

1972

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Recommended Citation

McDonald, W. G., (1972), Captain Waldron Deceased, Illawarra Historical Society, Wollongong, 31p.
<https://ro.uow.edu.au/ihspubs/2>

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Publisher

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*In the Supreme Court
of
New South Wales*

*In the Matter of
Captain Waldron
Deceased*

W.G. McDonald

*Illawarra Historical Society
Wollongong*

Registered in Australia for transmission by post as a book

Cover design by A. W. R. Macdonald

CAPTAIN WALDRON DECEASED

BY

W. G. McDONALD



ILLAWARRA HISTORICAL SOCIETY

1972

Author's Note

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The author gratefully acknowledges assistance received in locating and obtaining material and in the preparation of the original paper and of this booklet from Miss M. McDonald, Mrs. H. J. Shaw (a descendant of Captain Waldron), Dr. C. H. Chaffey, Messrs. W. V. Mintorn and A. P. Fleming and other members of the Illawarra Historical Society.

W.G.M.

CAPTAIN WALDRON DECEASED

"1834. Saturday, 18 January. Captain Waldron's servant girls were brought to the court for thrashing their master". So the Paulsgrove diarist¹ first noted a case which, not surprisingly, created a first-rate sensation in Illawarra, and even in Sydney, where the "Sydney Herald" of 23rd January reported "an occurrence almost unheard of . . . C. Waldron, Esq., J.P., having occasion to find fault with one of his female servants, it was returned with great abuse—joined by another female servant. In the sequel they beat that gentleman in such a manner that he is seriously laid up. The neighbours were sent for to render protection until the arrival of the police — in the interim the ladies stripped themselves naked and had a dance in the courtyard!!!"

The sequel was more sensational still. A local tradition has handed down what may be called for convenience the carving-knife version of the story.

According to this, the unfortunate captain was knocked down by the two convict women, who then went to work on him with a carving-knife, inflicting injuries from which, after lingering for a fortnight, he died. The women were tried for murder and convicted and on 26th February the Paulsgrove diarist noted, "Sown about three acres of turnips. This day the two consign'd servant girls of the late Captain Waldron was hung at Sydney for the murder of their master. The cattle came home from five islands".

So far so good — or, for the participants, so bad. There were undoubtedly convict women in the colony capable of such a crime; it clearly amounted to murder; and the penalty for murder was death.

But the diarist had been misinformed. Before long he was writing "Walked to Wollongong for the papers, and heard the servants of Captain Waldron being pardoned by the Governor and the supreme Counsel".

Now here the carving-knife version becomes simply incredible. In those tougher-minded days commutation of the death sentence for murder was the exception rather than the rule, and this was an aggravated case. The alleged manner of the killing was brutal and revolting; and it was a murder which would not long before have been classed as petty treason: "where a servant killed his master, a wife her husband, or an ecclesiastical person his superior".² And though murders of bishops by archdeacons were by 1828 rare enough for Parliament to abolish petty treason as a distinct offence, the murder of a master by his servants was still no light matter in a convict colony. Yet the death sentence was not only commuted, but reduced to a mere three years' hard. At that rate a good many officers and gentlemen in New South Wales would have needed to make sure carving knives were not left lying about.

The commutation is beyond doubt — attested by Governor Bourke's despatch, reprinted in the first series of the Historical Records of Australia: "The circumstances of the case, which are fully explained in the enclosed minutes and the Judge's notes which accompany them, have induced the Council to recommend that the sentence of death be commuted to imprisonment with hard labour for three years, in which recommendation I fully concur".³

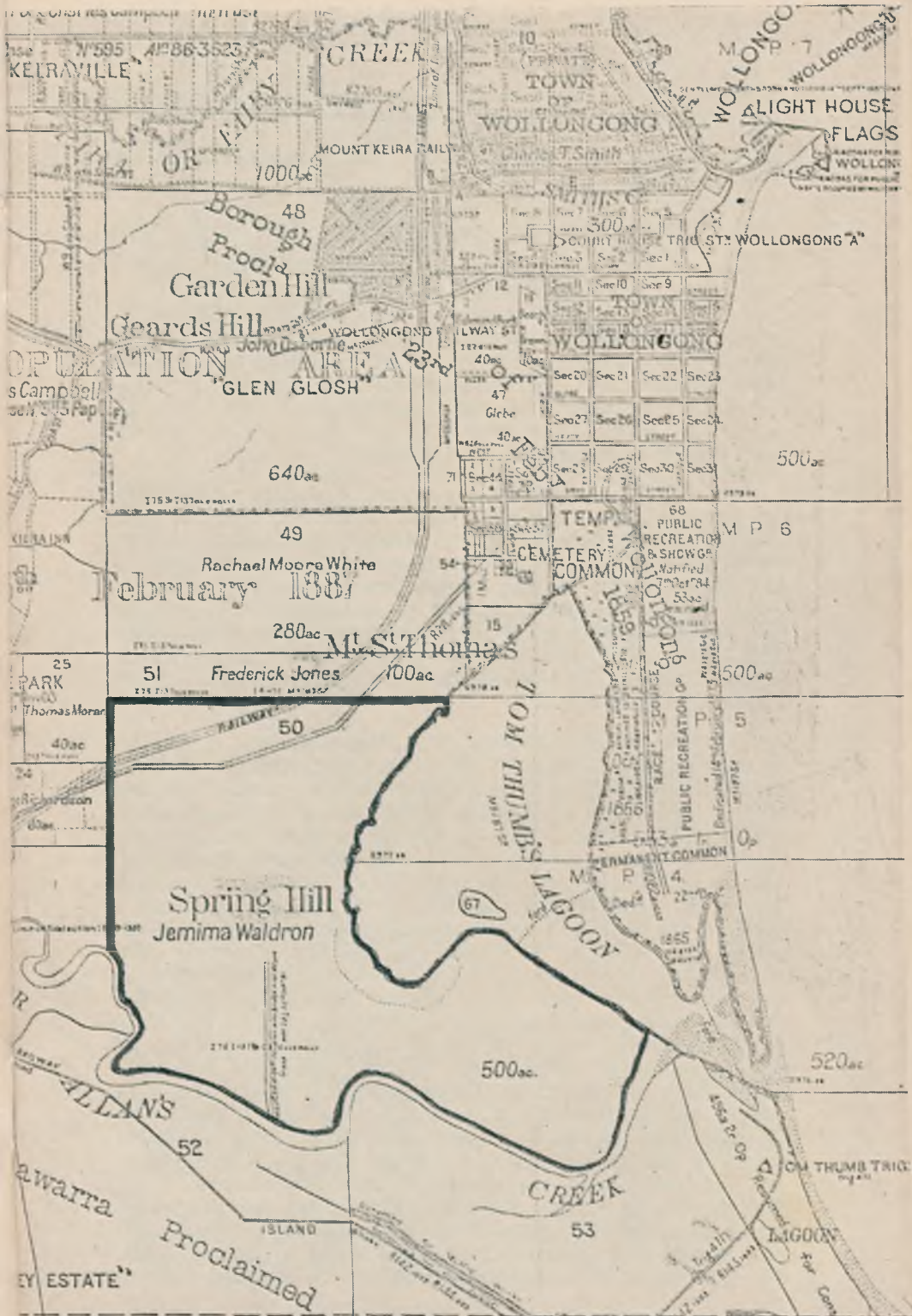
But the minutes and notes are not there — just a note that they will be printed in the Second Series, which never appeared (though, paradoxically, a third series did). So posterity has been left to wonder what lay behind this strange clemency, and it has been assumed that there must have been some provocation as outrageous as the crime itself.

The explanation has been lying in the Mitchell Library, tucked away in two fat volumes which bear the slightly Irish title, "Transcripts of Missing Despatches", and contain, among other things, the complete depositions at the trial.

The scene of the melodrama was Spring Hill, shown on the Parish Map as the small hill through which the road which still bears that name is cut, to the west of Tom Thumb Lagoon. (Old residents still remember Spring Hill House, near the Transfield camp and the two big fig trees on the crest of the hill). Very early in Wollongong's history, on 22nd June 1824, one George Tate had obtained from Governor Brisbane a promise of a grant of 500 acres thereabouts.

Alexander Stewart in his *Reminiscences*⁴ said: "George Tate Senior had the first hotel on the coast. Springhill House, where Mr. Alfred Waldron now (i.e. in 1894) lives, was the hotel. Mr. Tate got his licence in 1829 and held it for about two years. He then gave up the licence and Spring Hill House ceased to be a hotel. Whilst it was a hotel it was frequented mostly by sawyers". This is not so strange as it sounds. The first road, such as it was, from the landing place at Brighton Beach to the Dapto district straggled off south-westerly not far away. According to Stewart it "ran through the Glebe . . . and on through the new Roman Catholic burying ground, till it came out across the Blind Creek now called Mount St. Thomas. Then it crossed over Springhill through Tate's flat and came out near Heron Farm, where it crossed Allen's Creek. From there it went on to near the coke-works at Unanderra" (that is, near the corner of Five Islands Road and Princes Highway).

In 1832 the "Sydney Monitor" advertised for sale "that beautiful Estate situate at Illawarra or Five Islands, known by the name of Spring Hill, containing nearly 700 acres of rich alluvial



land, bounded nearly on three sides by Tom Thumb's Lagoon and Charcoal Creek

There is an excellent dwelling-house consisting of twelve rooms, a strong kitchen and wash-house, barn and barn-yard, a stable and fowl-house, piggeries, stock and milking yards, a neat garden, well stocked with good fruit and ornamental trees, &c. and forms a delightful view both of water and landscape scenery, and is in fact altogether calculated for a respectable family residence. Its advantages are many, the distance being only 3 miles, with a good road to the boat harbour at Wollongong, where a conveyance of produce &c. can always be obtained to and from Sydney by water. There are always an abundance of fish and wild fowl to be obtained at the Lagoons."⁵

On 5th September 1832 by indenture of lease and release,⁶ in consideration of £147.5.6 lawful money of Great Britain, George Tate conveyed to Charles Waldron five hundred acres in the District of Illawarra in the County of Camden, bounded on the east by Tom Thumb's Lagoon, on the south by Charcoal Creek, and on the west and north by marked lines. The property had not yet been granted to Tate, but grants took so long to issue that conveyances of land not yet granted were common. In the upshot Captain Waldron did not live to receive the grant, which finally went to his widow.⁷

Captain Waldron had had a long and creditable, if not particularly successful, military career. Born in Ireland in 1780, he had first served in the Roscommon Militia and received his first regular commission in 1800. He married a Miss Jemima Thomas, whose family name is said to have been given to Mount St. Thomas. Waldron distinguished himself in the Peninsular War, was wounded at Redinha and in the bloody storming of Badajoz, and in 1813 received his captaincy. Seventeen years later, still a captain, and having in the meantime served for 4½ years in the Portuguese Army, he exchanged into the 39th Regiment, then about to sail for New South Wales. That he had not got further in the army was no reflection on his abilities or his soldierly qualities. An officer then normally had to purchase not only his first commission but every subsequent step up to Colonel. For a poor man without influential friends, almost the only chance of promotion was a death vacancy; hence the gruesome old toast traditional in officers' messes, "Here's to a bloody war and a sickly season" — calamities which meant quick promotion for the survivors. Death vacancies were comparatively rare in the long peace after Waterloo, the Irish gentry were chronically insolvent, and it seems a fair inference that Charles Waldron, with his wife and ever-growing family to support, lacked the means to buy his way up the ladder. That he sought a posting to New South Wales is consistent with this. The social or comfort-loving officers of a regiment ordered

overseas would try to exchange postings with officers on home service. If the regiment was going on active service, men might exchange into it for adventure, honour and glory. But these were not to be found guarding convicts at the end of the earth. A man who exchanged into regiment bound for Botany Bay must have been prompted by inability to live on his pay at home, a cash consideration, the hope of making a fortune in a new country, or a combination of all three.

Captain Waldron reached Sydney at the end of November 1831. He was accompanied by his wife and nine children — a family which ultimately increased to twelve, all of whom grew up — an almost unique record for those days.⁸

On purchasing Spring Hill Captain Waldron retired from the army and settled down to country life. Next year John Dunmore Lang, after visiting him at Springhill, wrote:

"He was busily employed in superintending certain horticultural operations in a new garden which he had formed, cleared and cultivated out of dense forest during the few months he had been in possession of the land. He told me he had found a copious spring of excellent water. He was fully occupied, contented and cheerful, with the prospect of spending the evening of his days in patriarchal retirement and at length leaving his family in comparative independence".⁹

So, except for trouble from time to time with insubordinate convicts, whom the Captain tried to discipline with the lash or solitary confinement, things seemed set fair for the Waldrons. In December 1833 their twelfth child was born. Then early in January two convicts from the Female Factory were taken on the strength at Spring Hill.

Mary Maloney was twenty-five. Her career in the colony, according to the "Monitor", had been marked by eccentric violence. She "was represented by those who knew her in the Factory as the terror of evil doers. That is to say, *evil doers to her and her friends and those she honoured with her patronage.*

She was a great redresser of grievances too in a more public way; a sort of leader of the *factory radicals*. She was chief ring leader along with Mary Cartwright (who was lately pilloried) in the breaking-out of the factory. In short Mary Maloney exhibits the moral wreck of a superior mind. Her courage and firmness exceeded that of nine men out of ten".¹⁰ Mary was a militant unionist born before her time.

Sarah McGregor was only 18 and much under Mary's influence. She was "the daughter of a gardener who lives at the lodge of a park near Liverpool, the property of Lord

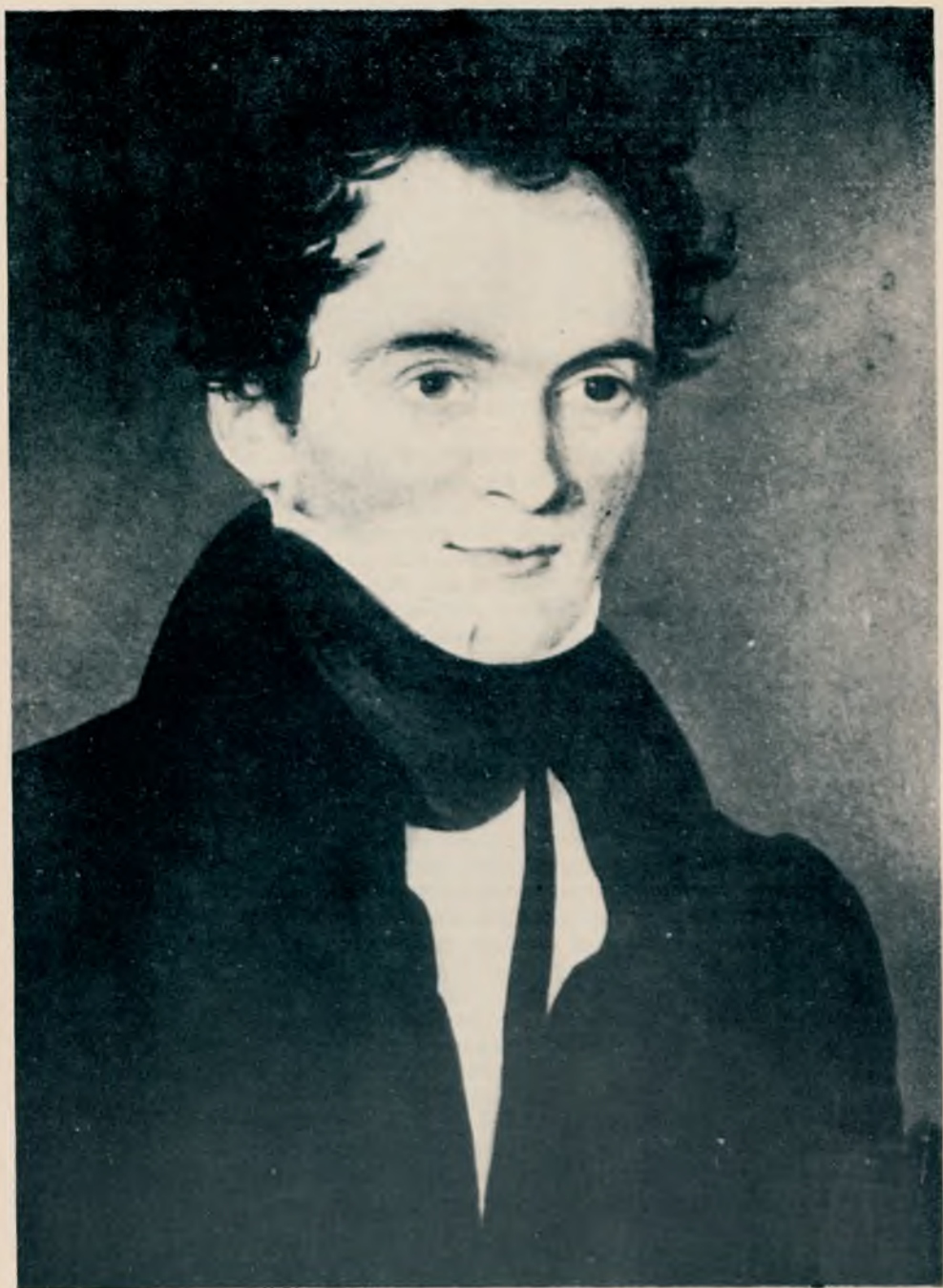
Her parents brought her up morally and religiously"¹¹ — with only indifferent success, for she was transported at the age of 14.

What happened on the fatal day, 14 January 1834, was thrashed out in the Supreme Court in Sydney, on Saturday 22 February. One can readily imagine oneself among the spectators sweltering in the stifling atmosphere of the courtroom, every part of it packed to capacity; the back of the gallery full of old lags who did not care for water in any shape or form and never touched the stuff, internally or externally; while ladies whose refinement forbade them to keep such dubious company might be accommodated with a seat on the bench, to the scandal of those whose even stricter propriety forbade them to do more than devour the newspaper reports of the trial.

Those with personal experience of the workings of the law—as many of those present had, one way and another—must have been speculating on the sort of jury that would try the case, and explaining to their less learned or less experienced neighbours that it might consist of seven officers or of twelve civilians. Since the first settlement, juries in New South Wales had been composed of military and naval officers, the authorities fearing that a civil jury might be like that celebrated Irish jury who, when the clerk of the court said, "Gentlemen of the jury, take your usual places", all piled into the dock. But the increasing number of free settlers, and constant agitation, had led to a change in the law the previous year, which allowed a civil jury in the criminal jurisdiction on the application of the accused.¹² Moreover, emancipists who met the property qualification could sit as jurors. The defence was therefore expected to ask for a civil jury, which, especially if it included one or two old lags, should have been better disposed than a military one towards convicts charged with the murder of an officer. But presently speculation was ended when seven red-coated officers filed into the jury box. The defence seemed to have missed the first trick.

Counsel were already at the bar table — for the prosecution, the Solicitor-General, John Hubert Plunkett;¹³ for the defence, Thomas Deane Rowe, a veteran as legal practitioners went in New South Wales, for he was one of the half-dozen solicitors already practising who were enrolled when the new Supreme Court was set up in 1824.¹⁴ The deposition clerk was missing, but a young barrister named Roger Therry¹⁵ volunteered to deputise for him. Then Mr. Justice William Westbrooke Burton, majestic in the scarlet and ermine robes of the Supreme Court in its criminal jurisdiction, took his place on the bench.

In response to the shout of the clerk of the court "Put up Sarah McGregor and Mary Maloney", the two accused appeared,



ROGER THERRY

like the Demon King in a pantomime, through a trapdoor in the floor. Hearing the name McGregor, "Monitor" Hall in the press box was reminded of Helen MacGregor, the formidable wife of Rob Roy — Scott's novel had been a best-seller a few years before — and mentally attached it to one of the prisoners who "to a commanding countenance and brilliant eye, possessed a fine bust and erect figure". But she turned out to be Mary Maloney; Sarah McGregor was the smaller prisoner, who appeared to Mr. Hall "feminine and amiable, (with) considerable personal attractions as to feature, though not as to figure".¹⁶

A long-winded indictment charged the two prisoners with the murder of Charles Waldron. A second count charged Sarah as the principal and Mary as an accessory.

Mr. Piunkett rose and called his first witness. To a murmur of respectful sympathy from the better types in the gallery, while one or two ladies of exceptional sensibility and refinement wiped away a sympathetic tear or two and sniffed delicately at their smelling salts, Mrs. Jemina Waldron, the relict of the deceased, in deep mourning, with an infant at her breast, was helped into the witness box. "She appeared at first to be overcome by painful recollections, but gradually becoming composed, delivered her evidence in a distinct and collected manner". She deposed that after breakfast on the morning of 14 January her husband had gone out to smoke his pipe on the verandah. Mrs. Waldron, following him, saw that the verandah had not been washed. She said to Sarah McGregor, who should have done it, "Sarah, the verandah has not been washed", to which Sarah answered, "It has. Mary Maloney has done it, it was my turn to do the parlour". "Jemima", said the Captain, "don't let them persuade you it has been done, for I will take my oath that water has not been on the verandah". Calling Mary, he said "Now I will show you, Mary, that water has not been on it, here are the ashes of my pipe and here is the carpet I had my foot on last night"; to which Mary replied, "It is not the ashes of your pipe, it is the ashes of my own pipe as I washed the verandah". Then, said Mrs. Waldron, "holding up both her hands in a violent manner she called out, 'You bloody old soldier may hell and damnation blast you and all in the house'". She then went across to the kitchen, which, in the manner of the time, was a detached building behind the main house. Captain Waldron, remarking "This is not language for you and the family to hear", followed her. Sarah went after them. ("I smelt spirits on her", said Mrs. Waldron).

Mrs. Waldron, bringing up the rear, saw the captain standing, his right arm leaning on a post by the kitchen door and his pipe in his left hand, and heard him say "Mary, you shall go in to the beach" (a current local expression for the police head-quarters at Brighton Beach). Mary went on "blasting and cursing".

"If Mary goes to the beach", Sarah declared, "I will go with her; we came together and we will go together". The captain, if Mrs. Waldron could be believed, replied with surprising mildness, "Sarah, you have done nothing to induce me to bring you to the beach, you shall not go".

But as even previously ignorant Sassenachs had learnt when "Rob Roy" was a best seller, MacGregors were ever ill folk to cross. The blood of a thousand outlaws¹⁷ surged up in Sarah. "I will, and you will see I will give you reason to send me there!" she yelled, and with a vengeful halloo the reincarnation of Helen MacGregor went into action. "She came forward with immense force and passion", said Mrs. Waldron, "and struck my husband on the right side of the neck with her fist — he was standing or leaning towards the post when he received the blow, there was a great descent in the place the kitchen being built upon a rise and the yard paved with rough stone fast in the ground. He fell on his left side . . . both followed him down the descent as he lay with his head near the stones . . . they beat him on the head and face and neck . . . with their fists with all the force they could command".

Mrs. Waldron, panic-stricken, called to some male convicts nearby, "For God's sake assist your master — save him!" But to no avail. "From the noise and cussing of the women the men were prevented from hearing my cries". This was putting a charitable construction on it — Mr. Hall thundered editorially, "None of the male monsters present offered the least assistance. Such barbarity was never seen in any land except New South Wales".¹⁸ But there was a better man at hand. Master Charles Waldron, aged 12, charged into the fray. This shamed the men into action. Knaves the carpenter pulled Mary off, someone got hold of Sarah, and the Captain rose from the ground. "He looked at me" said Mrs. Waldron, "with a stern look which convinced me as if something particular had taken possession of his eyes. I said, 'My dear, I am afraid you are hurt'. He answered very feebly, 'Oh, no'. I said to Mary 'You vile and wretched and worst of women, what have you done to my husband?' She turned around and said 'You call me a wretch, do you know what a wretch is?' And immediately took up her petticoats and exposed her person to me and my husband." Captain Waldron had not flinched in the imminent deadly breach of Badajoz, but he flinched then. "My husband said faintly, 'Come in, come in'". Pausing only to say with what dignity she could muster, "Mary, I shall never be able to look up with these men on the farm after what has taken place", Mrs. Waldron followed him through the back door, leaving the two viragos mistresses of the field.

"My husband", Mrs. Waldron went on, "called the men around the house to protect it from the women — they were be-

having very violently in the yard, cursing and blasting and wishing a short life to the bloody old soldier and bloody old b— and to me and all under the roof . . . the language they used was of the lowest description, and what I had never heard before — I would rather be excused from repeating it. . . . I heard a carving-knife spoken of . . . one of them said 'I will run the bloody old soldier through with the carving knife' ". Thereupon Mrs. Waldron prudently sent a man to the kitchen to bring the knives into the house.

For all their superior numbers, the forces of law and order were terrorised. Reinforcements were sent for — Captain Allman, the commandant at Wollongong, and the police, and a neighbour named Shoobert — and the Waldrons and their men prepared to stand a siege. "I desired the men to prevent the women from coming into the house", Mrs. Waldron said, "They said they would have their clothes which were in the house". When Sarah broke a window and opened the sash, the carpenter said "For God's sake, mistress, give those women their clothes or there is no knowing where this will end". The clothes were passed out while Mary and Sarah rampaged around the house.

So far even those with some pretensions to respectability must have had trouble keeping the straight face demanded by the solemnity of the occasion, while the veterans of the Old Bailey at the back unashamedly enjoyed this story of an officer and gentleman done over by women convicts. But Mrs. Waldron's evidence next took a turn which restored everyone to gravity: "About twenty or twenty-five minutes after he was knocked down, my husband complained of his tongue getting dry and asked for a cup of tea . . . when I brought it he said 'Jemima, do you see my head is falling? I looked and saw his right side shaking and he said 'Look at my hand, I can't touch the tea, I cannot take it'. He had lost the use of his right arm . . . when he spoke to me his voice was not perfect . . . I put the tea to his mouth but he could not drink it and I perceived . . . his mouth and cheek to be drawn on one side . . . I then with the assistance of the carpenter got him over to the sofa, in removing him I found he had lost the use of his right leg . . . he did not complain of pain but seemed to have no inclination to speak. . . . I spoke to him repeatedly but he did not answer. Whilst the men and I were rubbing him, Captain Aliman came. On seeing him tears came from the left eye but not the right . . . he knew Captain Allman and gave him his left hand." Captain Allman took Sarah and Mary off to the lock-up still "making a continual noise and cursing and swearing".

Dr. Grover, who lived about four miles off,¹⁹ arrived soon after. He blistered and bled the captain, but to no avail; "He never left his bed — he became an infant in bed, obliged to be

lifted and turned . . . I think he had only a perfect knowledge of me once or twice during the whole illness. . . . He made me understand that his case required great assistance; and I then sent to Sydney for Dr. Imlay.²⁰ Dr. Imlay saw him eight days after the assault. He knew Dr. Imlay and put his left hand feebly to him and looked up at him and tears came from his left eye but not from the right — he mentioned his name but imperfectly". On the 28th January, a fortnight after the assault, Captain Waldron died.

According to Mrs. Waldron his general health had been good. "He was an active man and in good health for 53. Some time before . . . he had been complaining of sickness at the stomach and was recommended smoking by Dr. Imlay. He had never had a paralytic affection before or any symptom to my knowledge. He was a man of abstemious habits of drinking, no one more so in the colony. He was not given to sudden passion. He was the best of fathers and husbands. When he was first struck his manner was not that of a man in a passion".

Cross-examining, Mr. Rowe tried for some time without success to shake Mrs. Waldron on her main story. In fact her replies, in Mr. Hall's opinion, strengthened the case for the prosecution. Nor would she admit that the captain was an irascible man. "He was not a man given to sudden passion, he was not passionate, not particularly, he had not frequent words with his servants, of course he found fault angrily at times when business was not done — he was . . . more a mild man than a passionate man; he never lifted his hand to a servant . . . since the day I knew him". Asked if the captain had been summonsed at Campbelltown for striking a servant, she maintained it was the other way round. Mr. Rowe, getting no change from her, sat down.

The next witness, William Wade, one of the Waldrons' assigned servants, said that he had been in the carpenter's shop grinding wheat, which Knaves took into the kitchen to sift. There was a slab partition between the carpenter's shop and the kitchen, and he could hear and see what went on. "Master and Mary Maloney came across the yard — she came first. She said she expected better treatment from her countrymen than to come there to be starved. He said 'Go in, go in for a bitch'. I did not hear what conversation was afterwards — not until Mrs. Waldron called me out to assist the master. . . . He was on his back and the two women standing over him . . . Mr. Charles Waldron came and struck Mary Maloney two or three times on the face . . . neither of those women struck Captain Waldron in my presence . . . I said 'Come into the kitchen before you get into further trouble' . . . I went into the kitchen with the women and did not assist the master . . . No one laid hold of the women . . . I never heard them speak except that they said they would not stay on the place".

Later the captain had posted him on the verandah to keep the women out. "Whilst I was sitting on the verandah I could hear them, they were shouting and making a noise then. I heard them call him an old b—". About half an hour after the assault he had helped to carry the Captain in. "He was vomiting; one hand and leg was very stiff — the right; I perceived nothing the matter with his face". During the captain's illness he had been unable to shave himself and Wade had shaved him.

This witness, obviously not too anxious to assist the prosecution, was not cross-examined very severely. With a little gentle leading, he said that the women "went away peaceably and quietly with me when I desired them . . . my master was a very good sort of master but very subject to passion — he lifted his hand . . . and said 'Go in for a bitch' ". But Wade was not going too far to help the defence either. The captain had not been near enough to strike Mary; he had been two and a half to three yards away; and Wade had never known him to strike a man.

Next, Master Charles Waldron was put into the box. He related that from a hut twenty yards away he saw the women enter the kitchen. The captain followed and stood outside. Six or seven minutes later the assault had occurred. "Mary Maloney made use of very bad language, calling him a bloody old soldier — I do not remember what else she said. . . . Sarah struck him — she ran at him as he stood at the kitchen door, she hit him in the neck, he fell directly and rolled a couple of yards from the kitchen door. The stones were rough . . . both prisoners were striking him . . . Mary Maloney struck him several times under the right ear with her fists and Sarah hitting him also on the breast".

Charles heard his mother call for assistance. None of the men moved, so he had run up himself and hit Mary Maloney. He heard Sarah McGregor say she should stick the bloody old soldier before she left.

Cross-examined for more details, he said that when Mary Maloney struck the captain on the neck and on the ear it was on the left side; he was lying on his right side. Sarah had said that if she did not go to the beach she would make the bloody old soldier feel the carving-knife. Mr. Rowe put to him that Sarah said she would not use the carving-knife as someone else had threatened to a few days before, but Charles stuck to his guns. "I am sure of the words she used, no one had threatened to use the carving-knife a few days before". Asked if he knew what the question meant, he said "I know very well what you mean".

Asked whether his father was a man of an angry disposition, Charles, being truthful, had to admit that the captain was given to anger; but being loyal too, he added, "He was not in the habit



JOHN HUBERT PLUNKETT

of getting into a passion without just cause. He always had just cause as far as I know . . . He has never done so to me except when he had cause". Then Charles stepped down, having made, on one observer at least, the best impression of any of the actors in this unedifying drama.

Next came Captain Allman, the commandant at Wollongong — grey-whiskered, red of face and nose, benign of mien. He would have been known personally to many present, and not only to those of his own social class; there had been complaints from some respectable settlers about his free-and-easy mixing with cedar-getters and other low types—it was said that "if a bushranger did not actually label himself as such, he might sit down in the same gunyah and eat beef steaks and damper, and drink strong tea and smoke a pipe with him without the slightest risk". Others might have heard from soldiers who served under him that he was one of the best fighting men in the regiment, and had shown the most daring courage in the Peninsular War, and that in forty years in the regiment he never had a soldier flogged. Or they might know his clerk, young Alexander Harris. According to him, "There is no excuse so frivolous and shallow that the Captain would not resort to it to get rid of holding a court when the business was such as to lead him to suppose he would have to inflict punishment. His distress at times was comic beyond description but for the intense childlike gentle-heartedness it betrayed". The loves of this good man's life were his gun and his rum bottle — his proficiency with the one in no way impaired by his proficiency with the other.²¹

The captain wanted to be fair. He gave evidence of the arrest of the women; of his interviews with Captain Waldron; of a complaint by one prisoner of not being well-fed. Mrs. Waldron had pointed out where Captain Waldron fell, about four yards from the kitchen door — on large flat stones, about fourteen inches lower than the doorstep.

He had seen Captain Waldron three days before the assault. "He was then in good health and spirits — he was a spare man, not a florid full-blooded man." Then Mr. Rowe started the same line of cross-examination as before. Captain Allman admitted Captain Waldron was irritable — "I think he might be provoked to violence and sudden bursts of passion, and I think he would be violent upon any insubordination of a servant". He said this reluctantly, and Mr. Rowe should have known when to let well alone. But like many an advocate before and since he went on to ask one question too many — a nasty insinuation about Captain Waldron's drinking habits. Captain Allman was sorry for the prisoners, and would have helped them if he decently could, but to ask him to defame a brother officer, to speak ill of the dead, to add to that poor little woman's distress — "Why, damme, it's too bad!" His grey whiskers bristled, his red face grew redder. "I never

knew him to drink freely, quite the contrary! I knew him to be a most humane good man!" True or false, it was spoken like an officer and a gentleman; and this time Mr. Rowe took the hint, and withdrew under cover of an innocuous question about Dr. Grover's absence. Captain Allman said he knew Dr. Grover had been subpoenaed, but did not know why he was not present: "I believe his wife is in a dying state."²²

The solicitor general played his last card. Though marked as a king, it proved to be a knave. James King deposed that he was a ticket-of-leave man employed at Spring Hill. At the time of the assault he had been doing some coopering work and, though the slabs of the cooper's shop were two or three inches apart, the conscientious Mr. King had kept his head down, closed his ears and gone on with his work through all the uproar. He had not looked through the slabs, nor left the shop till ten minutes after Wade had gone out. This was not what Mr. Plunkett was after. Getting leave to treat King as hostile, he put him through a severe cross-examination, which made it clear that the assiduous Mr. King saw and heard far more than he first admitted, although it came out in no sort of sequence. "I heard Mrs. Waldron say 'Oh you vagabonds, do you intend to kill my husband?' I had no occasion to go out. I saw Mrs. Waldron standing near her husband's head, who was then lying on his back — one woman was standing near his head in the act of stooping down — McGregor. I don't know what made her bend without it was that Captain Waldron just then made a kick with both his feet. What knocked him down was a woman's arm shoved him out of the door. I saw that — I don't know whose arm it was.

The door where I was was within five feet. He fell back on his backside, the two women came out, then he made a kick at the two women with his two legs. . . . The door sill is about 6 inches from the surface of the ground and then there is a descent and hard stones . . . both women came out together to him saying 'We'll learn you to come into the kitchen to beat us and to call us bitches'".

After he got up, Captain Waldron had used abusive language to the prisoners and they to him. "He said, 'You vagabonds, I'll let you know what it is to ill-use me!' They replied, 'We will not stop here to be starved. You send us out a slice of bread not enough to eat'. One said she had been stealing bread from the men to eat. I did not hear the words 'bloody old soldier' . . . I heard Mary Maloney say to Captain Waldron that she had washed the verandah. He said, 'You lie, you bitch!' She said, 'Why can't you believe me and the other servant?' He said 'No. Get in, you damned bitch, get in — can't I see?' She was then standing inside the door and he outside. The other was laughing very heartily inside. He said to the little one, (McGregor) 'Ah, my lady, and

I'll have you punished for laughing!' As she still laughed, I saw him step on the door sill — he lifted up his hand thus, the fist clenched and elevated. . . . He was pushed by a flat hand against his breast — he staggered two or three paces, then fell on his backside. The two women came out and he kicked out his two feet at them and that threw him on his back. When he came upon his back and the women came to him neither touched him . . . one of the women was stooping when Mr. Charles struck her."

Mr. Rowe rose to examine (one could hardly say cross-examine) this helpful witness, and, according to Mr. Hall, "being led by Mr. Rowe, the witness swore away for the prisoners . . . seemingly much pleased at the counsel's encouraging him to swear all on one side".²³ He thought the woman might have come out to lift the captain up, but was pulled away and struck in the face by Master Charles before she had time to do so. "They said how dare he call them a bitch, had he not a mother of his own. . . . Captain Waldron had been on the ground for about half a minute when Mrs. Waldron came out; she did not see him shoved out. It was not a blow with a clenched fist that knocked him down. He was not struck by either of the prisoners after he was down. After the assault Captain Waldron had called me to the door and said 'William, I charge you as a magistrate to keep those women quiet till I send for a constable to take them to the factory'. They remained quiet afterwards". (Mr. King did not explain why the Captain called him William when his name was James). "That is my case, your Honour", said Mr. Plunkett.

Despite the help of two Crown witnesses, Mr. Rowe was up against it. Dr. Grover, on whom the defence had evidently pinned its hopes, was missing, no one knew where or why. As everyone knew, prisoners could not give evidence in their own defence. Otherwise some of those present might never have left their country for their country's good; and some might have had their necks stretched, for the rule was less one-sided than it seems at first sight.²⁴ Prisoners could, however, make an unsworn statement, and Sarah handed up to the Clerk of Arraignment an address which he read for her. It struck Mr. Hall as "very properly and modestly expressed" — something of a change for Sarah — and "protested against any intention of murder, and hoped the military jury would not be biased by their trying them for the death of a brother officer, and appealed to the mercy of the Court".²⁵

Beyond this, all Mr. Rowe could do was to recall Captain Aliman and Mrs. Waldron to clear up a couple of minor points — a rather irregular proceeding, with the Court bending the rules in favour of the accused. Mr. Plunkett suggested calling a medical man for an expert opinion on the evidence. The Judge assented. Peter Hoskins, a Sydney surgeon, was called, and read the deposi-



MR. JUSTICE WILLIAM WESTBROOKE BURTON

tions of the previous witnesses. Then he solemnly announced his opinion, delivered with much pomposity and verbosity, but amounting to little more than that "the symptoms denoted paralysis" — which the jury hardly needed Dr. Hoskins to tell them — and that "it is generally a consequence of injury to the brain either from a blow or a natural cause". But he went so far as to say that he would have expected violence sufficient to cause paralysis to produce "considerable external injury". Anger and excitement could cause the rupture of a blood-vessel in the brain, resulting in paralysis. Cross-examination only left everyone more blinded with science than before.

Mr. Rowe asked for an adjournment till Dr. Grover could appear, but the Judge ruled, "His evidence is not positively necessary; and it is for the jury to grope their way to the truth from the evidence produced in Court". Then counsel addressed, and the Judge summed up, telling the jury that it was impossible to reconcile the evidence of Mrs. Waldron and Charles with that of Wade and King. If they believed the assault was committed without provocation and was the cause of death, then, though the prisoners did not intend that result, it was legally murder. If, on the contrary they believed that the blows were not given, or were not the cause of death, they must acquit the prisoners.²⁶

The courtroom had grown dark while the judge was summing up, and the candles on the bench were lit before he concluded; for the custom of the time was that once a criminal trial had begun, judge, counsel and jury must, if humanly possible, stick it out and finish it at one sitting, even if it meant an all-night sitting. At 7 o'clock the jury retired. Some of the spectators slipped out for a quick one, taking a chance on being able to get in again; others, determined not to lose their places sat fast and hoped the jury would not be out too long.

Those who sat it out were justified. After only half an hour the usher came back and knocked on the door behind the bench. The judge returned, and the jury filed back into the box.

"Gentlemen of the jury, have you agreed on your verdict?"

Major Delisle rose: "We have".

"How say you, are the prisoners guilty or not guilty of the murder of Charles Waldron?"

"Guilty".

A buzz of conversation, instantly silenced, for Major Delisle was still on his feet. He pulled out a piece of paper and read:—"We . . . the jury . . . conceiving that we were compelled by the law to find the prisoners guilty of murder, yet the offence was so nearly allied to the crime of manslaughter and seemed . . . so far from being committed under any contemplation of its fatal issue, as together with the absence of the important evidence of the medical

man who attended the deceased, induces us to recommend them to the favourable consideration of the Executive Council”.

But the prisoners had been convicted of murder, and there was only one sentence the judge could pass. His tipstaff arranged the black cap on his wig, and in solemn tones Mr. Justice Burton passed sentence of death on both prisoners, holding out no hope that the sentence would be set aside. It was to be executed on the following Monday — in only two days’ time.

Sarah’s presence of mind had not deserted her. There was still one chance. In the elegant old phrase, she pleaded her belly in arrest of judgment — that is, she claimed to be pregnant. This would have entitled her to a respite till after her confinement — which in practice almost invariably meant a commutation of the sentence, for even when the laws were most severe there was a natural human repugnance to carrying out a long-delayed death sentence.²⁷

The judge ordered a stay of execution until Wednesday, and directed the sheriff to return a jury of twelve matrons on Monday morning “to inquire whether or not Sarah McGregor be quick with child”.

Lastly, the judge, now free to express his own opinion on the evidence, expressed it forcefully by committing the two wise monkeys, King and Wade, for perjury. Then the court rose, and the audience pushed and shoved their way out into King Street, the respectable to lay down the law over their Sunday joints about the total depravity of the prisoners, the old lags to speculate lewdly on Sarah’s interesting condition and the responsibility for it, and to lay the odds on whether there would be the free entertainment of a public hanging on the next Wednesday.

For some of the less respectable the day’s entertainment was not yet over. A large crowd gathered as the police prepared to take the prisoners back to gaol. The Monitor reported, “The Governor of the gaol therefore very prudently obtained a strong reinforcement of constables . . . a bold policeman with a stout stick in his hand waiked all around the procession of constables and dealing his blows pretty freely on all who came within a few yards of them . . . the mob at length gradually dropping behind . . . ten or twelve hundred men, women and boys followed like a funeral procession. On their arrival to the gaol Sarah McGregor entered first and proceeded in a feeble manner to ascend the long flight of steps which reached from the outer door to the turnkeys hall. She exclaimed, bursting into tears, ‘God knows I never intended to commit any murder’. . . Mary Maloney presently came up and after encouraging her companion with a commanding sort of patronising kindness sat down by her side. . . She looked quite dark beside the pale face of her companion; her eyes flashed fire and her foot kept tapping the ground as if in disdain. . . Mary Maloney exclaimed with a toss of her head and a flash of her eyes,

'Pretty trial we had! found guilty but yet no doctor to prove what he died from!!' "28

On the Monday morning the jury of matrons was empanelled, and after examining Sarah for half an hour, returned a verdict, "Not quick with child to the best of our opinion". So on the Wednesday, the brow of the hill overlooking the gaol yard, said the Monitor, "was tastefully ornamented by a number of females anxiously expecting the execution of the unfortunate women convicted for murder. Whilst the men in general exhibited deep feelings of sympathy for these females, the lower order of their own sex were not overscrupulous in execrating them".²⁹

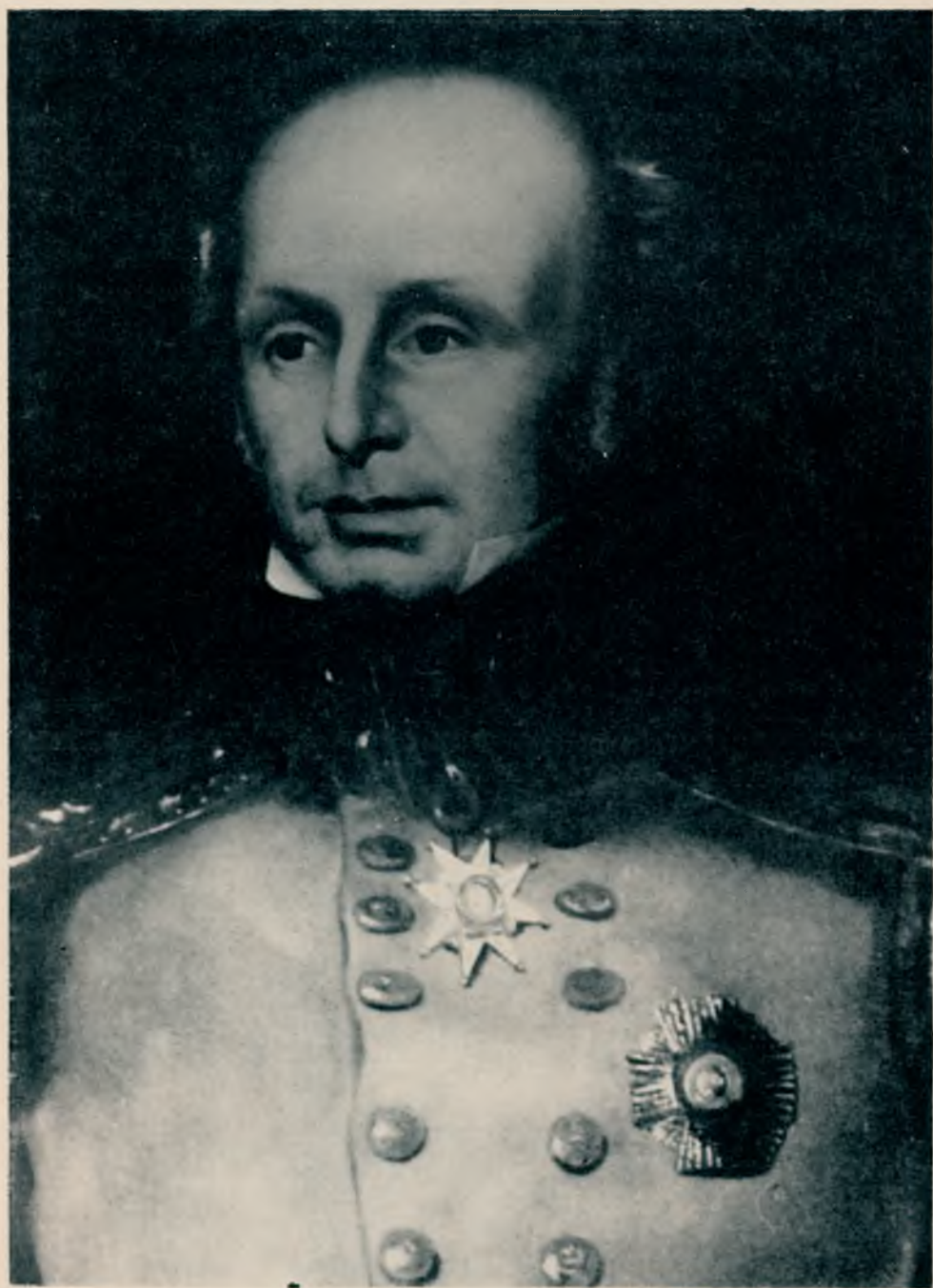
But the hopeful crowd were disappointed. Sarah's final throw had paid off after all, by deferring the execution from the Monday to the Wednesday. On the Tuesday a letter had come from the missing Doctor Grover: "Dear Sir, In haste I proceed to detail to you all that I know of the late Captain Waldron's case. But first I ought to mention that I made every effort to attend to my subpoena, my absence arose from my anxiety to remain at home until the latest period, having there a wife dangerously ill and blind. I left Illawarra on Wednesday and had proceeded about fifteen miles of my journey when my horse being weak fell, in consequence of the slippery state of the mountain occasioned by the heavy rain. I was obliged to return to Illawarra but could not procure another horse, and although there was a boat in the harbour ready to sail, the commander was afraid to venture out in consequence of the tempestuous weather. . . .

With respect to Captain Waldron, I attended him from the day on which he was taken ill to the day before his death. After the assault I examined his head very carefully but could discover no mark of violence whatever. After his death I called at the house and asked permission to open his head, which was refused by Mrs. Waldron. This I very much regret as an examination would have thrown a great deal of light on the subject.

He had been in a declining state for some months, having never perfectly recovered from the effects of an inflammation of the bowels when he received no medical attendance, and I am decidedly of the opinion that there was a predisposition to paralysis in the system arising from the impaired state of his stomach, etc. To me it appears highly probable that his decease arose from natural causes. The absence of all marks of violence goes a great way with me in forming this opinion. I think I may state with confidence that the blows he received after his fall could have had no effect.

Before I conclude I think it right to add that Captain Waldron was very irritable and to my knowledge gave way to violent gusts of passion on very trifling occasions. Allow me to subscribe myself, Sir,

Very faithfully yours
Montague Grover".



SIR RICHARD BOURKE

Dr. Grover himself must have accompanied or immediately followed his letter, for the same day he swore before Mr. Justice Burton that its contents were true. The Judge conferred with Chief Justice Forbes and Mr. Justice Dowling. Urgent representations were made to the Governor, Sir Richard Bourke, who forthwith convened the Executive Council — evidently in haste, for only three members, probably a bare quorum, were present — Sir Richard himself, the Colonial Secretary and the Honourable Lieutenant Colonel Snodgrass.³⁰

Mr. Justice Burton reported that he and the other Judges were of the opinion that had the purport of Dr. Grover's letter been given in evidence at the trial the prisoners must have been acquitted. The jury's recommendation to mercy was also laid before the council.

Dr. Grover was then introduced and said that about a month before the assault, Captain Waldron had informed him of the complaint mentioned in his letter, which led him to suppose that the Captain had a predisposition to paralysis. "He would confidently state that the blows from the fists had had no effect, but that the fall might have been an exciting cause of paralysis". The Council, after considering the case, decided that a full statement should be laid before the King, and the prisoners respited until the pleasure of his Majesty was known. This was a formality; there was no risk that the prisoners

"Must swing
On a yard of hempen string
For the pleasure of the King"

— good-natured old Silly Billy would not be less merciful than his representatives.

There is not much to add by way of postscript. So far no record of what happened afterwards to Sarah and Mary has come to light. King and Wade were still awaiting trial for perjury in May, when the Attorney General's Department wrote to Mrs. Waldron, urging her and Charles to come to Sydney to give evidence and pointing out that if the prisoners were to be tried at all it must be at the next sitting of the court.³¹ But the press reports of those sittings do not list them either among those convicted or those discharged. Probably Mrs. Waldron refused to leave Wollongong and the Crown had to drop the prosecutions.

Mrs. Waldron died at Wollongong at a ripe old age in 1872. Charles also lived at Wollongong until his death in 1892 aged seventy.³² Alfred Adolphus Waldron, who hammed it in the witness-box at the age of two months, was living at Spring Hill when Alexander Stewart wrote, was the owner until the property was resumed by the State Government in 1913, and died aged 87 in 1920.³³

So that is the official version of the case. It appears not only better authenticated but more consistent and intelligible than the carving-knife version, and free of the latter's improbabilities, incomprehensibilities and plain incredibilities. Nor does it give any support to the hypothesis of gross provocation. Even the witnesses most favourable to the prisoners would not say that Captain Waldron was a harsh master. Of cruelty there is no evidence, of any other sort of depravity not a whisper. The worst said against him is that he was hot-tempered and irritable, and probably expressed himself with the freedom traditional in the military profession. But, granted that when he was excited he used language that would make your hair curl, the ladies he was addressing had heard it all before, even if Mrs. Waldron had not, and could more than hold their own in an exchange of compliments. Take, for instance, what seems to have detonated the explosion, the dreadful word *bitch*. Assume that Captain Waldron said, "Go in for a bitch", and not "Go in to the beach". ("The words were so much alike . . . they still are, though years have rolled over their heads"). It is still hard to credit that Sarah, let alone Mary Maloney, had never been called a bitch before. Their sensitivity reminds one of those police constables who find the word "mug" so offensive, and, unable to bring themselves to repeat the accompanying adjectives, can only write them down and hand them up to the magistrate.

In the newspaper correspondence after the trial it was suggested that discipline at the Female Factory at this time was so lax that women convicts found it preferable to assigned service, and that Sarah and Mary had set out to get themselves returned to the factory, "Services no longer required". There may be a good deal in this. Even considered merely as a common assault, the offence seems so disproportionate to the alleged provocation.

Two questions remain. Firstly, it seems clear that Sir Richard Bourke and his council acted justly and reasonably on the information before them; but in a case where so much depends on early nineteenth-century medical evidence, one cannot help wondering what modern medical knowledge would make of it, and whether Sarah and Mary cheated the gallows after all. But an expert opinion indicates that this was not so; Captain Waldron did in fact die from the effect of a stroke. In themselves the blows and the fall were in no way responsible — the only way in which the assault contributed to the Captain's end was by raising his blood pressure.³⁴

If so, Sarah and Mary might theoretically have been guilty of manslaughter,³⁵ but in practice it is hard to imagine a jury convicting them. So probably substantial justice was done by treating it as an aggravated case of assault, and giving them the maximum sentence for that offence.

Secondly, how did the carving-knife version gain currency? The real facts were well known at the time, and there were many

people who should have been concerned to protect the memory of Captain Waldron.

Perhaps the most likely explanation is that the carving-knife version survived by its very scurrility. If it had been printed, it could have been refuted in print; it might even have provided grounds for a prosecution for criminal libel. But it could hardly be printed in its entirety now, much less in the Victorian age; such a story, passed on by word of mouth, is impossible to catch and pin down.³⁶

The excuses for reviving this ancient sensation must be firstly its inherent interest as a story, and secondly the light it sheds on the life, manners, and laws of the day. But it may be, too, that to make the official — and it is submitted the authentic — version known is no disservice to Captain Waldron's memory.

NOTES AND REFERENCES

¹ The Paulsgrove Diary was kept between June 1833 and April 1834 by a free man (whose name may have been Webster) employed on James Stares Spearing's Paulsgrove Estate at West Wollongong. Some passages from the diary were reprinted in "Earliest Illawarra" (Illawarra Historical Society, 1966).

² "For a wife to kill her lord or husband, a servant his lord or master, an ecclesiastic his lord or ordinary, these, being breaches of the lower allegiance, of private and domestic faith, are denominated petit treasons" — Blackstone, Commentaries on the Laws of England, Book IV, Chapter 6.

"The punishment of petit treason, in a man, is to be drawn and hanged, and in a woman to be drawn and burnt" — Ibid, Chapter 14. Petty treason "was converted into the crime of murder by the statute 9 Geo. IV c. 31" — Osborn, "Concise Law Dictionary", s.v. "Treason".

³ "Historical Records of Australia", Series I, Vol. XVII, p. 379.

⁴ "Reminiscences of Early Illawarra" by Alexander Stewart, who had lived in the district since 1828, appeared in the "Illawarra Mercury" in 1894, and were reprinted in the same paper in 1934.

⁵ "Monitor", 23rd June, 1832.

⁶ No. 117, Book F, Deeds Registry, Registrar-General's Department. I have seen no explanation of the discrepancy in acreage between the advertisement and the conveyance.

⁷ Grant dated 6 June 1835, (Series No. 33, Page 223 in Deeds Registry, Registrar-General's Department) of 500 acres in the County of Camden, Parish of [Wollongong], "bounded on the north by a line bearing east 66 chains, on the east by Tom Thumb's Lagoon to the junction of Charcoal Creek, on the south by that creek, and on the west by a line bearing north 54 chains 50 links".

It appears from the wording of the grant, which is expressed to be made in pursuance of a promise by Sir Thomas Brisbane on 22 June, 1824, and identifies the land as "being the land promised to George Tate and granted to Jemima Waldron in accordance with report No. 461 made 2 February 1834 by Commissioners under the Act 4 William IV No. 9", that it is a grant of the Spring Hill property; not, as stated in "The Australian Genealogist" (May 1950, p58) of a further 500 acres "at Tom Thumb's Lagoon, and adjoining Spring Hill". This is borne out by comparison with earlier Parish Maps, which show only one grant of 500 acres to Jemima Waldron, and none to George Tate or Charles Waldron.

In more recent Parish Maps the grants in this area have been obliterated and replaced by a reference to "Australian Iron & Steel Ltd. Act No. 36, 1936. Total area 1665a. Or 6 p."

⁸ For Captain Waldron's previous career, the history of the family, and the naming of Mount St. Thomas, see article "The Waldrons of Illawarra and their Connections", in "The Australian Genealogist" (May 1950 p. 54, and August 1950 p. 69) by his descendant, the Rev. O. B. Waldron-McCarthy.

⁹ John Dunmore Lang, "An Historical and Statistical Account of New South Wales" (1st edition, 1834) pp. 168-169.

¹⁰ "Monitor", 28 February 1834.

¹¹ Ibid

¹² 4 William IV No. 12. (Section 2).

¹³ John Hubert Plunkett (1802-1869), an Irish barrister, was Solicitor-General of New South Wales from 1831 to 1836, Attorney-General from 1836 to 1856 and again in 1865-66, and held many other public offices. He was the original grantee of the "Keelagues" or "Gundarun" estate, which extended from Mount Keira Road near Mount Keira School to south of American Creek, including Mount Nebo.

¹⁴ Dr. C. H. Currey, "Sir Francis Forbes," p. 76.

¹⁵ Roger (afterwards Sir Roger) Therry, (1800-1874), an Irish barrister, arrived in New South Wales in 1829 with an appointment as Commissioner of the Court of Requests (a forerunner of the Small Debts Court) and the right of private practice at the Bar. In his capacity as Commissioner he sat at Wollongong, the Paulsgrove diarist recording on 7 October 1833: "Went to Wollongong with Mr. Spearing and Marcus to the Court of Requests, Commissioner Terry (sic). 81 cases, being 11 more than last year. All the district there; it would have been a hard job to find an honest man amongst the set."

Therry was member for Camden in the first partly-elected Legislative Council (1843), and was later resident judge at Port Phillip and a justice of the Supreme Court of New South Wales. He was for a time the owner of a property at West Wollongong, and is believed to have built the old house which, shockingly maltreated by subsequent owners, still stands in Bukari Street.

¹⁶ "Monitor", 28 February 1834.

¹⁷ The entire Clan Gregor was under the ban of the law from 1603 to 1661 and from 1693 to 1775. Even the use of the name was forbidden, and a MacGregor who went into a district where the government's writ ran had to assume an alias.

¹⁸ "Monitor", 25 February 1834.

¹⁹ This is the distance stated by Mrs. Waldron. Some years later Dr. Grover had a lease from W. W. Jenkins of a farm at "The Avenue", Berkeley (near the corner of Five Islands Road and Princes Highway, Unanderra) which would be less than half that distance as the crow flies. The farm is described in the lease as "at present on (sic) the occupation of the said Montague Grover", but there is nothing to show how long he had been there.

²⁰ Three brothers, Peter, George and Alexander Imlay, all doctors, were prominent in the early history of the far South Coast. Presumably Mrs. Waldron was referring to one of the three, but to which one the records do not indicate.

²¹ This description of Captain Allman is based on the assumption that he was the "old Irish major" whom Alexander Harris served as clerk. ("The Secrets of Alexander Harris", pp. 155-158). There are some discrepancies between Harris's story and the account of Allman's career given in the "Australian Dictionary of Biography" (Vol. I p. 8); but there are enough resemblances to make the identification reasonably certain.

²² Mrs. Grover died a few months later (20 September 1834). She was one of the two persons buried in the first Wollongong cemetery (on the site of the Public Library), but her body was afterwards reinterred in the cemetery which became Pioneer Park (A. P. Fleming, "Pioneer Park", p. 3).

²³ "Monitor", 28 February 1834.

²⁴ Some of the youngest of those present may have lived to see the law changed, and to read that eminent counsel, among them Edward Carson, the greatest advocate of the day, and Marshall Hall, the most famous of all criminal defenders, considered that allowing prisoners to give evidence helped the prosecution more than the defence. (Marjoribanks, "Life of Lord Carson", Vol. I, pp. 276-277).

²⁵ "Monitor", 25 February 1834. This statement is not mentioned in the depositions. Mr. Hall complained that "this document like others was read in a low tone of voice, which is highly improper as regards the defence of prisoners at the bar."

²⁶ "Monitor", 25 February 1834.

²⁷ Sarah alleged that she had been seduced by an unnamed officer at Bathurst shortly before coming to Illawarra. For the old law as to respiting a pregnant woman, see Blackstone, "Commentaries on the Laws of England", Book IV, Chapter 31: "Respites may also be *ex necessitate legis*; as, where a woman is capitally convicted, and pleads her pregnancy; though this is no cause to stay the judgment, yet it is to respite the execution till she be delivered. This is a mercy dictated by law of nature, *in favorem prolis*. . . . In case this plea be made in stay of execution, the judge must direct a jury of twelve matrons or discreet women to inquire the fact; and if they bring in the verdict *quick with child* . . . execution shall be staid generally until the next session; and so from session to session, till either she is delivered, or proves by the course of nature not to have been with child at all."

²⁸ "Monitor", 28 February 1834.

²⁹ Ibid. A nearby hostelry, the "Blue Posts" in Gloucester Street, "tempted customers by pointing out its excellence as a place of vantage for the witnessing of executions in the gaol yard!" (J. M. Freeland, "The Australian Pub", p. 63).

³⁰ Alexander Macleay was then Colonial Secretary, and Lieutenant-Colonel Kenneth Snodgrass, C.B., the senior military officer in the colony.

³¹ Letter from the Attorney-General's office to Mrs. Waldron, 1 May 1834, in N.S.W. State Archives.

³² "The Waldrons of Illawarra and their Connections" in "Australian Genealogist", May 1950, p. 60. The Reverend O. B. Waldron-McCarthy, author of the article, is his great-grandson.

³³ Ibid, p. 63.

³⁴ Dr. C. H. Chaffey of Dapto, a member of the Illawarra Historical Society, after examining the depositions in detail and tabulating Captain Waldron's symptoms as described by the various witnesses, came to the following conclusions:

"We have a man of 53 years of age with a family history of Hypertensive Encephalopathy and a personal disposition to be easily roused into a 'passion'. There seems good reason to believe that he was suffering from Hypertension for years previous to the fatal illness and that he had had previous attacks of Hypertensive Encephalopathy. The argument with the women worked him up into a highly emotional state and would have raised his labile blood pressure. The personal attack he sustained culminating in a fall and further physical blows would have further raised his blood pressure. Within 20 minutes a paralysis began to show up in his right limbs and probably on the left side of the face suggesting a lesion in the left side of the brain stem. A fracture of the skull

would be unlikely to give just the symptoms described. A cerebral thrombosis or haemorrhage would be more likely. His illness then progressed rapidly over the next two weeks until his death. This makes a diagnosis of Cerebral Thrombosis more likely, the slow deterioration in that day and age being contributed to by less skilled nursing and feeding than a patient would now receive, and by doubtful medical attention.

Probable Diagnosis: 'Stroke' i.e. Cerebral Thrombosis affecting the left side of the brain stem due to Hypertension due to Arterio-Sclerosis."

Dr. Chaffey added that in his opinion there could be no doubt that the only way in which the assault contributed to the captain's death was by raising his blood pressure. In themselves the blows and the fall were in no way responsible.

³⁵ Cf. Kenny, "Select Cases on Criminal Law", 7th Ed., at p. 94 ff. (cases of manslaughter in which prisoner's act was not the immediate cause of death) and at p. 116 (cases of manslaughter where the intent was merely to hurt).

³⁶ A passage in the "Monitor" suggests that the original furore was current in Sydney even before the trial. Mr. Hall surmised that the execration of the prisoners by "the lower order of their own sex" might have been "owing to the *reports* long circulated of the *means* they were said to have adopted in order to deprive Captain Waldron of his life and which the publication of the *real* evidence has not yet had time to contradict".

A hundred and thirty-eight years have not been time enough. McCaffrey, Illawarra's earliest and most unreliable historian, gave the carving-knife version, if not his imprimatur (for he omitted it from his published history, some of the details being in his less permissive day scarcely printable), at least his blessing. (But McCaffrey, over and above his general credulity, had no use for officers, gentlemen, magistrates or Protestants — least of all Irish Protestants — and Captain Waldron was all those things). Mr. Edgar Beale, a past president of the Illawarra Historical Society, had pointed out to him in his schooldays the very stone on which the bloody deed was done. I have myself been told the story, as a fact, by a well-known local historian. No doubt Jack Point was right:

"Thy lie must be a lie of circumstance . . .

. . . A story

Grim and gory . . .

Tell a tale of cock and bull,

Of convincing detail full,

Tale tremendous,

Heaven defend us!

What a tale of cock and bull!"

Printed by Tubman & Spence Pty. Ltd., Wollongong, for the Illawarra
Historical Society, 11 Market Street, Wollongong, N.S.W.

