

New Zealand Lost Cases Project

R v Margaret Reardon

1 September 1848

Supreme Court, Auckland, Martin CJ

Keywords: Perjury, transportation, assault; murder, children, woman, Van Diemen's Land.

Main Sources: *New Zealander*, 2 September 1848, p2; 6 September 1848, p3; *Daily Southern Cross*, 2 September 1848, p3; 9 September 1848, p3

Additional Sources: Petition of Margaret Reardon to the Governor, 19 September 1848, 48/2059; Weekly Gaol Return, Auckland, 9 September 1848, 48/1989; Resident Magistrate to Colonial Secretary, 14 March 1848, IA 48/505 all in 'General Inwards Correspondence to the Colonial Secretary', 1848, ACGO 8333 IA1, Archives New Zealand, Wellington

Counsel: Frederick Ward Merriman¹ for the prosecution; Margaret Reardon conducted her own defence.

Significance: Margaret Reardon was the first and only case in New Zealand of a woman sentenced to transportation for committing a felony.

In September 1848, Reardon was indicted for perjury, a felony which could result in transportation or imprisonment with hard labour under 2 George II c25 s2. Her indictment was closely linked with two earlier cases involving her de facto partner and father of her children Joseph Burns. In March 1848 Burns was indicted the Supreme Court for cutting and wounding Reardon in a violent attack.² As she was not married to Burns, she was able to give evidence against him. Burns was sentenced to transportation for life for this offence. However, while imprisoned in the Auckland Gaol, he was charged with another felony; the murder of Lieutenant Robert Snow and his family. Initially Thomas Duder had been arrested for the crime, largely based on evidence given by Reardon. Her evidence was dismissed by the Resident Magistrate and after recanting her evidence against Duder, she was detained in custody. Reardon was again required to give evidence against Burns in his murder trial; she deposed that Burns had urged her to make the false statement against Duder.³ The Jury found Burns guilty of murder and he was hanged on 17 June 1848. Burns was the first Pakeha to be executed in the colony.

Reardon stood trial in September 1848 and pleaded not guilty to the charge of perjury.⁴ In a statement read to the court by Supreme Court Registrar Thomas Outhwaite, Reardon outlined the threats she had received from Burns and pleaded to be given mercy for the sake of her two children. The jury found Reardon guilty and the following day she was sentenced to

¹ Frederick Ward Merriman arrived in Auckland in 1844: <http://www.nzetc.org/tm/scholarly/tei-Cyc02Cycl-t1-body1-d1-d10-d7.html>

² The Queen v Joseph Burns, 1 March 1848, Martin CJ, Supreme Court, Auckland.

³ The Queen v Joseph Burns, 1 June 1848, Martin CJ, Supreme Court, Auckland.

⁴ The Queen v Margaret Reardon, 1 September 1848, Martin CJ, Supreme Court, Auckland.

transportation for seven years.⁵ While imprisoned Reardon petitioned the governor to have her sentence remitted but this request was declined.⁶ Margaret Reardon was the only female convict to ever be transported to Van Diemen's Land from New Zealand.

Further Information: See M. Simpson, A woman of “notoriously bad character”: A case note on *Regina v Margaret Reardon (1848)*”, forthcoming *VULWR*, 2010; Robert Burnett, *Penal transportation: an episode in New Zealand history*, Wellington, 1978, p28

Transcript of Decision⁷

R v Margaret Reardon

Margaret Reardon was then placed at the bar charged with the crime of wilful and corrupt perjury —to which offence the prisoner pleaded Not Guilty.

Mr. Merriman conducted the case for the prosecution, eliciting in evidence, the following facts—

James Elliott, sworn — Is clerk to the Resident Magistrate. Remembers the 4th of March. Remembers a charge having been preferred against Thomas Duder for the murder of Robert Snow. That charge was heard at the Magistrates Court before Thos. Beckham, A. Kennedy, R. H. Wynyard, Joseph Laye, Percival Barry, J.P. Witness took the deposition on that occasion. It is in the same state as when I wrote it down. There is no alteration. The mark is that of the deponent. The signatures are those of the magistrates. I saw them signed.

The Deposition (already so perfectly familiar to our readers) was here produced in evidence.

The deposition contains the substance of what she (defendant) stated. It was read to her before she signed it. She was sworn on the Gospels in the usual manner. She was not hurried, nor did she give her evidence with any degree of confusion.

By his Honor — Had no doubt as to the substance of the deposition being correct.

Percival Berrey, Esquire, being sworn, states— I am a Justice of the Peace, I remember being on the Bench on the 4th of March, upon which occasion Thomas Duder was brought up charged with the wilful murder of Lieutenant Snow. Defendant was a witness on that occasion. She was sworn before-giving her evidence, in the usual manner. She was particularly cautioned to speak the truth, and not to say anything that would criminate herself. The oath was administered before the justices. The signature to the deposition is mine. The deposition produced is the substance of what was spoken. It was read over to the defendant more than once with great care. The mark affixed is that of the defendant. The charge against Duder was wilful murder; the evidence adduced was most material to substantiate that charge. Her evidence was given with the utmost deliberation. She was in no way flurried. The bench allowed her a chair, and full time to answer all questions.

⁵ Transportation was first introduced to New Zealand in 1841 under a proclamation gazetted on 10 November 1841, p1

⁶ Petition of Margaret Reardon to the Governor, 19 September 1848, IA 48/2059 in 'General Inwards Correspondence to the Colonial Secretary', ACGO 8333 IA1/71 1848/2059, Archives New Zealand, Wellington, Archives New Zealand, Wellington

⁷ *New Zealander*, 2 September 1848, p2; 6 September 1848, p3

George McElwaine, Governor of the Gaol, was present at the last Criminal Sittings of the Court, when Joseph Burns was put on his trial for murder. Defendant gave evidence on that occasion. Referred off that occasion to former evidence criminating Duder. Stated her former evidence to be false. In reply to a question then put by the Chief Justice, she stated she knew her former evidence to be a lie— meaning the evidence given by her at the Police Office.

George Watson, a little boy eleven years of age, was there to speak the truth, and knew the consequences of a lie. Some time since he lived with Duder at the flag-staff, Remembers the night of Lieutenant Snow's murder, and recollects the man of war officers coming to ask Duder if he knew that Mr. Snow was murdered. Duder slept on a sofa; he, witness in the kitchen. Duder went to bed at nightfall, and did not get up till the man of war officers came. Had he got up I would have heard him,

By his Honor — If Duder had got up he must have come through the room where I was — ho could not have got out any other way — Mrs. Duder keeps the key of the parlour door, and that was locked — I do not think Duder could have gone out without my hearing, as I did not sleep any that night. Duder was in bed when the man-o-war officer came.

Thomas Duder, Is signal man— I know the defendant Margaret Reardon— I remember the occurrence of the murder of Mr. Snow. Margaret Reardon lived at that time at O'Neill's Point, North Shore— about a mile and a half from the flagstaff Joseph Bums— I remember the night of the murder quite well— I was not in Burns' house that night nor for months before— I was no nigher to his house than the flagstaff. I did not see Burns that night — I went to bed about eight o'clock, and got up when the man-o-war officer came, between one and two— I sat awake until I heard 12 o'clock strike, when I dropped off asleep— I did not leave my house nor was I out of bed, until called by the man-o-war officers. I held no conversation with any but the inmates of my own house during that time.

This closed the case for the prosecution.

The defendant called the following witnesses in her defence:

Mr- W. Lee — Who could only speak to the injury she had received from Burns, and the terror she was in from his violence.

Mr. T F. McGauran— who could only afford like testimony, but spoke to no [?] material to the case.

William Calthorp, a prisoner — who stated, that before Burns was tried, he said if Reardon did not go back in her evidence, he would bring her in for it, and say that she was a party to the murder. The counsel for the prosecution here interfered, and said he had no desire unnecessarily to interrupt, hut the testimony was inadmissible, and tended more to the damage than to the defence of the prisoner. The learned Counsel, in terse and forcible terms commented upon the evidence, leaving the case to the Jury, who, he concluded, could pronounce but one verdict, that of guilty. When asked if he had ought to offer in her defence, the wretched woman handed in the following written statement, which was read by Mr. Outhwaite, the Registrar of the Court:

I humbly beg to show your Honor and the gentlemen of the Jury, that Joseph Burns, by threats of bringing false charges against me to take away my life, by implicating me in the murder of Lieutenant Snow, and also to murder me; the reality of such threats I had too much reason to dread, being already the unfortunate victim of his ferocity, as he always boasted he would soon shake the fetters of him, and should never be transported; acting under fear of these threats, and feeling that natural attachment to the father of my unfortunate children, I merely related the case as he told or ordered me, not thinking myself otherwise safe from the desperate attempts of such a man. Your Honor and the gentlemen of the Jury are aware of my share of sufferings, being left a deformed object with two helpless children, dearer to me than life. Gentlemen of the Jury, in such case, no person, I believe, driven to take an oath for the preservation of their life, it held guilty. Trusting, gentlemen, you will see clearly the charge of wilful, as preferred against me, never can be applied to any person compelled under fear, the execution of such threats is clearly proved in his trying to destroy my life, being also in such a feeble nervous state of body and mind, with my head half off, I scarcely knew what I said or did at the time. I would humbly state to the Court, it is the practice in the British dominions for the crown to supply the prisoner with counsel, where unable to provide themselves. But trusting to your Honour's kind feelings, I hope I shall not suffer in this, as, in the good old English practice, the Judges supplied voluntarily such deficiency. I would also state, with due submission, it is also, gentlemen of the Jury, the humane intention of the British law, in all cases where there is a doubt existing, to give the prisoner the benefit of that doubt. Admitting this, gentlemen, you will acquit me of having wilfully erred in this cue. Now, trusting to that mercy, in which, gentlemen, we all hope to share, I commit my case into your hands.

In summing up the Chief Justice said — That if the evidence given by the defendant before the magistrates was false, and known to be false at the time by the witness, then doubted perjury was committed. For the testimony the defendant then gave was material to the inquiry then before the Justices. They were inquiring rejecting the murder of Mr. Snow, and this evidence went to fix the guilt of that murder upon Duder. To complete the offence of perjury, it is necessary that the false swearing be wilful— by which is meant, that it be deliberately given. The word is introduced into the law in order to save from the penalties of perjury persons who, in giving testimony, may err by surprise, inadvertence, or want of sufficient recollection. The evidence of the Sheriff and of the Clerk to the Bench shews that this evidence of the defendant was given very deliberately. The main question then for you is, was the testimony false? Now there is a cautious rule of our law respecting the evidence required to support a conviction for perjury. Ordinarily one witness will suffice to establish any fact. But it is not so in a case like this. For to produce only one witness is simply to set one oath against another. You must have at the least one witness to contradict the statement alleged to have been falsely made; and there must be some further distinct and independent evidence which may come either from another witness or from the defendant. In this Case the evidence is more than sufficient, supposing that you are satisfied of its credibility. For there first, in opposition to the statements made by the defendant before the magistrates, the evidence given by the boy Watson, and the evidence of Duder, both very distinctly negating the statement made by the defendant before the justices. Besides this there is the contradictory statement made by the defendant in this court in the course of a most solemn inquiry; and that statement was not merely a contradiction by the defendant herself to the evidence given by her before the magistrates, but was also an admission that the evidence Mien given was false, and was known to be false by the defendant when she gave it

His Honor offered to read his notes if the Jury desired; they deemed it, however, unnecessary, and after an absence of five or six minutes, returned with a verdict of — Guilty.

Auckland, Sept. 2nd, 1848.

The Court sat at 10 o'clock, when the prisoners convicted on the previous day, were brought to the bar, and His Honor proceeded to pass sentence as follows:

You, Margaret Reardon, have been convicted of perjury, of perjury in its worst form. For the false testimony which you knowingly and deliberately bore, tended to fix the charge of murder upon an innocent man. It is true that you made some small reparation for your crime by openly confessing it in the face of the Court at the last Criminal Assize. And the defence of which was read on your behalf yesterday, contained no denial of your guilt. It was merely an attempt to palliate it, by alleging that you acted under the pressure of extreme fear for your own safety. But whatever may have been the evil influences which wrought upon you, either from without or from within, they can form no excuse for so foul a crime as yours. The sentence of the Court is that you, Margaret Reardon, be transported beyond the seas to such place as his Excellency the Governor shall appoint, for the term of Seven Years.

For further information, contact Megan Simpson.