

The Pardoning of “Swing”

In July 1834, Lt Gov Arthur answered a despatch notifying him of the desire of the Home Office to grant a free pardon to John Boyes “at the expiration of four years from the time of his conviction, provided his conduct shall have been good.”

I have the honor to inform you that I have caused an intimation of this intention to be made to him; and the circumstance itself to be recorded in the office of the principal Superintendent, - and to state that his general conduct from the time of his arrival has been very good.¹

John Boyes had been sentenced to seven years transportation at the Special Commission held at Winchester in December 1830 to try ‘Swing’ rioters, and transported to Van Diemen’s Land on the *Eliza*. Upon receipt of his pardon, Boyes returned to England; his return notified in the *Reading Mercury* (and reprinted in the *Times*).²

Preparations are making by joyful hundreds to escort him in triumph along the same road along which he and others were dragged from Winchester gaol to the hulks in the dead of night of a cold winter’s night, when poor wives and children could only take a farewell of husbands and fathers by crouching in hedges or on banks by the road side in the inclement season. It is singular that his arrival is just in time for him to join the company of sheep-shearers of whom, for years, he was captain.

Subsequently the *Salisbury and Winchester Journal* published Boyes’ letter to “Messrs Eckless, Palmenter [Palmerstone?], and the Six Hundred and Thirty-four Gentlemen, whose benevolent exertions rescued me from Slavery, and restored me to my Native Country, to my Family, and my home.” Boyes concluded his letter with a plea “to restore them [his fellow rioters] to their anxious families.”³

So what was the incident that caused Boyes to be transported? According to Boyes’ statement to the Van Diemen’s Land convict authorities upon his arrival at Hobart Town, his crime was “conspiracy to raise wages”. On 23rd November 1830, a mob visited Thomas Deacle’s farm at Owlesbury and destroyed a threshing machine. Learning that the mob intended to visit Smith’s farm, Deacle went to Farmer Smith’s to warn him. John Boyes, who was passing by, was called in by Smith, and the three (Smith, Deacle and Boyes) drew up a paper agreeing to raise wages and to provide a corresponding reduction in rents and tithes. This paper, duly signed by the three farmers, appeased the mob; but Boyes was pressed to carry the paper around the district for signatures. Boyes was with the mob visiting Lady Long’s estate (Marwell Hall) and subsequently

¹ Arthur to Glenelg No 39 18 July 1834 CO 280/48 pp446-7

² Also reprinted in the *True Sun* 2 June 1835.

Geoff Sharman records John Boyes as receiving a free pardon on 15 December 1835. **This is correct!** (*Hobart Town Gazette* 18 December 1835) Acting upon the authority of the 1834 despatch, Boyes was released from servitude in December 1834. Although no documentation has been found, the Home Office received further representations concerning Boyes, resulting in the grant of a Free Pardon under Royal Warrant (13 June 1834 HO13/65 p89). Notified to the Colonial Office, despatch No 1 20 June 1834 was prepared for inclusion in the despatch bag per the *Norfolk* on 5 July 1834. (CO 408/10 p118) Unfortunately the *Norfolk* was condemned as unseaworthy and the despatch bag never arrived at Hobart Town. The duplicate despatch was forwarded per convict transport *New Grove* which arrived at Hobart Town 27 March 1835. Why it took until December 1835 to publish this Free Pardon is not explained.

³ John Boyes’ letter 23 October 1835 is reproduced in website <http://www.mikeparsons.org.uk>

Lord Northesk's estate; at both properties they obtained signatures to the paper, and money was demanded . W E Tallents, 'a Gentleman of very high character and great legal experience',⁴ who was sent to Winchester by the Home Office to assist the magistrates in the preparation of indictments for the forthcoming Special Commission reported to the Home Office:

I shall be most anxious to investigate scrupulously the conduct of one farmer who went (compelled as he says) along with the Mob to the Houses of several Occupiers, for their signatures which he procured to a paper containing two columns, in one of which the farmer promised to raise their labourers' Wages, and in the latter to lower their Rents. He has been apprehended; but was afterwards discharged.

I am of opinion that this conduct tended greatly to the encouragement of the Rioters, and hope to be able to collect sufficient evidence to sustain an Indictment against this Man, at least for a conspiracy (in conjunction with the Mob) to effect the lowering of Rents by menace and intimidation; indeed I am inclined to think the Man has placed himself (by his presence) in a situation to be indicted as a principal in the higher offences committed by the Mob he accompanied, although he seems to have stood aloof (after getting the paper signed while they committed those offences); an attempt however to bring him within the same Indictment would probably fail; and it may be expedient to insure his conviction for the minor offence rather than risk an acquittal for the greater.⁵

Tallents was right to anticipate difficulties in conducting the prosecution. Boyes was indicted along with five others for the capital offence of "Robbery" of Moses Stanbrook (Steward to Lord Northesk), but only William Adams⁶ and Nicholas Freemantle⁷ were convicted. The prosecutor, Sergeant Wilde, considered that Boyes (along with James Fussell) should be put before the court on another indictment; that of robbery of Mrs Long. The judges conferred as to whether the evidence amounted to "robbery", but allowed the trial to continue and the pair were found guilty not of the capital offence of "robbery", but of "larceny"; the sentence of seven years transportation reflecting the lesser crime; more akin to the "conspiracy to raise wages" as stated by Boyes upon arrival at Hobart Town.⁸ There was almost immediate agitation for remission of sentence for both Boyes and Fussell. Fussell's sentence was indeed mitigated to eight months imprisonment which he served out upon the hulk *York*.⁹ But Boyes was moved to the *Eliza* and sailed on that transport to Hobart Town.

In the course of his trial, Boyes referred to the role of Thomas Deacle in preparing the paper for signatures, and William Adams informed the court that ". . . Mr Deacle, the farmer, was the man who gave all the orders where we were to go and get the money." Sergeant Wilde was anxious to keep the name of Thomas Deacle out of the trial, as he

⁴ M Phillips to F Baring Esq 25 November 1830 HO 41/8 p127

⁵ Tallents to Home Office HO40/27/6 pp547-8

⁶ To New South Wales per *Eleanor*

⁷ To Van Diemen's Land per *Proteus*.

⁸ Jill Chambers *Hampshire Machine Breakers* p117

⁹ James Fussell subsequently migrated to Sydney circa 1852; In Sydney he was variously a newspaper editor, music publisher and bookseller. He died 19 January 1876 aged 65. *Sydney Morning Herald* 20 January 1876.

was the subject of a separate indictment. Deacles was not put before the Special Commission. A note, in small print, on the published summary of the trials states that “A true bill was found against Deacle and five others for conspiracy, to be tried at the next assizes.”¹⁰ In that trial, said to have aroused “great public interest”, before the Lent Assizes (26 February 1831) the prosecution was abandoned. But that was not the end of the matter. At the next assizes, Thomas Deacle brought an action against Messrs Bingham Baring, Francis Baring, Robert Wright, William Nevill and Charles Seagram, complaining that the defendants had entered his house, assaulted and imprisoned himself and his wife, and injured some of his property. The jury returned a verdict for the plaintiff and awarded damages of £50 against Bingham Baring.¹¹

Publication of details of Deacle’s prosecution of the Barings by William Cobbett in the *Register*¹² and in the *Times* led Colonel Evans (MP for Rye) to bring forth a motion in the House of Commons calling for the papers relating to the trial to be tabled. This provided an opportunity for Francis Baring, Sir Thomas Baring; also the Attorney General, Sergeant Wilde and others to provide additional details of the Swing riots and the Special Commissions “from above”; but the reporting of the House of Commons debate on Evan’s motion in Cobbett’s *Register* and the *Times* prompted Thomas Deacle and his wife Caroline to petition the House of Commons claiming that the reporting of parliamentary speeches grossly and unfairly maligned them.¹³ Further comments by parliamentarians involved in the case ensued, and petitions were tabled calling for an enquiry into the conduct of the magistrates; indeed calls for Bingham Baring and his cousin Francis Baring to be dismissed as magistrates. In the course of one weekend 360 signed a petition supporting the magistrates and a contrary petition, “numerously signed by respectable residents of Winchester”, were presented to the House of Commons.¹⁴

The attempt by Hampshire magistrates to remove “radicalism” by means of the Special Commissions had failed in the ongoing contest of Cobbett against the Barings. Joseph and Robert Mason had been banished to New South Wales, and Boyes to Van Diemen’s Land, but much conflict remained. A large fire at Cocum Farm (owned by Sir Henry Wright) occurred on Sunday 11th December 1831. Investigations led to trials for arson not only for the 1831 fire, but for the fire (also on Sir Henry Wright’s property) during the Swing Riots. These trials, held at the Lent assizes in February 1832, resulted in the execution of Henry Hunt for the 1831 fire and Thomas Berriman for the 1830 fire; and the reprieve, subject to transportation of John Dore and James Whitcher to Van Diemen’s Land (per the *York*¹⁵).

By September 1832, Sir Thomas Baring was prepared to adopt a conciliatory move, with a plea to pardon Joseph Carter; and in March 1833 another request - to pardon Thomas Berriman Snr.

¹⁰ Jill Chambers *Hampshire Machine Breakers* p115.

¹¹ Jill Chambers *Hampshire Machine Breakers* pp 127-128

¹² A reprint from Cobbett’s *Register* of 2 July 1831 appeared in the *Sydney Monitor* 7 January 1832 p3. See also Alun Howkins ‘The Owlesbury Lads’ in *Captain Swing Reconsidered: Forty Years of Rural History from Below* published by the Southern History Society Vol 12 2010

¹³ Hansard House of Commons 22 August 1831. For further details of Thomas and Caroline Deacle see Alun Howkins *The Owslebury*

¹⁴ Hansard House of Commons 27 September 1831

¹⁵ Arrived Hobart 29 December 1832.

I anticipated at the time that the clemency shown to Carter by releasing him before the expiration of his sentence would have a good effect upon the people of Sutton . . . and tend more than any other measure to weaken the power of the agitators for there are agitators, and some formidable ones in Hampshire as well as elsewhere: in this expectation I have not been disappointed. Under these circumstances and to soften down some of the angry feeling still remaining in the neighbouring villages, I am induced to make a further application on behalf of another man Thomas Berryman of Barton Stacey a convict on board the same hulk that Carter was confined and who was found guilty of the same offence. ¹⁶

But it was the increase in severity and certainty of transportation that created the most decisive move towards the pardoning of Swing rioters. In November 1832 instructions were issued limiting the power of Surgeon-Superintendents to reject convicts for actual transportation “to those cases only in which they may consider that the life of the party is likely to be endangered by the voyage.”¹⁷ A consequence of this instruction was to increase the proportion of convicts on the hulks whose utility was limited, prompting the Superintendent of Convicts to recommend free pardons for 13 ‘Swing’ rioters on the grounds of ill-health.¹⁸ But the Home Office did not accept the Superintendent’s recommendation. Eight “swing” convicts were to remain on the hulks: three only (John Poulton, Benjamin Harding and James Painter) were granted free pardons in May 1833, but four Hampshire rioters (Robert Cook, Charles Hayter, Daniel Payne and Jacob Wiltshire) were placed on board the *Captain Cook* 29th April and forwarded to Sydney.¹⁹

The pardoning of Benjamin Harding prompted the Rev John Haygarth²⁰ to enquire “whether his Majesty’s Government have sent out any directions to NSW and elsewhere on this subject [remission of sentences], as they have lately released several of the offenders that were confined to the Hulks at Portsmouth, & I should suppose that the same clemency will be extended to those who have been actually transported.”²¹

This brought forth the following Home Office response:

J Haygarth Esq
Upham Bishops Waltham
Hamp.

Home Office 10 June 1833

Dear Sir

I have enquired of Lord Melbourne, whether he has any intention of

¹⁶ Sir Thomas Baring to Lord Melbourne 11 March 1833 HO 17/46/31. Although Sir Thomas does not mention the fact, it is surely relevant that the application for Thomas Berriman to be released, and his actual release, was made just days before the first anniversary of his son’s execution.

¹⁷ Phillipps to John Barrow 12 November 1832 HO 13/61 p183

¹⁸ HO 17/17/76 available for download from *Findmypast*

¹⁹ Also on board the *Captain Cook* was Cambridgeshire rioter John Kidman, transported for a Swing incident in 1832.

²⁰ The Rev John Haygarth, Rector of Upham, had petitioned on behalf of his parishioners Harding and Primer 3 January 1831.

²¹ Haygarth to Melbourne or Phillipps [PC1/81 Part 2 June 1833] text available in Jill Chambers *Hampshire Machine Breakers* p 294

Recomg a remission of Sentence to the Prisoners abroad, who were convicted of Rioting in 1830:- & Lord M informs me that the Government has not any such intention.

In many instances there have been pardons granted to prisoners in this Country convicted under the Commissions in 1830; but the Sentences of imprisonment in this Country were in the cases of least guilt, & in which there were no circumstances of aggression. - The cases in which the prisoners were transported were of the worst description.

I beg you will never scruple to write to me, when you wish for any information on such subjects.

I am &c
S M Phillipps

The idea that those transported “were of the worst description” appears to form the basis for the campaign on behalf of John Boyes. A petition in favour of the small farmer from Owlesbury (the parish adjoining Upham) appeared in the *Hampshire Telegraph* of 12 August 1833, in which it is stated that Boyes’ presence with the mob was in the hope that he would “controul them and prevent the destruction of property” and that “by his persuasion the same mob abstained from assembling the next morning as was proposed and generally wished, and thus the neighbourhood was, by his praiseworthy exertions, tranquilised without the interpolation of any constabulary or military force.”²² The campaign, backed up by an affidavit, also enlisted the support of Lord Palmerstone, who suggested to Lord Melbourne that “More good would be done as to public impression in the County by letting the culprit off, even if he is ever so guilty, than by enforcing the full penalty of the law in the face of so general an application for mercy.”²² The initial response of the Home Office was “nothing at present”²³ but Palmerstone’s “indefatigable Philanthropist from Hampshire” (John Iremonger Ekless) persisted and forwarded a second affidavit to Lord Palmerstone. “Could you not take an indulgent view of Boys’s case on the condition for which I would be responsible that there should be no other Hampshire men with any claim to mercy” Palmerstone implores the Home Secretary. This time the plea was successful; Lord Melbourne authorising that Boyes should receive a free pardon after he had served four years.

In the context of the clamour for remissions for the Dorset labourers (aka the “Tolpuddle Martyrs”) and the public meeting held in Glasgow in March 1835 in favour of the Scottish ‘traitors’ of 1820, the report of Boyes’ return provided just one small reminder of the fate of the Swing rioters. Another was the inclusion of three machine breakers (so designated) in the list forwarded by the Superintendent of Prisons for the hulk *York* under the “two thirds of one third” rule.²⁴ Yet another was a petition forwarded by Lord

²² Letter quoted in Jill Chambers *Hampshire Machine Breakers* p160

²³ This response, and the subsequent authorisation of a pardon after four years, reflects the restrictions included in the *Punishment of Death Bill* in 1833, at the insistence of the House of Lords, that transported convicts could not receive indulgences till they had served stipulated periods of their sentences (four years in the case of convicts sentenced to seven years transportation).

²⁴ 31 June 1835. PC 1/79 At the end of each quarter, each hulk provided a list recommending one-third of the hulk convicts (subject to having completed half of their term) and the Secretary of State then selected two out of three for release. The Home Secretary Lord John Russell approved the release of Wm Hancock, but refused the recommendation made in favour of Jno Freeland and Josh Smith.

Norreys MP for Oxford in favour of Edward Camel which brought forth a reply from Lord John Russell "I have the satisfaction to acqt your Ldp that measures will be taken for granting this Convict a Free Pardon provided he has committed no offence in the Colony."²⁵ On 1 August 1835 the Home Office advised the Colonial Office:

Lord John Russell having had under consideration the Case of the several Persons who were sentenced to Transpn in the years 1830 & 1831 for Machine breaking and other acts of Rioting, I am directed to transmit to You the accompanying lists containing the Names of 264 of the Convicts in question who his Lordship proposes should now receive Free Pardons.²⁶

The Colonial Office prepared despatches forwarding the lists to Van Diemen's Land (for 246 convicts) and New South Wales (for 18 convicts only)²⁷. The New South Wales despatch for the "machine breakers" in **No 37**. The Colonial Office also forwarded, on the same day, absolute pardons for 18 convicts convicted of High Treason in Scotland in 1820 (Dispatch **No 38**). How widely known was the grant of these pardons? The Home Office's intention to grant pardons to the machine breakers was not announced in Parliament; a (semi-) public notification would appear to be a letter from the Colonial Office to the Van Diemen's Land Company, noting that the allocation of 50 agricultural convicts under the agreement of January 1831 was likely to be affected by these pardons, and that orders would be given for replacements to be supplied, and the Rev John Haygarth, upon enquiry, was informed that the Government had no intention of issuing pardons to those who had been convicted of more serious crimes.²⁸

Arthur acted upon the dispatch (January 1836) gazetting Free Pardons and advising that ten pardons had not been issued due to colonial sentences.²⁹ With the experience of the pardon issued to John Boyes, Arthur was prepared to issue, under his own authority,

²⁵ Russell to Ld Norreys 30 July 1835 HO 13/67 p245

²⁶ Phillipps to Hay 1 August 1835 HO 13/67 p263.

²⁷ The Home Office decided to use the *Eliza* to transport Swing rioters to Van Diemen's Land sometime in December 1830 and as explained by Geoff Sharman in chapter 2, Kent and Essex rioters were transferred to the *Eliza at the end of December 1830*. As County Quarter Sessions sentenced rioters, the Home Office ordered their removal to the hulk *York* for transfer to the *Eliza*. Rioters sentenced directly to transportation by the Special Commissions for Hampshire and Wiltshire were likewise ordered to the *York*. The *Eliza* had received its full complement of convicts with the transfer of the first four on the list of Berkshire rioters on 27 January 1831. Rioters sentenced to death by the Special Commissions at Winchester, Salisbury and Dorset remained in county gaols until the Home Office approved the recommendations (effectively pardons conditional upon transportation for various periods or imprisonment) on 24 January 1831. These pardoned men were then ordered to the *York* and the majority then transferred to the *Eleanor*, the remainder kept on board the *York* (but separate from other convicts) awaiting the arrival of the *Proteus*.
By this process, the majority of seven year Swing rioters were transported to Van Diemen's Land by the *Eliza* - and New South Wales received a disproportionate number of Life and 14 year convicts by the *Eleanor*.

²⁸ Col Office to Revd J Haygarth, Upham 18 December 1835 CO408/11 p299

²⁹ Arthur to Glenelg no 16 28 January 1836 CO 280/64 pp401-3. This dispatch comes back into the story during discussion in the House of Commons in September 1836.

Free Pardons on the basis of good conduct in the colony.³⁰ But Governor Richard Bourke does not act upon the despatch. An 1838 memorandum attempts an explanation:

There has been some mistake in the Despatch No 37 of 10 Aug 1835. It alludes to the Prisoners transported in 1830 & 1831 for Machine Breaking, but encloses a Warrant for Eighteen Men transported in 1820 for High Treason. It looks as if a Blank had been left in the Despatch for a number of Convicts to be pardoned and afterwards filled in by the wrong Number, and that a Warrant was enclosed different from that originally intended . . .³¹

Following the lead of this memorandum, George Rudé makes the comment:

For, by some fantastic bureaucratic oversight, the warrants for their release were left blank, and by the time they reached the colony, there had been added to them, presumably in one or other of the offices in Whitehall, the names of eighteen men who had been sentenced to death for high treason and had, after their reprieve, been transported not to Sydney but to Hobart.³²

The reality is very different. The confusion was due to the Home Office method of informing (via the Colonial Office) the Governor of New South Wales of the pardons to be issued to the two groups - coincidentally both of eighteen men - a **Royal Warrant** naming the *Stirling* 1820 High Treason men and a **list**, easily misplaced from the accompanying dispatch, "signifying His Majesty's Pleasure, that Free Pardons should be issued to the Convicts herein named, except in the cases of any of them who may be undergoing punishment . . ." The misidentification is evident almost immediately. In a return of Pardons issued during 1836, the authority for the "High Treason" pardons is given as "Despatch **37**".³³

The granting of free pardons to Van Diemen's Land machine breakers was noted in the New South Wales press, but without editorial comment. Likewise, there is no commentary with the issue of a free pardon to Joseph Mason, notified 21 December 1836.³⁴ Given the high profile of Joseph and his brother, Robert, in the riots in the Dever Valley and their letter writing from the transports and in their exile, this is somewhat surprising, and raises a question as to the extent of connections maintained by machine breakers within the Australian penal colonies.³⁵ Part of the explanation would appear to relate to the report in Sydney papers, soon after Mason's pardon, of the astonishing speech given by Lord John Russell in the House of Commons.

CONVICTS IN AUSTRALIA

HC deb 17 August 1836 vol 35 cc1273-4 [1273](#)

³⁰ A file of Pardons issued in Van Diemen's Land which includes pardons for some Swing rioters is now in the Mitchell Library (Microfilm held by Tasmanian Archives).

³¹ Colonial Secretary Office memorandum 24 November 1838 enclosed in Dispatch 190 Gibbs to Glenelg 24 November 1838. *Historical Records of Australia* 1 xix pp625/6.

³² Hobsbawm & Rudé *Captain Swing* p273

³³ Bourke to Glenelg No 73 1st August 1837 CO 201/262 p10

³⁴ *New South Wales Government Gazette* 21st December 1836 p 977. Joseph Mason's pardon, like that of John Boyes, was the result of initiatives from villages in the Dever Valley of Hampshire.

³⁵ Joseph Mason's memoir (ed David Kent and Norma Townsend *Joseph Mason: Assigned Servant 1831-1837*) include numerous references to contacts with fellow machine-breakers in New South Wales.

§ Lord J. Russell

said, that an hon. Member had placed a notice on the books for an address to his Majesty, intreating the Royal clemency to those Convicts who had been transported to New South Wales, in 1831, from Hampshire, and the south of England, for the offences of machine-breaking, fire-raising, rioting, &c. It would be quite unnecessary for him to enter into the question of the propriety of that address, as he had received a letter from the Under-Secretary of the Colonies, in reply to one addressed to that hon. Gentleman on the subject, which he hoped would be satisfactory. In this letter, the Under-Secretary stated, in reply to a letter of the 1st of August, respecting the free pardon which his Majesty had been pleased to grant to 246 persons, convicts in New South Wales:- "I am directed by Lord Glenelg, to acquaint you, that Governor Arthur has done this, except in the case of ten individuals, who have forfeited all claim to this act of clemency." He ought to state that the pardon was directed for 246 persons - the whole number being 264. He only made an exception in the case of those, who had previously been committed for some other offences - such as creating riots, or machine-breaking. With respect to these parties, it was thought that some difference should be made.

§ Mr. Hume

asked, if all who were transported to New South Wales at the time for the offences mentioned, were to have the benefit of the pardon?

§ Lord J. Russell

said, that the order made no distinction.

§ Subject dropped.³⁶

This report was interpreted in Australia (as in England) to indicate that ALL the machine breakers were granted pardons.³⁷ Possibly Russell was aware of his "mis-speak" and promptly granted free pardons to a further 89.³⁸ Among the Privy Council papers relating to convicts for October 1837 there is a "List of 191 Male Convicts embarked per Ships "Eliza", "Eleanor", and "Proteus" for New South Wales, and Van Diemen's Land in Decr. 1830, in Jany., Feby., and April 1831".³⁹ This list was used in relation to the issue of Conditional Pardons in October 1837, but there are indications that it was compiled following Lord John Russell's speech and used in relation to the issue of Absolute Pardons in October 1836. These pardons were notified in New South Wales in March 1837, and the *Colonist* took up the case of the Berkshire rioter Joseph Nichols (actually Nicholas).⁴⁰

. . . and in answer to a question from Mr Hume, as to whether *all* who were sent out to New South Wales at the time for the offences mentioned, were to have the benefit of the Royal clemency - His Lordship [Lord John Russell] replied that "the order made *no* distinction." Now, what has been the result? Why on our application yesterday at the Colonial Secretary's Office, on behalf of a man

³⁶ Downloaded 16 October 2023 from Hansard of House of Commons for 17 August 1836.

³⁷ The earliest reference to Lord John Russell's speech, via a Trove search, is the *Colonial Times* (Hobart) 31 January 1837 p4.

³⁸ HO13/70 pp125-6 (VDL) and p127 (NSW) Glenelg to Franklin No 36 10 October 1836, Glenelg to Bourke No 216 15th October 1836

³⁹ PC 1/85 AJCP 965

⁴⁰ 9th March 1837

named Joseph Nichols, who was one of the machine breakers in question, and arrived by the *Eleanor*, in 1831, assigned to Andrew Lang, Esq., of Dunmore, Paterson's River; we were informed (indeed the warrant was politely shown to us) that only forty names were contained in it, of which number the poor fellow above-mentioned, did not form one. What renders the omission of the names of so many similarly circumstanced, more extraordinary, is, that some among those whose names *are included* in the warrant, were absolutely tried at the same Assizes, before the same Judge, *at the same time*, and we believe received the same sentences as many of those who are now here, but whose names are not contained in the royal warrant. It is true other warrants may arrive in the next vessel, but no advice has been received of their coming. We respectfully call the attention of the Colonial Government to the case of these poor fellows, whose hopes have been excited to the highest pitch, only to have their probation rendered ten times more wretched, for "disappointed hope untuned the soul." Surely His Majesty has not made any distinction of counties, for the moral guilt of breaking a machine is as great in one county as another. Some explanation, at all events, is due to those who have been so cruelly disappointed.

Seven *Eleanor* machine breakers took up their plight directly with the colonial government representing "that their Offences were similar to those committed by their Companions" and that they had "reason to expect the same indulgence".⁴¹ Governor Bourke, on their behalf, addressed a despatch to the Colonial Office explaining that "I have thought it right to request that I may be enable to give the necessary explanation" for the omissions "to those who have already or may hereafter apply to me upon the subject."⁴² Governor Bourke's despatch prompted Russell to declare that the remainder of the 'Swing' rioters could be granted conditional pardons,⁴³ but the actual response was to cause further confusion. It was pointed out by the Home Office that William Carter, Robert Page and John Aldridge "were included in a list of 264 Convicts transd to Mr Hay [ie to the Colonial Office] on the 1st August 1835, with a view to authority being given to the Govs of the Australian Colonies to grant them a Free Pardon; & Isaac Coote was included in a pardon transd in Octr 1836."⁴⁴ The reference to the 1835 list being for 264 pardons led the newly installed Governor, Sir George Gipps, and colonial officials in New South Wales to assume that there were further 'rioters' ("possibly 200") denied pardons.⁴⁵ The Colonial Office provided the explanation:

In a letter which was received from the Home Dept dated the 1st August 1835 were transmitted lists containing the names of 264 Convicts sentenced to transportation for Machine-breaking & Acts of rioting in the Year 1831, and to whom it was proposed to grant Pardons.

Of these 18 had been transported to New South Wales, & the remaining 246 to Van Diemen's Land. -

⁴¹ William Sims, William Primer, Jacob Turner, William Carter, Isaac Coote, Robert Page and John Aldridge.

⁴² Gipps to Glenelg No24 1 May 1837.

⁴³ CO 201/264 p347 26 October 1837. Similar despatch to Franklin CO408/14 8 Nov 1837

⁴⁴ HO 13/72 p 114 26 October 1837. Glenelg to Gipps No 19 9Nov1837 reply Gipps to Glenelg No 113 19Jul1838.

⁴⁵ Gipps to Glenelg No 190 24 Nov 1838 HRA.1 XIX pp685-6. Answered by Normanby to Gipps No 62 4 Jun 1839 CO 202/40 pp106-7 (Not printed in *Hiostorical Records of Australia*)

The list containing the names of the 18 Convicts was transmitted to Governor Sir Richd Bourke with Lord Glenelg's dispatch No 37 of the 10th August 1835 accompanied by a communication of his late Majesty's pleasure that the convicts in question should receive free Pardons except in the case of any of them who might be undergoing punishment for Offences committed in the Colony. The Warrant for the Pardon of the Prisoners convicted of High Treason referred to in the Memorandum of the Colonial Secretary was transmitted with Lord Glenelg's dispatch No 38 of 11th August 1835. - The misapprehension appears to have arisen in this case from the incidental reference to the whole number of 264 Pardons in Lord Glenelg's dispatch No 19 of the 19th Nov 1837.

Having referred your dispatch to the Secretary of State for the Home Dept I now transmit a copy of a letter in reply enclosing Duplicates of the former lists of Pardons with an additional list of 4 Convicts to N S Wales in the ship "Captain Cook" in the year 1833 and to whom you will grant pardons on condition of them remaining in the Colony if they should appear to you deserving of the indulgence of a Pardon.⁴⁶

With this explanation the Home Office's direct involvement with pardons for "machine-breakers and other rioters" of 1830/31 ceases. Swing rioters other than those transported by the *Eliza*, *Eleanor* and *Proteus* (plus the four transported to New South Wales per *Captain Cook*) were not recognised as "Swing" by the Home Office and their fate, as far as pardons were concerned, relied entirely upon the colonial regulations or individual appeals to the Home Office. Thus Isaac and Simeon Richardson, whose trial was delayed due to the absence of a material witness, did not receive conditional pardons until 1842 and 1843 respectively; whereas they might have expected to be included in the round of indulgences issued in 1838. The Richardsons were also not as fortunate (in terms of pardons) as George Heaver and Thomas Parker, convicted and sentenced along with the Richardsons, who were transported to Bermuda and granted a free pardon upon their return to England in 1840.

Kevin Green

Monday, 16 October 2023

⁴⁶ Phillipps to Stephens 21 May 1839 HO13/75 p122 and despatch Normanby to Gipps No. 62 4th June 1839. It would appear that the addition of the four convicts forwarded to Sydney in 1833 per the *Captain Cook* was due to the receipt by the Home Office of a petition in April 1839 from Charles Hayter (supported by Ann Hayter and Sarah Newman). HO 13/75 p94. Hayter did receive his Conditional Pardon - in fact, twice, 7th October and 12 November 1839 - ; Robert Cook and Jacob Wiltshire were both dead, and Daniel Payne received notification of his pardon along with Charles Hayter on 12 November 1839.

