

# *R v MARGARET REARDON*

SUPREME COURT AUCKLAND, 1 SEPTEMBER 1848

*Megan Simpson\**

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*This note considers the case of R v Margaret Reardon. The case is of historical importance as she was the only woman to ever be sentenced to transportation in New Zealand. She was involved in three Supreme Court cases during 1848; as victim, witness and accused. Her case is indicative of how women were dealt with by the courts in the early colony.*

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This note considers the decision in *R v Reardon*.<sup>1</sup> Margaret Reardon, a twenty eight year old married domestic servant, was the first and only New Zealand woman to be sentenced to transportation for committing a felony. While her story highlights a darker side to life in the colony, the three Supreme Court trials she was involved with give a crucial view into how women were dealt with before the courts in early New Zealand, both as witnesses and as defendants.

In the early period of the colony, women were indicted for fewer serious crimes than men. There were only seven female defendants, including Reardon, in Supreme Court criminal trials during the 1840s.<sup>2</sup> This is a trend that can be observed in other jurisdictions in the British Empire. The Supreme Court had jurisdiction to hear cases of a more serious nature. Cases which were more generally associated with female defendants, such as small theft, prostitution and drunkenness, were heard by the Resident Magistrate's Court. This is one explanation for the absence of women from Supreme Court statistics. More frequently women were present in the Supreme Court as witnesses. Women regularly testified before the Supreme Court and were treated no differently from their male

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1 *R v Margaret Reardon*, Supreme Court (now High Court), Auckland, 1 September 1848 per Martin CJ, reported in *New Zealander* (Auckland, 2 September 1848) at 2; *New Zealander* (Auckland, 6 September 1848) at 3; *Daily Southern Cross* (Auckland, 2 September 1848) at 3; *Daily Southern Cross* (Auckland, 9 September 1848) at 3. The Supreme Court was established in 1841: Supreme Court Ordinance 1841 5 Vict No 1. It was renamed the High Court in 1980.

2 Figure generated from the New Zealand Lost cases case database <[www.victoria.ac.nz/law/NZLostCases](http://www.victoria.ac.nz/law/NZLostCases)>.

counterparts. However, if a woman was deemed to be of questionable reputation, especially if she was a known drinker, her testimony was often challenged by the courts.<sup>3</sup>

In September 1848 Reardon was indicted for perjury, a felony which could result in transportation or imprisonment with hard labour. Her indictment was closely linked with two earlier cases involving her de facto partner and the father of her children, Joseph Burns, a stock keeper with a violent predisposition. Her relationship with Burns was first examined in a case held in the March 1848 sittings of the Supreme Court.<sup>4</sup> Burns was charged with cutting and wounding Reardon in a violent attack that resulted in her receiving four large lacerations to her head, neck and shoulders. Burns had attacked Reardon in her sister's home, allegedly fuelled by alcohol and the fact that Reardon had refused to marry him.<sup>5</sup> As the couple were not married, Reardon was able to give evidence against her partner at the trial, noting that he had "laid hold of me. He made a cut at me. I believe he cut me in the neck, with what I cannot tell".<sup>6</sup> Under cross examination she also reflected that "You [Burns] were always kind to me when in your sobriety. I do not know whether you were in your senses when you committed the act".<sup>7</sup> For this attack Burns was sentenced to transportation for life, with the judge noting that drunkenness had never been permitted as an excuse for crime in the law of England.

While imprisoned in the Auckland Gaol, Burns was charged with another felony: the murder of Lieutenant Robert Snow and his family in October 1847. Initially Thomas Duder had been arrested for the crime, largely based on evidence given by Reardon. Her evidence was dismissed by the Resident Magistrate owing to, as the *Daily Southern Cross* reported, "the notoriously bad character of the woman".<sup>8</sup> Soon after, Reardon recanted her evidence and was detained in custody.<sup>9</sup> During Burns' murder trial, Reardon was again required to give evidence against Burns.<sup>10</sup> She deposed that Burns had confessed to the murders and that the axe used in the attack was from their house.<sup>11</sup>

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3 Cases include *R v Charles Stutfield* SC (now HC) Wellington, 1 September 1864 per Johnston J; *R v Thomas Meagher* SC (now HC) Hokitika, 19 July 1866 per Gresson J.

4 *R v Joseph Burns* SC (now HC) Auckland, 1 March 1848 per Martin CJ.

5 *New Zealander* (Auckland, 3 June 1848) at 2.

6 *New Zealander* (Auckland, 4 March 1848) at 3.

7 *Ibid.*

8 *Daily Southern Cross* (Auckland, 11 March 1848) at 2; Prosecution of Thomas Duder, 7 March 1848 "Auckland Resident Magistrates Criminal Deposition Book", 1848, Archives New Zealand, Auckland (ANZ), BADW 5989 36a.

9 Burns slit his throat in the gaol on hearing that Reardon had recanted her evidence; he recovered from the injury and later claimed it was a result of his temporary insanity caused by the life sentence imposed on him and the separation from his children: *Daily Southern Cross* (Auckland, 3 June 1848) at 3.

10 *R v Joseph Burns* SC (now HC) Auckland, 1 June 1848 per Martin CJ.

11 *New Zealander* (Auckland, 3 June 1848) at 2.

Reardon's sister Sophia Aldwell also gave evidence, deposing that she had witnessed Burns' violent attack on Reardon and noting that Burns had said that "he would do for her so that she would not tell any tales upon him".<sup>12</sup> 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.

In September 1848 Reardon stood trial for wilful and corrupt perjury in relation to the statements made against Thomas Duder.<sup>13</sup> Perjury is defined in Blackstone's *Commentaries on the Laws of England* as "a crime committed when a lawful oath is administered, in some judicial proceeding, to a person who swears willfully, absolutely and falsely".<sup>14</sup> Reardon's case was only the fourth perjury trial to be heard by the Supreme Court in the colony and she was the first defendant to be found guilty.<sup>15</sup> Reardon pleaded not guilty to the charge. The prosecutor focused his case on proving the untruths of her evidence before the Resident Magistrate, while the defendant's counsel attempted to prove the "terror she was in from his [Burns'] violence".<sup>16</sup> 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, now fatherless, children. The jury soon after found Reardon guilty and the following day was sentenced to transportation for seven years, with Chief Justice Martin noting that "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".<sup>17</sup>

The sentence of transportation was established in 1718 under the statute 4 George I c11.<sup>18</sup> Transportation was first introduced to New Zealand in 1841 under a proclamation gazetted on 10 November 1841.<sup>19</sup> The Governor proclaimed that offenders sentenced to transportation would henceforth be transported to the colony of Van Diemen's Land. This was the sole destination for

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12 *Daily Southern Cross* (Auckland, 3 June 1848) at 3.

13 *R v Margaret Reardon* SC (now HC) Auckland, 1 September 1848 per Martin CJ.

14 William Blackstone *Commentaries on the laws of England* (Book 4, Chapter 10, Dublin, 1766) at 137.

15 *R v English* SC (now HC) Auckland, 7 June 1843 per Martin CJ; *R v William Dudley* SC (now HC) Auckland, 1 March 1844 per Martin CJ; *R v Thomas Whebby* SC (now HC) Wellington, 2 June 1845 per Chapman J.

16 *New Zealander* (Auckland, 2 September 1848) at 3.

17 *New Zealander* (Auckland, 6 September 1848) at 3.

18 The Transportation Act 1718 (UK) 4 Geo I c 11.

19 *New Zealand Government Gazette*, No 17 (10 November 1841) at 1.

New Zealand's transportees until transportation was abolished in 1854.<sup>20</sup> Ninety seven men and one woman were transported during this 13 year period.<sup>21</sup>

As Margaret Reardon was the only female to ever be transported, her sentence raised issues around the welfare of her two small children. While she was confined during Burns' first trial, rations had been sought to support her children in her absence, however, no provision had been made for the care of her children on her departure from the colony.<sup>22</sup> Reardon had been imprisoned in the Auckland Gaol since 26 June 1848 and remained there while she petitioned Governor George Grey to have her sentence mitigated.<sup>23</sup> Rather than apply to take her children with her to Van Diemen's Land, she requested that the Governor imprison her in New Zealand, noting that she would "gladly suffer any period of incarceration, if she be only spared the separation from her children".<sup>24</sup> The Governor declined her petition on the grounds that she had admitted her guilt and that there was no proof that she committed perjury under extreme circumstances.<sup>25</sup> As a result of the Governor's decision Reardon was transported to Van Diemen's Land on 23 September 1848 on board the schooner "Sisters".<sup>26</sup> Her children were taken in by Reardon's sister Sophia Aldwell, a witness in all three cases, who took the children with her to California in 1849.<sup>27</sup>

Margaret Reardon's character was consistently challenged by Burns and the authorities. Prior to Reardon's false testimony about Burns, she was already an unreliable witness due to her perceived immoral lifestyle. She had deserted her marriage in Sydney, had two illegitimate children with Burns and was a self-proclaimed "woman that drinks".<sup>28</sup> While on the gallows, Burns' final words, read by his minister, were that "the causes which have led him to this sad end, are indulgence in two

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20 Secondary Punishment Act 1854 18 Vict No 9. The sentence of transportation would be substituted for penal servitude.

21 Robert Burnett *Penal Transportation: an Episode in New Zealand History* (Victoria University of Wellington, Institute of Criminology, Wellington, 1978) at 3.

22 Resident Magistrate to Colonial Secretary, for rations of children of Margaret Reardon (14 March 1848) 48/505 in "General Inwards Correspondence to the Colonial Secretary", ANZ Wellington, ACGO 8333 IA1/66 1848/505.

23 Petition of Margaret Reardon to the Governor (19 September 1848) 48/2059, in "General Inwards Correspondence to the Colonial Secretary", ANZ Wellington, ACGO 8333 IA1/71 1848/2059.

24 Ibid.

25 Ibid.

26 Margaret Reardon, Convict No 58627, "Indents of Convicts Locally Convicted or Transported from other Colonies" 1835-53, Archives Office of Tasmania, Hobart, CON16/1/5 at 46.

27 Elizabeth Rushen "An accession of valuable and useful free female settlers: the Dublin Mendicity Society and Antipodean Emigration in the Early Nineteenth Century" (paper presented to Ireland and the Irish Antipodes: One World or Worlds Apart? conference, Massey University, 9-12 July 2009).

28 *New Zealander* (Auckland, 3 June 1848) at 2.

sinful courses – his fondness for bad women and his love of drinking".<sup>29</sup> He claimed right up until his execution that Reardon was responsible for the plot to implicate Duder in the Snow murders.<sup>30</sup> Burns had made a full confession, accepting responsibility for the murders but refused to acknowledge his role in involving Duder in the affair. Reardon's character was also challenged when she sought to mitigate her sentence of transportation. On declining her request, it was noted that "neither is the previous character of the prisoner in her favour – Without living his wife, she had for a length of time been consorting with a man of a different character".<sup>31</sup>

At the heart of this case was Margaret Reardon, a woman classified by society as being of "bad character". This expression deemed her to be at odds with the good moral character of most female settlers. It grouped her with the criminal underclass who frequently came before all levels of the judiciary, and it condemned her for her supposed depravity, regardless of the strong evidence of abuse, cruelty and hardship she endured.<sup>32</sup>

### Transcript of Decision

*R v Margaret Reardon*<sup>33</sup>

Auckland, Sept. 1st, 1848

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.

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<sup>29</sup> *New Zealander* (Auckland, 21 June 1848) at 2.

<sup>30</sup> *Ibid.*

<sup>31</sup> Petition of Margaret Reardon to the Governor (19 September 1848) 48/2059, in "General Inwards Correspondence to the Colonial Secretary", ANZ Wellington, ACGO 8333 IA1/71 1848/2059.

<sup>32</sup> For further information see Burnett, *Penal Transportation*, above n 2; Robyn Anderson "The hardened frail ones: women and crime in Auckland, 1845-1870" (MA (History) Thesis, University of Auckland, 1981) at 171-2; Guy Lennard *Sir William Martin: The Life of the First Chief Justice of New Zealand* (Whitcombe and Tombs, Christchurch, 1961) at 31-36.

<sup>33</sup> *New Zealander* (Auckland, 2 September 1848) at 2; *New Zealander* (Auckland, 6 September 1848) at 3.

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.

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 on 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 – he 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 Burns – 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 injurie [sic] 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 fact 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, but 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 aught 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 case. 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 [sic] 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 then 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.