

## MARY ANN STEWART

[*Elizabeth and Henry* (3), 1848]

by

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Mary Ann Stewart arrived in Van Diemen's Land (VDL) as a convict aboard *Elizabeth and Henry* (3) on 30 June 1848.<sup>1</sup> She was twenty years old. On 23 July of the previous year, she had been convicted of an assault and robbery in Edinburgh, Scotland, and sentenced to transportation for fourteen years. That crime was not her first. She had been a troubled and troublesome young woman in Scotland and had already served a number of short gaol terms. In VDL, she was just as troublesome. During the years of her penal servitude, she fell foul of the law continually. While many of her offences were relatively minor in nature – being drunk, disorderly conduct, disturbing the peace and so on - some were serious and she was punished for them by being confined for lengthy periods at the Cascades Female Factory. She married twice in the colony but neither marriage seems to have brought her happiness. There is no record of her having had children. There is considerable uncertainty about her circumstances in her final years as a prisoner. A note on her conduct record, dated February 1857 – four years after transportation of convicts to VDL had come to an end – seems to indicate that the unexpired portion of her original sentence was to be remitted but there is some doubt about whether this actually happened. The last entry on her conduct record – a charge of disturbing the peace – is dated 10 August 1858. She was then about thirty years old. What happened to her after that remains a mystery. The date and place of her death have not yet been located.

This is Mary Ann's story:

Little is known about Mary Ann's life before her conviction. At her trial at Edinburgh on 23 July 1847, the court had heard that, in company with two acquaintances William Thompson and Elizabeth Tennent, she had assaulted a man named James Rankin and stolen the sum of forty-five pounds from him. Thompson, the ring-leader, was sentenced to transportation for twenty-one years. Mary Ann received a sentence of transportation for fourteen years. The case against Elizabeth Tennent was 'not proven' and she was dismissed.<sup>2</sup>

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<sup>1</sup> Conduct record: CON 41/1/17, image 146; Description List: CON19/1/6, image 120; Indent: CON15/1/4, image 318/319; Police Number 805; FCRC ID: 4394.

<sup>2</sup> National Records of Scotland, Reference AD14/47/558 per FMP and 'ancestry.co.uk' via FCRC d/base at [www.femaleconvicts.org](http://www.femaleconvicts.org)

After the trial, Mary Ann was taken from Edinburgh Gaol to Millbank Prison in London to await a vessel to take her to VDL. While there, two petitions begging mitigation of her sentence were forwarded to Sir George Grey, a Senior Minister of the Government and the Secretary of State for the Home Department.<sup>3</sup> The petitions give brief insights into Mary Ann's home life and character.

The first petition, presented by two businessmen who had known the Stewart family for many years, claimed that nineteen year-old Mary Ann had been born 'of most respectable parents in the city of Edinburgh' but had 'lost her father ten years ago' and had since 'remained under the care of her widowed mother'. However, 'a short time ago' she had begun 'a thoughtless career of folly (not crime)' and had been 'seduced from her anxious mother's protection ... and induced to commit herself to that unfortunate affair for which she is now suffering.' The petition concluded with an earnest request that, because this was Mary Ann's first conviction, merciful consideration might be given to the 'severe' sentence she had received.<sup>4</sup>

The second petition was presented by Mary Ann's mother. She said that Mary Ann was her only living relative. She asserted that her daughter had been an accessory only to the crime and that the young man whom she was with at the time was the one responsible for it. She added that her daughter had broken her arm just two or three days before the incident and would have been quite incapable of playing any real part in an assault and robbery. She concluded her statement with the hope that the Secretary would see fit to recommend to Her Majesty that Mary Ann be kept 'in this country' rather than sent to the other side of the world.<sup>5</sup>

The Secretary was not moved one iota by the petitions. In deciding not to intervene, he was possibly influenced by a report of Mary Ann that he might have received from Edinburgh Gaol. It presented a picture of her that was in stark contrast to the one in the petitions. It stated that she had been '19 times in gaol' and that she had been 'on the town' – that is, a prostitute – for almost two years prior to her conviction.<sup>6</sup>

Eventually, Mary Ann was put aboard *Elizabeth and Henry* which, with 170 female prisoners, departed from Woolwich on 9 March 1848 and reached Hobart on 30 June that year.<sup>7</sup> Upon arrival, Mary Ann was described as being twenty years old, four feet and eleven inches (about 150 cms) tall, of a fresh complexion with brown hair and hazel eyes. On the inside of her lower

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<sup>3</sup> At that time, the Secretary of State for the Home Department (normally referred to as the Home Secretary) was Sir George Grey (1799-1882), a Senior Cabinet Minister, who held the office from July 1846 to February 1852.

<sup>4</sup> The businessmen were Mr. D. Kennedy, a book agent, and Mr. F. Gavin, a slater by trade. (Source: HO18/250; FMP; Contributor: K. Searson – via FCRC d/base at [www.femaleconvicts.org](http://www.femaleconvicts.org))

<sup>5</sup> Source: HO18/250; FMP; Contributor: K. Searson – via FCRC d/base at [www.femaleconvicts.org](http://www.femaleconvicts.org).

<sup>6</sup> As for Note 5.

<sup>7</sup> <http://members.iinet.au/~perthdps/convicts/shipsTAS.html>

right arm was a tattoo of an anchor and the initials 'JK' and 'AS'. She stated that she could both read and write. She was of the Presbyterian faith and a 'nurse girl' by occupation.<sup>8</sup>

After disembarkation, Mary Ann was taken to the *Anson*, the hulk of a former naval vessel that had been moored in the Derwent River near Risdon in 1844 to be used to house female convicts in order to alleviate the overcrowding at the Cascades Female Factory. She was kept there for a probation period of six months before being eligible to be hired into service by settlers.<sup>9</sup>

Soon after the completion of her probation, Mary Ann was in trouble with the law again. In fact, in her first year of service she was charged with offences on three separate occasions. On 10 September 1849, assigned to a Mr. Aughey of Hobart, she was charged with 'using obscene language' and sent to the Cascades Female Factory to serve two months' imprisonment, with hard labour. On 26 November, then in the service of a Mr. Ward, she was 'admonished' for being out after hours. On 17 December 1849, she was sent to the Female Factory again – this time for three months with hard labour - when charged with 'being (unlawfully) in a public-house at a quarter to eleven' at night.<sup>10</sup>

On 23 July of the following year, a former convict by the name of Martin Heydon (seen also as Haydon, Hayden and Heyden) applied for permission to marry Mary Ann.<sup>11</sup> With approval granted, they were married at St. Joseph's Catholic Church, Hobart, on 12 August 1850. The marriage register shows Mary Ann as a twenty year-old 'spinster' and Haydon as a twenty-six year-old 'plasterer'.<sup>12</sup>

Haydon, born in County Roscommon, Ireland, had been in the colony since his arrival as a nineteen year-old aboard *Layton* (4) in September 1841.<sup>13</sup> Earlier that year, he had been convicted of house-breaking at the Liverpool Quarter Sessions, England, and sentenced to transportation for ten years. The report from the gaol where he was held while awaiting transportation to VDL described him as 'notoriously bad', commenting that he had been in gaol six times previously for crimes including theft and pick-pocketing. His conduct record in VDL shows that he was a difficult prisoner. Constantly in trouble, he was punished regularly for new offences ranging from insolence, insubordination, refusing to work, neglect of duty and misconduct to more serious crimes such as fighting with a fellow prisoner and attempting to abscond. He had served a number

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<sup>8</sup> CON41-1-17, image 146.

<sup>9</sup> CON41-1-10, image 59; <https://www.femaleconvicts.org.au/convict-institutions/probation-stations/anson>

<sup>10</sup> CON41-1-17, image 146.

<sup>11</sup> Heydon: Conduct record, CON33-1-10, image 97; Permission to marry, CON52-1-3, pages 214,215; Mary Ann was probably twenty-two rather than twenty.

<sup>12</sup> RGD37/517/1850, Hobart.

<sup>13</sup> Heydon's convict vessel is shown as *Layton* (4) in some lists of convict ships and as *Layton* II (3) in others.

of short terms in gaol, usually with hard labour, sometimes in solitary confinement and, on more than one occasion, in chains.<sup>14</sup>

Nevertheless, by the end of 1848 Heydon had been granted a ticket of leave. In late 1849 he received a conditional pardon and in early January 1851 – just a few months after his marriage to Mary Ann – his term of servitude had been completed and he was issued with a certificate of freedom.

After the marriage, Mary Ann and Heydon lived together in Brisbane Street, Hobart – but they were not together there for long.<sup>15</sup> Shipping records in VDL reveal that, on 19 February 1851 – just six months after the marriage – Heydon left the colony as a steerage passenger aboard the ship *Shamrock* bound for Melbourne.<sup>16</sup> Did he ever return? There is no record of him in VDL after this time.<sup>17</sup> Had he simply walked away from the marriage? If so, was Mary Ann aware that he was leaving her? Had he made any provision for her in his absence?

There are no answers to these questions yet – but desertion of convict wives by their husbands was very common at the time. Newspapers of the day railed frequently against the cruelty of men who, having served their time as convicts, sailed away from VDL leaving their penniless ticket-of-leave wives dependent on the government.<sup>18</sup> That this was prohibited by law did little to deter deserting husbands.<sup>19</sup>

In *Tasmania's Convicts: How Felons Built a Free Society*, Alexander (2014) pointed out that, after Victoria was settled in the 1830s, as many as 35,000 people - convicts and former convicts among them - might have left VDL to go there, some in search of higher wages, others to escape their convict past. Most of them never returned. The discovery of gold in Victoria in mid-1851 led to even more men deserting their wives and children and heading for the diggings on the mainland.<sup>20</sup> Shipping records in VDL reveal that more than 19,000 men left the colony in 1852 alone.<sup>21</sup>

In fact, so many convicts and former convicts went to Victoria at that time that politicians in that colony became greatly alarmed. Horrified at the number of immigrants from VDL who had been

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<sup>14</sup> CON33-1-10, image 97.

<sup>15</sup> See *HTG* 25 March 1851 – as quoted on Mary Ann's 'Absconding' page of FCRC website, with acknowledgement to the Founders and Survivors project. (See <https://researchdata.ands.org.au/founders-survivors-project/187173>)

<sup>16</sup> Source: POL/220/1/1, p.331 at <https://stors.gov.au/POL220-1-1>, image 331.

<sup>17</sup> See FCRC website; it is noted there that Heydon died but no record of his death has been located in Tasmania, Victoria or NSW.

<sup>18</sup> See, for instance, *The Courier* (Hobart), 22 December 1849, p.2.

<sup>19</sup> See, for instance, *The Britannia and Trades' Advocate* (Hobart), 9 September 1847, p.2; *Hobart Guardian, or, True Friend of Tasmania* (Hobart) 22 December 1849, p.3.

<sup>20</sup> Alexander, A. (2014). *Tasmania's Convicts: How Felons Built a Free Society*. Sydney: Allen & Unwin, pp.166-167; [https://link.springer.com/referenceworkentry/10.0007%2F978-94-007-6179-7\\_51-1](https://link.springer.com/referenceworkentry/10.0007%2F978-94-007-6179-7_51-1)

<sup>21</sup> See *eGold: A Nation's Heritage* @<http://www.egold.net.au/blogs/EG0006b.htm>

found guilty of crimes since their arrival in Victoria and were now serving time in the Melbourne gaol, they introduced a *Convicts' Prevention Bill* into the parliament. The *Bill*, aimed at prohibiting entry to that colony of any convicted persons who had not served the entire term of their original sentence, regardless of whether or not they had received conditional pardons, so offended the citizens of VDL that they petitioned the Queen to disallow it. However, when the governor of Victoria was ordered to repeal the *Act*, the parliament passed an even stronger one – and, until as late as 1867, convicted felons discovered in Victoria were returned to Tasmania.<sup>22</sup>

The date of Haydon's departure makes it unlikely that he had left Mary Ann to try his luck on the Victorian goldfields because it was too early for him to have heard of the great fortunes that were soon being made at places like Clunes, Castlemaine, Ballarat and Bendigo. There is little doubt, however, that he would have joined in the mad rush for the precious metal that occurred shortly after his arrival in Victoria. Most men in the colony did!<sup>23</sup>

Although Mary Ann was probably hurt economically by her husband's leaving her, she might not have been greatly disturbed by it emotionally. The marriage had not produced children and she had never adopted the 'Heydon' surname. Moreover, as soon as Heydon was gone, she took the opportunity to abscond.

On 25 March 1851, the *Hobart Town Gazette* reported that, a week earlier, Mary Ann had fled from the home she had shared with Heydon in Brisbane Street and that a reward of five pounds was offered for information leading to her arrest. She was not apprehended until October 1852.<sup>24</sup> Where had she gone at this time? How had she lived?

When Mary Ann was eventually discovered, she was ordered to serve eighteen months with hard labour at the Cascades Female Factory but even in prison she was rarely able to stay out of trouble for long. While there, she was punished seven times for breaches of discipline – misconduct, refusing to work, failing to clean her room, talking in chapel, defacing a book, washing after hours and making frivolous complaints about her rations. She was usually punished for these misdemeanours by having to spend three days in solitary confinement, fed only on bread and water.<sup>25</sup>

Mary Ann appears to have learnt little from this gaol experience. On 16 May 1854, once again assigned to a settler, she was charged with 'being out of her bed room at an improper hour and

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<sup>22</sup> Alexander, A. (2014). *op.cit*; see also *Convicts Prevention Bill* in *The Courier* (Hobart), 13 October 1852, p.2; *Tasmanian Colonist* (Hobart), 11 November 1852, p.2.

<sup>23</sup> Haydon departed VDL in Feb. 1851 but the first payable goldfield in Victoria – at Clunes – was not opened until about July of that year. The first NSW gold rush – at Bathurst – occurred in May 1851.

<sup>24</sup> CON 41/1/17, image 146; see also Mary Ann's 'Absconding' page on FCRC website which acknowledges the Founders and Survivors (FAS) project. (See <https://researchdata.and.s.org.au/founders-survivors-project/187173>); FAS references to Mary Ann's absconding in HTG 25 March 1851 and apprehension in HTG 26 October 1852.

<sup>25</sup> Cascades Punishment Book: CON138/2, pp, 167, 169, 170, 172 via FCRC website.

found in the man-servant's room under the influence of liquor'. She was ordered back to the Cascades to serve another nine months with hard labour.<sup>26</sup>

It is interesting to speculate on whether Mary Ann might have seen the irony in her situation as she began this new term of imprisonment. Would she have been aware that, a year or two earlier, the forced transportation of convicts to VDL had been abandoned and that there was much agitation in the colony for its name to be changed to Tasmania to counter the 'stain' of the convict associations of the 'Van Diemen's Land' name? Would she have wondered how different her life might have been had these changes occurred just a few short years earlier?<sup>27</sup> She might have known, however, that as she was only about halfway through her term of fourteen years transportation, the changes that were taking place were unlikely to make any difference to her circumstances. And so, her life went on as it had since her arrival as a convict – with one spell of trouble after the next.

In December 1854, she absconded again and, although she seems to have been apprehended quickly this time, she was sentenced to another eighteen months' gaol with hard labour. In January 1856, she was imprisoned again when found guilty of stealing money. In 1857, she was charged four times – in February for being drunk while in service, in March for being out after hours, in July for disturbing the peace and in September for some unspecified misconduct.<sup>28</sup>

However, the year 1857 also brought better news. In July, Mary Ann was granted a ticket of leave and – even more significantly – in November she married again.

Her new husband, William Binns, was also a former convict. He had arrived in the colony aboard *Tory* (2) on 18 March 1847. He was then twenty-five years old and single. He had been found guilty of stealing clothes in his native Dublin in April 1846 and sentenced to seven years' transportation. His gaol report described him as an 'extremely bad character with a stubborn, vicious temper' and noted that he had been convicted five times previously. In VDL, his behavior was no better. He was charged with offences many times and, in April 1852, his term of transportation was increased to fifteen years after he was found guilty in the Supreme Court, Hobart, of 'feloniously assaulting and robbing' a man.<sup>29</sup>

Nevertheless, by September 1857 he had been granted a ticket of leave and on 13 October of that year applied for permission to marry Mary Ann.<sup>30</sup> They were married at St. Georges Church of

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<sup>26</sup> CON 41/1/17, image 146.

<sup>27</sup> <https://www.abc.net.au/local/photos/2013/01/31/3680442.htm>; the last convict ship to VDL with male prisoners, *St. Vincent* (3), arrived at Hobart on 26 May 1853; the last ship with female prisoners, *Duchess of Northumberland* (2), arrived 21 April 1853; see <http://members.iinet.net.au/~perthdps/convicts/shipsTAS.html>.

<sup>28</sup> CON 41/1/17, image 146.

<sup>29</sup> CON33/1/85, image 19;

<sup>30</sup> CON33/1/85, image 19; permission to marry: CON52/1/7, page 44.

England, Battery Point, Hobart, on 1 November.<sup>31</sup> The marriage entry shows Binns's age as thirty-two, Mary Ann's as twenty-six. (Both were probably two or three years older!) Binns's occupation is shown as 'labourer'. Interestingly, Mary Ann, whose surname is shown as 'Stewart', is described as a 'widow'. This is puzzling! Was she not legally Mary Ann *Heydon*? And did she have information that Heydon had died?

Convict documents reveal that Mary Ann and Binns spent little time together after the marriage. Both continued to offend and to serve time in prison for their separate offences.

In early 1858 – just two months after the marriage - Mary Ann was charged with absconding again but that charge was dismissed when it was discovered that she had not run off but had simply failed to notify the authorities of the new place of residence that, apparently, she and Binns now shared. Nevertheless, she spent three months in gaol for that misdemeanor. Later that same year, she was charged again with disturbing the peace – and the ticket of leave she had been granted before her marriage was revoked.<sup>32</sup>

In early 1858, Binns was also gaoled for three months when the authorities discovered that he had soldier's clothing in his possession. In July 1858, he was sent back to prison for another six months for the theft of money. His ticket of leave was revoked. In July 1859, he was tried again in the Supreme Court for the serious crime of breaking and entering and sentenced to another four years of penal servitude.<sup>33</sup>

Disappointingly, little more is known about the life of Mary Ann or her husband. The entries on the convict documents of both are difficult to read and interpret after 1859 – the result, perhaps, of less attention being given to the documents after the cessation of transportation and the renaming of the colony. However, they seem to indicate that Mary Ann and Binns had both received - or were eligible to receive - conditional pardons by 1863. By that time, Mary Ann would have been about thirty-five, Binns about forty.

What happened to them after that remains a mystery. Neither seems to have come to the attention of the authorities again.

The death of a 'William Binns', aged sixty-one, was recorded at Fingal, Tasmania, on 24 October 1881. The age seems about right but whether or not this was Mary Ann's husband has not been verified.<sup>34</sup> There were other men of that name in Tasmania at the time.<sup>35</sup>

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<sup>31</sup> Marriage: RGD37/244/1857, Hobart.

<sup>32</sup> CON 41/1/17, image 146.

<sup>33</sup> CON33/1/85, image 19.

<sup>34</sup> Death of William Binns (not verified): RGD35/192/1881, Fingal.

<sup>35</sup> Three convicts named William Binns were transported to VDL between 1833 and 1847: see Tasmanian Names Index at [https://linctas.ent.sirsidynix.net.au/client/en\\_AU/names/](https://linctas.ent.sirsidynix.net.au/client/en_AU/names/)

There is no record of the death of a 'Mary Ann Binns' in Tasmania. However, the deaths of two women named 'Mary Ann Stewart' were recorded at Launceston in the 1890s – the first at sixty-eight years of age on 15 July 1895 and the second at seventy years of age on 22 January 1896. One of those could possibly have been her.<sup>36</sup>

It is difficult to know what to make of Mary Ann's story. On the one hand, it is impossible not to feel great sympathy for what she endured as a convict in VDL but, on the other, it seems that she brought a lot of her troubles upon herself. She was apparently from a good home in Scotland and grew up with caring parents. She should have been able to lead a nice life. As a teenager, however, she was attracted to bad company and made poor decisions. Her bad decision-making continued after her conviction and transportation. The men she chose to marry in VDL were both bad. How different her life might have been if she had been just a little wiser!

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<sup>36</sup> Deaths of women named 'Mary Ann Stewart' (not verified): 1. RGD35/179/1895, Launceston; 2. RGD35/29/1896, Launceston.