

CRIMINAL COURT. <http://trove.nla.gov.au/newspaper/article/166796442>.

Before his Honor Mr. Justice. Cheeke. The Jinden Murders

James Griffin was indicted for that he did, on the 9th . January last, at Jinden, near Braidwood, feloniously and wilfully kill and murder one Patrick Kennagh.

The prisoner was tried on the 30th of May last, on a charge of murdering John Carroll, at Jinden, on the 9th of January, 1867. He was acquitted of the charge. The evidence given on that occasion was fully published in this journal and the evidence adduced for the prosecution on the present occasion, is substantially the same.

Kennagh, whose murder forms the subject of this inquiry, was killed at the same time that Carroll met his death, and there can be little doubt that they were murdered by the same persons, It is unnecessary for us to do more than give a very brief summary of that evidence which has been already given and published; but we shall give rather more fully the - additional evidence which has been procured since the trial of the prisoner in May last.

The prisoner pleaded not guilty, and was defended by Messrs. Dalley and O. J. Manning, instructed by Mr. George Evans. The Solicitor-General prosecuted.

Mr Dalley addressed the jury for the defence.

He said :

You will be called upon in the discharge of your duty to undertake the pronouncing an opinion of a very remarkable case a case remarkable in many particulars, and a case, the importance of which it is impossible for you to overestimate. You are trying whether, virtually, a human life shall be taken away; the life of one who is, as you may see, just entering upon manhood. The prisoner is charged with a most fearful crime; the accusation is preferred by the most infamous witnesses, sustained by the most remarkable circumstances, although a precisely similar charge has been tried against the same person, and before a precisely similar tribunal as that before which he is now arraigned.

You have heard that he has been tried before one of the best magistrates in the country, who by the profundity of his learning and his vast experience ably supervised the last investigation, and before a jury without any disrespect to you equal in intelligence and conscientiousness to those I am now addressing. He has been tried already for an offence precisely similar to this in all particulars. Of the result of that trial you have no absolute direct evidence, be cause, when I made an attempt to ascertain that result, the Crown opposed my doing so; but you may infer, from the fact of the prisoner's being here on his trial now, that he was then acquitted. That was no ordinary trial. It was a trial that excited great attention. I ask you to come to no adverse conclusion against the prisoner, from anything you may have heard or read connected with that trial; but that knowing he has stood in imminent peril of his life before and has been adjudged innocent, you will pause before you arrive at a conclusion adverse to his interests, and which may be the means of taking away his life.

You are now asked to entertain the accusation of murder against the prisoner although in the whole scope of the evidence you can discover no reason for his committing murder. He is a man unstained by crime, a man who, if we are to believe one of the witnesses for the Crown, bore the best possible character living certainly in a disturbed district and having unfortunately some relatives who were violators of the law you are asked to find him I guilty of a murder which he could have had no more motive to perpetrate than the Judge who presides over this trial.

These detectives were not searching him out. He had done nothing to place himself in peril from them. He was living in the district unstained by crime, and, according to the testimony of one of the witnesses for the Crown, nothing that could be said against him could possibly injure him I need hardly tell you that one of the necessary

ingredients of crime is the motive because If you find that the man committed a motiveless murder you will have some difficulty in establishing the theory of his guilt. I will ask you to dismiss from your minds all considerations prejudicial to the prisoner in connection with certain persons whose names have been introduced at this trial. If he was connected with those persons you will not associate his case with the guilt of those persons unless you see that there was something to connect him with the guilt of those persons. You will not suppose that he was a murderer for the sake of those people. We do not try people for their association with murderers unless their association is of a guilty character. Every man stands alone to answer for his actions.

There is one peculiarity in this case, and that is, that the only evidence on which you are asked to convict this man is the evidence of persons who come into the witness box and confess that they are perjurers. That is a novel feature. It is a novel feature that the Crown establish their case by the evidence of witnesses who confess themselves to be perjurers; who say "We are now going to speak the truth. We have taken an oath as on former occasions; we have sanctified our testimony on former occasions by calling upon God to witness its truth; but we have lied! We have lied not in one particular but in fifty, not in one matter but in every matter! We have taken these oaths before tribunals where those oaths were equally binding as they are here but we have lied! But, do not mind that. Now we are going to swear the truth. You must now believe us." That is what they say. So that it appears that when they were swearing not to take away a human life they were swearing falsely and now they are swearing to take away a human, life they are swearing the truth!

Gentlemen, it is not I who condemn these witnesses. Out of their own lips they are condemned. I may quote a remark that was made by my learned friend in his opening address. He said that the objection to the testimony of these people lay only upon the surface. I object to such a principle as that in the name of that truth which should be ever sacred. I say the objection to their testimony does not lie upon the surface. The objection is a vital one; it has nothing to do with the surface at all. It goes to the very heart of their testimony.

Then my learned friend said. 'It may be that you will have a satisfactory explanation of their perjuries.' So that you had the admission that the Crown was going to call perjurers to give evidence in this case. The learned counsel admitted it in his opening speech. He said a satisfactory explanation of the perjuries would be afforded. I say that no satisfactory explanation has been given. Perjury disentitles a man to credence under all circumstances.

In olden times the law of England was that a perjurer's tongue should be cut from out his head. Even when that law was abolished there was a law disentitling a perjurer of belief. That was the law of this country. Those wise and eminent men, the founders of our jurisprudence, thought if a man came into a Court of justice and used his tongue for the purpose of convicting innocence of guilt, that man should never again be allowed to imperil society by giving false evidence; and so they deprived him of the physical means of giving evidence. And in the same way the law since took away from such a man the power of speaking by disentitling him to belief. I most unhesitatingly contend that no satisfactory explanation can ever be afforded for perjury.

My learned friend says it is the same as if you are asked to weigh the evidence of two witnesses whose testimony is entirely opposed. The illustration has no bearing on this case, In this case the witnesses themselves say that they are liars and perjurers. I say the illustration was not to the point at all, and that no amount of argument could ever convince you that it was.

Having made these few preliminary observations, let me now ask you to consider what this case really is. It is a case of a cruel and unnatural murder. Perhaps no more fearful case was ever presented to the attention of a jury. Four men, in the discharge of an honourable duty, engaged in the suppression of crime, are coldly butchered by some

persons. The story is one which, told even now, at this distance of time, makes our very blood run cold. A murder more foul and unnatural never was perpetrated. Who are called to depose to this murder, and to such portions of its circumstances as shall convict this man?

The first witness is the only person who heard anything for she did not see how the murder was done about it. This Mrs. McEneny is called. Though she did not see the shots fired, she heard the reports of the guns that took away these men's lives. She was the hearer, not the seer of the deed. Now, if a man trained to take away human life had heard those reports, and afterwards seen the bodies of the persons who were murdered by those shots, would anything restrain him from flying at once to the police and telling what he had heard? Living, as she said, in a part of the country where she had no near neighbours, what is her story?

She says that the story she told when she was first called upon to speak is a lie, from first to last. She never tells at any investigation what she swears to here. She never said anything to touch the prisoner at the bar on the last occasion when she was put into the box here. You have heard her deposition read. She was called at the inquest on the bodies of these men. What does she say at the inquest? Why, she commenced to lie from the moment that she begins her evidence. She swears that she saw nothing. She did not say one word against the prisoner. She specifically swears to three men retiring from the back of her place as she describes not four men, or three or four men, but three men. When asked to describe them, she describes them as three of the men who formed this party of detectives. What is the character of this evidence. She knew before she took that oath that before she saw these men the whole of these unfortunate detectives had gone to meet their God. She does not fear to outrage the majesty of death, and does not hesitate to swear that the three men she saw were men whom she knew were corpses at the time. That fact stamps her as a wretch whose oath you cannot credit. She knew, that she was lying. Can you imagine anything more horrible? If she wanted to lie why did she not say "I do not know who the men were." Her evidence at Braidwood is, that she saw four men, or three or four men, and she swears that they were the detectives. To that the same observations apply. But she swears also that at the time she gave her evidence at Braidwood her life had been threatened and she gave her evidence under terror of her life. That is her palliation.

When his Honor comes to address you, gentlemen, he will most probably tell you that that can be no palliation for perjury. The moment perjury is proved against a witness, that witness's evidence must be rejected. But at the inquest she had not been threatened at all; and yet, as she swears now, she swore a lie then. I shall leave her evidence with this remark; but she has only placed us in a position to prove that she and Smith are perjurers. The persons of whom Smith; speaks were on horseback; the persons she saw after the shots were fired were on foot.

The next witness is John Lynn. He was never called before. This is suggested to you, because it may be that the Crown did not dare to call him before. If they could have got in his evidence before with any hope that the jury would believe it, they would have called him. What does he swear now? That he saw Griffin on the morning of the murder at Smith's place; that he heard a single portion of a conversation between his master, Smith, and the prisoner; that he saw his master pointing in a certain direction which he said the detectives had taken, and that he heard the prisoner say, "Yes, I know, I have been watching theall night.

Let us see how far that statement is consistent with his own evidence given at Braidwood, and the evidence here today. With his own evidence it is clearly inconsistent, because at Braidwood, or at the inquest, he never says one word about it. He, of course like the rest, adduces terror as his reason for not saying this before, terror of the bushrangers. On the last trial he knew that these Clarkes had been apprehended, and that they had been sentenced to death, so that his cause of terror was removed. That is the first proof of his lie; what is the second? Smith is called. Does Smith say that he made the observation which Lynn swears to? He says that

Griffin said in answer to his remark about the detectives, "Yes, I met them as they were coming." Lynn saw Smith yesterday. He denied that he saw him before, but you will judge what reliance you, can place upon his assertions. Smith and he may have been dovetailing the evidence for the last three months.

One thing I may say his brother was only called in to depose to circumstances on which he had been speaking to, the constable. John Lynn swore that the fowling-piece seen in Scott's possession precisely corresponded with the fowling-piece seen in Smith's possession. His brother swears that it was not the same fowling-piece that Scott's fowling-piece was half an inch longer, as if he could notice such a distinction as that.

I am going through the evidence as it was given, and I shall now call attention to the evidence of Donohoe, who deposed to a conversation in which Griffin tells him that something he had heard would shock the heart of any man. This is not the language of a murderer, but of one that was horrified at the murder. Griffin is asked about his connection with that murder, and indignantly denies that he had anything to do with it. Then he says he was "with the horses."

It may be attempted to be urged upon you that this expression meant he was with the horses of the bushrangers when they were committing the murder. Surely to God you will put no such construction upon it. A man who denies the murder and then says this, is his remark to outweigh his denial? You will reject such an assumption as that, and not entertain it for an instant.

The next witness called was McCurley, and if you ever saw a countenance in the witness -box which should be in the dock you saw it then. He never was called before. He tells you he was stopping at Mrs. Clarke's house and that he stopped there all night. He then makes to you the incredible statement that there were two policemen talking and laughing with the girls there for hours. Two policemen in the very house of the mother of the very men who were known to be murderers, and one of whom was known to be an outlaw! He was in this house and he swears that he stopped there all night.

In the morning as he tells you he had a conversation with the prisoner. Nobody was present but himself and the prisoner, not a soul. What is the story? That the prisoner proposes to him at once, without any circumlocution whatever, to be one of a party that were to murder Carroll and his party! He refuses to do so. Gentlemen, you saw this man in the witness box, and if ever a self convicted perjurer manifested himself by expression and conduct, he was the man. You saw him crouching down in the witness-box, as if fearing that the judgment of Heaven would fall on him while he was bringing forth those perjuries. You heard him lying three times consecutively in answer to the three first questions I put to him. You heard him swear on his oath that he did not hear my question, and you heard him immediately afterwards repeat that question with the greatest exactitude. If you were engaged in investigating the most trifling circumstance, and that creature swore twenty oaths, would you allow his evidence to affect you one way or the other.

I shall make no reference to the evidence of his brother, because it has nothing to do with the case.

But now let me approach the great witness for the prosecution the witness upon whom the, prosecution is based the witness from whose lips comes the prisoner's confession of guilt the witness whose testimony, if you believe it, must lead you to a conclusion adverse to the prisoner. I shall make no remarks upon his demeanour. You will have remembered that. He comes here today under advantages for perjury. He has been subjected to examination, and cross-examination, and re-examination by the learned Judge who presided at the last trial. He comes here to give evidence armed at all points.

The first thing he deposes to is the conversation with Griffin, when Griffin comes to his place. His report of that conversation makes either Lynn or himself a perjurer. (Edward Smith's evidence quoted.) He then swears that the inquest was held on the Friday, and we find it was held on the 11th, 12th, 13th, 14th, and 15th January; so that, according to his story, the prisoner's admissions of guilt were made two days after the Friday on which the inquest was begun, and before the inquest was concluded. [Smith's evidence further quoted and commented upon] This horrible murder had been committed almost at his own door. The murdered men were his own guests. They had been brought to his house by himself. Do you doubt that? He would say that he did not; but I had his evidence read where he stated that he saw these men three weeks before; that he had an interview with this man Carroll, who asked him if, when he came up to Jinden he (Smith) would, assist him. He said he would. Yes, he assisted him. He assisted him. He sent him and his unfortunate companions to be murdered. He sent them into the midst of a gang of murderers, and his place should now be the dock with this unfortunate prisoner. The last place at which these men were seen was his. They come to this ruffian's house, these poor, unfortunate policemen, strangers in the district, who had never been there before, relying on the protection which this villain had almost promised them they come to his house. They come with horses, and saddles and bridles, with the means of escaping dishonourable deaths if they should be unsuccessful. He deprives them of these, and he is found in the possession of the property after they are murdered. But for his persuasion do you think it probable that they would have left their horses there, and gone on foot among those human tigers. From his own tongue I will show you an irresistible proof of this. He swore that he never suspected Griffin until after Griffin told him of the murder, If so, he would have no alarm about the safety of the men when they left his house. But what does he do? Next morning he sends this wretched boy Lynn the way they were to go. You saw how he fenced the question how he denied that he ever told the boy to go a particular way. But you heard him admit at last that he sent the boy a particular road, and there the boy found the murdered men. He tells the boy to go by the very line on which he discovers the murders. He says he was anxious about them. He? who sent them to their graves who induced them to leave their horses behind, so that they could not escape? Then when the bodies are found he flies away to the police and he has his reward. He has succeeded in his ruse.

He is placed in the witness box instead of being arraigned as a murderer. This man was called before the coroner's inquest. He never mentions Griffin's name there, he never mentions the request for the rifle nor the conversation. He knows that Griffin had been there, and on his oath he never mentions a word of it. He bears on the following Sunday the full particulars of the murder. He is drunk or he is sober, whichever you believe. If he had been sober would he not have flown to the police at once? He did go to sergeant Byrne and had some conversation, which was no doubt the same as he detailed at the police office, for if it were not Byrne would have corrected him at the police court, [Smith's evidence at Braidwood quoted, and commented upon.

Now what is his story as to what he overheard? He swears that he heard this young man confess the murder to him. that he heard him say that if he had been present he would have saved Kennagh's life. That's what he swore at Braidwood. Can you have much stronger proof that this young man was not present. He swears now that that was true, but the ruffian when I asked him whether he did not swear at the last trial that was false?' would not swear that he did not.

All terror was removed then. All terror was removed when he was before the Chief Justice, and yet he cannot say that he did not tell the Chief Justice, that what he had sworn at Braid wood was a lie. I now come to an important part of his evidence.

Now listen to these pieces of evidence which I am about to read to you. (I may have told sergeant Lenthall that I was sorry Griffin was apprehended. He was sorry. Why? Sorry that this cold blooded murderer was apprehended! This murderer who had confessed to him the perpetration of a murder under such horrible circumstances!

Then he says "I won't say that I did say so; I don't believe I said so; did not say so. &c."

His perjuries are not one but innumerable yet he hesitated to say that he was a perjurer. The oath is to tell the truth and the whole truth, and the offence of concealing the truth is as great as of stating a falsehood. He has committed every kind and form of perjury that it is possible for a man to conceive perjury of suppression, perjury of expression, absolute falsehood, and mixed truth and falsehood. Every way in which a man can commit perjury he has committed it. What explanation is afforded of these perjuries. The explanation is terror; that he was so much under the influence of fear of what might be done with him that he was incapable of speaking the truth.

Consider the condition of the country at the time. True, it was infested by bushrangers, but the whole country was full of police. If he had come forward and told the truth the police would have protected him the Government would have established a police station at his house. He could have no cause for fear. And so with this woman McEneny, and with this' wretched boy, Lynn. They both make their perjuries excusable by fear, I have now no more to say on the evidence.

After the investigation which has taken place before, there is no necessity for my occupying your attention, Of these perjured witnesses coming here again to soil this Court with their presence, there is no necessity for me to say anything more. You have heard from their own lips what they are, not from mine. If they themselves say that they are perjurers that they come here stained from head to foot with - perjuries. Will you believe them? The very atmosphere of this court is polluted with their presence. The august presence of justice herself is degraded with such associations.

While to leave the sanctuary of human life open to the invasion of such loathsome wretches would be to inspire universal horror and alarm to surrender power to the perjurer and society to the scoundrel. Here, at all events, in this sacred temple let us have no crimes perpetrated in the name and under the sanction of the law.

And if the self - confessed perjurer is the accuser let us snatch the accused from a danger which is as much that of society as of the prisoner.

The Solicitor General rose to reply, and said that,

After listening to the speech of the learned counsel, which consisted of vituperation and abuse of the witnesses, uttered in loud tones, and of nothing else

Mr. Dalley interrupted,

He did not know whether he was to put up with impertinence of this kind. The observation was one that he had certainly never heard in such a court before.

His Honor: *I really did not catch the observation.*

Solicitor General:

I said, "Listening to singular vituperation and abuse, in loud tones, of the witnesses called for the Crown"

His Honor: *I don't see that there can be much objection to that, if those were the words used.*

Mr. Dalley: *Very well, your Honor.*

The Solicitor General then continued his address and reviewed the evidence at great length. His Honor summed up, and at ten minutes before 7 o'clock the jury retired to consider their verdict. At 9 o'clock they came into Court with a verdict of ' Guilty,' recommending the prisoner to mercy, on account of his youth and the bad associates who had led him into crime. His Honor passed sentence of death upon the

prisoner in the usual form.

James was sent to Darlinghurst gaol, released September 1880, suffering from TB from which he died a year later.