

SMH, Friday 31 May 1867.

THE JINDEN MURDERS.
CENTRAL CRIMINAL COURT
Thursday, 30 May, 1867.

Before the Chief Justice and a jury of twelve.

James Griffin - arraigned on Tuesday for the murder of special constable Carroll, at Jinden, on the 9th January, 1867 and to which he pleaded not guilty - was now placed in the dock for trial.

The Solicitor-General prosecuted for the Crown. The prisoner was defended by Mr Dalley and Mr Rogers, instructed by Mr George Evans. The indictment was read over to the jury. Witnesses were directed to leave the court until called upon to give their evidence.

The SOLICITOR GENERAL, in stating the case for the Crown, said:

The prisoner at the bar stands indicted for the murder of a person named John Carroll, on the 9th of January last, at a place called Jinden. It will appear in evidence that Carroll was in charge of a party of special detective constables sent into that district for the purpose of assisting to protect life and property from depredations and acts of violence committed in the district. Of course you have nothing to do with anything done by anybody else, or other offences which may have been alleged to have been committed even by the prisoner himself. A number of witnesses will be called to prove a variety of circumstances, many of them more or less indirect; and you may be called upon to hear evidence which is not altogether irrelevant, but which is chiefly of importance as assisting the consideration of matters bearing more immediately upon the charge. I shall endeavour to confine my questions as far as possible to that which is relevant, but I am very much afraid, from my knowledge of the case, that it cannot be concluded to-day. It is not my intention to do more than to give a most general statement of the circumstances. Much of the evidence affecting the prisoner will be detailed to you as coming from his own lips. Those statements were made independently, at different times, and to different persons, and they contain matter corroborate of other evidence to be brought before you. If you should see reason to doubt the testimony of any one of the witnesses you will be good enough to consider the testimony you distrust with the evidence of witnesses whom you may credit. Evidence bringing the prisoner directly in the vicinity of the spot on which the dead body of Carroll - and, I may state, the bodies of the other constables, though you have nothing to do with them in this trial - was found at the time the murder was, as far as we can judge, committed. The circumstances are of a very strong character. Shots were heard by a witness, who will be called, in the direction in which the bodies were found. This witness's house was in the vicinity, and she will prove that the prisoner was in the neighbourhood, and that, some time after hearing the shots, she saw four persons riding away from the direction in which the bodies were subsequently found and from which she heard the shots. Of these four persons the prisoner at the bar was one. Should necessity arise for me to call your attention to the salient points of the evidence at a future period, I shall deem it my duty to do so.

The first witness called was Daniel Byrne, who deposed:

I am a sergeant of police stationed at Ballalaba sixteen miles from Braidwood, it is thirty miles from Jinden, I know Mr Edward Smith's station at Jinden, it is called Jinden House, I found some bodies on the 10th of January last, about a mile from Mr Smith's place; I knew Carroll. Phegan, Kennagh, and McDonnell, they were special constables sent to the Braidwood district. I received the prisoner in charge from Loughlin, nothing particular passed between us, I merely asked him where he was on the day of the murder, and he said that he could account for that by and by, he did not mention any particular place; I first saw Carroll alive about 8 o'clock on the morning of the 8th of January, on a Tuesday, at Ballalaba, he was passing the station in

company with Phegan, Kennagh, and McDonnell, they did not speak to me at all, they passed the station and went in the direction of Jinden, they were about thirty miles from Jinden and were passing Ballalaba, I am quite sure those were the four men; they were riding, I knew Carroll was acting as a detective, they were armed, I saw two revolvers with them, that was all I saw, I saw the bodies on the following Thursday, the 10th, at about 2 o'clock, I saw the bodies of Phegan and McDonnell about a mile and a quarter from Jinden House, Mr E Smith's place, the other two bodies were close on half a mile distant lower down in the bush, they were away from the track, they were the bodies of Kennagh and Carroll, the ground was sloping from where the first two bodies were lying to where we found the second about 2 o'clock I was at Foley Flat, I proceeded from Jinden House on the track leading to Guinea's, the free selector's, constable Laughlin, two other constables, and a tracker were with me: Smith was not with me at that time, he went from Jinden to the bodies without Smith - presumably Smith was still at the murder site. Guinea lives on the Krawaree Flat, about three miles and a half from Jinden, between Ballalaba and Jinden House, not in a direct line, you leave it to the right, about one mile and a quarter from Jinden House, I first saw Phegan's body on the flat, lying on his face with his head towards Guinea's, the opposite direction from Jinden House, he was lying flat on his face, I walked right up behind them; he was lying two feet to the left of the track, when I first arrived at the place, there was an old man belonging to Edward Smith in charge of the two bodies, his name was Thomas Gee, I turned up the body of Phegan and recognised his face, I examined his clothing, and I found bullet marks on the right side of the body opposite the arm, nearer to the breast than the back, close to the body, on the track, I found a Tranter revolver pistol, I examined it and found it loaded and capped, all round, about four yards further on in the direction of Guinea's, I found the body of McDonnell, he was an elderly man, he was lying on his back, close to the track, and I found a bullet mark on his left thigh, four or five inches above the knee, there was a large quantity of blood on the ground near the body, the thigh seemed to have been broken, and he seemed to have fallen over on the left side, and lay on his back, his vest pocket was pulled out, four or five yards from the body I found a hat and another pistol, a Tranter revolver, I recognised the hat as belonging to Constable Kennagh: it was a black hat with a blue veil on it, close to the hat I found a Tranter revolver pistol capped all round, there was a bullet mark on a tree about two feet from where McDonnell fell, there was a pistol of the same kind as the others in McDonnell's belt capped all round he seemed to have been behind a small tree, not affording much protection for his body, about five yards up the tree a branch was cut by another bullet; there were two large trees on the tracks twenty-three yards from Phegan's body and twenty-seven yards from McDonnell's, around the largest of these trees there were footprints of men and I found a piece of wood belonging to a breach-loading rifle and some loading paper, I found no bullet marks on the tree, about ten yards further on towards Guinea's, on the same side of the track, was the other tree, which was nearer to McDonnell's body, I also saw footprints of men around that tree; the large tree was nearer Smith's Place (Jinden House) than the smaller one; I found no paper or cartridges at the smaller tree; the old man was sent to Smith's for a cart and when he brought one a man named Watts and George Smith came up; This is when he first saw Watts and Geo Smith - perhaps the reporter has neglected to include Ed Smith here. I put the bodies of Phegan and McDonnell in the cart, went down the bush about half a mile, leaving Guinea's on the right, Smith's on the left and away from the track, and there found the bodies of Carroll and Kennagh, In his deposition he says Smith, Smith and Watts were with him, Carroll's body was lying on the back; on the left breast I found a red silk handkerchief and a £1 note on the handkerchief, with a small piece of wood on the note as if to prevent it from blowing away, beneath the body on the right side I found some Tranter's ammunition, his right hand pocket was pulled out, and his hat lay a short distance off, about four yards when we found Kennagh's body also lying on his back; there were a match box and small knife in his left hand, which appeared to be shut upon them; there was a wound in Carroll's left breast, and the day afterwards I found that Kennagh was wounded in the neck, the ball passing down into the body, I was present at a post mortem examination of the bodies by Dr Patterson, at Jinden House, next day, there were no arms near Carroll's and Kennagh's bodies, Mrs McEneny's house is scarcely a quarter of a mile from the place where I found Carroll's

body, and her house is about two or two and a half miles from Guinea's a person going away from the spot where I found the bodies of Carroll and Kennagh in the direction of M^c Eney's would pass within about a quarter of a mile of the spot where the bodies of McDonnell and Phegan lay ; I would have to go about a quarter of a mile as near as I can guess, leaving the bodies on my left, I saw two rifles with Carroll's party when I saw them at Ballalaba, but was not close enough to see what sort of rifles they were; I found no rifles with any of the bodies.

On the Saturday morning, after finding the bodies, I went to the place where I had found Carroll's body; I examined the ground, and went up to where I found the first two bodies, it was open forest country , I examined the ground near where I found the first two bodies, and about 300 yards off, on the way towards Guinea's, I found the prints of horses' feet; there were the prints of three horses at least, they appeared to have been tied up there, you could see the place where the bodies were found, from where the horses were tied up; cries could have been heard at the distance; I am not sure that there were not more than three horses but there were at least three, I could distinguish the tracks of three.

The witness was not cross examined.

John Loughlin, a constable, stationed at Ballalaba, being sworn, said

I know the prisoner, on the 19th January last I arrested him at Oronmeir, where he resided, I arrested him on a charge of being concerned in the murder of Carroll and his party, I know Jinden House; the prisoner's residence is about twenty five miles from there; on the 9th January I accompanied sergeant Byrne and others to a place near Jinden, where we found the bodies of Carroll, Phegan, McDonnell, and Kennagh. I had known those persons for some short time previously. The distance from Jinden to the prisoner's house is not more than twenty five miles. The house belongs to the prisoner's brother; two of his brothers lived there with him, and also his father and mother; the place is a farm of about 100 acres, part being under cultivation, and part grazing land; there were cattle there, I have known the prisoner for about five years; I suppose him to be between twenty and twenty-two years of age; he has one older and one younger brother; prisoner used to drive teams on the roads, and sometimes rode after cattle; I have seen him driving a team.

The witness was not cross examined.

Edward Smith, being duly sworn, deposed:

On the 8th January last I was managing the Jinden station, about forty miles from Braidwood ; I remember some dead bodies being found about a mile and a half from Jinden House; the dead bodies were those of Carroll, Phegan, McDonnell and Kennagh; I saw the prisoner at my place on the evening of the eighth of January last. He did not remain there more than a quarter or half an hour. He came to me and said that Carroll and his party were on the road-that they were at the Dirty Swamp as he passed them , prisoner was riding a bay horse, and when he left my house he rode away towards Braidwood, in the direction in which he had said Carroll and his party were coming; on the same night a young man named Dempsey - who was subsequently arrested-came to my house and stayed about half-an hour, and about sundown Carroll and his party arrived and remained in my house all night; they left on the following morning about 7 o'clock, going towards the farm of a man named Guinea, a free selector; the prisoner came to my house on that morning, about half-an hour after Carroll's party left; prisoner told me that he had seen Carroll and his party going towards Guinea's place. Carroll and his party left my place on foot, having left their horses with me, prisoner stayed about half an hour, and when he left, went as if he were going to Guinea's place; he was riding a grey horse; he asked me to lend him my breech loading rifle, I refused to do so; I told him he should not have it; he told me not to give it to sergeant Byrne or Carroll, I did not see any other strangers about my place on the 8th January; I know McEney's place; it is about three-quarters of a mile beyond Guinea's, I was there about three days before, I did not see any strangers about

there or about Guinea's; I next saw the prisoner on the following Sunday, at the house of Michael O'Connell, a publican at Stoney Creek; some people call him Connell; Stoney Creek is sixteen miles from my place; I had some conversation there with the prisoner alone; I saw him there on the following Sunday, the 13th; he said, " after leaving your place last night, I went towards Clarke's place;" Clarke's place is between twenty and twenty-five miles from Jinden House ; prisoner said . " I brought the bushranger up that night; " he did not mention any name; he said " Bill Scott and John Clarke stood behind one tree, and Tommy Clarke stood behind the other;" He did not mention any place; he said Carroll and his party advanced, and Tommy Clarke went out from behind the tree and called upon them to surrender;' ' those are the exact words, " Phcgan and McDonnell fell; McDonnell fired one shot out of his revolving rifle and his leg was broken; they fired into the detectives, Kennagh and Carroll retreated down the flat: Kennagh took two balls from the tree behind which Bill Scott and Johnny Clarke were; Tommy Clarke ran round at the back of Kennagh and fired a shot at Kennagh, and the ball went into a sapling close alongside of him; Clarke called for a horse, and a horse was brought down. He did not tell me by whom the horse was brought down; that was after he told me Tommy Clarke got behind Kennagh; he did not tell me which took place first. " Tommy Clarke fired a shot at Kennagh, and he called upon Kennagh to surrender; Kennagh looked round and threw his rifle on his arm, and surrendered; there was one shot in the revolving rifle when Kennagh surrendered; Tommy Clarke said to Carroll, you are Carroll; Carroll said that he was not Carroll, that Carroll was lying dead on the road, Tommy Clarke said, make up your mind, you have not got many more minutes to live; Carroll then said, mercy! Tommy Clarke said, you can't expect mercy, you did not show mercy to my sister; that is all prisoner said; he said that Tommy Clarke shot Carroll, and that Bill Scott shot Kennagh; John Clarke did not shoot any of them; Tommy Clarke shot three out of the four; he did not tell me whereabouts the wounds were; he did not tell me what Tommy Clarke shot Carroll with, or what Bill Scott shot Kennagh with; he said all the money on them was only £1 2s. 6d.; that is all the prisoner said; he said nothing at all about Kennagh; he did not say on whom the money was found; he made some remark about Kennagh, but I do not remember what it was; prisoner said that he held the horses; I remember that now; I don't remember anything more as to where he held them, how he held them, or anything else; he said that he held the horses; he did not tell me who took the horse down on the flat; he said Clarke called for a horse; prisoner expressed a wish to go with me to Gipps Land; I told him that it looked very suspicious, and that he had better not go; he said that Tommy Clarke had his boots off and was barefooted I have told all that I remember.

The Solicitor-General submitted that he had now a right, having exhausted the witness's memory, to put leading questions.

His HONOR said *he took it for granted that when a witness's memory was exhausted, the Crown Prosecutor had clearly a right to do so; but he would suggest as little as possible, merely give the clue.*

The SOLICITOR GENERAL. was understood to *ask whether the landlord, Mick Connell, was present, and the witness was understood to reply that he was.*

The SOLICITOR-GENERAL Did you hear anything pass between the landlord and the prisoner that morning about spirits of any sort? *He asked about gin.*

His Honour : "When was that ? *Before the conversation.*

How long before? *About three quarters of an hour. He said, " Did the gin take effect?"*

Was anybody else present but yourselves at the long conversation you have detailed? That was between the prisoner and me alone. He said that only for the gin he could not get them up to the pitch.

Was that said to Connell? *Yes-" Only for the gin he did not think he would get them up to the pitch."*

Just repeat that, will you? *Only for the gin he could not get them up to a pitch.*

Mr. DALLEY: What's this new rendering? Before it was that the prisoner said - *Only for the gin, he did not think they would get him up to a pitch.*

His Honour What did you understand the prisoner to say? Witness *"Only for the gin, I could not get 'em up to a pitch."*

Was that what you meant to say in the first instance? *Yes.*

A Juryman: That is what he did say your Honor.

Another Juryman I understood the witness to say, *"Get him up to a pitch."*

His HONOR Do you give the jury to understand that you meant to say at first what you say now? *Yes.*

Are the jury to understand that the prisoner said " If it had not been for the gin, I do not believe I could have got them up to the pitch? *Yes.*

THE SOLICITOR GENERAL: Did he say any-thing else about spirits? *No*

Did you hear Connell say any more to the prisoner? *Not then.*

Were you present at any other conversation between prisoner and Connell? *No, I was not*

Then you have told us all which you recollect of the conversation between Connell and the prisoner at which you were present? *Yes*

You cannot remember any more? *I cannot remember any more*

Did he at that conversation mention the name of Thomas Clarke?

His HONOR In the conversation with Connell? The SOLICITOR GENERAL *Yes, your Honor*

Witness Not when I was present. I heard a conversation going on in the bar, but I was not present

THE SOLICITOR GENERAL When prisoner came to you on the morning of the 9th, had he anything with him? *He had some gin*

What was it in? *In a square gin bottle*

His Honor That was on the morning of Wednesday the 9th? *Yes.*

Did you mean a square gin bottle, or a square bottle with gin in it? *A square bottle with gin in it*

How do you know gin was in it? *He gave me some of it*

THE SOLICITOR GENERAL. Did he leave the bottle with you, or take it away with him? *I did not see it after he left*

Had you it in your hand at all? *I had it in my hand and gave it back to the prisoner*

You say you overheard a conversation between prisoner and Connell? *Yes*

In the conversation you overheard, and took no part, did you hear the prisoner say anything to Connell about Tommy Clarke being barefooted; *I heard prisoner say Tommy Clarke was barefooted; I did not hear him say so. I heard Connell say it to him.*

You are quite sure it was him? Quite sure. Did you hear their voices? *Yes*

They were both there? *Yes, they were standing apart Connell said, "Then you brought the horses there."*

His HONOR Where were you? *In the parlour.*

You heard Connell say, " Then you brought the horses down? *Yes*

The SOLICITOR-GENERAL That was in answer to some-thing you did not hear? *Yes*

What else? *Prisoner said something about Tommy Clarke not being able to catch Carroll barefooted, Carroll ran so fast down the hill, and he called for the horses, then Connell said " You brought the horses down "*

Did the prisoner make any answer to that? *I did not hear what he said*

His HONOR, He said he could not do what barefooted? *He said that Tommy Clarke could not catch Carroll running down the hill.*

Mr DALLEY What are you, Mr. Smith? *I am not doing anything at present, I am looking after employment*

Where are you living? *At the Cosmopolitan Hotel*

How long have you been living there? *Seven, eight, or nine weeks.*

When did you first communicate to any policeman the story you have told here today - did you ever tell any police officer the story you have told to-day? *Yes*

At what time did you mention it? *Immediately after the evidence was taken at the Police Court*

After prisoner was committed for trial ? *Yes.*

Was that the first time you told the story to any member of the police? *If I remember rightly, it was not the first time*

When was the first time ? *I think it was on the Sunday that the conversation took place.*

In what place? *At Ballalaba*

At what hour of the day? *About 2 o'clock.*

Were you at Ballalaba more than once that day? *No.*

Where did you stop that night? *At Connell's public house.*

At what time did you start to Ballalaba?*I started shortly after 11 o'clock.*

For what did you go to Ballalaba? *To post letters and papers.*

A letter you had written that morning before starting from Connell's? *Yes.*

At what time did you get up that morning? *About 8 o'clock.*

Were you sober ? *Yes.*

And continued sober ? *Yes.*

Were you sober the night previous? *Yes*

Were you sober during the rest of the day when at Ballalaba? *I had a little to drink, but was not drunk*

This conversation you recite took place between the time you got up and the time when you started for Ballalaba, and not after your return? *Yes but there was a conversation after I came back*

You have not said anything of that in your evidence? *I was not asked*

Were you examined at the Police court as a witness? *Yes*

On what day did your examination take place? *I do not remember now*

Was it about the middle of February? *About that time*

That would be some five weeks after you heard the conversation you speak of? *Yes*

That is at the police office at Braidwood? *Yes*

Did you in your examination say, in reference to your condition on that particular Sunday, that you were not sober? *I said that I had had some nobblers that day*

Did you say you were not sober on that Sunday-did you say those words "I was not sober on that Sunday." *Yes, but I was not drunk.*

Did you use these words, "I was muddled the day before" *I might have used the words, but I do not remember.*

Did you use these words, "I was not sufficiently sober to know all that passed on that day?" *I do not remember saying them.*

Do you believe you said them? *I might have said it. I would not like to swear whether I said it or not*

How many glasses of liquor did you take that day? *I cannot tell.*

Can you tell how many you took at Connell's? *I do not remember .*

Is it now true or false that you were not sober on that day? *I was not drunk*

Is it true or false that you were not sober on that day? *I was not drunk on that day.*

Is it true or false that you were not sober on that day? *I was sober enough to know what I was doing*

And when you swore that you were not sober on that day were you telling the truth or a lie? *I did not swear that I was drunk on that Sunday*

When you swore at the Braidwood Police Court "I was not sober on that Sunday" did you swear the truth or a falsehood? *I do not remember swearing that I was drunk on that day; I not know what you mean by sober*

Did you swear that you might have had six nobblers of brandy between 9 and 6 in the morning. *Yes about six.*

Was this conversation between prisoner and Connell of which you have spoken going on as you were writing a letter in the parlour. *Yes. A portion of it. Prisoner and Connell were stopping in the bar, as I was writing in the parlour*

This story consists of two parts - What prisoner told you when alone with him, and what took place between prisoner and Connell when they were alone? *Yes*

You were In the parlour while they were in the bar? *A portion of the time*

Where were you in the other portion of the time? *Some times I was going in and out of the bar*

Could you hear from the parlour what was said in the bar ? *Yes.*

Did you ever swear "I was in the little parlour and they in the bar, and I could not hear what was said in the bar I could hear a portion of it. Did you ever swear that ? *I do not remember swearing it*

Was prisoner sober or drunk? *He had a few nobblers, but was not drunk*

Was Connell drunk? *Connell was drunk*

Do you recollect having In evidence at the police court sworn that you did not recollect prisoner telling you that Tommy Clarke got behind a tree? *Yes, I remember that*

When I went to the court I was cautioned that if I said anything there against certain parties I would be shot down

You were giving evidence in a public court with lots of police about? *Yes.*

The only parties referred to were the criminals who were before the Court ? *Yes, Guinea, Connell, and Griffin*

You were in the witness box upon oath? *Yes*

Did you not say you did not recollect prisoner saying that Tommy Clarke and Scott fired together, or did you recollect that on that occasion you stated that Connell said " I believe there were two shots fired, and that Griffin said he supposed that was It ? *I do not remember saying it*

No such thing took place at themselves conversation? *Yes, I remember what took place*

Did you swear at the Police Office that Connell said he supposed that Clarke shot three out of the four ? *I might have done that, I think I did.*

Did you swear at the Police Office that you heard Connell say , " No doubt they had other horses to pursue them" *I do not remember.*

Do you think you said it? *I do not remember saying anything of the sort*

Do you remember saying that either Connell or Griffin said that ? *I do not remember*

Do you remember saving anything about your not re remembering telling Connell and Griffin that Mrs M'Eneny told you that saw saw three men going away from the place of the murder? *Yes.*

Is it a fact that you told them what Mrs M'Eneny told you - or did she tell you. She told me she saw some men going away - *I cannot remember whether she said three or four*

Did you communicate this to Griffen and Connell? *I was talking to Connell about it. I said Mrs Mc Enery saw three or four men going away.*

Is it a fact that you swore at the police office that on your return from Ballalaba, you were drinking all the afternoon saying " *I was very sick when I got back I had been drinking all the afternoon? Yes.*

Were you so drunk that day that you had to leave your horse and go to bed? *I was unwell in the evening, and had to go to bed.*

Through intoxication? *No*

Were you drinking all the afternoon? *Yes*

Did you allege drunkenness as an excuse that you could not give an account of the conversation? *Yes I said I was drinking all the afternoon*

Did you allege that as an excuse? *No*

Did you say you had to leave your horse about 8 o'clock and go to bed? *Yes, I was very unwell.*

Did any portion of the conversation you have detailed to the jury take place on the afternoon after your return from Ballalaba? *Not the conversation with Griffin. I do not recollect any portion of the conversation after my return.*

Between whom was the conversation? *Between Connell, Griffin and myself.*

Then there was a conversation between prisoner and yourself of which you have not told the jury anything? *We talked the same matter over again*

Where were they talking the matter over? *Sometimes in the parlour, sometimes in the bar*

How long did it last? *It was at different times*

Then there were several conversations? *Yes.*

Had prisoner sought to be engaged to go to Gipps Land before this Sunday? *No, but he was going*

Then it was not a sudden thought of going - he had arranged to go before that? *Yes.*

How long before? *Three weeks.*

Had he about a week before the bodies were found seen you about it? *Yes.*

Did he accompany you a portion of the way with the cattle? *He went out as far as the stockyard, but did not accompany me on the way.*

Did he accompany your men? *No*

Did you meet him with your men and cattle at the camp? *He came out to the camp from which the cattle started*

Previous to the murder of the detectives had you seen the Clarkes and Scott? *I saw them the day before we started from the camp; they came there and remained for the night; I arrived next morning at sunrise, and found them there.*

How long did they remain after your arrival? *Not a moment.*

Had you any conversation with them? *I told Clarke not to come to the camp where the men were, and he said he was hard up*

Was there a man named Lynn there? *Yes, there are two Lynns.*

Did you send them on with the cattle? *I sent them out of the yard, and the cattle followed them*

Did you stop after that? *I stopped a minute or two talking with Clarke*

How long after did you overtake Lynn? *It may be about ten minutes. I went to look after horses.*

Was it half an hour before you overtook Lynn? *No, nor a quarter of an hour? Not more*

During this time you were looking for a horse that was lost the night before? *Yes*

Did one of the men tell you that he had lost a horse? *Yes, Byrnes.*

Is he here? *I think not.*

This would keep you behind? *Yes*

Did the horse belong to you or to Byrnes? *To me*

What took you to Connell's house the Sunday after the murder? *I went there with Orridge and Griffln, and remained there.*

Had you slept at Connell's before? *On several occasions.*

Did you ever say before that on the occasion of Griffin coming to your house he asked you to lend him your breech loading rifle? *Not before today.*

Did you ever say before that he asked you not to give it to sergeant Byrnes or to Carroll before today? *Yes, I remember saying that before?*

When did you say that before? *I do not remember when.*

When you were on your oath at the police office did you say one word about his asking you to lend him the rifle, or refuse it to Byrnes and Carroll? *I do not remember.*

When did Griffin first commence to make this communication to you- at what hour on the Sunday ? *Between 10 and 11*

Where were you standing? *At the corner of the fence, a little way from the public house.*

Did he take you from the public house to make it? *Yes.*

How far? *About twenty yards.*

Did he impose any secrecy upon you with regard to it? *No, he had heard Connell and myself talking about it.*

Why did you pick out certain portions of the conversation and not state what took place after your return from Ballalaba ? *I do not understand the question.*

You told us there was a conversation before Griffin said anything to you - between you and Connell. Why did you not tell us the nature of the conversation which followed and also that which preceded the conversation you have spoken of? *It was something of the same kind, and I did not think it necessary to state it*

When did you see the murdered men before you saw them at your house? *It might be about a month before*

Will you swear you did not see them a fortnight before? *I will not positively; it may be three weeks or a month*

You swear you did not see the detectives within ten days at your house? *I am certain it was more than ten days or a fortnight*

Did you send your boy Lynn on the Thursday morning following the murders anywhere? *Yes, to Bell's Creek.*

Did you give him any directions as to the route he should take? *Yes, I told him to go by Guinea's and inquire if anything had been heard of Carroll's party, or if they remained there or not*

This was the day following that on which they left your house? *Yes, between 9 and 10 o'clock.*

The road he would take to Guinea's is not the ordinary road to Bell's Creek? *There are two roads about equal as to distance*

You did not specify any particular road? *No, excepting to go by Guinea's*

There are two roads to Bell's Creek? *Yes, one leaves Guineas about a mile and a half away, but that by Guinea's is a better road.*

When did the boy return? *In about half an hour after he left.*

Up to the period of his departure did you know of the murder of the detectives? *No, but before he returned I heard of the two men lying dead on the road which I had recommended him to take.*

Was that breech loading rifle of yours ever in the possession of the bushrangers? *No*

Did you not in a prosecution of Thomas Clarke identify it as your property? *It was never in his possession.*

Did you never claim a rifle found in the possession of a bushranger? *Never*

Did the examination at Braidwood take place with closed doors? *Yes.*

The public being excluded, nobody being there but the professional men engaged, the magistrates, and the prisoners? *That is all.*

Did you never see the detectives who were murdered before you saw them at your house? *No*

Did you never invite them to come up to your place? *Never.*

Did you ever in conversation with them ask them to come up to your place? *Never.*

You never offered them any inducement to come to your house? *No*

You are perfectly certain of that? *Yes.* Did their coming up surprise you? *No.*

How did they come to leave their horses at your place? *The night they came it was first thought of putting them in the paddock, but as it was feared they might lose them, they preferred to have them put in the stable.*

The horses were left at your place when the detectives left? *Yes they asked me to take care of them until they returned.*

Did you suggest that they should go on foot? *No*

Did you direct them where to go? *No*

Did they tell you where they were going? *No, but they imagined the road to Guinea's*
That was the road by which you sent your boy the following morning? *Yes, that is the road to Bell's Creek.*

You had dinner in the house of an officer of police? *Yes*

His Honor: When was that?

Mr Dalley: *On the Sunday, your Honor after he left Connell's.* (to witness) you dined with an officer of police at Ballalaba? *Yes I did.*

That was Mr Byrne who is here? *Yes.*

The Solicitor General objected to the question His Honor allowed the question

By Mr Dalley: What quantity of gin was there in the bottle brought to your house by the prisoner? *Nearly half a bottle.*

How much of it had you and he together ? *I had a very small drop of it*

What quantity? *Not two spoonfuls*

What quantity had he? *He put the bottle to his mouth and drank.*

What became of the rest ? *I don't know*

You did not see him finish it? *No*

Did you see him take it away with him? *No, I did not*

Mr Dalley: I will now have the witness's deposition taken at the Police Court put in, your Honor.

The document was put in and read, as follows -

"Edward Smith, being duly sworn, maketh oath and saith as follows I am a manager and grazier, residing at Jinden, I have been from home for three weeks, Jinden station is about forty miles from Braidwood, I knew special constable Carroll and party, he stayed at my station on the night of Tuesday the 8th January last; they left my place about 7 o'clock the following Wednesday morning, I saw their dead bodies on Thursday, the 10th of January last, about 11 o'clock, lying about a mile and a half or two miles from my homestead, I sent for the police; I know the three prisoners; prisoner Guinea lives four miles from my place, and Connell about sixteen miles, Griffin lives about nineteen miles from my place, I saw Griffin at my place about 4 o'clock p m on Tuesday the 8th of January last, Griffin was riding; I think he was on a bay horse, he stopped about half an hour, he told me that he had passed Carroll's party on the road, that was all he said to me about Carroll's party, he said nothing about the bushrangers, he did not tell me where he was going, I saw Griffin on the following morning after Carroll's party had left my place, we had some conversation about the bushrangers, or Carroll's party; he was then riding a good horse, Carroll and party had left my place about three quarters of an hour before Griffin came; he did not tell me where he came from; I had some conversation with Griffin about Carroll's party; I cannot recollect what was said; I think Guinea's name was mentioned and also Carroll's name; I don't think Griffin said the detectives were going in the direction of Guinea's he made a remark about the detectives and Guinea's, but I don't recollect what it was; griffin remained about a quarter or half an hour; he had some gin in a bottle; I had some with him in the dairy yard, about thirty yards from the house; the gin was in a square bottle; I had my breakfast before I had the gin; Griffin rode up; he had the gin in his pocket; he said nothing about Clarke's party; he did not tell me where he got the gin; he did not tell me where he stopped that night; he came to my place about 8 o'clock a.m.; I cannot say whether he took the remainder of the gin with him; when going away he rode around the yard; I did not notice what way he went; I saw Griffin at my place on Monday or Tuesday - it was the day after that they came to remove the corpses to Braidwood; he was at my place all day from 11 to 12 o'clock; I saw Griffin at Connell's public house on the same day alter the detectives were murdered, Connell was there; I stayed at Connell's on the Saturday night; I saw Griffin about 11 o'clock on the following Sunday morning; I did not see Griffin come to the place, I do not know if he came on horseback; I got up on Sunday morning about 9 o'clock a m, I had breakfast; I saw Griffin and Connell together, I was in the little parlour and they were in the bar; I could not hear what was said in the bar; Connell was drunk that day; Griffin was pretty well on when I saw him about 11 o'clock, I saw Griffin and Connell have drinks about 10 o'clock on Sunday morning; that was the first time that I saw Connell on the Sunday morning; Connell and Griffin were talking in the bar; there was a good deal of chaffing about the murders; Griffin said if he had been there he'd have saved Kennagh's life; they were going on with all sorts of talk, I don't recollect the conversation; I don't remember telling me that Tommy Clarke got behind a tree; he might have said so, I do not remember Griffin saying that Bill Scott and John Clarke fired together at Carroll's party; he might have told me but I do not remember; I was not sober on that Sunday; I was not sufficiently sober to know all that passed on that day; I was muddled the day before, and Sunday, I do not recollect Griffin telling that Phegan and McDonnell were first shot; he made some allusion to it; he said they were good shots; Connell said I believe that there were two shot; first, Griffin said he supposed that was it; Connell said he supposed that Clarke shot three out of the four, they were saying that they were good shots; I believe they were referring to the bushrangers, I do not recollect Griffin saying that Carroll did not fire at all; I cannot swear that he did not say so, I don't recollect Griffin saying that Carroll kept behind

Kennagh, whilst Kennagh kept firing at the gang; I heard Connell saying no doubt they had their horses and pursued them; either Connell or Griffin said so; I did not hear Griffin say that Clarke arrived with the horse; I heard Griffin or Connell saying that Carroll prayed for mercy, and the answer was, how can you expect mercy when you showed no mercy to my sister; I heard one of them, either Griffin or Connell, say, that after Carroll asked for mercy, Tommy Clarke went up close to Carroll and shot him with his revolving rifle; I heard the remark that Kennagh threw down his rifle and did not ask for mercy, I heard them say that Scott shot Kennagh through the neck with a double-barrelled gun, I cannot say which prisoner said so; this conversation took place between Connell and Griffin, Guinea was not present, I did not hear them say that Clarke took a £1 note out of Carroll's pocket and put it on his breast, I did not hear them say that £1 note was put on Carroll's breast, I did not hear it; it might have been said without my hearing it, I did not hear Griffin say that if he had known that Kennagh was such a game fellow he would have saved his life, I heard him say that if he was there he would have saved Kennagh's life; I don't remember Mrs McEnery's name being mentioned; I don't recollect telling Griffin and Connell that day that Mrs McEnery said she saw three men going away from the place of the murder; I might have told them that she told me; I did not hear Griffin say that it was a good job for her that she did not see more than three men going away; the conversation at Connell's was carried on on the Sunday, before and after dinner; I was in the little parlour writing a letter, I got up about 9 o'clock; I was writing the letter about 11 o'clock a.m.; I might have had six nobblers of brandy between 9 and 11 o'clock a.m.; I wrote the letter and posted it, it was to Mr Wallace, of Braidwood; there is a slab partition between the bar and parlour, not plastered; the door was open; I could mostly hear what was said in the bar when I was in the parlour; I do not remember asking Griffin what he was talking about; I went out a couple of times to the bar; I heard what was said in the bar when I was in the parlour; I was not a party to the conversation, except when I would go out to the bar to have a drink; they might make a remark to me about being a very good shot; I don't remember Griffin saying that Tommy Clarke rushed out from behind a tree; I did not hear him; I don't remember them making any remark in my presence about the shooting; I left Connell's about half-past 11 o'clock a.m. to go to Ballalaba to post my letter; the distance is six or seven miles, I saw the postmaster at Ballalaba; I don't think he saw me; I gave the letter to the post boy; I stayed about half an hour, and had dinner with sergeant Byrne, and then rode back to Connell's, I am certain I had drink on the Sunday morning before I went to Ballalaba; I never saw prisoner Connell at my place until the day of the inquiry; I had no conversation with Connell on the day of the inquiry; he said it was a dreadful affair, Connell never said to me as soon as Carroll and the other left I had them watched and sent for the bushrangers; Connell was assisting the doctor post mortem examination, I don't remember Connell saying that he could chop that fat -----Carroll into mince-meat; he did not say so to me; I heard that remark made use of in Connell's on the Sunday night; there were men and women present; I cannot say I heard it remarked in Connell's room; some person said they could chop Carroll up with an axe; I did not speak to any person about the murders at Cooma; I did so at Barry's and Buckley's crossings; I don't remember saying at Cooma that Mick Connell when drunk said to me that when Carroll and the other -----had left, I had them watched and then sent for the bushrangers; I do not remember telling sergeant Lenthall that; I won't swear that I did not tell it to sergeant Lenthall; I saw Lenthall at Buckley's crossing place, about three weeks ago; I stayed at Walsh's the first night that I went to Cooma; next night I stopped at Barnes's, Lenthall was there; I had a conversation with Lenthall, I told Lenthall that no doubt they had been watched and laid on by some person; I never heard Mick Connell saying that when Carroll and the other ----- left I had them watched and sent for the bushrangers; I won't swear that he did not make use of those words; the post mortem examination was held at my place; I did not hear Connell making use of the words "I could chop that fat -----Carroll into mincemeat with an axe;" I will not swear that he did or did not make use of those words at my place; my memory is not very good; I was served with a summons, on last Friday, in Cooma, by sergeant Lenthall; he served me in Solomon's public house; Lenthall might have been half an hour in my company during the day; I might have told Lenthall that I was sorry that Griffin was apprehended; I don't recollect saying so; I won't swear whether I said so or not; I never said that Griffin would bring home murder to someone; I will not swear that I did not tell Lenthall so; I do not think I told him; I am sure I did not say so; I did not say it to Lenthall on Friday last; I don't believe I said anything of the kind to him; I never said to Lenthall that I was sorry Griffin was arrested as I would have to bring murder home to him; I am sure I never said it; I do not think I said anything to Lenthall in the presence of the troopers; I saw no strange horses with saddles and bridles on at my run on the 9th of January last; I saw the three bushrangers - the two Clarkes and Scott - on the Friday morning before the murder; my men were camped with the cattle, and on the Friday morning when I went to the camp the bushrangers were there; I would know the letter I wrote - to Mr Wallace on the Sunday; I have a breech loading rifle for the last three or four years; I lent it to Griffin about three months ago to shoot wild horses; he told me he'd return it in a week; I told him to leave it with sergeant Byrnes; Griffin returned it

to me; he left it it for eight or nine weeks; he said nothing about the police when he returned it to me; I don't recollect him saying that he was afraid to give it to the police; I never saw it with John Clarke or Tom Connell; I told Griffin that if he did not bring home the rifle I would tell the police, as I thought he wanted it for the bushrangers.

By Mr Scarvall. I do not remember seeing any police on the Sunday at Connell's; I had dinner about 1 o'clock with sergeant Byrnes; it would take me about an hour to go from Connell's to Ballalaba; I got back to Connell's on the Sunday, about 3 o'clock; I was very sick when I got back to Connell's; I was drinking all that afternoon; I do not know when Griffin left Connell's on the Sunday, I was so bad; I had to leave my horse about 8 o'clock and go to bed; some of the conversation was in the forenoon and some in the afternoon; I think I heard the most in the forenoon; I remember only parts of the conversation that I heard on the Sunday; there were people in and out about Connell's, but I cannot recollect who they were; I think Dennis Dempsey was there, and also George Smith; there were others, but I cannot recollect who they were; Griffin generally helps me to muster horses and cattle and he was talking of going to Gipps Land with cattle; I saw Griffin at Connell's; he left Connell's place on the Sunday, the same time that I left to go to Ballalaba; I think he came back to Connell's about 4 or 5 o'clock pm on Sunday; he stayed there for about an hour.

By the Bench: I do not remember seeing George Smith at Connell's on the Sunday morning, but In the afternoon of that day; I gave no ammunition to Griffin when I lent the rifle, I think James Lynn and Denis Dempsey were at Connell's; I did not see any person In the bar on the Sunday morning between 9 o'clock a.m, and when I went to Ballalaba only Griffin and Connell; everything I heard was said either by Connell or Griffin; I saw Mr. and Mrs. Berry at Connell's on the Sunday morning; I swear that I never said to any person that Mick Connell told me when Carroll and the other ----- left, I had them watched, and sent for the bushrangers; he brought the gin to my place, and on the morning that Carroll left my place Griffin came to my place about an hour before Carroll; Griffin said that he passed Carroll and party on the Dirty Swamp, about five miles from my house; Griffin had no firearms; he brought the rifle back about ten days before the murder."

His Honor: I want to ask the witness a question or two [To witness] You have heard your dépositions read? Yes

Several questions appear to have been put to you by Mr. Scarvell - who is Mr Scarvell? *He was the solicitor acting for the prisoners*

Who was he acting for? *All the prisoners, I think*

Who were they? *James Griffin, Michael Connell, and Daniel Guinea, your Honor*

Connell is related to the prisoner. What relation is he to the prisoner? - *He is married to the prisoner's sister*

Is he any relation to the Clarke's? *He is uncle to the Clarkes*

Were the Clarkes at large then? *They were, your Honor.*

You have said you gave information to the police? Yes

Have you any objection to mention the name of the officer to whom you gave it? *No, sir.*

Who is he?: *Mr Byrne*

You swear you gave this information to him? *Yes, directly after I heard of the affair.*

You can't tell why your Information was not acted upon at once? *No, I cannot tell.*

I can see that a great many questions were put to you before Mr Scarvell asked you any questions-who put them? *Mr Gannon.*

Who was heading for? *He was acting for the Crown,*

He must have put a great number of questions to you? *Yes, a great number.*

You received some information on the subject of a threat against you? *Yes I had this Guinea, that was in the dock, up for cattle-stealing some time before - for having beef on his premises that he couldn't account for.*

Who threatened you? *I was threatened by the prisoner's brother, who said that if I injured a hair of his brother's head he would shoot me down and all belonging to me*

Mr Dalley: Of course, your Honor, that's not evidence.

His Honor: He has already said it I only wanted to hear the name of the person who said it. I don't think he has added anything to what he said before. (To witness): The person who told you that was the prisoner's brother *Yes, your Honor.*

Why did that lead you to say what was untrue? *When I was living there before there were five or six shots fired at me and my place was burned down; I left the neighbourhood before, and went back again.*

There are parts of your evidence quite irreconcilable with what you have said to-day-were those parts given in answer to Mr Gannon? *Yes, Sir, I was frightened, not for myself, but my family; we have since sold out, and left the place altogether.*

By the Solicitor General: What did you mean by saying that you were compelled to say some things that you did not wish to say? *I was frightened that Guinea would tell what I said*

Did you give evidence under apprehension of violence to yourself or injury to your family? *Yes*

You say that since that you have removed from the district? *Yes, sold out.*

Has any other affair occurred since that? - Have any other persons removed from the district, or been removed? *I believe there are some, I don't know of any except Mr McEneny.*

None others? - *I don't know of any None from the districts? No.*

Do you not know that since you gave evidence, Thomas Clarke and John Clarke, and several others, have been taken? *Oh, yes, I know that.*

His Honor: The Clarkes and others? *Yes, Billy Scott.*

The Solicitor General: When you first gave evidence they were at large? *They were at large.*

When I examined you first did you or did you not detail to me first the conversation which you had with the prisoner alone - *I did*

Did you not also give me portions of the conversation which took place between prisoner and Connell in which you slightly joined? *Yes*

That was a separate conversation, was it not? *Yes, it was a different conversation.*

Did you not give me an answer to a question about something which passed between prisoner and Connell when you were not present, but which you overheard? *Yes*

But only to my question? (no answer)

I will repeat the question? Did you hear him saying anything about Tommy Clarke being barefooted? *Yes*

And that was the only question I put to you on the matter? *Yes*

You volunteered no statement ? *No.*

Do you remember this question put to you by Mr Dalley, " Have you at any time told to any member of the police force the same story which you have told here today? *Yes*

And this was not the question: "Did you ever tell to any member of the police all that you have told here to day? Was that word " all" in the question? *No.*

You meant you had told the same story? *Yes*

And you now say that you did tell sergeant Byrne? *Directly after I heard it.*

Did you tell him every iota, or merely the substance? *I told him the substance of what I have told here to-day*

It was on the Sunday that you told him? *Yes.*

When you saw sergeant Byrne were you drunk or sober? *Sober.*

I believe there is no doubt that you had been drunk? *Yes, about that after occurring and -----*

But you knew all that was going on? *Yes.*

And what you heard? *Yes.*

What was it that Mr. Dalley asked you about your rifle and the bushrangers? *He asked me if I lent it to the bushrangers*

Were you aware that they ever had it? *No.*

Of course you never lent it to them? *No.*

Have you known the prisoner any time? *Twelve or thirteen months.*

You say he has a brother? *Yes.*

You are quite sure that he is the person who came to your house on the Wednesday morning? *I am quite certain.*

Sure it was not his brother? *No, it was not*

I think you told me that the prisoner did not tell you in the conversation you had with him alone that he took the horses down; he only said the horses were taken down? *Yes*

But in the conversation with Connell he said that he did take them down? *Yes*

Are you certain he said so? *Yes, I am certain*

Did you see how the four constables were armed when they came to your house ? *I noticed two rifles with them. I don't know how many revolvers they had*

You only saw two rifles? *That's all.*

You are living in Sydney now ? *Yes I sold out of there*

You were bound over to appear here and give evidence? *I was, that is what detained me in town*

His Honor: What is the size of this Jinden station ? *Between 15 000 and 20 000 acres*

Whose was it? *Mrs Campbell's*

You were managing it for her? *Yes.*

Have you any family? *Yes, a wife and two children*

They were living on the station at the time of the murder? *Yes.*

The Solicitor General: Were they there at the time of the examination of the prisoners? *They were.*

His Honor: The murder must have taken place on Wednesday, the 9th; well on the previous day, the 8th the prisoner came to your house? *Yes*

Having then a bay horse? *A bay horse*

On the morning of the 9th he was there again, riding a grey horse? *Yes, a grey horse.*

When did you last see the Clarkes before that? *On the Friday or Thursday in the week before.*

Was that when the cattle were camped? *That was on the adjoining station*

How far from Jinden? *About seven miles*

When did the bushrangers come? *They came about nightfall.*

Who were they? *Thomas Clarke, John Clarke, and Billy Scott*

You saw nothing of them on the day of the murder? *No*

Nor since? *No*

And that was about seven miles from Jinden? *About that, Sir*

The Solicitor General: You say your people were about to start as you came up? *Yes*

They went off immediately? *Yes*

You had some conversation with the Clarkes? *Yes*

That lasted only a minute? *That's all.*

How long were you in rejoining your party? *About ten or fifteen minutes*

Mr Dalley: Did they stick you up on that occasion? *No*

His Honor: Were you summoned to give evidence? *I was, as I was coming back from Gipps Land*

How long were you there? *I was about three weeks and three or four days from the time I left to the time I returned*

When did you leave? *On the Thursday following the murder*

That was on the 17th January-how long were you away? *About three or four weeks. On my way back I was served with a summons.*

Mr Dalley: Were you summoned at Cooma? *Yes, I was*

Was it there you saw Lenthall? *Yes, he gave me the summons at Cooma, and told me he had a telegram from Braidwood from Mr. Orridge, to get out a subpoena for me.*

The Solicitor General: When the boy came back that you sent to Bell's Creek did you send him

anywhere? *Yes, I sent for the police immediately.*

His Honor: Did you when in Gipps Land communicate any of the information you had got to the police there? *No I did not, Sir.*

Had you any communication with Mr Gannon about it? *He was talking to me, but I did not make any communication to him on the subject of the murder*

So that his information must have been obtained from someone else ? *It was not got from me,*

You gave him no Information? *No, Sir, I did not*

George Smith, being duly sworn, was examined by the Solicitor-General, and deposed - *I am a labourer, and in January last I was in the employ of Mr Watts, of Carrawarra, in the Braidwood district, I know the prisoner; I know that some special constables came up into the district, and I knew them; I know Mrs McEneny; her place is about four miles from that of Mr Watts; Carroll and his party were at Mr Watts on Wednesday, the 9th January; they stayed about two or three hours and then left, going towards Guinea's place; they had two rifles, and I saw one revolver with them, I never saw them alive after they left Mr Watts's, they had shirts on, but no coats; I don't know what they went to Watts's for; they had dinner there; I saw their dead bodies next day; they were lying on the track between Watt's place and Jinden; I had a conversation with Connell, and during that time I noticed some men cantering beside the river about a quarter of a mile away; I know a person named Connell there, he keeps a public house at Stoney Creek, and his Christian name is Michael; I was at his place the Sunday after I saw the dead bodies; I saw the prisoner there, Thomas Berry, Kate Berry, Edward Smith, George Cole, and two others; Cole and I arrived at the same time; the rest we found there; I had a conversation with the prisoner, he told me that what had happened was all prepared the other day, and I said that it was; Mrs Berry is, I believe sister of Michael Connell or O'Connell; he is known by both names; she has married daughters; I have been by the house of Mrs McEneny, but I never was in it; it is about a quarter of a mile It is about a quarter of a mile from where the bodies were found; Edward Smith and Isaac Watts were with me when I saw the bodies; Watts and I were searching for the bodies; Guinea has since become related to Mrs Berry by marriage; I was three years in the district last June. I don't know these people more than by seeing them*

Cross examined by Mr Dalley: All you know is that you saw the prisoner, and he said it was an awful affair that happened up your way? *Yes*

The Solicitor General: Where were you going that Sunday? *I was leaving the place on my way to Araluen where I now live. Araluen is about thirty miles from Braidwood, I gave evidence at the police office at Braidwood.*

Catherine M Eneny, sworn, deposed; *My husband is a labourer; we reside at Jinden, about three quarters of a mile from Jinden House, and three miles from Guinea's; Jinden House is on one side and Guinea's on the other, on Wednesday morning, the 9th of January, four men came near where I was living; three of them sat on the ground and the other man came into the yard; I did not at the time know who that man was; he had firearms folded under his coat, they were in front, and they came between 8 and 9 o'clock in the morning; I saw their dead bodies the day afterwards; they remained about ten minutes, and asked me to show them the road to Guinea's; I did so, and they went that road, afterwards on that day, an hour before sunset, I heard the report of several guns go off; there must have been nine or ten reports at the same time; about ten minutes afterwards I heard several shots, but I could not say how many; the second lot of shots seemed further away, I afterwards heard two more, which sounded as if they were nearer; they were the last I heard; on that afternoon I heard a noise which I thought was made by cattle running through the bush, and on looking up I saw four men crossing a small creek eight or nine acres distant, that might have been five or ten minutes after I heard the shots, I recognised the prisoner among these four men, I have known prisoner about twelve months, and I have no doubt that he was one of the four men; they were not riding, but were all on foot, and all armed, it was quite light enough for me to see, they were going towards Jinden, I went into the house, the firing of shots near my house was a very unusual occurrence; I was a little alarmed, I saw nothing also that happened on that occasion, I had not seen any strangers that day; my husband was away from home; I saw no one else on that day but Lynn, Mr Smith's man*

Cross examined by Mr Dalley; Were you examined at the police office at Braidwood? *Yes*

Did you then swear that you saw no person whom you recognised that day but John Lynn, Smiths servant? *I did swear it but I was afraid .*

Did you on that day swear-" I am quite certain that I did not not see James Griffin on that day? *I did, sir, but I was afraid*

Did you on that day swear-" No person has threatened me about my action?" *I cannot recollect*

Did you on that day swear that besides the four persons who came to your house, the constables, you only saw one other person? *I did not*

Did you on that day swear that you never told anybody - neither sergeant Byrne or anybody else - that you saw James Griffin near your place on that day (9th January), and that he was not at your place on that day? *I did not.*

Did you swear that on that day you did not tell sergeant Byrne, about the middle of the day that Carroll was shot, that you saw Griffin riding close to the road where McDonnell was found ? *Yes. I did.*

Did you on that day swear that if you saw Griffin you did not think you would know him? - *I did, I believe*

Did you tell sergeant Byrnes, or did you swear on that day, with reference to the only other man that you saw, excepting the four, murdered men, that that man was John Lynn? *I did not .*

Did you say this - " I am positive the man I saw was John Lynn? " *Yes, the man that came to my house was John Lynn.*

Were a very great number of questions put to you in which Griffin's name was mentioned as the person who was at your house on that day? *Yes.*

Did you on all occasions deny that you saw him on that day ? *I denied that he was at my place, and I denied that I saw him riding past.*

Did you uniformly deny that you saw Griffin at your place at all on that day? *Yes*

Before you gave your evidence in Braidwood did sergeant Byrne call upon you? *Yes.*

At your house? *Yes*

Your husband was at home when you gave evidence at Braidwood? *Yes.*

Did you deny to sergeant Byrne that you had seen Griffin at your house? *Yes; and I have not seen him at my house*

Or any place where you could see him from home? *yes I did.*

The Solicitor General: Is it the case that Griffin did ride past your house? *He did not ride past that I saw.*

He was not at your place? *Not that I saw,*

You saw him with others walk past? *Yes.*

At the time that you spoke to Byrne did you know that you were to be examined? *No*

Your husband was away from home, and your children there with you? *Yes*

At the time you gave your evidence at the police office were you still residing there? *I was.*

Have you ever heard the names Thomas Clarke, John Clarke, Bill Scott, or Griffin? *Yes, I have. I could not properly recognise either of the Clarkes as the time; but I saw them the other day, and I now believe that the two Clarkes were two of the persons whom I saw with the prisoner on that day. I had seen Bill Scott before, and I believe he was the fourth man*

Have you been threatened? *Yes, both since I went to Braidwood and before.*

Have you had a visit from Mr Guinea? *No*

Where are you residing now? *I am stopping at Sydney for the present.*

Have you left the Braidwood district? *No, I intend to return*

Did you bring your children away? *Yes.*

Do you remember hearing, of the two Clarkes being taken prisoners? *Yes.*

Was that before or after you gave evidence at the police office? *After.*

Were you bound over by the magistrates to come and give evidence? *Yes*

Did Lynn come to your place on foot or on horseback ? *On horseback.*

Did you see any other person riding towards your house on that day? *No*

In what direction did Lynn come from? *As if from Mr Smith's*

His Honor: What did you mean by saying that you had been threatened? *I was told it was better for me to have nothing at all to say.*

Do you call that being threatened ' *Yes After my return from Braidwood I found that my pigs had all been destroyed. Some were killed and all were torn by dogs.*

Were you examined in private before the magistrates? *Yes.*

Who were then in the dock? *Griffin, Connell and Dan Guinea.*

No other threat was ever used towards you? *No*

Did you understand that to be a threat? *Living in the same locality, I did not like to have anything to say to it.*

Why not ? *I was frightened I might be shot.*

Nobody threatened to shoot you. All that you were told was you had better not have anything to say to it - Did you consider that a sufficient justification for telling a falsehood on your oath ' *Not that alone , I did not want to have anything to say to it.*

You either perjured yourself then or you have perjured yourself now? *Since I came away my geese have all been shot*

The Solicitor General: Where were you when you were threatened? *I was coming into Braidwood.*

You told his Honor that you did not want to have anything to say to it. *Was that feeling after you were threatened ' Yes , I was told I should be shot if I give evidence.*

His Honor: Who told you you would be shot, if you gave evidence ? *Nearly all the neighbours*

Mr Dalley: Give us some idea, if you can, as to the distance between where you were and where you say

you saw the men crossing the stream? *About nine or ten acres, the distance of our paddock*

Is your house in the paddock? *It is in the centre of the paddock, and I was at the end,*

Were they outside your paddock? *Outside.*

Anything intervening between you and them ? *In some place bush*

Could you see their heads or their bodies? *I could see them all sometimes.*

Do you recollect saying about the persons you saw returning, that you could not tell whether they had firearms or not? *In some places I could only see them partly; in others, as it was a clear day, and where there was no bush, I could see them plainly*

How long were you looking at them? *I might have been looking at them five minutes*

Had they their sides or their faces towards you? *When first I saw them they were like facing me.*

The Solicitor General: Try and give us some idea of the distance from where you were standing to where you saw the men. Supposing you were standing at the court house door, about how far would it be? *About as far as to public house on the other side of the road*

Did the four men pass close along by the side of the paddock ? *A little off*

Could you see the whole of their bodies over the fence? *Yes I could*

What sort of a fence was it? *A brush fence*

The deposition of the witness taken before the magistrates at Braidwood was then put in evidence, and read by the Judge's Associate, and will be found on the 6th page of this days paper.

Henry Zouch sworn, deposed I am superintendent of police in the south eastern district; I have known prisoner for many years; I have had interviews with him on two or three occasions lately; he must be one and two and twenty years of age; I had an interview with him in Goulburn gaol; on the first occasion I accompanied the surgeon as it was reported the prisoner was very ill; that , which was about 6th April, was the first interview; he requested to speak to me alone, and the gaoler left us, and then he made to me a statement which I have since reduced to writing; he said he wished to tell me all he knew with reference to the Jinden murders, or the murder of the detectives

Mr Dalley: had you any conversation with him making a representation of the consequences to himself if he made such a statement, or holding out to him the possibility of his becoming an approver? *He seemed to think it would be the best course he could adopt.*

To give evidence himself? *He seemed to wish to tell everything he knew.*

Did he impress you with the opinion that he desired to become Queen's evidence? *Yes.*

Did he say anything about a proclamation? *He said he was quite aware of it, though I think this was after he made the statement*

Mr Dalley submitted that this statement could not be received as evidence, being made with the hope and with the view of prisoner being permitted to become Queen's evidence

His Honor: I don't at present see on what grounds I can refuse this evidence.

Witness, in reply to a question from his Honor, said the impression upon his mind was that prisoner thought what he was about saying would benefit himself

Mr Dalley: Did he convey the impression that he was desirous of becoming a witness rather than be a prisoner? *I cannot certainly say that. I think he mentioned that he would be willing to go into any court,*

or become a witness, or do all he could to assist police in the capture of the Clarkes.

Mr Dalley then cited cases and authorities in support of his objection, and was replied to by the Solicitor-General who argued in support of the admissibility of the statement as evidence

His Honor said that he thought the evidence must be rejected. To receive it seemed to him extremely unsafe as it might be the cause of eventually upsetting the conviction if obtained. He believed it was better to reject it and he was of opinion that it was better to err on that side. The prisoner had given his information under the idea that it might do him good, and had alluded to the proclamation although the proclamation would do him no good, because it excluded him from pardon, as from the story told by other witnesses he had been a principal in the murder

Robert Vincent, being duly sworn, deposed *I am a schoolmaster, and have resided in the Braidwood district for some time, I am engaged to tutor to the children of Michael Nowlan O'Connell of Oranmeir, Stoney Creek; I was in his service in January last; I know the prisoner; I know Mr Edward Smith of Jinden; I remember hearing of the murder of Carroll's party; I can't remember the date; I think that Mr Smith was at O'Connell's on the Sunday following the murder, everybody was talking about the murder; Mr George Smith was there the same day; Mr Berry was there; I spoke to them; there were other people there, but I don't remember who they were, I can't say that I saw the prisoner there, or Michael Griffin; prisoner was very often there; I was in the bar, but I only spoke to George Smith and Mrs Berry; I did not see the prisoner there*

The Solicitor General: Can you remember whether he was there on a Sunday? *No, all days pretty much the same, I have my duties to look after*

Then Sunday is the same to you as any other day? *No, there is more people there on a Sunday.*

Oh, and is that the only way in which you can distinguish Sunday (No answer)

You are a schoolmaster? *Yes.*

You teach the young idea how to shoot? *Yes, sir, yes*

Have you no other way of distinguishing Sunday besides seeing more people at Connell's? *Well, yes, we dress a little better on a Sunday*

Is that all? *And it's a holiday, too*

Ah, that's something. Well, did you see the prisoner there on one of these holidays, after the murder? *I don't remember*

Witness continued. *He has been there on a Sunday, but he came so often that I did not notice when he came; he was a relation of the family, and was there frequently; I remember that Mr Edward Smith was there, because there was great talk about this murder; I don't remember that I saw prisoner at O'Connell's on any day after the murder, when Mr Edward Smith was there.*

The witness was not cross examined

Kate Kelly, being duly sworn deposed: *I resided at Long Flat in January last; Long Flat is ten miles on this side of Braidwood; I lived at Mr Gallagher's place; I remember seeing the prisoner there alone; I have seen a person named Carroll there in company with other persons; they were police and armed; I heard of the murder of those persons; I heard they were murdered on the same day that their bodies were found; when the constables left Gallagher's they went towards Mr Wallace's place; the prisoner was at Gallagher's two days before the police were there; Mr Gallagher keeps a public house; I don't know where Jinden is; prisoner was not at Gallagher's when Carroll and his party came, but had been there on the same day before they came; I don't remember any person coming to the house after I heard of the murder of the constables; I don't remember any persons coming to the house after the police left; I don't know when he went away; I don't know how far it was to his father's place; he came the previous night, stayed all night, and went away the next morning before Carroll arrived.*

Mr Dalley: All you know is that the prisoner had been to the house? *Yes*

And had gone after his horse when Carroll came? *Yes*

His horses were some distance away? *Yes, I think so*

While he was away did the police come? *Yes*

Was this some time before the murder ?- *I think so.*

What day was it?*I can't remember.*

At a quarter to seven o'clock the court adjourned for an hour for refreshment At the expiration of that time the Solicitor Général was absent, and at ten minutes past 8, His Honor asked if the Solicitor General were present, because if he were not he should close the case and call upon Mr Dalley to address the jury. He had waited half an hour as it was. In a case of so much importance he could not understand why the Crown could not spare another counsel to examine witnesses, leaving the leading counsel to reply

The Solicitor General then entered the Court, and the case proceeded

James Donoghoe, being duly sworn, said *I am a farmer and carrier residing at Foxlow Station, or Molonglo as some people call it, about twenty five miles from Braidwood; I never was at Jinden, but I believe Foxlow is between thirty or forty miles from there, I have known the prisoner for ten or eleven years; I remember seeing him on Friday, the 11th January, when I had a conversation with him at my place; after we had a good talk I said I looked at the papers, and there was nothing about the bushrangers; I said I thought as they were so quiet they must have gone to the Weddin Mountains; he said that when I heard of them they would strike terror to my heart; I asked him how that could be? how they could strike terror to my heart, as I had done them no harm; he said every man who had heard what they had done would get a shock; then he told me that the four detectives were murdered, and I said, "Good God," surely you had no hand in it, he said he hadn't, he seemed frightened, and told me he was afraid of the police, and I asked him why he should be, saying that the police never came to interfere with me. He said that the police were after him for some lies that Alick Bradley had told of him, I said he need never fear that, for he was a good character, and Alick Bradley's word would never hurt him, I know Alick Bradley; he said that he would get pulled about and remanded and it was best for him to keep quiet until the Court was over; there was no one else present; he told me that he had been getting his horse shod, and that he had been at Crooney's place; where he had dinner with me, and stopped about two hours; I wanted him to stop all night, but he wouldn't, he went away towards his home which was in the direction of the Jinden station; I was never at O'Connell's place at Stoney Creek; the prisoner was riding a brown horse when he came to my place; I should know the horse again; it was what you call a nugget; the prisoner was well known to all the teamsters about.*

By Mr Dalley: Did you see any appearance of nervousness about him? *No, except that about the police*

You mean from what he said to you ? *Yes*

And what he said was that some one had told the police lies about him? *Yes sir*

And you said that nothing that person, Alick Bradley, could say about him would hurt him? *Yes Sir; it couldn't hurt a character like his.*

Did he not say to you that if what he heard was true it would shock the heart in a man's body? *yes, Sir*

Did he say it would shock the heart of any man ? *Yes*

And immediately after did he say the four police were shot, *Yes*

He told you this without hesitation ? *Yes*

Now, are you sure it was the 11th January? *I am, Sir , it was on a Friday*

Did you say in your evidence before given that he called at your house on either a Friday or a Saturday?
I did say that, Sir.

Mr Isaacs: Have you told the whole truth of what passed ? *Yes, Sir*

Have you, are you sure ? *I don't know Sir-I told you what you asked*

Oh. is that all? *I may have forgot some trifling thing, Sir*

Now, can you remember no more? *Well, what did I say, Sir?*

Oh, you are to tell me that I didn't bring a perfect memory, *Sir, to come here*

Do you remember any thing more that passed between you ? *I can't say I do*

Did he tell you anything about the murder of these men? *He said they were shot dead*

Did he tell you any thing at all about the murder ? *He did not*

Did he say how they were murdered, or by whom ? *He said by the bushrangers*

Oh, he did tell you by the bushrangers ? *Yes*

You know who they were of course? *Yes, Sir*

He didn't tell you how it was done? *He did not-he didn't tell me any more than that they were shot dead*

Mr Dalley: Did he tell you so in reply to your inquiry about the bushrangers? *Yes, I was always inquiring about them, because you know I had always to look out*

Mr Isaacs: You are certain he said nothing about how the murder was accomplished - *Except so far as that the bushrangers had done it*

Have you ever told anybody that Griffin told you in what way that murder was accomplished? *How could I if I didn't know; I might have told to a hundred people what he told me,*

Will you swear you don't know any more about that murder? *Yes*

Not about the horses ? *I asked him-----Well ? (No answer)*

"Well, you asked him? *Well, sir, at the time that I asked him, "Surely to God you have had no hand in it; you would never never any hand in such a murder as that. He said he was with the horses*

The horses- what horses? *He said that he held-no, he said that he was with the horses.*

Well? *That's all sir; he said he was with the horses, and had no hand in it further*

Now, have you told us everything? *He positively told me no more than that he was with the horses. He did not say he held the horses*

Are you Irish? *Partly; I left Ireland when I was fourteen years old.*

And Griffin's father is Irish ? *None the worse for that*

Did you never before say anything about the horses? *I dare say I did*

Don't you know that you did ? *I know that I did.*

This closed the case for the Crown.

Mr Dalley addressed the jury for the defence. He said

After this protracted trial and the examination of such a vast number of witnesses, it is now my duty to implore your attention for as brief a space as possible to what I have to say on behalf of the unhappy man who stands here charged with the highest crime imaginable. It will be necessary for me to ask you to confine your attention strictly for the case as placed before you in the evidence, and not allow the crimes which shadow the reputation of other men and which may involve their lives - not to allow disturbances occurring in the district in which the prisoner has resided - to have any influence on your minds. You know of no crimes of which he has been guilty, indeed, no such knowledge could have possibly reached your ears, because it is the sublime principle of our jurisprudence that, though the character of the accused be as black as night, he is to be tried solely on the crime for which he is indicted. This young man stands before you charged with a motiveless murder on his part. There has never been the slightest charge made against him, and the witness for the Crown who has just left the box, and who has known the prisoner since his boyhood, appears to be impressed with a conviction that his character was so high, up to the perpetration of the murder at all events, that no imputation of crime upon him would be believed by those amongst whom he has resided. It has transpired in evidence that he is in some way or other distantly connected with a family which has gained a fearful and melancholy reputation in the annals of crime in the country; but you, gentlemen, too well know your duty, are impressed with too high a sense of the solemn responsibility resting upon you, to allow such a circumstance to weigh a feather in your estimate of his guilt or innocence. He is charged with murder. Crimes of this sort are not usually perpetrated without some adequate motive. In all cases of murder it is generally insisted on that there is or is not a motive adequate for the perpetration of the offence. Even men who are hardened in crime do not ruthlessly, suddenly, and causelessly imbue their hands in the blood of their fellow creatures much less can you conclude that the prisoner in the very flower of his youth would perpetrate one of the most fearful murders unless you could see that he had some adequate personal; interest. Some great crimes have been established though juries have not been satisfactorily provided by the Crown with an adequate motive for their perpetration; but there are exceptional, and in most instances you can see a clear and manifest motive for the commission of the crime. Then we cannot conceal from ourselves this fact, that though a single name, that of constable Carroll has been placed in the indictment, you have now before you the evidence which tends to show that not one murder, but four murders were committed on that melancholy day. As you have no motive which I can perceive in this case to enlighten you, so you have perhaps the most peculiar testimony that ever was given in a court of justice; as you have no motive, no standing point, in this investigation, so you have nothing to guide you to the conclusion of the prisoner's guilt. You saw a gentleman called into the box for the purpose of giving testimony concerning some statement made to him in the gaol at Goulburn but the judge rejected that evidence. You will indulge in no speculation as to what that evidence might have been but will dismiss it entirely from your consideration. You will infer nothing to the prisoner's disadvantage from the fact of its rejection on points taken by the prisoner's counsel, because it was the duty of the counsel to take those objections to the receipt of what was not evidence, - a duty not only to the prisoner, but to the administration of justice, and to you. What is the story of this murder? It rests on two witnesses, and two witnesses alone. There have been witnesses called here today whose testimony in no degree implicates the prisoner. It is at all times a serious thing for a jury, even when witnesses of the highest character give their evidence in the clearest possible manner - it is at all times an office of solemn responsibility and difficulty to say whether these witnesses are telling the truth, and if you find occasional contradictions hardly reconcilable, something which it is difficult to explain, your humanity, as well as your intellect, your consciousness of the dreadful responsibility for the result of your verdict will inspire you either a doubt of their testimony. If this distrust of testimony has ever arisen in tribunals under such momentous circumstances as the present, what shall you say to witnesses who are called to support a case, the result of which will be the taking of human life, who come into this Court to swear away what they have sworn in

another - to swear away testimony given under oath in circumstances of equal responsibility; for the God invoked in the Braidwood Police Court is the God invoked in this Court.

What shall be said of a case where the Crown has to be represented by two witnesses, who, the moment they open their mouths, say, " We are perjurers - not in one, but in a dozen, nay in fifty instances. We are perjurers from head to foot; and lo! though we have given evidence for the prisoner in one Court, we are here now to give evidence against him; we are here to be transformed into beings that every one must regard with contempt and horror." There is not a scintilla of evidence beyond the testimony of these self convicted perjurers, and there is no corroboration of their statement. The Crown dares not to attempt to corroborate them. In one of the most important particulars the Crown hesitates, declines to attempt the corroboration of that man Smith. The murder is committed in the immediate neighbourhood of his house, on the 9th of January - a foul, brutal, and unparalleled murder-a most cruel and unnatural murder-a murder which the unhappy man in the dock observed to the last witness called "would shake the heart in any man's body;" which would make the blood run cold, even in those abandoned wretches in an adjoining place, and make them shake their chains in trying to get at the perpetrators of it; such a murder was committed at this man's very door - the victims being men who a few short hours before were the partakers of his hospitality, and whose property was in his keeping. This terrible tragedy takes place on the 9th of January, and you would hardly imagine that there was a man living who, the moment the fact of this atrocity was communicated to him would not have fled at once to the officers of justice and done everything possible to discover the perpetrators. He sent to the police; but what did he say to the police? On his oath he informs you that it is the 14th of February when he tells a story about the murder, lies about it from first to last, to screen one whom he now says he believes to be a murderer. He says that on the day he became acquainted with the perpetrators of the murder, he dined with sergeant Byrne of Ballalaba, and that he told Byrne immediately afterwards. Do you believe one word of it? If he had Byrne would have flown on the wings of justice and grasped this young man - would not have allowed such human hydras to roam about the country. Sergeant Byrne has been in the court all day, and must have shuddered when he heard that statement. But, although Byrne is in the Court, the Crown does not dare to put him in the witness box to corroborate Smith. Smith waits until the 14th of February, and then tells a story which he now declares to be a mass of perjury, the object of which was to interpose his arm between the hand of justice and the body of this young man before the Court. If this Smith is a human being, with human sympathies, do you not believe that the moment he heard this story from this young man that he would have fled out of the house. But he remains in the house on that day with two murderers, and he sleeps there that night. Can you imagine any such utter depravity, such loss of all moral feeling, of all moral principle, in such brutal stolidity to his own personal peril to remain in the house with those men. Men consider what would be your own position, because in these matters you can discover the ordinary operations of men's intellects by studying your own; you cannot unlock the chambers of the brain. Imagine yourselves living in this district - that one of the murderers whispered in your ears the story of this fearful crime; would you not take the earliest opportunity of seeking a police officer, and tell the first you met to come at once with a strong party and seize these miscreants, even if there was some peril attendant upon your adoption of that course? But he had no such feeling; he remained there drinking and drunk in the company of murderers, told no story of them from that time until the middle of February, after five weeks had elapsed, after the poor victims of one of the foulest crimes lay rotting in their graves. He comes then before a tribunal where protection was abundant. In this very district if there were persons there who would support the arm of justice they would be protected, if he had come forward like one possessed of the feelings of a man abhorring crime, and had taken steps to bring criminals to justice, his house would have been made a citadel. He would have been surrounded with safeguards. If he had said to the officers of justice, I will tell you who were the murderers, but my life must be protected from the consequences, they would not have allowed him to return alone, but would have guarded him, have made his kitchen a fortress, and with their arms have sheltered

him from every danger. There were as gallant officers in that district as in any other, who would have protected him from every peril of life or property, yet the only excuse for the mass of perjuries he uttered was his own personal danger. Suppose you had neither heard nor seen anything of him, that nothing could have been proved against him, would you in any affair of gravity and solemnity have accepted his testimony as that of a truthful man, judging of him as you saw him in the witness box today? He has left the district, those whom he feared are in the hands of the law. then where was the cause for fear, Today he feared himself. he feared he was prone to lying, and not trusting himself, hesitated minutes at a time in answering the most simple questions. Do you believe, in the first place, from the way in which he answered those questions, that he knew more of this matter today than he did before. Was he giving his evidence as if the murder was committed near his place, whilst he was in possession of the property of the unfortunate men who ought to have been riding the horses he kept in his stable, and who gave no reason why they went on foot? Do you believe he know no more of this murder than he has told you? Does not his mass of lies prove that he knew more? Do not ground a verdict upon the evidence of a witness who suppressed the truth. Neither at the police office in Braidwood nor here did he tell of any conversation with this young man that would lead him to believe that he was one of the party of murderers. Smith could have had no apprehension that in a few minutes after Carroll's party left his house they would be stark dead in the bush; or if he had, he was a villain of deeper die than the wretched murderers who fired the fatal shots and were now in adjoining dungeons awaiting their own end. The Clarkes were not greater scoundrels if Smith, apprehending what occurred, did not say to Carroll and his party do not leave my house without having your weapons ready, and be cautiously on your guard, for those who intend to murder you are near. Presuming, however, as we must, that he did not anticipate the occurrence, if that is true, why did he send his boy to the very place where the bodies lay? Was it not easy to understand that had the police come down and found these bodies near his place, and property of the murdered men in his possession, there would be a terrible case against himself, they having been seen alive for the last time at his house. Why did the boy take that particular road? You must presume that these men were sent away without any apprehension on Smith's part that their lives, were exposed to peril, unless you believe him to have been an accessory before the fact to the murder. Griffin had business at his house, at that time being about to embark in some enterprise which would take him to Gipps Land; but if you imagine that he was there for the purpose of assisting in the murder of these men, and Smith knew his purpose, Smith must, in his heart, be as much a murderer as those who shot them down, if he did not warn the men of their peril, if he allowed them to go away exposed to peculiar danger, and did not urge them to take with them the means of escape, by taking their horses with them. If he did not expect any occurrence of this kind, how do you account for the fact that next morning he was so interested in their fate and seized with so much alarm, that he sends his boy by a peculiar route for the single reason that he wished to ascertain their fate, and that the boy should so shortly return and inform him of the fact of the murder?' Consider his course of action. He comes before the Court at Braidwood in the middle of February,, and not a soul was admitted to that examination but those engaged in the administration of justice. There could be no greater protection, no publicity was given to their proceedings there could be no reports, and no heresay statements of what took place, The prisoners, two of whom were now awaiting a felon's death, were committed for trial, so that he had every protection, nor had he any outrage to complain except one that took place seven or eight years ago. They never disturbed him-an exemption that argued much with reference to his character and his relations with the common depredators. He has left the district; is pursuing other avocations; does not want to return to it, and when giving evidence at Braidwood might have left for Sydney with the greatest safeguards and when he arrived here his life was as safe as that of the Governor. Yet the fear of the bushrangers is put forward as an excuse for thousands of perjuries. A comparison of the evidence he has given at Braidwood and during the present trial would show that he not only suppressed the truth-a natural result of fear, but he also lied. He not only does not tell you what he knows, but he says what he knows is not true If you could have the perjuries by suppression explained away, how could you receive the fabrication of lies. He not only suppresses the truth, but inserts falsehood, and even if the

necessity for lying, under any circumstances, were admitted, he lied unnecessarily. You heard him try to evade the question whether he was sober on the day he heard the conversations he spoke of, and you heard him at last swear that he was sober; yet at Braidwood he swore as solemnly "I was not sufficiently sober to know what passed that day" These questions are put by the attorney conducting the prosecution, who stood in that police office invested, for the purposes of that inquiry, with all the authority that my learned friend here exercises. That attorney had been in communication with the police; he knew all the stories that this man had circulated, and, from his knowledge he asked him questions, to which no doubt the witness gave merely monosyllabic answers, as he did today in the box here [The learned counsel here quoted from the depositions, putting the evidence in the form of question and answer] He answers those questions cautiously, because the scoundrel knows that Lenthal is there, and that, if he denies what he said, that Lenthal will go into the box and say, "why, you perjurer, you did say this to me " He does not risk that, but prefers to admit that he was a liar-that he never heard the conversation of which he told Lenthal, Gentlemen, don't forget this when you go to the jury room to consider this case What does it prove? It proves that this man is prepared to swear away the cloud of suspicion that hangs over himself - to avoid the rope which is perhaps dangling before his own eyes. You may infer this from his evidence. Sergeant Lenthal hears what he has to say, and at once takes out a subpoena for him. He could not have told Byrne this story, for if he had Byrne would have subpoenaed him. He did not do so, but Lenthal subpoenaed him. He went round telling all sorts of stories - blasting the reputation of Griffin and Connell-whom, by the way, the Crown dare not put upon his trial-and when he is brought to the police office to swear what would be sufficient to hang Connell, he won't swear that he did not say it to sergeant Lenthal. He said, too - and I hope you will mark this -

"I may have told Lenthal that I was sorry that Griffin was apprehended I will not swear whether I did say so or not " What ! he tell Lenthal that he was sorry that the man who told him all about this murder was apprehended He won't swear that he did not tell Lenthal that. Gentlemen, will you endeavour to go down in spirit into the depths of the human heart, and ask what this means? It is an ungrateful task I am asking you to discharge, but you must endeavour to go down into this man's heart and say what is meant by this? "I won't swear, he says that I did not tell Lenthal I was sorry Griffin was apprehended ' What! Griffin, the murderer ! Griffin who told that horrible tale of blood and misery and terror, which would frighten the most hardened ! And he says that he won't swear he did not tell Lenthal he was sorry Griffin was apprehended! Then he says,, "I never said that Griffin would bring home the murder to some one ' In the same breath he blasts his testimony. We have not Lenthal here if we had he would, no doubt, have told us a tale about this man which would have terrified us. He would have told us something that would have caused us to wish that he was locked up to save society from injury. He is worse than a murderer . A fellow like this, who can bring ruin and desolation on hundreds by his perjuries, is worse than a murderer. In the same breath in which he swears he never said that Griffin would bring home this murder to some one he says, " I will not swear I did not tell Lenthal so ' Then he says " I am sure I did not say so to Lenthal on Saturday " First he swears comprehensively, dating from the first moment of his life - his denial extends over all time - he swears as to a particular Saturday-and then he says ' I said nothing of this kind Then he swears " I was very sick when I got back to Connells-I had six nobblers in the morning. That is what he says. Now what part of this points to the prisoners guilt? There is not one word of the conversation sworn to by this man in the police office which indicates the prisoners guilt There is not one word connecting him with this affair except that he said, ' If I had been there I would have saved Kennngh's life ' I have pointed out where this man has lied superfluously - where he has created lies - lies which could have no possible relation with this case - because, as he says, he was compelled to do so by fear. Why, if that were the case, he should have said simply, " I know nothing at all about the matter ' But the fact is, he has gone about the country telling these stories because he felt that the popular suspicion pointed to him that people were saying, "It is not these young men who are the murderers, but the man at whose houses the corpses were lying"

Had he heard that this young man was making statements which implicated him, and then did he go round telling stories to arouse suspicion against Griffin and divert it from did he do this to purchase his own escape from the gallows? That his is one of the most atrocious cases of perjury that ever came before a judge all must admit

The man goes into the witness box, and says himself. "I have sworn every lie that I could, but you must forget all these perjuries and take me as a clear, honest, straightforward, credible, trusted witness ' That having been the story he tells at the police court-a story in no degree implicating Griffin-the story he tells to day is this, "That on the night of 8th January the prisoner went to his house, where he remained a quarter of an hour-that Carroll's party arrived the same evening, and left the next morning-the prisoner came again after they left and remained half an hour-that Carroll's party left their horses at his house-that the prisoner was riding a grey horse-that the prisoner asked him to lend him a breach loading rifle-and that he had refused to do. He refused to do so. Although he had lent this rifle to Griffin before and Griffin had kept it for some time, yet he refuses for some reason of his own to lend it. His reason for refusing does not transpire, but he says that the prisoner told him not to give the rifle to sergeant Byrne or Carroll. Why should Griffin suppose that he would give it to them ? You may sometimes discover a liar by bis ingenuity in making statements which are refuted by probability. A man who could invoke God to witness his perjury, as this gentleman has done, would be just as likely to speak falsely on this point

"Why should not this young man have told him not to give the rifle to the police? and why should the conversation have stopped there ? Why should not he have asked " Why should I not give this rifle to Carroll?" Why should this young man direct him as to the care of his own arms? Would he not have said, "You young scoundrel, why should I not give this rifle to Carroll?

If the police require it in the discharge of their duty it is at their service" There is nothing in the story. It is not of much importance, but by it you may test whether the man speaks the truth in other cases On the following Sunday he says he saw the prisoner at Connell's. The prisoner comes to him and, bursting with anxiety to tell the story of his guilt to somebody, he takes him to to the corner of a fence, twenty yards, from the house, and there tells him the whole tale. (The learned counsel then repeated Mr Smith's evidence as to the conversation]. There he stopped altogether, [at Clarkes firing the first shots) and my learned friend asked if he had anything more to say. It was a short stay this.

A crime so heinous-a crime which made us to feel as if death were brought to our very doors - a crime so fearful that if you were brought into the presence of one of the murderers, and heard a confession from his lips, you would feel as if no force could protect you from that tiger. But at this point this gentleman's memory fails. Then my learned friend puts a question as to who held the horses. We heard nothing about that before, but when the question is put we get that Griffin said he held the horses that he wanted to go to Gipps Land, and said he would like to go with Smith. To this Mr Smith replied that it would look suspicious, and he had better not go. You see what a liar he must be, because afterwards it comes out that this proposal to go to Gipps Land was made three weeks before the murder, and yet he produces it here as if it was made at the same time as the prisoner's confession to him. He gives this as evidence of the prisoner's guilt, and he warns the prisoner that it would be dangerous for him to go to Gipps Land. Then he went on to say, " Tommy Clarke had his boots off" Again my friend had to come to his assistance and refresh his memory; and that is the story which he says prisoner tells him twenty yards away from the house He says that Connell was not present at that conversation. Again his memory is exhausted, again my friend asks him whether he recollects any more, and then he tells you that Connell asks Griffin "Did the gin take effect? ' and that Griffin answers, "But for the gin I could not have got him up to the pitch ' That's what I understood him to say. My learned friend wishes it to be understood that the gin was given to Tommy Clarke and John Clarke to get them up to the pitch to murder the constables. There was only half a

bottle of gin left, and with that this drunken creature says the bushrangers were got up to the pitch of murdering these men. I believe that he lies when he says so. ' I was present ' he says, " at no other conversation between Connell and the prisoner " Mark that [The learned counsel then repeated a further portion of Mr Smith's evidence in reference to the conversations at Connell's] Now, gentlemen, will you have that story or the other

No proceedings were taken against this man for perjury; on the contrary, he is put forward by the Crown as the witness of truth, and stands here untainted. Supposing, gentlemen, you had a servant, and you found he had lied to you-if he had lied but once to you, could you trust him afterwards? But supposing that afterwards you found him out in another lie, and then told you a story which appeared to you incredible, could you believe him ? Supposing it involved the reputation of an intimate friend, would you credit him for one moment ? But here you are not asked to believe a liar who tries to damage the reputation of a friend, but you are asked to hang a fellow creature on the statement of a man who is proved to have perjured himself over and over again "We believe it is sufficient to have a single lie against a witness to damnify his testimony. The usual course is with such questionable testimony to throw it out.

Juries are cautioned-

You may believe this testimony, but take care, he admits he has perjured himself ' Gentlemen, never send a man to the gallows on evidence so questionable. These are no murders so terrible as judicial murders; there is nothing that will so soon sink a country in the estimation of the world as a fatal mistake in the administration of justice. The duty you have undertaken is a most solemn one-a duty which ought not to be undertaken without imploring Divine assistance. Don't let your minds be disturbed or alarmed at the possibility of the escape of a murderer, but decide upon evidence you can believe - not upon that of a perjurer. I now come to the evidence of Mrs McEneny, who swears that she heard some shots on the day that Carroll's party were shot, and that afterwards she saw three or four persons walking through a paddock that she calls nine acres. She now swears that these persons were the Clarkes, Bill Scott, and the prisoner at the bar. I shall not weary you with a repetition of the observations I have already made when addressing you on the perjured evidence of Smith. She, too, was in terror while the Clarkes were out, and she said not a word to anyone about these murders until some time afterwards. [The learned gentleman then read portions of this witness's evidence and commented on it] First she took the four men she says she saw crossing the creek to to Carroll and party, and then afterwards that they were three bushrangers and this young man. In this evidence she lies over and over again. On one occasion she says she could only see their heads and shoulders then she undertakes to swear they were the Clarkes, Bill Scott, and Griffin. She says she did not tell sergeant Byrne that she saw Griffin riding by that day, but she heard he was in the district. She now says that she did see him pass nine acres off. I leave this portion of the case in your hands to explain it if you possibly can. It is usual for the presiding Judge to advise juries where witnesses are proved to be perjurers, to sponge out the evidence from their memories. Justice sometimes uses unworthy instruments. Witnesses are brought from the stews, and from gaols, to depose to facts within their knowledge; but juries are always warned to receive this evidence with caution There are many wise and salutary provisions in our laws in regard to polluted testimony. It has been an unbroken practice in the mother country to tell juries when such evidence has been given, "you may convict on this evidence, if you like, but we advise you not to " If this is the case where one witness has transgressed, how much more is it necessary in a case where witnesses are leprous with leprosy from head to foot! Out of this mass of per jury-of contradictions-of inconsistent statements, covering tho whole case as with thick clouds of doubt and falsehood you will have to grope your way to a conclusion. With no light of truth to guide you-with no hand free from stain of sin to point the way-you will necessarily have to stumble upon your determination. May you, gentlemen be directed by Heaven to the path which will conduct you to a solution of this dreadful mystery!

The Solicitor General said

It now becomes my duty to address a few observations to you in reply to those you have just listened to from my learned friend Mr Dalley I regret on my own account, as well as on yours, that after the protracted character of the trial I should be the instrument of further protracting it. I have listened to the eloquent address of the learned counsel and being no mesmerist, you must perceive at once that I cannot know what effect that address has produced upon your minds; and since my learned friend has introduced so many irrelevant matters it is a duty incumbent upon me to try and show that many of his statements are not more worthy of regard than the idle wind which blows about you Do not for a moment suppose that I insinuate that you could be misled by an eloquent address, if it were simply eloquent and nothing more. But I know the influence possessed by my learned friend, his estimable character and other numerous good qualities, and therefore it is my duty to attempt a reply. The learned counsel has told you that the evidence for the Crown rests upon two witnesses, and that none of the other evidence bears in the remotest degree upon the case. But even on the sup-position that Mr Smith was an accomplice-which I do not admit, there is confirmatory evidence to an extent which the law would recognise sufficient to corroborate the evidence of even a proved accomplice. Three or four witnesses bring the prisoner in immediate apposition with Carroll and his party in different parts of the Braidwood district for the three or four days preceding the murder. Why was he thus dogging the heels of Carroll and his party. Even on the supposition that Mr Smith had ' lied ' to adopt the learned counsel's phrase, his testimony had been corroborated by other witnesses. A good deal had been said about the absence of adequate , but it was not for the Crown to supply motives. We could not get into the secret of that young man's mind , but, if we were to judge as men of common sense, we might conclude that this young man connected with the principals of that gang of marauders, was one of a class which the law calls ' maintainers and comforters , " that he was a spy for the bushrangers on Carroll and his party, and that on the night preceding the murder he was the person who brought the bush rangers to the scene of that atrocity. The evidence of the witness Donohoe has been misstated by the learned counsel. What that witness said was, that he did not think any one would believe anything which a man of so disreputable a character of Alick Bradley could say against him. As his learned friend had said, you are to draw no inference prejudicial to his client from the fact that Captain Zouch's evidence was not admissible; but with strange inconsistency the learned gentleman says that you are to draw inferences prejudicial to the case for the Crown because certain witnesses have not been called to corroborate others. If you are to draw unfavourable in inferences on one side, you are equally at liberty to do so on the other. I do not ask you to draw any unfavourable inference from the exclusion of Captain Zouch s testimony, but to consider themselves the case as if Captain Zouch had never been placed in the box. The repetition of these many imputations of perjury does not add to the strength of the statement, and you are not to permit the repeated application of the term to the witnesses to have any force at all unless accompanied by argument. No doubt Smith swore at Braidwood what was not true, and I do not offer any palliation of the offence; but I am here to point out, however inexcusable that may be, that unless reason is given against the truth of his statements, they may be of value logically though not of the slightest value in morality. The learned counsel applied the term perjury in its moral sense, and by its oft repetition tended to produce confusion in your minds; tor there was no necessity for concluding that the witness was not to be believed upon oath. Whilst you can with just horror regard the evidence of Smith, in the moral point of view, you may logically be compelled to believe what he says to be true. The learned counsel says the Crown dares not corroborate Smith's testimony; but there are two witnesses who do corroborate it. But in every transaction of life there must be only a limited number of persons who can speak of the immediate particulars con earning an action, and in a thinly populated district you cannot expect more than a few witnesses who can positively swear to facts such as have been sworn to by Smith and Mrs McEneny, and it is only in regard to more indirect circumstances that you can expect corroboration. The Crown cannot be said not to dare to corroborate when they have witnesses to afford corroborative evidence that may be necessary. There was no necessity for calling Lynn, and considering the difficulty in obtaining witnesses for the

Crown, you may infer that there are other reasons for not calling him than those suggested by the counsel for prisoner. All that is essential to the case is proved with his evidence which could be only to the effect of his having been sent by Smith for the police. As soon as he came back he informed Smith that he had found the dead bodies. Then if sergeant Byrne had been called I could not have put a solitary question to him and was I to go through the form of putting questions that I knew were inadmissible? But if there was any sincerity in this observation of the learned counsel he was at liberty to call both himself, Lynn and Byrne being in Court. The learned counsel then pointed out what an awful person Smith must be for not having the moment he heard of a person being concerned in the murder of Carroll and his party not having thrown himself into the arms of the first officer of justice he met, and said, "Come, with a strong force, and seize the miscreants. He says it was not till the 11th of February that Smith even mentioned it to any body. But what are the facts?"

The only personage of whose complicity in the murder he was cognisant on the Sunday was the person at the bar, and Smith's evidence against him was complete, because it was a confession of his own guilt; but prisoner's statement of the guilt of others implicated would not be evidence. The only person then to whom Smith could direct the attention of the police was prisoner. It may be thought that if Smith gave information to the police they would immediately have pounced down upon the Clarkes, Scott, or any others supposed to be implicated in the murders, and it is argued that because he did not do so he is a monster, apart from the answer that he did give information; as to Griffin it must be urged that he did not and scarcely could be aware of where the Clarkes and Scott had gone to. It was not as if he had them, like rats in a hole, ready for capture by the police; if such had been the case, these invectives may have come with some force. Prisoner, owing to his youth, may have been led into the paths of error by the devilish persuasion of others, but he at least had not, like them, been steeped to the lips in crime, had not desolated homes, razed houses and homesteads; had not stopped men, women, children, and poor foreigners who were led to expect protection under the British flag on the highway, and robbed them of everything they possessed. Can you not then conceive that after Smith made his statement to the police he had exhausted all that he had to do with the matter. He placed what he knew at the disposal of the police, and they, from the most prudent considerations, refrained from taking active measures for the capture of this small offender, while the greater criminals were at large. Smith had done all he was called upon to do. The non-arrest of the prisoner at the place and time indicated to the police by Smith was attributable, whether right or wrong, to the police-not to Smith. On his return from Gipps Land he receives a summons to attend the police office. He goes there and he gives his evidence in the manner you have already heard. You may often judge whether a man tells the truth or no by his demeanour in the Court. My learned friend noticed Mr Smith's hesitation in the witness box, and said that he demurred to answers the simplest questions. My questions may have seemed simple to my learned friend, but there were some that seemed to me anything but simple. The questions put by my learned friend to that witness were far from simple. There was scarcely a solitary question which did not tend to confuse Mr Smith, and which would not have confused any man who was placed in that box and compelled to answer them; the witness must have felt that my learned friend wished to confuse and mystify him. If there had been anything but the most ordinary hesitation in Mr Smith's mode of giving evidence, the circumstances afforded a full excuse for it. My learned friend then fixes blame upon Mr Smith because Carroll's party left their horses in his stable. This is absurd and futile. Those men were Government officers, who were armed-who could have taken every horse in Mr. Smith's stable-could have taken Mr Smith's rifle if they chose. They went to Guinea's on foot, and might not their reason for doing so have been, that they thought they could surprise the bushrangers better on foot? That is quite a reasonable supposition. Then my learned friend says "Why did he send his boy that way when his true route was in the opposite direction? He did not do so. The way in which he sent the boy was the shortest way to Bell's Creek, as Mr Smith swore. And when he sent the boy that way he told him to make inquiry about Carroll's party. Why he may have told him to do so because of the prisoners having asked him for the rifle. Suppose the constables said they were going to return the next morning, the fact of

their net doing so, coupled with the request for the loan of the rifle, would surely tend to justify us in coming to the conclusion that something had occurred of that kind - that he said to himself " their horses are here, and my boy may as well inquire what has become of the men."

And this is what so much is made of by the learned counsel. Then my learned friend, coming to the instance of perjury at Braidwood, says that Mr Smith had no ground of fear because he was leaving the district

That remark was not justified by the evidence There is nothing said about his being about to leave the district. He had a wife and family at home at the time, and he had been threatened at the door of the police office in the most audacious manner. That would be quite enough to affect his evidence. No doubt, he was about to get from the district as soon as he could, and he says that he has since left. My learned friend said that the attorney who examined Mr Smith at Braidwood must have been instructed by Lenthall. Very likely he was, but perhaps Lenthall mistook what Mr Smith said to him. Lenthall would, no doubt, be apt to seize everything that he thought would make out a case, and would very likely misunderstand some portions of Mr Smith's statements. These are matters for your consideration. Then my learned friend laid stress on the fact that Mr Smith said he was sorry that Griffin had been apprehended. My recollection of the evidence is that he said he was sorry, because he would have to bring the murder home to him. Would it not be, a painful thing to any man to aid in sending a fellow creature, however bad, out of the world? Would it not be a painful thing to any man to know that his voice would send a man in the last stage of disease to death? And how much more painful would it be when a young man like the prisoner, who seemed to be just entering upon manhood, was to be the victim? How painful must it be for you, gentlemen, to sit there to arbitrate on the fate of this young man! It is painful to me, to you, and to His Honor on the bench to assist at a trial which may result in the thought of this, and although he had heard that this young man held the horses, he might have thought that he had been led into it and was less guilty than the others. But this indication of feeling is made the groundwork of a charge against Mr. Smith. With regard to the other charge against the witness, it was perfectly absurd. A great point was made of the statement "that but for the gin I don't think I should have got him up to the mark " My learned friend mentioned that it was absurd to suppose that gin was necessary to stimulate the courage of such a man as Tommy Clarke; but I say that is a mistake. These men were cowards, and as Shakespeare, who was perhaps the greatest analyser of feeling that the world ever saw, said " cruelty is the mother of cowardice." When the very first question was put to the witness Smith by my learned friend, he (the witness) turned to his Honor, and said "Your Honor I gave my evidence at Braidwood under fear," and from Smith's very hesitancy, I ask you to regard him as the witness of truth, and not of falsehood, as my learned friend has contended from this fact, and I maintain that that piece of evidence which Smith gave in answer to a leading question put by me, that Griffin stated to him that when Tommy Clarke was running after Carroll he called for the horses, and he (Griffin) took them to him, was the most damning piece of evidence which he gave. If Mr Smith is to "steel" in perjury, so "leprous" in perjury as his portrait was drawn by my learned friend there is no reason why he should not have perjured himself on a former occasion as much as on this also. Nay, more, you have a reason, an intelligible reason, given why he did not speak the truth at Braidwood, inasmuch as he was under the influence of fear, but there was no possible reason why he should perjure himself today. It rests with you to decide whether, in your opinion, his evidence is worthy of credit, I submit that he is corroborated by Mrs McEneny, by George Smith, and by the girl. He is also corroborated in his evidence respecting the confession, because one of the witnesses expressly swears that he was at the public house on the Sunday, and that Griffin was also there on that day. The schoolmaster's evidence, as far as it went, was also confirmatory of Edward Smith, and strongly supported the case for the Crown. As to Mrs McEneny, I ask you if you ever saw a woman give her evidence in a clearer or more satisfactory manner. But my learned friend says that she "lied" before the magistrates at Braidwood. She tells you that she was under the influence of terror and the depredations committed on her property appeared to show that her apprehensions

were not altogether groundless. Her husband was not at home, and her children were there with her. The learned counsel argued that the investigation being private, she had no cause for alarm, and that her safety lay in the conviction of the prisoners. But it should be remembered that the leaders of the gang were then at large, and there were means of informing the friends of the bushrangers of the evidence she might give. Her testimony corroborated the evidence of Mr. Smith, who stated that Carroll and party left his house in the morning half an hour before the time they called at her house. Her evidence as to hearing the reports of shots afforded undersigned but important coincidences with the testimony of Mr Smith, recording the prisoner's account of the murder, and with the appearances of the place as described by other witnesses. There is no reason for doubting this woman's testimony. She has been guilty of a gross breach of morality in giving false evidence before the Braidwood Bench; but the manner in which she gave her evidence today, and her explanation of her former conduct, clearly entitled her to credit. No case was ever presented to a jury more clear, and I can see no rational ground for disbelieving the evidence of the witnesses Smith and McEneny.

The learned gentleman resumed his seat at five minutes to 1 o'clock, having addressed the jury for two hours and a half.

His HONOR then proceeded to sum up, and in doing so said

The case against the prisoner rests almost entirely upon the testimony of two persons who come here and confess that they are perjured. They admit that they have said on a former occasion that which is utterly inconsistent; with the truth. The question is whether to day they have spoken the truth, because it is perfectly possible that they have perjured themselves to-day, it is equally possible that they perjured themselves before under certain circumstances, which operated upon their minds and caused them to give false evidence. The prejudice against these witnesses must be so strong that I cannot but suppose you feel bound to yield to it unless you feel that you can safely rely upon their latter testimony instead of the former. And I advise you distinctly to acquit this prisoner unless you feel that the evidence of this man Smith can be relied on. It can only be relied upon if you thought he was in a state of alarm, fear, or terror, which led him to perjure himself. Perjury is perjury in all cases, but it varies in degree, according to circumstances. He who perjures himself under the influence of terror or charity, under the influence of a desire to save a beloved relation, stands, and must naturally stand, in a very different category to the man who swears falsely and deliberately for selfishness, gain, or lucre, malice, or vindictiveness. It is said that the prisoner has committed a murder for which no motive is assigned. It may be said that the woman Mrs McEneny and Smith have committed perjury. What motive had they for doing so ' It no reward was offered I cannot see how they could have had a motive for what they did. If they swore falsely for the purpose of getting a reward, then that was a most horribly wicked motive. If they did not there is no telling why they perjured themselves. If they perjured themselves because they were in a state of alarm, you may consider what degree of alarm was likely to be excited among such persons by the circumstances in which they were placed. If there were bushrangers abroad, and four well armed men seeking to capture them, had their footsteps dogged, and were at last brutally murdered, the fall of those men may, in the estimation of all persons who hear of it, create terror against the murderers. It is possible that an apprehension of violence at the hands of persons who resisted apprehension, it might not be known how long, and were still at large, not one or two, but several, said to have many persons connected with and aiding them, would induce a feeling that it would not be safe, to testify even the truth against them. On the other hand, when the fear is removed by the capture of some of the men and the death of others who had formed the party, the persons who were previously influenced by fear may then feel that it was safe to give the evidence of truth. If you are perfectly satisfied that is so in reference to evidence in the present case, you may in your consciences feel justified in believing their testimony. If, however, Smith's evidence be rejected there is nothing in Mrs McEneny's to convict the prisoner. All that she said apart from the corroboration of Smith was that she had seen the two Clarkes, and was satisfied that they were two of

the four she saw, prisoner being one, if you are disposed to believe the testimony of Smith notwithstanding previous perjury, you will have to consider McEneny's testimony, and say how far it tends to corroborate his. Then there is the testimony of Donoghoe, which struck me as remarkable, as you will recollect that after being repeatedly asked if he could recollect no more, he began to say in a way that was noticeable and you must consider the impression it made upon your minds-that the prisoner told him that he only held the horses If that is to be believed, it is of great significance in his case. With respect to the evidence of Captain Zouch, the deposition he took may be of no importance at all, or it may seriously prejudice the prisoner, or it may tend to throw light on suspicious circumstances. I cannot tell, and you may throw it out of consideration entirely. I feel bound to say that it struck me the instant I heard the deposition of Smith read that he was answering questions put to him. by some one, and the same struck me with regard to the woman. Smith answered most of the questions directly the reverse of what he said today. He says he did so because he was then under the influence of fear, but a man of strong mind would rather suffer death than perjure himself. Then you are not to suppose that because the Crown did not call Byrne he might not have corroborative evidence, they could not ask him the only question of any essential importance. The jury must also consider that the bodies of the men having been found at that spot, arranged as they were it was easy to dovetail these things together and invent a story, but you will have to judge of prisoner's capacity for that there may be some truth in the statement that this man was dogging the steps of the detectives, and was there long in a position to give information of the police. If looking at the evidence, he was in your opinion assisting them in any way whatever, he was in law equally guilty with those who actually took the life.

The jury, retired at twenty minutes past one, and after twenty minutes' deliberation returned into Court with a verdict of not guilty.

There was some manifestation of feeling on the part of the crowd in the Court, but the applause was almost instantly suppressed by the police. The prisoner was then remanded back to gaol, the solicitor General having intimated that there was another charge against him. He and Connell will be arraigned today, at noon-the latter on an indictment already filed : the former on an indictment to be made out to-day.

The Court at a quarter to 2 o'clock a m.