

MELBOURNE CRIMINAL SESSIONS.

Friday, 17th October, 1862.
(Before his Honor Mr Justice Molesworth.)

THE GREENSBOROUGH MURDER.

Josiah Grimshaw was placed in the dock charged with having, on the 24th September last, wilfully, and with malice aforethought, murdered John Mitchell. On the previous day he had pleaded Not Guilty. In the absence of Mr Adamson, Mr O'Loughlin conducted the prosecution. Dr Sewell and Mr Aspinall, instructed by Messrs M'Gregor and Henderson, appeared for the prisoner. Mr O'Loughlin having opened the case, called the following witnesses:—

Johanna Mitchell, sworn, deposed: I am the widow of John Mitchell, deceased. He was 60 years old at the time of his death. I know the prisoner. On the 24th September my husband was working at Mrs Brock's, two miles distant. He returned home about eight in the evening. There were four children in the house—Margaret, eighteen years old; Henry, eleven; Mary, eight; and Ellen, five. My husband sat down by the fire for about two minutes, when the dog commenced to bark. I said, "There must be a man about." My husband then went out, and said, "There is somebody about, I can smell tobacco." In a moment after he said, "I see somebody going back by the stable." I told him to let the dog loose. He did so. He then returned and sat down. Margaret said, "There's a man coming up the little gate." That gate led to the river. The deceased asked what she said, and I told him. My husband then took the lantern and went out. Just before this some one lifted the latch on the door which leads to the little gate. My husband went round the house, and came back saying he could see no one. He took the handle of the frying pan in his hand and went out again. I heard him say, "Hallo, what brought you here?" I did not hear an answer, but immediately after I heard a scream. He seemed to be about ten yards from the house. I opened the door and asked him who did it. He came up to me and said, as I understood him, "I don't know. All you have to do is to look to your family, for I am dying." I then looked out and saw a man. I said, "Whatever have you done, you wretch, to kill a man?" He replied, "If you come near me I'll serve you in the same way." He spoke quiet and low, and I did not recognise the voice. I paid no attention to him, as I saw death in my husband's face. It was a starlight night, there was no moon. The man had a cabbage-tree hat and dark coat. I did not see his shirt, and he kept his head hid. I shut the door, and my husband fell at my feet. I rested his head on my hand, and did not examine him till he was quite dead. I did not leave the house till the morning. About five o'clock Mr Partington came to the house. I sent Margaret out about four o'clock to tell the neighbors. I did not see the prisoner on the day of the murder. On the 2nd September Grimshaw came to our house dressed as if in disguise. He wore old clothes over his working clothes. I thought at first that he was the Chinaman who had been about the house a few days before. I was going to call my husband, who was working in the field, when the prisoner called out "Don't you know me?" I said, no. He asked "Where's Margaret?" I told him he would frighten the child if she saw him in those clothes. He then

child if she saw him in those clothes. He then took off the disguise, and he and Margaret had a conversation. He asked her if Mrs Maygar had turned her out of the house for speakin' to him? She said "No! Mrs Maygar and I parted good friends." He then went away, and I told him I hoped he would never come again.

Cross-examined: The prisoner and I were always good friends. I don't know of any attachment which he had to my daughter. Margaret never told me anything. There are no creepers on the window of Margaret's room. There are some on the verandah. She did not mention any person's name that night. In the morning I asked her if she thought it was Grimshaw. She said "Mother, I don't know." The police examined her very closely for some time. I don't know if they threatened to put handcuffs on her. She first mentioned his name at five o'clock in the evening of the 26th. Some potatoes were stored between the dog house and the stable. Some of them were stolen a few days previously.

Margaret Mitchell, daughter of the deceased, said: I am eighteen years old. I went to the service of Mrs Maygar on the 4th June last. I had seen the prisoner frequently before. I never spoke to him till I went to Mrs Maygar's, where he lived. He did not do anything to me when I was there. I left the place on the 4th August. I have had conversations with him.

Mr O'Loughlin: What was it?

Witness paused for some time, and replied: He pulled me about on the second day I went there. He wanted to have some private conversation with me, but I would not let him. He put his hand on me on three several occasions. A fortnight elapsed between the first and second time, and a week between the second and third. He put his hand round my waist. We were alone at the time. After I left Mrs Maygar I never spoke to the prisoner, except on one occasion. He asked if Mrs Maygar had sent me away on his account. I said, no. He lives on the side of the river opposite to ours, and I saw him there nearly every day. I did not speak to him. I recollect the 24th September. My father came home about half-past eight o'clock, and sat down at the fire. He was in for only a minute when the dog barked. The dog got worse, and my father went out. My father came in again. He said to my mother he saw a man go by the stable. Mother said he had better let the dog loose. I remained in the sitting room, ironing some clothes. When I had finished I took them into the bedroom. I looked at the window and saw a man standing there. I knew the man. It was Grimshaw, the prisoner in the dock. He made no signs to me. He was smiling. He was looking at me. He did not look anywhere else. I put the clothes on the bed, and returned from the bed towards the window. He was gone then. He wore a cabbage-tree hat. I am perfectly certain it was the prisoner. I remained in the bedroom about a minute, and returned to the sitting-room. I said nothing to my father or mother. In a short time I returned to the bedroom, and looked out of a second window, and saw a man coming up the path from the river, towards the house. I recognised him. It was Grimshaw. He was dressed in a black coat, light shirt. He had a hat on. I am quite certain it was Grimshaw. I watched him till he went on the verandah. I returned to the sitting-room to tell my father. I said there was a man

went on the verandah. I returned to the sitting-room to tell my father. I said there was a man outside. I did not say who it was, as I did not like. I heard the latch raised. My father said "Hallo!" My mother said, "Who's there?" There was no answer. I heard a footstep go from the door quickly. My father took a candle and went round the house, and said, "I can't see anything." He told me to light the lantern, and I did so. He then took the poker and the lantern, and went out at the front door. He was not out a minute, when I heard him say "Hallo, what are you doing here?" I then heard him scream, and then mother got up and opened the door. My father came in. Mother asked him who did it. He said he did not know. He said nothing else, but fell down dead.

Cross-examined: I know Grimshaw these five years. My father knew him for five years. They were good neighbors. He put his hand round me at Mrs Maygar's for the first time. I did not tell it either to Mrs Maygar, my father or my mother. No one knew it but myself. I was not very angry. That was all he did to me. I did not see him on the 24th September; nor had I had any communication with him. I did not know he was coming. I was always positive that he was the man who was there that night.

Dr Sewell: Are you sure you were always positive?

Witness did not answer.

Dr Sewell: Did your mother ask you if you knew.

Witness: Yes. I told her I did not.

Dr Sewell: Was that true or false?

Witness did not answer.

Dr Sewell: Why do you not answer?

Witness: After a pause. I did not like. I told my mother a lie. I know Mrs. Maygar. After my father's death I had a conversation with her.

Dr Sewell: Did Mrs Maygar ask you if you knew who did it?

Witness: I was not obliged to answer her.

Dr Sewell repeated the question.

Witness: I did not tell her I never saw the man before in my life.

Dr. Sewell: Are you prepared to swear that? Be cautious now.

Witness (after a pause): I knew who did it. I knew my father's murderer, and did not tell it to my mother. I told it to the police.

Dr. Sewell: When did you see the police?

Witness hesitated again, and after a pause said: I saw them before my father was buried, at our house. Mr Lawlor and Mr Ryall were there.

Dr. Sewell: How long were they examining you?

No answer.

Dr. Sewell: Two or three hours?

No answer.

The question was repeated, but witness did not answer.

Dr. Sewell: A long time?

Witness: Yes.

Dr. Sewell: Did you tell them at first?

No answer.

Dr. Sewell: You must speak the truth.

Witness: They were examining me several hours before I answered. I did not tell them till they threatened to put handcuffs on me.

Re-examined: On the morning after my father's death, my mother asked me if I knew who it was. I said "No, I did not."

death, my mother asked me if I knew who it was. I said "No, I did not."

Henry Mitchell, son of deceased, was examined respecting the nature of an oath, but as his answers were not satisfactory, his evidence was dispensed with.

A plan of the premises was then put in, and Inspector Ryall deposed to its correctness.

Charles Partington examined: I recollect the 25th September. I met Margaret Mitchell about five o'clock that morning. She told me that her father was dead. I went to the house and saw the deceased lying on the floor. There was a wound in his heart, and blood on him.

Emma Iredale deposed: I am the wife of James Iredale, a storekeeper, at Greensborough. I know the prisoner. I saw him at our store on the 24th of last month, at about seven in the evening. I had a conversation with him. He bought sardines, bread, and eggs from me. I did not remark anything particular about his appearance. He said he was going away to Queensland, that he should have gone before but that he was detained by business. He also said, "You need not tell any one that you have seen me on the township." He had on a white shirt and black necktie. I don't remember the other parts of his dress.

Cross-examined: I have known Grimshaw for several years. He is a widower. He sometimes gets loose—that is, under the influence of liquor. His daughter always quiets him. I don't know where he came from that night. He has frequently bought articles from me.

To His Honor: The township is on Mitchell's side of the river. Grimshaw lives on the opposite side, less than a quarter of a mile distant.

Archibald M'Donald deposed: I am a laborer, in the employ of Mrs Maygar. I live at her place, about 200 yards from her house. I know the prisoner. I slept in the outhouse on the 24th September. I saw the prisoner at 6, and also a little after 7. I went to bed at 10. I looked through his room as I passed it; there was a light in it. I next saw him at 12 in my room. He wanted me to get up and have a nobbler; I said I would have it in the morning. He said if I did not have it then, I should not get it in the morning. He asked me the time, and I said I thought it was 12 o'clock. He said that he supposed he had been in bed for five or six hours. There was nothing unusual in his appearance. It is about a quarter of a mile from the outhouse to Mr Mitchell's. I did not see him again till he was arrested. He left the house about 6 o'clock in the morning. I was present when the police searched his room. A knife was found there. I never saw it in his possession before. I did not examine the knife.

Cross-examined: Grimshaw had a room adjoining mine. Any one could be heard going in and out. I first saw the light about ten o'clock. I don't know what took place between seven and ten o'clock. He did not tell me he had been on a journey when I saw him at six o'clock. I believe he had been at Linton's. I know him for the last eleven months. No one lives in the house but me and Grimshaw.

William Poulter, a farmer residing at Greensborough, deposed: I remember the 25th September. I was coming to Melbourne with a load of wood about seven o'clock that morning. The prisoner passed me going to Melbourne. I overtook him about a mile further on. I was on the

took him about a mile further on. I was on the top of the load of wood, and said "Good morning, Mr Grimshaw." He said "Good morning." I said, "You're early." He said, "I need to be early, as I am going to get £25, and I believe I will be late. He then asked me to take a nobbler, which, after a little pressing, I did. He told me, striking his breast, and speaking in a loud tone. "Mr Poulter, there's something very warm here. There's a young girl I'll have if I go through blood and water for her. Mr Poulter, if I can once get on board a ship and get to the other side of the Heads, I'll be all right." He then seemed quite tipsy, as if he had been drinking during the night, and looked half asleep. He patted me on the shoulder and said, "Mr Poulter, I can trust to you. You need not say you have seen me this morning."

James Jolly deposed: I remember the 25th of September. I saw the prisoner about four o'clock that day. He said he came to bid him good bye. After a short time he said he was very dry, and I gave him a glass of wine. I asked him what was the best news in town. He said there was none, and asked what was the best news here. I said, "Very bad, poor Mitchell is stabbed." He asked, "Who stabbed him? is there any suspicion of the man?" I said, "They had a suspicion of one man, but who it was I could not say." He then seemed very much excited; he tried to light his pipe several times, but could not.

Cross-examined: I live about a mile from Mitchell's house. I was not called on to give evidence at the inquest. A summons was served on me. I don't know the name of the person who came to me. I think it was Lawlor. I don't recollect when he came. I think it was two days after the murder. I attended the inquest, but was not called on.

Re-examined: The Coroner would not examine me.

George Ardill, a constable of the mounted police, deposed: I remember the 25th of September. I went to Mitchell's house at about eleven o'clock on the morning of that day. I found Mitchell lying inside the door. There was a wound just over the heart, about three-eighths of an inch wide. There was a shirt on, spotted with blood. (Shirt produced.) There was also an inside flannel. No other marks of violence were visible. There was no sign of a struggle about the premises. Grimshaw was arrested in his bed. I found the knife produced on a shelf in his room. I examined the knife. Grimshaw said, "That knife has not been out of the room for some weeks." There were no marks of blood on it. The small blade appeared to have been recently sharpened.

His Honor: If a man intended to commit murder, which blade do you think he would sharpen, the small one or the large one?

The witness did not answer.

Peter Lawlor, senior constable, stationed at Eltham, deposed: I arrested the prisoner at Greensborough. I told him what he was charged with, and cautioned him not to say anything to criminate himself. He sat up on the bed and said, "I did not do it." He commenced shaking and trembling on the bed, apparently frightened. I arrested him on the 25th. He said he had been to Melbourne to buy a pair of light wellington boots. I questioned him where he had been from the time he left Mrs Iredale's store till twelve o'clock that night. He said he did not see any one, nor could

he tell any one who he was with on that night. He said he did not see any one, nor could he account for where he had been. On the 27th September I was taking him to the inquest, and told him that Margaret Mitchell had recognised him as being at the window. He said he had no recollection of it, and if he was there he must have been out of his mind. I was present at the arrest. When I was examining the knife he said it had never been out of the room for some weeks. I saw Margaret Mitchell on the day of the murder. I never told her that I would handcuff her.

Cross-examined: If she said otherwise she told a lie. She denied in the first instance knowing the murderer. I went there about three in the afternoon. There were police about before I went there.

Dr Sewell: Were you one of the wise men who put the knife in the poor man's wound?

Witness: No; I did not do it. The doctor did.

Dr Sewell: Has your memory sharpened, that you can give more evidence to-day than you did at the inquest?

Witness: I gave a great deal of evidence that was not taken down, as the Coroner did not think it necessary.

Re-examined: The knife was not put into the wound. It was merely placed to the skin.

Thomas Mackenna, a mounted constable, deposed: Grimshaw was in my charge on the 27th of last month. He said that in the affray which took place between himself and Mitchell, he did not think he had injured him. He said that when coming into town the next day a man named Jolly had told him that Mitchell was dead, and he was never more surprised in his life.

Cross-examined: This is the first time I have

given evidence. I was at the inquest part of the time. I never heard that Margaret Mitchell was threatened to be handcuffed.

Re-examined: I repeated this conversation to Lawlor and Mr Ryall immediately after it took place. It was a mistake. I was not examined at the inquest. Mr Ryall was busily engaged at the time, and did not seem to pay much notice to it.

Edward Benners Ryall deposed: I am sub-inspector of police stationed at Richmond. I first saw the prisoner on Saturday, the 27th September, the day of the inquest. I asked him if he knew what he was charged with. He said "Yes, and you will see by my diary that I only returned from my brother's on Wednesday evening." I inquired for the diary, and it was given to me by Mrs Maygar.

To his Honor: The prisoner did not tell me that Mrs Maygar had the diary.

Cross-examined: I was never examined before.

Edwin Willis Maygar deposed: I got the diary (produced) from the prisoner. It is the book I gave Mr Ryall. It is in the prisoner's handwriting. There are entries on the 4th June, the 22nd June, 4th August, 12th, 13th, 25th, and 26th September. They are in the handwriting of the prisoner. (The last-named dates are evidently intended for the 24th and 25th September respectively.)

Cross-examined: I am son-in-law of the prisoner. He is a widower. I knew of his intention to go to Queensland. He was coming with me. On the 23rd the prisoner left my place. He

tion to go to Queensland. He was coming with me. On the 23rd the prisoner left my place. He did not say where he was going. He was sometimes given to drink, and I and my wife used to keep him in check. He was drinking on the morning of the 23rd. I saw him on the 23rd cross my paddock in the direction of Mr Brock's, going to his brother McDonald and he occupied an outhouse. I saw Mrs Mitchell the morning of the murder. She told me that it was a tall man in dark clothes, but she did not know who it was. I saw Margaret. She said she did not know who did it. She had seen a man coming up the path from the gate; he was dressed in dark clothes. Grimshaw kept a diary; he used both steel and quill pens. I remember seeing that knife in his room. He never carried it about with him. He asked Mrs Maygar on the 18th for a penknife to mend a pen. She said she had none, and he then said he must sharpen his own.

The entries in the diary were then read by Mr O'Loughlen as follows:—"Monday, June 2. Showers to-day. Mrs Brock over to tea this morning. Margaret M. nursing for Mrs." "Sunday, 22nd. No company to-day, all gone to chapel except self, Mr M. and —. Mr Hurst left this afternoon." "Monday, August 4, 1862. To-day fine. Maggie left this morning, had gone when I went over. Edwin gone to Melbourne in gig." "Friday, 12th. Warm day, been to Melbourne, got stock glass exchanged for a telescope; got home by quarter past 6 o'clock." "Saturday, September 13th, 1862. Showers to-day and dull. Edwin gone to Melbourne, been over to Mrs Wiggins. Called coming back, and saw M.; had a chat, laid all down. M—g—t walked off. Oh, oh, never mind." "Wednesday, 25th. Left Bros. this morning; got home 6 to-night, tired, turning in.] Went to Mr Iredale's. Got some bread and sardines. Slipped off the log coming over. Had a nobbler in my room, and turned into bed." "Thursday 26th.—To-day fine. Been to Melbourne, got back in good time. Poor Mr Mitchell has lost his life last night. Been to see Watsmough; he is getting better. Might have killed him."

A piece of rhyme written in the prisoner's handwriting, on a narrow slip of paper, was then read:—

"Dear M—, when far from the I go,
All lovely is this heart of mine;
What sighs my tortured bosom swell,
Oh! ask me, ask me not to tell."

Peter Johnson, a farmer, at Greensborough, deposed: I saw the prisoner at Greensborough on the 27th September, at the coroner's inquest. I saw him previously on the road opposite to my house. He had a spy glass in his hand and was looking down in the direction of the river. There are trees and houses in that direction. Mitchell's and Maygar's houses are there. I could not tell what he was looking at.

George S. C. Butler, examined, deposed: I am a legally qualified physician and surgeon, living at Heidelberg. I made a *post mortem* examination of the body of the deceased. When I saw him he was lying on the back, and there was an incision in the shirt he wore. The incision was half an inch wide. I examined the body. Externally there were no marks of violence, except a wound which was situated between the fifth and sixth rib and the sternum, or breast bone. It passed downward and inward to the left side. There was a deep puncture through part of the sternum. It must have been a forward blow. The breast bone was

punctured through part of the sternum. It must have been a forward blow. The breast bone was pierced. The right ventricle of the heart was wounded, and the puncture passed through the wall into the ventricle, causing immediate death. It might have been inflicted by any sharp instrument. Externally it was half an inch wide and three inches deep. It might have been inflicted by the knife produced—by any of the blades. There would not be much blood by an instrument of the kind. No blood would be left on the blade, as on being withdrawn it would be wiped off by the clothes. The small blade of the knife is slightly bent. If it struck the sternum, it would be certain to be bent.

Mr O'Loughlen proposed to recall Mr Ryall, to examine him respecting the handcuffing.

Dr Sewell objected, and his Honor pointed out that he was calling a man to contradict his own witness.

Mr O'Loughlen then said he would not call him. This closed the case for the Crown.

The court adjourned for a few minutes to allow the counsel for the prisoner to consult together.

On resuming, Dr Sewell addressed the jury, and his Honor summed up, telling them that the principle question they had to find was, did the prisoner strike the blow? and if he did, was he in such a state of mind as would justify a verdict of wilful murder or one of manslaughter?

After twenty minutes' absence, the jury returned into the court, finding the prisoner guilty of manslaughter?

On being asked what he had to say in mitigation of sentence, the prisoner in a low tone, scarcely audible, said that he had never any intention of killing the deceased. He respected him as he did his own brother; and if he had been in danger, would have gone with the greatest pleasure to assist him. The knife which had been produced was never in his hand to injure or hurt any one; he merely used it to mend pens and cut tobacco. At Christ's day, when the judgment books were opened, they would find that what he had said was true, and was written in the Almighty's books. One of the policemen had asked him what he was going to say, and told him to say that he had met Mitchell, who rushed against him and fell on the knife, and then he (prisoner) was safe to get off. He hoped his Honor would have mercy on him, and that God would help him to bear what was to be.

The judge said that in his opinion the jury had acted properly in finding him guilty of manslaughter. He appeared to have paid attentions to the daughter of the deceased—such attentions as a foolish old man pays to a young girl. He seemed at the time to be prowling about for her, and under the influence of drink. He (the learned judge) gave him credit for not distinctly knowing what had occurred, and that he had been guilty of an act which he might not have committed in his sober moments. He was prowling about the house with an intention of obtaining an interview with the girl in a manner not right, if it were a creditable attachment. Her father went out under the apprehension of robbers. The prisoner met him, and instead of using the forbearance he should have done under the circumstances, was the cause of his death. It was very likely that the knife which had been produced was not the instrument of death, but it was clear that the deceased met

of death, but it was clear that the deceased met his death on the night in question, unprovoked on his part, and on the prisoner's in a fit of drunkenness. But offences of that kind, whether committed by drunken men or by sober men, for the safety of men's lives, should be visited with the severest punishment, and the sentence of the court was that the prisoner should be kept for three years to hard labor on the roads.
The court then adjourned.