LAW AND CRIMINAL COURTS.

SUPREME COURT—CRIMINAL SIDE.

THURSDAY, DECEMBER 5.

[Before Mr. Justice Boothby.]

MURDER.

Peter Starr was again placed in the dock, and the trial, adjourned from the previous day, was resumed.

Dr. Popham, re-examined by His Honor, stated that the deceased was, when he saw him, incapable of making a written declaration. Believed that such a thing had been suggested by the police; but the deceased had (in witness's opinion) neither mental nor physical power to do so, owing to his great loss of blood. As the orifice of the wound was not very large, it was probable that an hour would have elapsed after the wound was given before that extreme debility resulted from the loss of blood. The deceased appeared to have been an athletic young man, and in good health until wounded. Witness thought the deceased was about five feet nine inches in height.

His Honor, at the request of the Jury, read over the evidence of Catherine Flannery, who did not answer when called this morning.

The Jury intimated that His Honor had the information in his notes which they desired to have elicited from the witness.

Mr. Andrews then addressed the Jury, contending that it was impossible to find the prisoner guilty of the offence fairly and properly defined by the Crown Solicitor as maliciously and wilfully taking the life of one of Her Majesty's subjects. He went over the evidence, and submitted that the prisoner and deceased were proved to have been friends. There was no cause of quarrel shown, and, in the absence of anything to show ill-feeling, he scarcely saw how the Jury could go further than to find the prisoner guilty of manslaughter. He cited a case where, on a man having a contest with another, went away for a few minutes, and returned with a knife and killed his adversary; yet Lord Tenterden instructed the Jury that if they were of opinion that the prisoner's mind had not cooled, and that he had not at the outset intended to take his antagonist's life, they would only be justified in returning a verdict of manslaughter. The present case was still more favourable to the prisoner. There was no evidence that he first resorted to the use of the bayonet. It was consistent with the evidence that whatever the prisoner did he did in self-defence; and if so, a verdict of manslaughter on that ground would be virtually a verdict of acquittal. The learned gentleman's recapitulation of and comments on the evidence occupied nearly two hours in delivery.

The Crown Solicitor submitted, in a careful review of the evidence, that the Jury were bound to take a common-sense view of the facts admitted or proved before them. They ought to have a high sense of their duty, and that should teach them not to strain any point against the prisoner on one hand, or to fritter away on insufficient grounds the criminatory evidence against him on the other.

His Honor, in addressing the Jury, said the enquiry having extended over part of two days he felt it necessary, in a case of such importance, notwithstanding the attention they had given to it, to read all the evidence, commenting on it as he proceeded, and then he would give such general directions as he considered the case required to assist them in coming to a correct conclusion. He thought there was no bad feeling exhibited by the prisoner in his manner of calling the deceased back when he accompanied the visitors to the slip-panel. While reading the evidence of the witness Flannery, His Honor said—Suppose the bayonet to have been within reach, and its being taken in the heat of passion and used, and death resulted from its use, the offence of using it would not amount to murder. It would, however, amount to the offence of manslaughter. The absence of all evidence as to how the bayonet came into use threw great difficulty in the way of a correct conclusion. The Jury would have to consider the probabilities of the case, and in doing so they would have to take into account the age of the deceased—24 years—his greater strength and stature as compared with the prisoner—an old and feeble man—and then say whether it was probable the deceased would, unless they had evidence of a very wicked disposition on his part, be likely to have resorted to the use of such a weapon in a contest with the prisoner. Some inference might be drawn from the language of the prisoner's wife, "William, take my advice," and the answer of the deceased, "It is too late, I'm stabbed." Would that be what a woman would say if deceased had assailed her husband with a deadly weapon, or were her words and the answer more consistent with the supposition that she had advised him to get away from danger, which advice he had unfortunately not acted on? It might also be proper to consider that the bayonet had been kept at the head of the prisoner's bed, and to which of the two, the prisoner or the deceased, its whereabouts would be most likely to occur upon the occasion of a quarrel and personal encounter. Had the prisoner deliberately armed himself with the weapon and entered into a conflict with the deceased, and death resulted from the use of the weapon, it would be murder. Should, however, the Jury be of opinion that the prisoner had with his own hand fetched the weapon, not intending to use it, but in the course of the conflict did use it, there being no time for his blood to cool, he would be still responsible for the result, and the crime would be manslaughter. The use of the weapon deliberately which occasioned death would be murder. The sudden use of it in the heat of blood would reduce the crime to manslaughter. The law cast the responsibility of deciding that important distinction upon the Jury, and if the evidence left any reasonable doubt upon their minds they were bound to give the benefit of that doubt to the prisoner. There were, unfortunately, many new-fangled notions abroad about improving the laws which had been sanctioned by the wisdom of our ancestors; but he hoped that no change of the law would ever allow a wife's evidence to be taken for or against her husband, or that a husband's evidence would be admissible for or against his wife, in criminal cases. Were such a change to be made, it would lead to great and frequent failures of justice. Our forefathers knew that all human laws were imperfect, and their system was wisely adopted to secure justice, in ninety-nine cases out of a hundred, by allowing Juries to draw reasonable inferences from facts rather than to embarrass them with unreliable testimony. Some remarks had been made by counsel for the defence with a view to throw suspicion on the removal of the bayonet by the girl Flannery. She herself said she was frightened and scarcely knew

removal of the bayonet by the girl Flannery. She herself said she was frightened and scarcely knew what she did or why she did it; but certainly the wisest thing that could be done was to remove from two struggling men a weapon so deadly. It was a well-known fact that persons often acted on a sudden emergency with greater wisdom than if they were allowed time to confuse themselves with doubts as to what they ought to do. Whether the sense of emergency suddenly nerved the brain to an intuitive perception of the proper course to pursue he would not venture to say, but the fact was proved beyond doubt by experience. Some strange behaviour of the prisoner's was spoken of, and the girl used the word "cranky," which was understood to mean crazy; but there was nothing to show that the prisoner was in such a state of mind as would render him unaccountable —

Mr. Andrews—The doctor spoke also of his aberration of mind.

His Honor—He spoke of excitement; and there again experience went to show that such was the horror of taking human life that men generally became intensely excited, and, as with the prisoner's trousers, neglected to remove evidence of the commission of the crime. That might be regarded as one of the wonderful provisions of Divine Power that the human mind should lose its balance on the commission of great crimes, and thus, by rendering detection more easy, operate to prevent their frequent repetition. It had been suggested that the fatal wound might have been given by accident; but how did that agree with the conduct of the prisoner, who spoke of "Poor William" having been stabbed, and saying he would give £50 to know who did it? If the Jury found that the prisoner introduced the bayonet in the contest, he would be responsible even if death resulted from the deceased falling upon it; for it was an unlawful weapon to introduce, and the death of the young man was consequent upon his unlawful act. In that case it would be their duty to find the prisoner guilty of manslaughter. Whether they found the prisoner guilty of murder or manslaughter, the consequences to him must be most serious; but it was their duty to return "a true verdict" without regard to consequences. It would be a frightful usurpation of powers which did not appertain to them were Jurors to say we will not convict, although we think the prisoner guilty, because of the punishment that must follow conviction. Was such an usurpation to be made all the advantages which society enjoys from trial by Jury would be abolished; but he was quite sure the intelligent gentlemen he was addressing would respect their oaths, and "a true verdict give according to the evidence." In weighing the question as to murder or manslaughter, it was scarcely proper to say that the prisoner was entitled to the benefit of any doubt. He had heard Lord Cranworth say that this was a most unfortunate expression, inasmuch as it implied a favour to the prisoner, who was entitled to demand, not only as a right that he should have the benefit of all reasonable doubt, but that the Jury must be convinced of his crime before they could be warranted in returning a verdict of guilty.

The Jury retired for a quarter of an hour, and returned with a verdict of guilty of manslaughter.

His Honor—Peter Starr, the Jury, after a patient and attentive investigation, have returned a wise and a most merciful verdict. It is most grievous to see, from the facts which have been proved in evidence, that length of years has not taught you the value of temperance and prudence. It is most painful to think that a man of your age should indulge in such drunken carousings as took place in your house on the night when this crime was committed. The evidence gives indeed a picture of rural dissipation which reflects no credit upon South Australia. It is shocking to think that four or five otherwise respectable neighbours should assemble and indulge in such disgraceful excess. I trust that your unfortunate case will be a lesson to all persons who are conscious of a disposition to indulge in the immoderate use of strong drink, and that they may be warned by the unhappy result to you to avoid the certain consequences of unrestrained indulgence. I see you are an old man; but I can make no difference in your punishment upon that account. The forbearance of Judges is often implored in consideration of the innocent families of convicted offenders; but that, like age in your case, is a consideration which should have prevented the commission of the offence; it cannot, in justice to others, be admitted as a ground for mitigation of sentence. The law has no vindictive end to serve; its severity has the merciful object in view of restraining by example crime in others rather than the infliction of punishment on the convicted. For that sufficient reason I cannot take account of your age, and, although the period of penal servitude to which I am about to sentence you will not in words embrace the whole remainder of your life, yet in all probability that will be the effect of it. Your crime has been a frightful one; its consequences must be fearful. A young hale man, in the flower of his age, in the bloom of manhood, was by your crime suddenly hurried before the bar of his Maker and Judge. You will now have time upon this earth to repent of your crime committed against society, and against that Great Judge, before whom both you and I shall in His good time have to appear. But had the Jury found you guilty upon the awful charge of murder, you must have been left for execution, so far as I am concerned; I could have offered no recommendation in your favour. The Jury, as I have said, have mercifully and wisely given you the benefit of whatever doubt was involved in the circumstances; and it is my duty now, for the protection of human life, to deal with you as the law requires. The sentence of the Court is that you be kept to penal servitude for the term of nine years.

LIBEL.—APOLOGY.

Mr. Fenn said he was instructed in the case of the Queen v. Popham, which was a common charge of libel, to say that the prosecution would be withdrawn upon the defendant making an apology in Court.

Mr. Ingleby said he was instructed by the defendant to say that the libel complained of was the circulation of a printed paper, and that the defendant regretted that it should have given Mr. Martin any pain. He was further instructed by the defendant to say that the portion of the paper which gave the greatest annoyance to Mr. Martin was not intended to apply to him at all, but reflected upon a totally different person. By that admission the sting of the article was taken away, and the defendant was sorry that it should have pained Mr. Martin, and apologized for having given that pain.

His Honor—This appears to me to be a very proper course. I hope, Mr. Fenn, that your client

His Honor—This appears to me to be a very proper course. I hope, Mr. Fenn, that your client is satisfied?

Mr. Fenn—Quite so, your Honor. Those proceedings would not have been instituted, but that my client, Mr. Martin, is Mayor of Gawler Town, and he felt that this vindication was due to his position.

His Honor—Then that ends the last case of the session.

The Jury were formally thanked by His Honor, and discharged.

SENTENCES OF PRISONERS.

The prisoners tried but not sentenced by Mr. Justice Gwynne are to be brought up on Friday, at 11 o'clock for sentence.

Court adjourned until 11 o'clock next day.