

The case was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, MEREDITH, JJ.A.

J. L. Counsell, Hamilton, and J. G. Farmer, Hamilton, for the prisoner.

J. R. Cartwright, K.C., for the Crown.

Moss, C.J.O.:—The evidence taken at the trial was made part of the case, and upon the first application, as well as upon the argument of the stated case, it was fully and ably discussed by the prisoner's counsel.

The prisoner and the deceased were both natives of some part of Poland. They were both employed at the Deering Harvester Company's works in Hamilton. The deceased and his wife carried on a boarding house, in which a number of their countrymen and countrywomen lodged, and amongst them the prisoner. He had lived in the house for more than a year prior to 12th July, 1907. In the afternoon of that day the deceased was found lying on the floor of a bedroom on the ground floor of his house in a pool of blood. He was lifted up and laid upon the bed, and it was found that he had received a wound from a pistol bullet, which appeared to have entered on the left side of the head immediately below the ear; and it was subsequently shewn that this wound was the cause of his death. The bedroom opened from the dining-room of the house. Among the first to enter the bedroom when the deceased was found lying on the floor, was the prisoner, but in a short time he passed into the dining-room and sat down at the table. Shortly afterwards one William Walsh, a witness at the trial, came in, and, passing the prisoner where he sat at the table in the dining-room, went into the bedroom where the deceased was lying on the bed. There was no one else in the bedroom at the time. After a short interval he went out through the dining-room into the kitchen, where one Brandon, who had assisted to lift the deceased to the bed, was washing his hands, and, after looking out to see if there was anybody in the yard, he returned to the bedroom. He then spoke to and endeavoured to rouse the deceased, who had evidently lost much blood, and was apparently unconscious or in a stupor. Eventually he succeeded in raising him so that he made an effort to sit up in the bed, but fell back. What then happened was described by the witness as follows:—