

way; remember being at Chambly for ball practice some time in the month of June; I belong to No. 5 Company, as did prisoner and deceased; prisoner was confined at Chambly for being drunk at ball-practice; he was confined for seven or eight days to barracks with drill; the orderly Sergeant, who was deceased, reported prisoner for being drunk; came back from Chambly about the 29th, and on the morning of the 10th the murder was committed; the whole of No. 5 Company returned from Chambly; after our return we had 20 rounds of ball cartridge, each man served out to us; they are put up in packages of ten rounds, and kept in each man's pouch; [witness shows the ball and cartridge produced to the court and jury]; it was out of one of these packages of ten that the missing cartridges had been taken out; saw the prisoner at night when he went to bed; he undressed; the deceased's body was carried to the hospital of the regiment; he was not dead then; Dr. Ferguson attended deceased; I gave evidence at the inquest.

Cross-examined—Have been nine years in the regiment; have known prisoner for five years; first met him at Dublin; have often seen him drunk at the Curragh of Kildare; have seen him once drunk upon duty; prisoner is occasionally drunk like every other private soldier; saw prisoner drunk at Chambly; only saw him once, and then he was drunk under arms; prisoner was drunk on the 9th of July; he was not sober, don't remember drinking with prisoner a few nights before the 9th July; had not a drop on that evening, no more than at present; when I saw prisoner on the night of the murder I was sitting on my bed; there was no light in the room; saw from the light in the window that it was the prisoner; prisoner charged up the room with his bayonet until he was apprehended; on the night of the murder prisoner was not drunk, but I would not swear he was fit for duty; prisoner's only fault has been drinking during the time I have known him; did not see prisoner served with his rounds of ammunition; when a soldier is off duty his pouch remains hanging over his bed.

Re-examined—Saw prisoner in the barrack-room on the night of the 9th, under the influence of liquor; it was between seven and eight o'clock saw him when he was going to bed; did not speak with him all the evening; knew by his appearance that he was under the influence of liquor; prisoner was quiet and walking about; he knew what was going on around him.

The Court adjourned for half an hour.

#### AFTER RECESS.

Upon re-assembling, John Connell, private in the 16th Regt., was the first witness called.—Knows the prisoner and knew deceased; remembers the night he was shot; was in bed that night, and in the same room; belong to the same company; it was between 12 and 1 o'clock on the morning of the 10th July; was awakened by hearing a man cry out "I'm shot, I'm shot;" after hearing this, I

thought it might be some one dreaming, and was about to go asleep again when I heard the same words repeated; I turned over on my right side and saw some person with a rifle at what we call charge bayonets, with the bayonet pointing in the direction of my bed; the bayonet was fixed to the muzzle of the rifle; thought the man might have done some one an injury and was likely to do me some too; made a rush at him; he made a thrust at me; I jumped to one side and seized the bayonet by the socket; I pressed the bayonet downwards, and at the same time I was seized hold of by the throat; I seized the man in return; we struggled about two minutes as near as I could judge; I kept shouting all the time that I had caught the murderer; Private Judge came to my assistance; we knocked him down and kept him so till the guard came up and he was disarmed; I then saw it was the prisoner at the bar, Private John Mawn; he had a rifle and bayonet, of which he was disarmed; prisoner was within two yards of my bed when I first saw him; my bed was nearest to the door; that was the proper way to pass out; went as far as the bedside of deceased, but could not look at his face; saw blood flowing from the bed; saw the mark of a ball next morning; saw a lot of clotted blood, and the print of the bullet in the wall.

Cross-examined:—Has been fifteen years and a half in the regiment; my acquaintance with the prisoner only commences with my arrival in Canada; was at Chambly with him; he was drunk there on duty; a man in the army who would get drunk on duty oftener than once, would be considered a very indifferent character; was at the Curragh of Kildare with the regiment; recollect there were some Courts-martial held then, but don't know if prisoner was tried; the moon was shining on the night of the murder, but very dim; there was not light enough for me to see; prisoner knocked over tables and things of one kind and another, and it was all I could do to keep myself before he was arrested by the guard.

By the Court: I have no impression whether the prisoner was drunk or sober on the night in question; with the light, from my bed, I could not identify the man who was coming down the room.

Dr. Hector Ferguson, 16th Regt.:—Knows prisoner, and knew deceased; on the morning of the 10th July was called upon to see a man who had been shot in the barrack-room; it was between 12 and 1 o'clock; found him in his bed in the Molson's barracks; he was lying on his back; there was a great quantity of blood about the bed; on examining him found he had a bullet wound on the right side of the abdomen, about an inch below and to the right side of the umbilicus; the ball had, apparently, made its exit about the seventh rib—between the seventh and eighth; the patient was conscious, and I had him removed to the hospital; he died in about three hours and a half; on a *post mortem* examination found