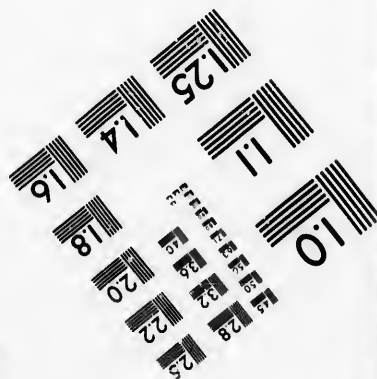
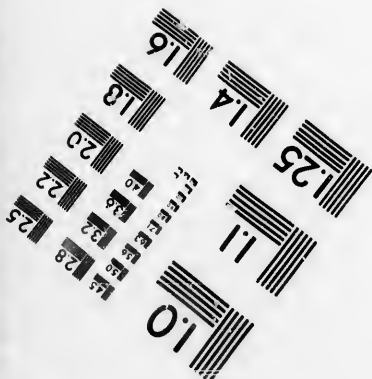
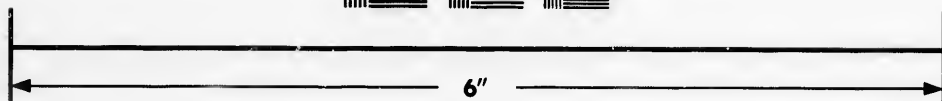
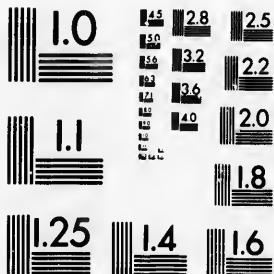


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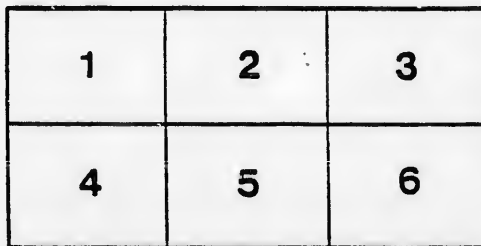
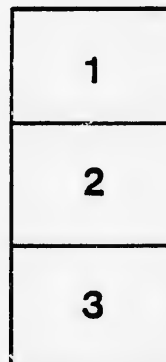
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THE

TRIAL

OF JOHN A. WILSON,

*A PRIVATE IN HER MAJESTY'S 16th REGIMENT*

FOR THE

WILFUL MURDER

OF

SERGEANT EDWARD QUINN,

*OF THE SAME REGIMENT.*

ON THE 10<sup>TH</sup> DAY OF JULY, 1862.

---

MONTREAL.

PRINTED FOR THE PUBLISHER BY JOHN WILSON.

1862.

# THE TRIAL, CONVICTION SENTENCE AND EXECUTION

OF

**John Mawn, a Private in Her Majesty's 16th Regt.**

FOR

**THE WILFUL MURDER**

OF

**Sergeant Edward Quinn of the same Regiment,**

was carried off by a bullet in the chest, on the 10th day of July, 1862.

## THE MURDER.

About 1 o'clock on the Morning of Thursday the 10th of July 1862, the officers and soldiers belonging to the 16th Regiment of foot, stationed in the Molson Barracks, Quebec Suburbs of Montreal, were thrown into a state of the greatest excitement and alarm, by the report that a Sergeant of the regiment had been shot, and an attempt made at stabbing one of the privates, by a soldier belonging to No. 5 Company, while his comrades were asleep in the Barrack-room. The sensation soon spread to the street, especially when it was known that the victim was dead and the assassin in custody,—having admitted and boasted of the deed. The military authorities were no sooner aware of the horrible facts of the case, than communication was made by them to Mr. Coroner Jones, who at 10 o'clock the same morning summoned a highly respectable and intelligent Jury, and, at the Military Hospital, where deceased was lying, commenced holding

## THE INQUEST.

The prisoner when brought into the room appeared about 5 feet 7 inches in height, light haired, and wore a heavy brown moustache. His face had a red weather-beaten tinge, and the features were not unpleasant when in repose; his hands trembled violently, and he seemed to be nervous as if from the effects of a debauch, or great terror. Otherwise, he looked indifferent at the awful position in which he was placed, his eyes were seldom lifted from the ground, and he displayed throughout a sullen apathy which seemed to argue the absence of all hope; he was dressed in a trowsers, the fatigue coat of the regiment, instead of the military jacket; appearing in fact in the same attire he had on, when the murder was committed. The Jury being sworn proceeded to view the body, with all the appearances of the ghastly crime connected with it: deceased look-

ed very little older than the prisoner who had taken his life: his face bore traces of severe suffering and the wounds in the abdomen and left side, deponed to hereafter, were distinctly visible. The Coroner having ordered Dr. Ferguson, the regimental Surgeon, assisted by Dr. Robillard, an M.D. of this city to make a *post mortem* examination, and having heard the evidence of the witnesses brought forward, the Jury returned a verdict of wilful murder against Mawn, and he was handed over to the civil authorities to await his trial at the then ensuing term of the Court of Queen's Bench.

## THE FUNERAL

of deceased took place on Saturday afternoon, about half-past 2 o'clock. The body was laid in a handsome coffin upon which a silver plate told his name and age. The coffin was borne out of the Hospital by four men of the 16th, and placed on one of the guns of the Armstrong Battery, which was drawn by six greys. The procession then started along St. Mary Street. First came the firing party, taken from the fifth company of the 16th, with reversed arms, next came the Band playing the *Dead March*, then the gun-carriage and coffin, on which were placed the accoutrements of deceased. After that came the whole battalion of the 16th, except two companies that were out of the city, followed by the non-commissioned officers of the 47th, Scots Fusilier Guards, Grenadier Guards, Royal Artillery, &c., and last of all the Officers of the 16th Regiment. The procession proceeded along Notre Dame and Great St. James Streets up Beaver Hall Hill, and thence to the Roman Catholic Cemetery, on the Cote de Neiges Road. The men of the 16th wore crapes tied with white on their sleeves, but apart from the outward signs of mourning, there was that in their faces and looks which proved that the grief was sincere. The procession was a



highly impressive one, and the melancholy music of the band heightened the effect produced on the spectator. It was said that when the unfortunate Mawn, from his place of confinement, heard the notes of the band as the cortege began to move, a total change came over him; the feelings of the man were stronger than the self-control of the criminal, and he wept bitterly.

## THE TRIAL.

The Court of Queen's Bench (Criminal side,) commenced on the 24th September, and the prisoner Mawn was among the first arraigned. Their Honors Judge Mondelet and Assistant Judge Berthelot, presided, and the prisoner pleaded NOT GUILTY to the indictment preferred against him. At the same time, on being questioned by the presiding Judge, he stated he had no counsel, and no means to pay for one, and the Court at once assigned as counsel on his behalf Mr. Murdoch Morison, a barrister of many years standing, and who, it will be seen from the report, during the whole of the trial, with an energy and perseverance which is deserving of all praise, stood by his unfortunate client, and did all that human talent and professional skill could do, to obtain from the Jury if not an absolute acquittal, at least a verdict for a lesser offence than the capital crime. Thrice was the prisoner set at the bar to take his trial; but the solicitor general, who prosecuted on behalf of the Crown, having consented to his being tried by an English speaking Jury, not until two supplementary panels had been ordered to be summoned by the Sheriff, was the required number of twelve good men and true, put into the box and sworn. This was on Wednesday the 9th October, Justices Mondelet and Berthelot, as before, being on the Bench, Mr. Solicitor General Abbott, Q. C., for the Crown, and Mr. M. Morison, for the prisoner. The following were sworn as

## THE JURY

John Courtenay, William Cunningham, James Conway, Peter Clarke, Daniel Courtenay, William Cook, Patrick Corrigan, Michael Corbit, James Collins, John Cox, James Carroll, and James Donovan.

All the witnesses (except the Medical) were ordered out of Court.

The Solicitor General stated the case to the Jury very shortly and with great moderation. He expatiated upon the enormity of the offence, upon the responsibility of the Jury; and stated the conclusive evidence of guilt it would be his duty to submit to them.

He then called

Martin Judge, private in the 16th Regt.:—Knew the late Sergeant Quinn; knows the prisoner; slept in the same room with them in the Molson College Barracks, on the night of the 9th July last; my bed was between ten and twelve yards distant from that occupied by deceased; remember his death; it occurred between the hours of 12 and 1 a.m.; he was killed by a musket ball to the best of my opinion; heard the report of a shot which woke me from my sleep; I sat up in my bed, and looked in the direction

where I thought I heard the shot; saw the prisoner standing erect near Sergeant Quinn's cot, towards the middle of it; he was about a yard distant from it; he was on the outside or left side of the cot, as you look towards the head; he was sideways towards the Sergeant; he had a rifle in his hand holding it in his two hands across his body; the muzzle pointed towards the deceased Sergeant; heard deceased sing out "I'm shot, I'm shot;" saw prisoner going to the left about, and fixing his bayonet on the muzzle of the rifle; prisoner was in his fatigue dress—his boots, blue trousers, and a white fatigue smock on; he had no forage cap on nor belt; he appeared to carry his bayonet under his arm; saw prisoner advance his arms mid [redacted] deceased's bed; he advanced towards Lance-Corporal Cooke's cot; he came towards where I lay until he came to the second cot off mine; the Private-Connolly's bed; saw [redacted] to the [redacted] still fixed [redacted] and covered myself up; prisoner [redacted] till he went to the third or fourth cot from me; he was not walking fast; he was going in the direction of the door; the next cot he reached was that of Private John Connell, at whom he made a thrust of the rifle; Connell jumped at him, and took hold of the socket of the bayonet and the prisoner; Connell was in his bed, but had his eye on prisoner after the report of the gun; saw prisoner and Connell struggle together for about a couple of minutes; the latter called out for assistance; I went to his assistance; prisoner struggled with us for a couple of minutes; we felled the prisoner to the boards, and I called out for more assistance; one or two men came, but I could not tell who they were; we kept the prisoner till he was taken away by an escort of the regimental guard; saw the prisoner's accoutrements—his belt and pouch over his bed; every soldier has his military accoutrements hung up over his bed; the rifle stands in the arm rack beside every man's cot; saw the Sergeant of the guard examine prisoner's pouch; there were two rounds of ball ammunition deficient from his pouch; I mean by this ball cartridges; the rifle and bayonet were gone; saw a bullet picked up; went to deceased's bed to see him; the doctor was there; looked at the bed and saw where the bullet had gone through the bed and bedding; the bullet was between deceased's bed and the wall, in the corner; it was on the right hand side of the bed as deceased lay; the bullet was slightly dented.

Joseph Jones, Coroner of the District: Remembers holding an inquest on the body of Sergeant Quinn, it was on the 10th July last; I have in my possession a bullet that was produced at that inquest; [witness exhibits the bullet in Court]; it was handed him by Adjutant Stabb of the 16th; witness also produced a cartridge he received from the same officer.

Judge, re-called:—The bullet shown me is that I saw found: it was dented in the same

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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 retraced 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



the ball had passed through the abdomen and intestines, wounding in five different places; the left kidney and spleen were wounded; the ball passed through the diaphragm into the pleura, fractured the tenth rib, passed beneath the integuments to beneath the seventh and eighth rib, and there made its exit; the organs were generally healthy, except that there was a slight adhesion between the pericardium and heart; the cause of the death of Sergeant Quinn was a gunshot wound; I gave evidence at the inquest; deceased must have been shot from the hip; the rifle must have been held about there; from the direction of the ball I imagine so; the rifle could not have been raised; the wound was such as would have been produced by the ball before me.

By the Court—The ball before me has been dentated by coming in contact with a foreign body—probably against the wall.

Lance Corporal William Cook—Knows prisoner, and knew deceased; was in the barrack-room the night Quinn was shot; heard the report of a gun, raised up my head and looked towards where deceased was lying; thought it was a shot from one of the steamers going up the river; looked for some time and saw the prisoner; he was standing over deceased's bed with the rifle at charge; smelt burnt powder, and then attempted to get out of bed; saw prisoner come to the left about; he then had his bayonet fixed on the rifle; laid down in bed again; was between four and five yards distant from the prisoner; it was moonlight, but the moon was shining very dim; could not recognize the prisoner.

Mr. Morison—Then why did you say you saw him?

Witness—I saw a man coming towards the foot of my bed; he came within one yard of it; did not know him; he turned to the right and went up the centre of the room towards the door; witness jumped out of bed and shouted that there was a man shot, and for some one to shut the door; then followed the man for about six yards; Judge, Connell and Conquest came up; they were struggling with the prisoner, and had him down; I went to get a light, but struck several matches before they would light; saw it was the prisoner with whom Judge and Connell were struggling; never lost sight of prisoner until I struck the light; prisoner had on a smock frock, blue trousers, but was without his hat and belt; looked at Quinn's bed and saw the marks where the ball had passed through it.

The Solicitor General here called upon the High Constable to produce the bed and bedding in his custody upon which deceased lay on the night of the murder.

Adolphe Bisonette, the High Constable, accordingly produced two linen shirts, one straw linen palliase, marked W. D., 1862, 1 cotton shirt, No. 2335, 16th Regt., September, 1860, 1 flannel shirt, a rifle, marked 1 Bn. 16, 732, 1 bayonet, marked 16, and under 732; the articles were handed to witness by Sergeant Lenahan, Hospital Sergeant of the 16th Regt., on the 12th

July last, and had been until now in his possession.

Mr. Morison saw no necessity for making an exhibition of this kind in Court.

The Solicitor General—This was a case of too much importance and too much solemnity to omit anything necessary to convict the guilty or deliver the innocent.

Cook re-called—Examines the bedding produced; it is like that slept on by deceased; points out the hole and the blood of which he had spoken.

Cross-examined—Has been in the regiment four years and a half; was at the Curragh of Kildare with the Regiment; knows the prisoner drinks rather freely and gets tipsy; it was the only vice to which he was addicted; prisoner is peaceable unless when in his cups; did not see him on the evening previous to the murder; don't know that he was ever drunk on duty; have seen him at Chambly drunk; though I could not see the prisoner on the night of the murder, I knew Judge and Connell by their appearance and talk; while I was striking the matches my back was turned to the parties who had hold of each other; have heard no orders given not to speak of the state of the prisoner on the night in question.

The Court—It would not be for the interest nor conducive to the honor of the regiment that any such order had been given.

Mr. Morison—It has been insinuated to me, nay stated broadly, that such is the case, and I thought it due to the prisoner to put the question. I am very glad to find there is no truth in the story.

Cross-examination continued.—Prisoner is a very unfortunate fellow when he gets drunk.

Private John Conquest—On the night of the murder heard the report of the shot, and corroborated the evidence of Connell and the other witnesses as to what took place in the barrack-room; witness identifies the rifle in Court as that belonging to the prisoner; on the nipple is an exploded cap; [the rifle was shown to the jury, witness picked up the bullet now produced under the deceased's bed; gave it to Corporal Barker; witness also gave testimony as to the drunkenness of the prisoner at Chambly, and his being confined; as to the serving out the rounds of ball cartridge, and how they were put up.

Cross-examined—Has seen the prisoner the worse for drink; on the night of the murder, when the light was brought into the room, prisoner appeared sober enough; he was not very much excited; he was cool, calm and collected; he was not in any way ruffled or excited.

Corporal John Barker proved that the ball in Court was given to him by Private John Conquest; identified the rifle, and generally corroborates the testimony of the witness who preceded him; he was present when Sergeant Carroll examined the rifle after prisoner had been arrested.

Cross-examined: Prisoner was tried by Court martial at the Curragh for being drunk on duty; saw him drunk at Chambly, but can't say how often besides; saw prisoner drink on the even-

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ing of the 9th July; saw him at Mr. or Mrs. Gibson's tavern or grocery on that evening; it was between five and six; prisoner drank about half a tumblerful of whiskey; after prisoner came into barracks he had a sup more; prisoner and two others drank a gingerbeer bottleful of pure spirits after leaving Mrs. Gibson's on that same evening; prisoner might have drank a second glass at Mrs. Gibson's, but I did not see him; the whiskey he brought with him might have been pure whiskey; I do not know if there was water in it; the liquor was drank out of the bottle; prisoner only took a mouthful of it; he got the liquor from Mrs. Gibson, I did not; Sergeant Quinn came in rear of the prisoner when he was put under arrest at Chambly; I was reduced from Corporal to the ranks on account of a simple barrack-room report, which reached the ear of my Colonel.

Re-examined; Returned to barracks with prisoner about 6 o'clock; a gingerbeer bottle only holds a tumbler, and if prisoner had drank his share, he would only have had a third of that after he got in; was present when the Orderly Sergeant called the roll at tattoo at nine o'clock that night; Sergeant Gordon called the roll; neither at 6 o'clock nor at 9 o'clock was the prisoner seriously the worse for liquor, but capable of performing any duty that might have been imposed upon him; heard prisoner distinctly answer to his name on the night in question when the roll was called; the answer returned is simply "here."

Sergeant Patrick Carroll:—Is Color-Sergeant in the 16th Regiment of No. 1 Company; knew deceased and prisoner; remember the night Sergeant Quinn was shot; was Sergeant commanding the regimental guard; heard the report of a musket where I was lying in the guard room; was about to get up when the sentry in the door called me, and said there was a shot fired in barracks, and that some one was crying; brought a portion of the guard with me, and went into the room occupied by No. 1 Company; found all was right there, and went up stairs to the room occupied by No. 5 Company; on entering there I heard that Sergeant Quinn was shot, and on enquiring by whom, was told John Mawn; examined prisoner's accoutrements; found two packages in his pouch one of which was open, and two rounds of ammunition missing; examined the rifle No. 732 now in Court, and found it had been recently discharged; took the prisoner to the guard room, and had him placed in irons; spoke to him at the guard room door, and said he was the last man I supposed would have done such a thing to Quinn; he then turned round and cried, and said Quinn confided him at Chambly, when he need not have done it, and that he told him he would be revenged of him dead or alive; Corporal Barker shortly after brought me a rifle bullet; told prisoner there was a round of ammunition yet missing; he nodded towards the pocket on the left hand side of his trousers, and told me it was there; ordered Private Shepherd to take it from his pocket; he did so, and hand-

ed it to me; it was a round of ball ammunition, what we call a ball cartridge; indentifies the rifle now in Court.

The Court adjourned till to-morrow morning at 10 o'clock.

## SECOND DAY.

Thursday, October 9.

The Judges took their seats on the Bench precisely at ten o'clock; and in a few minutes afterwards John Mawn the prisoner, was put at the bar. The Court was again densely crowded, and continued so during the day. The Colonel of the regiment, many of the officers and quite a number of soldiers, were present, and regarded the proceeding with great interest. Prisoner when placed in the dock, looked calm and collected as heretofore; a shade paler, and if anything yet more attentive and anxious.

The Solicitor General again appeared for the Crown, and Mr. Morison for the defence.

The first witness called was High Constable Bissonette, who produced in Court the ghastly relics of the tragedy—appeared yesterday—the ball, the cartridge, the bayonet, the bedding, sheets, shirt, &c.

Sergeant Patrick Carroll that handed me by the court; the ball shown me is the same as the ball in the room on the morning of the 10th; the bayonet was brought before the commanding officer.

Mr. Morison objected to the evidence being taken if it was to prove what took place before a military Court.

Examination continued—Major Garrett was commanding at the time.

Q. Did you hear prisoner say anything respecting the murder?

Mr. Morison—I object to this being answered until I put one or two questions to the witness.

The Court—It is to be done through the Court.

Mr. Morison—I find that what this witness is to prove took place before a military court of enquiry. The learned Counsel contended that if Quinn had not died, prisoner would have been tried by court-martial and would have been committed by his commanding officer to take his trial. What the prisoner said then, on that occasion, ought not to be admitted in evidence. Mawn was then a prisoner and in custody, guarded and in duress, when this conversation is said to have occurred.

The Court—But had the prisoner been in the custody of a police officer, what he said on the occasion would be received in evidence, provided his admissions were legally made. That is, if they were made without threats, or promises.

Mr. Morison—The man had been in irons all night, was brought up in custody of a guard with fixed bayonets, and all the paraphernalia of war before a man whom he is taught to stand more in awe of than his God—his commanding officer; and I should any admissions, should any conversation thus extorted from this poor, ignorant, unfor-

fortunate man, should this be taken in evidence against him in a Court of justice?

The Court—The military authorities knew they had no power over the prisoner because Quinn was dead, as has been proved by Dr. Ferguson. They knew they must hand him over to the civil power, and the Court will take care that whatever the prisoner may have said, nothing will be allowed in evidence that is not exactly and precisely in accordance with the rules of law. The prisoner shall have a full, fair and impartial trial.

Examination continued—Major Garrett read over the charge to the prisoner, and asked him what he had to say; The charge was for shooting Sergeant Quinn.

The Court—Suppose the charge had been for any other kind of offence, would the course pursued have been the same?

Witness—The very same; there was nothing out of the ordinary course.

By the Solicitor General—Did Major Garrett say anything to the prisoner beyond reading the charge to him? A. Not a word; he might have made some remarks, but I did not hear them.

Q. Was any promises made to the prisoner to confess, was any representations made to him to confess, or was any threats held out to the prisoner to induce him to say anything about this affair?

A. Not that I am aware of. Q. State what the prisoner said in answer to Major Garrett? A. The prisoner said that Sergeant Quinn was always down upon him; that is all he said; prisoner was then marched back to the guard-room.

Cross-examined—Only examined one pouch in the room that night—the one pointed out to me as the prisoner's: have been in the army 18 years and 11 months; have seen bullets after striking the target a great deal more damaged than that produced; have seen a bullet that has struck a bank, which is not so hard a substance as the target; swear positively that the bullet in my hand was given me by Barker; it was dented precisely as it is now; the dent in the point shows that it met with a hard substance; the cartridge produced is the ordinary one used in the British army; this is the cartridge taken out of the prisoner's pocket; I recognise it by the dirt which adheres to the greased part, and which is here still; this unfortunate affair has created some excitement in the regiment.

Question—Is it not the general desire of the officers and non-commissioned officers to convict the prisoner and hang him?

The Court would not allow the question to be put.

Mr. Morison argued that if the military witnesses came into the box biased with a determination to send this man to the gallows, it would greatly tell against the value of their testimony.

The Court—Ask the witness if he is biased: You have that in your power, and then the jury will be able to see. Bring it home to the witness if you can, but as to asking him about others, you can't.

Question—Have you not in common with other

officers and non-commissioned officers of the regiment, expressed an opinion that this man should be hung?

The Court—Confine your question to the witness himself.

Witness—I have not formed an opinion in my own mind that this man should be hung, for I don't know if he is guilty or not; know that prisoner has been brought up sometimes and reported for being drunk; never considered the prisoner a dissipated character; always looked upon him myself as a fair man; prisoner was court-martialled once in Ireland for being drunk on duty; I have seen as good a soldier as any in the service get drunk on duty at an odd time; it ruins him for the time, but he may recover afterwards; prisoner began to cry before the irons were put on him.

By the Court—All the accoutrements of the prisoner, including the ball and cartridge produced in Court I handed over to Adjutant Stabb.

Arthur Stabb, Adjutant 16th Regiment—Know the prisoner, and knew the late Sergeant Quinn; he was shot on the morning of the 10th July, between the hours of 12 and 1 o'clock, was called out of bed at the time; went to the room in which deceased slept; prisoner had been removed then to the guard-room, and deceased to the hospital; I went to the guard-room, and received from last witness the rifle now in Court, also a ball cartridge and a rifle bullet, the bullet was an Enfield rifle one, slightly indented at the top, and had been fired; examined the rifle and found it had been recently fired; I took an exploded cap off the nipple; examined the barrel of the rifle with a clean rag; it came out soiled, as if it had been recently fired; Sergeant Carroll also handed me eight rounds of ammunition loose; after the return of this Company from Chambly rounds of ammunition were served out to them, twenty rounds to each man; ten rounds was in each package; no portion of this should have been used; gave the things I received from last witness to the Coroner, having taken them to my room that night and kept them there; saw prisoner on the same evening in the orderly room; there was nothing said or done to induce him to confess, on the contrary; prisoner was brought in, and the charge read to him by the Commanding Officer, Major Garrett; this course is the usual one adopted in all cases when a soldier is accused of any offence; witness produces the black list of the morning in question.

Mr. Morison strongly protested against the document being put in, but the Court allowed it.

Adjutant Stabb—The paper in my hand contains the charge read to the prisoner; it is to the effect, first of shooting Sergeant Quinn in his bed; second, with attempting to stab Private Connell; prisoner said nothing; and was asked if he had anything to say; he replied that Quinn was always down upon him, and had confined him at Chambly unjustly.

Cross-examined: Every charge for which a man is confined will be entered in the charge list, but need not come before the commanding officer;

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It may be dealt with by the Captain of the man's company; according to our military impressions, this is no military Court; Courts of inquiry are held for different purposes; never saw to books of military jurisprudence this tribunal called the Commandant's Court; there is nothing very different in the cartridge produced to that of other Enfield cartridges; a new round of ammunition would not have the marks of dirt upon it this cartridge has; have no personal knowledge that any rounds of ammunition were given to the prisoner; was not at Chambly with the Company.

Mr. Morison produced a manual of Military Law approved of by the Horse Guards, where, in chapter third, of the Court of the Commanding Officer's power and duties are treated of.

The Court while taking note of the authority produced, said it would like to see what the Mutiny Act had on the subject.

Private Robert Lee, belongs to No. 5 Company in which is prisoner; prisoner slept in the next bed to me on the night of the murder; when I awoke, I saw the prisoner lying at the foot of my bed; could not say what time it was; two men were on the top of him holding him down; could not say who they were; saw Sergeant Carroll in the room after prisoner was taken; he was looking for the prisoner's accoutrements; he asked me where prisoner's ammunition was, and I showed him; the Sergeant examined his pouch, and took 18 rounds of ammunition out of it; it was out of the prisoner's pouch this was taken.

Sergeant Kelly: Was on guard on the 7th July last, at Molson's Barracks for about 24 hours, or till 10 o'clock on the 8th; knows the prisoner who was on my guard; on dismounting guard, examined prisoner's pouch; found in it 20 rounds of ball ammunition complete in every respect.

Cross-examined: That was on the 8th.

Captain Rooke: Is Captain of No. 5 Company in which prisoner and Sergeant Quinn were; we were at Chambly in the month of June for ball practice; we returned on the 24th of June; prisoner was confined for being drunk while going down for ball practice; Sergeant Quinn, in charge of the party, sent him back; he was confined in the guard room till next morning, when he was brought up before me; confined him for seven days to barracks; part of the punishment was in Chambly, part in Montreal; about three days after the Company returned from Chambly, twenty rounds of ammunition were served out to each man; there was no occasion between the serving out of this and the shooting of Quinn, on which any of this ammunition could have been legitimately used; was in the orderly room on the morning prisoner was brought up; heard the charge of shooting Sergeant Quinn read to him; no threats or promises to induce him to make any statement were held out; prisoner said Sergeant Quinn was always down upon him, or words to that effect.

Cross-examined: Never heard this Court called the Commanding Officers Court, it may be so, but we always speak of it as the orderly room;

it certainly is my desire that the prisoner should be hanged, and I am thoroughly convinced he is the murderer of Sergeant Quinn.

Court adjourned for recess.

## ON RE-ASSEMBLING,

Private James Conway was called for the prosecution: Heard Sergeant Carroll say to prisoner after the murder, while he was being put in the guard-room, "Mawns, Mawns, you was the last man in the 16th Regiment I thought would do the like of that;" prisoner replied, "Oh, Sergeant Carroll, I know my own know; I promised him that at Chambly, if it ran to the end of 12 months I would shoot him;" prisoner said no more outside the guard room door, only what he said inside; prisoner said when walking up and down the guard room, that when Quinn was a private soldier, he had often given him many a pint and pot of beer, and that he thought he should be the last man in the 16th Regiment who should drink on him; now, said he, I've shot him and I hope the Lord is dead and damned.

Cross-examined: Was on guard this evening; when the conversation I have related took place, prisoner appeared to me to be like a man in the horrors; I said so at the inquest; prisoner appeared to be in the horrors, but witness did not know if he was excited at the deed he had done or not; prisoner was under the influence of liquor at the time—you could smell his breath—but I could not say strong; prisoner's eyes were rolling in his head, and he had a frantic look about him; I belong to No. 1 Company, prisoner to No. 5.

Re-examined: Prisoner walked up and down the guard-room and staggered a little; he appeared to me very curious at the deed he had done; should think he would; it was nothing extraordinary that he should appear curious.

Private John Bracken, 16th Regt., No. 6 Company:—Was in the guard-room on the night of the murder when prisoner was brought in; a round of ball cartridge was found on him by private Shepherd.

Cross-Examined: Assisted in putting handcuffs on the prisoner; I was perfectly sober and could judge of the state that prisoner was in; prisoner was in liquor, but did not appear to be desperately drunk; smelled the liquor upon him when putting on the handcuffs; could not say prisoner was in the horrors.

Colonel-Sergeant Samuel Bedson, of No. 5 Company 16th Regt: Proved the number of prisoner's rifle and accoutrements to be No. 732, and was present when Sergeant Carroll examined the pouch. Witness also corroborates the evidence of former witnesses as to what took place in the orderly room, and what the prisoner there said; prisoner said at his first examination before his own Captain, that he had shot Sergeant Quinn, and he was sorry he had not taken another.

Cross-examined: Prisoner said, in answer to Captain Rooke's enquiry, that he was sorry he had not shot another. Q. You have a very anxious desire to see the prisoner executed, have you



not? A. I would like to see the prisoner hung (Sensation.)

Prisoner: Oh you wicked old scoundrel to say so! Re-examined—Question: Why would you like to see the prisoner hung? Answer: Because I think the man who would shoot another, asleep in his bed, deserves to be hung. (Prisoner at this evinced considerable emotion, and shed tears.)

Private John Daly:—Belongs to same company as prisoner; slept in the third bed from Sergeant Quinn on the night of the murder; was called up by deceased who said he was shot; when I saw that such was the case, I went for the doctor; saw prisoner's rifle was not in the rack.

Private James Shepherd proved finding the round of ammunition produced, in prisoner's left side pocket, after he had been brought to the guard-house, on the night of the murder; prisoner said in the guard-room he was very sorry he did not shoot Quinn dead for getting him seven days in Chambly, when he was not in fault; prisoner also said he told Quinn to his face that he would shoot him at Chambly, or very soon after leaving.

Cross-examined: Privates Conway and Bracken were present when this conversation took place; can't say if they heard it; prisoner was talking in an audible voice; been a year and ten months in the militia before I entered the army; can't tell whether the guard-room is 12 by 15 feet, less or more; prisoner was walking up and down the guard room when this conversation took place; can't tell how long or wide the guard-room is.

Coroner Jones:—The proceedings at the inquest on the body of Quinn were handed into Court; Dr. Robillard and Dr. Ferguson examined the body; committed the prisoner to take his trial.

Sergeant Jeremiah Lehaize, Hospital Sergeant: Saw Quinn after he was shot in his bed in the barrack-room; assisted the doctor in bandaging him; brought lint and bandages, and remained till deceased was removed; witness identified the bedding, shirt, flannel, and other things worn by the deceased.

Dr. Robillard corroborated the evidence of Dr. Ferguson, as to the state of deceased's body, and the result of the *post mortem* examination.

This was the case for the Crown.

It being now close upon four o'clock Mr. Morison hoped the Court would allow him till to-morrow morning, before commencing the defence.

Judge Mondelet: No, we have still an hour to go on, in Jalbert's case we had to address the Jury at ten o'clock at night.

Mr. Morison addressed the Jury for the defence. He had hesitated to undertake the case of this unfortunate man when requested to do so by the Judge, because of the sickness under which he had so long laboured. But when appealed to on behalf of a soldier, and as a soldier to undertake the case of a man, poor peniless and alone, he at once acceded to the demand, and determined that no effort of his should be spared to do the prisoner's case justice. He well knew what he had to contend against—against the public, the press, and persons wearing her Majesty's uniform, who

were all arrayed against this unhappy man, and determined to have his condemnation. All that he asked of the Jury was honest fair play. He begged them to discard from their minds all they had heard outside this building—to forget the magnitude of the offence of a private soldier raising his hand against his officer—to remember the sacred obligation of the oath they had taken. They must look upon this case as if they had never heard of it before; they must look at it as if they had never seen or heard of the 16th Regiment before; they must deal with the prisoner as they would be dealt by, and as they would have to answer to God for dealing with him hereafter. Trial by Jury had well been called one of the great bulwarks of British Freedom. Whatever might have been the evils which led to the institution of it, the most grievous had been done away with; now, thank God, the Judges were not menials, dependent either upon popular favor or the pleasure of the executive, they were no longer the willing tools of power, or, what was worse the corrupt instruments of the popular will. Our Judges are learned, honest, upright men, who, instead of being desirous to crush the innocent had always a leaning and bias the other way; hence it was that we saw them daily suggesting to counsel means which his less skilful knowledge of the law might fail to discover whereby a prisoner might be acquitted. But Judges were men, and possessed all the infirmities and weaknesses of humanity, nor were they infallible, so that even to-day Jurors were called in to judge of the facts of a case, not according to the rules of law, but with the feelings of living men. Jurymen ought therefore to be impressed with the great responsibility of their oath; they sit as the country—they represent the country. The Juror is bound to judge according to the evidence; but he will bear in mind that the words "not guilty" are not of absolute import, but have only a legal meaning: a Jury in delivering that verdict do not mean to say that they are not morally convinced of the prisoner's guilt, but that according to the strict rules of law and the particular evidence on the case as disclosed on the trial, the prisoner cannot be considered guilty in a legal sense, in manner and form, as laid down in the indictment. The death punishment was the last remnant of a barbarous code, which, if the Jury were averse to inflict, they were not bound to find the prisoner guilty. The Jury were interpreters of the law so far as connected with the facts of the case. They were to say, from the evidence they had heard, if they were prepared to send the prisoner to an early grave for one solitary evil act. Would a public execution improve the morals of a country? He had never been present at one, but he had read and had heard from parties present, that the public executions which had taken place in Montreal, so far from striking the multitude with awe and the sinner with fear, were a farce and a burlesque. The learned counsel cited a case where Lord Mansfield charged the Jury to find a verdict for a minor offence, where a verdict of guilty

would have hopes the le in this case fore proceed he made a or at the ba sergeant en and drew a at home, an who listen enlisting in prisoner ha undoubtedly soldier who drummed o guardian of in the way come inebr not to be tr had shown one who by so besotted no longer a the bench upon the m he was adu eyes. He that the m was not ge who would for his one of drink. example v canteen-ke them in ev in order th it, those in to body ar of them. diguation of th to human had taught the officer ingly avo the officer the condu ago, who this man' act of vic racter for enness an not his o peculiar r opened th ation, an give the evidence ment in slaughte ed with crime of aforesaid must be mind m

would have ended in the scaffold, and had great hopes the learned Judge who now presided would, in this case, follow so brilliant an example. Before proceeding to annalize the case and its details, he made some observations respecting the prisoner at the bar. He pointed out how the recruiting sergeant entrapped the unwary youth of Ireland, and drew a heart-rending picture of the desolation at home, and the misery of the poor unfortunate who listened to the voice of the charmer. It was enlisting in an unhappy moment that made the prisoner have recourse to the bottle, and that had undoubtedly placed him in the dock to-day.—The soldier who gets drunk on duty, deserved to be drummed out of his regiment, as unfit to be a guardian of the public peace. When duty was in the way, the man who allowed himself to become inebriated was no longer a man, and ought not to be treated as such.—The prisoner's career had shown that he was one of these unfortunates, one who by long habits of indulgence, had become so besotted, so deranged in his mind that he was no longer a responsible being. Their Honors on the bench might know little of the effects of drink upon the middle classes, but the intelligent Jury he was addressing had it constantly before their eyes. He cared not if it was written in the law that the man who killed another should die; it was not gentlemen like those he was addressing who would send this unhappy man to the scaffold, for his one only offence committed under influence of drink. If for the sake of military discipline an example was required, let it be made upon the canteen-keepers, and the system which established them in every barracks, and allowed them to sell, in order that government might make money of it, those intoxicating liquors which were ruin both to body and soul of the unfortunates who partook of them. The learned counsel adverted with indignation to the witnesses who thirsted for the blood of the prisoner at the bar. It was degrading to human nature, and to the religion which Christ had taught; and more especially did it degrade the officers of Queen Victoria who had so unblushingly avowed such sentiments. The conduct of the officers and men of the 16th reminded him of the conduct of the Jews eighteen hundred years ago, who cried crucify him, crucify him! Was this man's life to be taken away for one solitary act of wickedness? The prisoner got a good character from all, with the single exception of drunkenness and who was the man among them who had not his own peculiar failings, and knew his own peculiar temptations?—The Solicitor General had opened the case with his usual care and consideration, and was the first to admit his readiness to give the prisoner a chance for his life. As to the evidence, there was none to support the indictment in manner and form. Murder and manslaughter were the two different courses connected with the killing of a man. Murder was the crime of voluntary killing another with malice aforethought. For an individual to do this, he must be in the possession of all his senses; his mind must not be warped; he must not be frantic,

he must not be in the horrors; he must be calm and collected. There was another killing recognized by the law—that of manslaughter—where, upon a sudden affray, or upon a sudden impulse, a man strikes another without any intention of killing, and kills him. It had been held also that where a man, in a sudden fit of intoxication, killed another, it was not murder. On this point considerable difficulty attended. As a general rule drunkenness was no excuse for crime, nor for the peace of society, should it on all occasions be allowed to be so, but every case on its own merits, and though the general principle was not allowed, Courts of Justice still would hold that a drunken man committing a crime was not responsible for it to the extent a sober man would be. The learned Counsel had gone to the mess-room of the 16th to see if there was not some slight pity for the unfortunate man, some slight consideration for him, but though personally well received, there was no word of comfort or kindness for his unhappy client. And yet he (the learned counsel) believed as firmly as there was a God in heaven the statement of the prisoner to him, that from the time he went into bed until he found himself on the floor, pinioned, he knew nothing of what passed or had been done. Returning to the evidence, what did it amount to? That the prisoner had been often drunk on duty, and so early in the morning as six or seven o'clock; that on the night of the murder prisoner was under the influence of liquor is indisputably proved. It was also proved that the murder was committed and the prisoner was arrested. But no one saw the shot fired, and it was only his own admission made while in the horrors in the guard-room that told against him? Had the prisoner been in his sober senses would he have fired a shot which must result in discovery, instead of stabbing deceased with his bayonet which he had close at hand? The cowardice of the soldiers was noticed by the learned counsel. If the courage of the men of the 5th company of the 16th Regiment is a fair sample of the valor of the regiment itself, God preserve us from their ever being called in the field, to defend our fire-sides; for if men who are by profession soldiers and supposed to be prepared to meet any emergency, sixty in number, cover their heads with a blanket, while one man is dancing about with a fixed bayonet, what must they be if they had to meet thrice that number in the field? For he, the son of a soldier, had always been taught to believe that one English soldier was a match for five of any other in the world. The learned counsel then took into his hands the rifle with fixed bayonet as produced in court and said, I am a poor, feeble, emaciated creature, but with this arm in my hand, I defy any ten men in her Majesty's service to disarm me in the space of time in which it is said the prisoner was disarmed. I look upon it as impossible that, if the prisoner was in his sound mind and senses—a strong, powerful, athletic young man, the whole company could not have disarmed him in a quarter of an hour, unless they had used the same weapon which he had



held. It is evident that the unfortunate prisoner was then totally unconscious of passing events, as he told me he was, and must have been laboring under influences which had destroyed his reason, and only thus could the story be credited that two men, themselves unarmed accomplished what they did. Every man who has mixed in society or with the world, after taking more than his habitual convivial glass and having a short sleep wakens with wild ideas, in bewilderment, and often not knowing where he is, nor what has passed. What must have been the state of the poor soldier who, drinking this horrible stuff, which is well known to contain some of the most violent and poisonous narcotics, awakes from some horrid dream; and commits an act of which he is wholly unconscious, as is proved by the evidence? Will you gentlemen by your verdict say that he is guilty of cool, wilful and premeditated murder and ought to be made a victim to that odious and barbarous law of which I have already spoken? It had not been proved that one cartridge was ever delivered to the prisoner; they had proved that 18 was taken out of his cartridge box, never that one was put in it. Nor was the identity of the one cartridge or the bullet produced in Court in any way proved. The feelings of the regiment was the same as evinced in the witness borne by Captain Rooke—they thirsted for the death of this unfortunate man. Private Barker taking his cue from his superiors swore in the box that the prisoner was sober on the night of the murder; before the Court he swore he had seen the prisoner that night and he was drunk at tataroo. The learned counsel condemned the proceedings in the orderly room. He contended that the admissions there elicited from the prisoner were admissions which could not go to the Jury, because the proceedings was before a court having limited jurisdiction—a court known to every one who knew anything of military affairs to be established by the military act, and her Majesty's regulations for the army, and called by all writers upon military law the commanding officers court. It was only necessary for any one to look at an elementary work published by Colonel Pippon under the sanction of the Duke of Cambridge entitled manual of military law where the jurisdiction of the commanding officers court was specially defined, to prove his. The arraignment of the prisoner before that court upon the charge of murder was an act beyond its jurisdiction and any admission which the unfortunate prisoner at the bar might have made when dragged before that court fettered, unarmed and surrounded by the drawn bayonets of the guard whom he in his ignorance may have supposed had power to put him to instant death, was not legal evidence to be admitted or taken notice of before this Court and Jury; they were admissions made in terror, in bodily fear and while under duress, and he hoped no Court sitting under the broad arms of England would admit such testimony. Had the prisoner been brought before a magistrate having competent jurisdiction to commit him, he would have been cautioned that

he was not bound to make any answer—that any answer he made would be evidence against him. No caution was used on this occasion; dragged from the dungeon and in chains before that great autocrat his commanding officer, any admissions he made were not the free and voluntary admissions that our criminal law would recognise as sufficient to make evidence against the prisoner especially in a case of life and death. Looking at the whole case, and the evidence brought to support it, the learned counsel thought a verdict of manslaughter would be ample punishment for the prisoner at the bar. He could not imagine that the jury would, after the evidence given in the box, and the spirit in which it had been given, find him guilty of murder. The object of society was to suppress crime and punish the offender; and this end would certainly be answered by a verdict of manslaughter. Even a verdict of temporary insanity would have this effect. The man would be sentenced to the Penitentiary for life, and surely that would be punishment severe enough. The prisoner was only twenty-seven years of age; it was a long life he would have to prepare for in the Penitentiary, and society would never again be troubled with him. The learned counsel was about to comment upon the testimony of Captain Rooke when,

The Court said, it was five o'clock, and unless Mr. Morison was nearly finished, an adjournment must take place.

Mr. Morison would not finish for some time, and the Court adjourned till ten o'clock the following day.

### THIRD DAY.

Friday, Oct. 16th.

Mr. Morison on the opening of the Court resumed his defence of the prisoner. Referring to the case of Jalbert, which the learned Judge had incidentally alluded to last night, he said the closing scene of that trial was disgraceful to the populace of Montreal. A mob had entered the chamber of justice, and endeavored to coerce an honest conscientious jury—like those in the box—to return a verdict of guilty against the prisoner, against their conscientious convictions to the contrary. Ten honest men of that jury sat out from day to day until the last hour of the term, and then being brought into Court declared they could not agree with the other two, and the Judges and the jury had to fly for their lives. Years after it was discovered that poor Captain Jalbert was innocent of that murder, and yet the infuriated mob would have sent him to the scaffold. In this case it was not exactly a mob that was against the prisoner, but a body of men with whom he was connected—his comrades in the army that clamored for his death. Not all of them, indeed, for he believed some of them would tell the truth; but dared not, afraid of being marked and punished for it by their superior officers. How would the jury feel, if some eight or ten months hereafter, one of the witnesses they had heard should, on his death-bed, make a declaration bearing out what

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he; the learned counsel, had asserted and believed, that his unfortunate client was unconscious at the time of what he was doing, or what was going on? In the case of Jalbert the jury were charged to convict, notwithstanding the contradictions in the evidence; but the ten honest men held out to their own opinion, and after years showed they were right. Referring to some expressions he made use of last night, the learned counsel said they might be considered harsh, but he had no time to weigh his words in a case of life and death. He could not find time to pick out choice and elegant expressions of language in which to speak of those whom he regarded as the persecutors, to a certain extent, of his unfortunate client. The great question for the jury to consider was, whether the prisoner did wilfully, and of his malice aforethought, coolly, calmly, and deliberately murder his Sergeant? Judge, the first witness examined, did not say exactly that the prisoner was drunk—soldiers could hardly be ever got to pronounce that word, because, by military law, it was the subject of severe punishment. Soldiers, therefore, preferred qualifying the expression, and would say "a little liquor," or something of that kind, rather than fully express the term. The witness went pretty far, however: he swore prisoner was not sober on the evening of the murder, nay, that he was drunk in the afternoon of that day. He, the learned counsel did not pretend that prisoner had been drunk or drinking at the hour when the murder took place, but that he went to bed under the influence of liquor, which resulted in delirium tremens, and rendered him perfectly unconscious of what he was about. Referring to Lance Corporal Barker's evidence, he put the jury in mind how difficult it was to get anything out of this witness in favor of the prisoner, and again pointed out the contradiction between his evidence before the Coroner and before the Court. The evidence of a witness of this kind was not to be believed at all. Mrs. Gibson, the woman at whose house the prisoner at the bar with Barker, was drinking, had been confined this morning, and could not be here to tell her story, or Barker might have been convicted of yet more flagrant contradictions. As to Sergeant Carroll, he had undertaken to swear to the positive identity of a cartridge, which it was almost impossible to identify; but yet, the doubt might have saved the prisoner, and, therefore the Sergeant entertained none. Turning to Captain Rooke's testimony the learned counsel said, whatever personal regard he might entertain toward that gentleman, or, however much he might respect his position in a case like this, every witness in the box, was, in his sight equal; the law recognised no distinction of persons; whatever a man's rank was, he must be treated like others, and wherever he laid himself open, or could be taken advantage of in his evidence or his manner of giving it, it was the duty of the counsel for the prisoner to do so, more especially in a case of life and death. The gallant Captain had in his evidence before the jury shown such an evident de-

sire at all costs to see a great military example, that his evidence must be looked upon with very great suspicion, nay, it must be rejected altogether. The evidence of Conway showed clearly that prisoner, when brought to the guard-room, was in the horrors—was frantic. If he was so then, what must he have been when he committed the deed? Could the jury believe that in his sane senses this crime was committed? If the prisoner really bore such a grudge against his Sergeant because of what took place at Chambly, why have waited so long to execute it? If he had made up his mind to take the life of Quinn, would he have chosen the barracks as the place to execute the deed, surrounded by soldiers, and certain of being captured? No; it was preposterous to imagine a thing of the kind. If prisoner had wanted deliberately and in cold blood to murder his sergeant, would he not rather have slipped a ball cartridge into his gun when firing blank shot or taken the bayonet of one of his comrades to avert suspicion from himself, and so have stabbed him in the dark? The learned counsel commented strongly upon the evidence of Sergeant Bedson, and said no one but a monster of iniquity would come into Court and say he wished to see a man hung because he believed him guilty. But the Sergeant, not satisfied with expressing his own feelings, went a little further, and determined the prisoner should have no chance. He told them of an extraordinary admission made by the prisoner before Captain Rooke, to the effect that he wished he had killed—another. He the learned counsel would put Captain Rooke in the box to prove that no such admission had ever been made, that he, in short, had never heard a word of it. Private Shepherd also heard an admission which no one else heard, though it was said to be uttered in presence of two of his comrades. The truth was, that the Captain and Sergeant of the Company desired to have a fearful example made; the privates, poor fellows, were afraid to say a word against them, or followed in their wake. The evidence had, for the most part, been given in a vindictive and malicious spirit, and ought to be discarded by the jury. It all showed, however, that prisoner committed the murder, either when labouring under the effect of delirium tremens or mental delusion, and therefore the verdict ought to be one of manslaughter. The learned counsel regretted the absence of some medical witnesses he had meant to call; but the prisoner was poor and unable to pay them, and these gentlemen could scarcely be expected, with all their generosity, to attend here from day to day, for nothing. A verdict of manslaughter, which would confine the prisoner in the Penitentiary for the rest of his natural life, would be amply sufficient to make amends to society, and atone for his offence. Whatever the learned Solicitor General may say upon the case, or the Judge charge on the law, the jury, and the jury alone, were the judges of the fact. If they believed that at the time of the murder prisoner was unconscious of what he was doing, let no power on earth hinder them from say-

ing so. If they had even a doubt on their minds in the case, let the prisoner have the benefit of it, for far better that ninety-nine guilty persons should escape than that one innocent man should suffer. Remember the evidence in this case was given by those who are anxious to see the prisoner hung. And remember this, and with what hesitation such evidence should be received; he asked at the hands of the jury such a verdict as would satisfy the ends of justice and satisfy their own consciences.

The learned Counsel proceeded to call

Private Thomas Rice, 16th Regt.—Knows prisoner; knows private John Barker; remembers the night of the murder; was in company with prisoner and Barker that evening; we were at Mrs. Gibson's, about 200 yards from the barracks; prisoner drank out of a glass, but he did not finish it all while there; it was whiskey I think that he drank; he drank it out of a tumbler, which held near a noggin; this was between five and six o'clock in the evening; it was after supper, which we had about five o'clock; prisoner brought into the barracks a small bottle with him containing whiskey; could not say how much he drank; I could only see the bottle to his mouth; saw prisoner laying on his elbows on the table as I was passing at tattoo; could not say if the whiskey was pure or diluted; prefers the Irish whiskey to what is got here, because a glass of it would be of more service to a man when he is cold than a pint of what we get in Canada; the whiskey we get in this country is not, I think, so good for the health as that we get in Ireland; did not take much notice of Mawu as I passed him on the evening in question; saw prisoner drink no liquor before five o'clock of the day in question.

By the Court—Prisoner is not a habitual drunkard; he gets drunk every now and then, but is not still drunk; the whiskey he took into the barracks was in a ginger-beer bottle; the three of us drank out of it; it's a ghost that does not often appear to me is whiskey.

Cross-examined—The kind of a noggin I mean would hold about a pint; the tumbler was not half full; prisoner only drank a sup out of it; the ginger-beer bottle would hold the full of a tumbler, and this we had between three of us.

Dr. Robillard: A man of the appearance of the prisoner with a tendency to blood in the head, would be sooner affected by drink than another; if he drank a large quantity of liquor his symptoms would be more of an apoplectic kind than anything else; it might also have the effect of producing a temporary delirium.

By the Court: The whiskey said to have been drunk by the prisoner prior to the murder, in my opinion, would have had no effect upon him at the time the murder was committed; prisoner must have been so sufficiently refreshed by sleep at the time the murder was committed, that the drink could have had no effect upon him.

Cross-examined: Saw prisoner at the bar on the morning of the inquest; there was nothing extraordinary about his appearance.

Captain Rooke: Prisoner never made any direct admission to me respecting this murder—what I heard took place in the orderly room; prisoner never said to me he had shot Quian, and was sorry he had not shot another; I asked him what he had to say in the usual way, and he answered nothing at all, but as he turned away, I fancied I heard him mutter something.

Cross-examined: Sergeant Bedson was present when prisoner was brought before me; I was nearest the prisoner at the time I investigated the crime; one of the escort guard must have been nearer to prisoner than any one when he was brought before me; the guard was nearer still than Sergeant Bedson to the prisoner.

John Gibson proved the sickness of his wife, and her inability to attend.

This was the case for the defence.

The Court adjourned for recess.

#### AFTER RECESS.

Prisoner was again placed at the bar. His countenance is as determined and set as before, but he has clearly lost hope. During the charge of the Judge he leant motionless over the dock, his brows contracted, and his eyes bent on the ground.

The Solicitor General addressed the jury. He said:

Gentlemen of the Jury,  
You have had occasion during the present term to dispose of many important cases, involving that right which every British subject possesses, of being protected from injury to his person, and of being secured in the free use of his property. But grave and important as those cases have been, that which has occupied your patient attention during the last three days is incalculably more grave and more important; for you have been investigating the circumstances under which one of your fellow men met a bloody and premature end; and upon the result of your enquiries depends the life of another.

It is a striking proof of the leniency of the laws under which we have the happiness to live, and of the right feeling of those who administer them, that upon a charge like that upon which the prisoner is upon his trial, not only is every reasonable latitude allowed to a counsel, in the course he may think proper to take for the defence, but if the prisoner be poor and unable to pay for legal assistance, the Bench uses its influence to procure it for him gratuitously—and the Bar take a pride in placing their services at his disposal. In the present instance, the learned counsel for the defence assumed his duties at the request of the learned judge now presiding—and he did so without fee or reward—when, as he has told you, the state of his health might well have justified him in declining so onerous, and so responsible a task. And you yourselves have seen with what zeal and industry he has performed his duty. But making every allowance for that zeal—and conceding to the learned counsel all the latitude to which he was entitled in defending a man upon his trial for his life, I must be

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permitted to say, that it appears to me that he has permitted his zeal to lead him beyond the most extended limits which the most humane interpretation of the law or the most lax administration of it would warrant him in going. The taunts of the learned counsel as to the character of the Regiment; his assertions that its colours were "maiden;" his statements as to the temptations which the regimental authorities threw in the way of the soldiery, by having as he said canteens at every corner hired by their keepers at so much per head of the soldiery in garrison and his aspersions in respect of their feeling towards the prisoner, seem to have been uncalled for and gratuitous; and to have been unwarranted either by facts, or by the exigencies of the defence. In point of fact the 16th Regiment is one of the oldest Regiments in the British service—it was raised nearly two hundred years ago—and it took a conspicuous and honorable part in the wars of the last century. It followed the great Duke of Marlborough in his glorious continental campaigns, and if the recent custom of inscribing upon the colors of a regiment the victories in which it had shared, had then prevailed, theirs would have borne the glorious names of Blenheim, Ramilies, Malplaquet, Oudenarde, and of many other victories, which in their day won the admiration of the world, and the gratitude of the nation, and still fill some of the brightest pages in the record of the glorious achievements of the British army. If the colors of the Regiment are maiden, it is not because its sword has not been fleshed; and if it be true that they do not bear the names of England's later victories, it is because then, as now, it was here in this country, aiding in our protection and defence. In the beginning of this century, when more fortunate regiments were earning laurels in the peninsula, the 16th regiment was in Canada engaged in the defence of our country from invasion by our neighbors over the lines; and when the unhappy circumstance occurred which gave rise to this trial, it was again here, upon what was at one time feared would prove to be an occasion of similar emergency. The taunts of my learned friend on this subject are therefore wholly unfounded in fact: and they seem peculiarly ungracious and unbecoming in a Canadian advocate, since the pretension on which they are founded rests solely on the fact of the regiment having been employed in the defence of his own country.

The aspersions as to canteens, and as to the prevailing feeling in the regiment, are equally unfounded and uncalled for. The statement as to the number of canteens, and as to the mode in which the licences to keep them are obtained, are simply incorrect. You may not be aware of the facts, gentlemen; and as my learned friend thought proper to make the statement he did, I have taken pains to verify the facts, and though there is nothing in evidence before you on the subject, my assertion is entitled to as much credit as that of the learned counsel for the defence. The

canteen, gentlemen, is simply a little shop, for permission to keep which a small and merely nominal annual fee is paid. In it the soldiers and their wives can obtain small articles of convenience, without the necessity of going out of barracks; and so far from their affording to the soldiers opportunities for intoxication or temptations to fall into it, the sale of spirituous liquors in them is strictly prohibited. And the charge that a bloody and unchristian desire exists in the regiment that the life of the prisoner should be sacrificed, is equally unwarranted. The learned counsel has been most pressing in his determination to elicit from the witnesses their opinion as to the guilt of the prisoner and as to the punishment they thought he merited; and from two of them he actually forced the reluctant admission that they believed him guilty and thought he deserved death. Was that in any respect surprising? Captain Rooke suddenly found himself deprived of one of his inferior officers, by a most base, cowardly and treacherous murder, upon no other provocation than that he had performed his duty, upon an occasion which is of too frequent occurrence both in and out of the army. He was satisfied by the admission of the prisoner himself, voluntarily made before his colonel, that he was the assassin. Was it "bloody" or "unchristianlike," or did it render Captain Rooke "unworthy of the uniform he wears," that he, upon the prisoner's own admission, believed him guilty; and that so believing him guilty of a crime for which death was the appropriate punishment, and which was rendered appropriate in a tenfold degree by the circumstances attending it, he thought he should be subjected to its lawful punishment? It is impossible, gentlemen, that any right thinking man could answer this question affirmatively, and it is upon such facts as these that this regiment generally, and its officers, have been assimilated to the Jews of old, when they cried "crucify Him," "crucify Him!" The indecorum, if not blasphemy, of the allusion, is on a par with its inapplicability. In fact it must be plain, gentlemen, that such expressions as had been used with respect to Captain Rooke, and similar ones which had been applied to Sergeant Bedson, could only be accounted for by supposing that the learned counsel believed, that to defame the officers and men of the regiment would increase the prisoner's chance of escape; and to attain that end he felt entitled to defame them unjustly. I give the learned counsel the full benefit of the belief that he was justified in this course by the task he was performing; but if he does entertain that belief, I must be permitted to say that he is wrong, and that no man, whether an advocate or not, has the right unjustly to asperse the character of another, even when the object to be gained is so momentous as the saving of the life of a fellow creature.

It has been repeatedly told you, gentlemen of the jury, that the law which dooms a murderer to death is a barbarous law: that it is the remnant

of an old and a barbarous code—and that it is a law which shocks Christian sensibilities, and which should not be carried out by Christian men. It is not a part of my duty now, gentlemen, to discuss this question, nor will it form any part of yours to decide it. I admit that the law is an old one; it is to be found in an old and Holy Book, which you and I and all of us have been taught to reverence; and it is there pronounced that “whose sheddeth man’s blood, by man shall his blood be shed.” I am content to leave the question of its barbarity without further remark; but the real question for us is, not whether this law be barbarous, or old, or new, but whether it is the law which this Court is bound to administer, and by which you are sworn to be guided. To this question there can be but one answer, and you do not appear to me to be men likely to be led by any sophistry from the performance of your plain duty or by finding this man guilty only of manslaughter to save him from the punishment of death, if in your consciences you believe him, according to the evidence placed before you, to be guilty of murder.

The discussion of these preliminary matters, gentlemen, has now brought me to the real questions involved in the momentous issue before you; and these questions are few and simple—

—Whether or no Sergeant Quinn was killed by the prisoner at the bar, can scarcely be termed one of these questions, for it cannot be disputed that he did, and his counsel does not deny it. Admitting that fact, then, what crime did that killing constitute? Was it murder or was it manslaughter? Or as appears to be contended by his counsel in portions of his address, was it committed while the prisoner was in a state of insanity, unconscious of what he was doing, incapable of premeditation or of malice, and, therefore, incapable of committing the crime of which he stands charged?

Let us try to obtain a clear idea of what murder is, and what distinction there is between murder and manslaughter, and we shall then be better able to decide in which category the act of the prisoner should properly be placed. Not to fatigue you with learned subtleties I may tell you, as you will probably be better told by his Honor in his charge, that killing a man deliberately and with premeditation is murder. Killing him in a sudden transport of passion caused by grievous provocation, acted upon on the instant of provocation, is manslaughter. But notwithstanding that the killing follows violent provocation, no matter how grievous; if there was an interval of reflection it will be murder. For instance, if a man with an implement of his trade in his hand receives gross provocation, and in an outburst of passion strikes his insulter or assailant dead on the spot with the instrument he holds, a consideration for the frailty of our nature would probably cause the crime to be classed as manslaughter; but if the same man being without any weapon, should return to his home or workshop to obtain one, and should then seek

his enemy and kill him, it would be murder. For, however short the interval might be, the offended man had had time to reflect and to control the first impulse of his temper. This explanation will enable you to judge, gentlemen, whether the act of the prisoner at the bar can be held to be manslaughter. Let me trespass on your attention for a few moments while I recall to you the details of the whole of the circumstances as proved. They have been fully related to you by the witnesses; you are enabled by the testimony to trace the prisoner step by step from the period of his intoxication and punishment at Chambly down to the morning subsequent to the fatal act, when he gave his own account of it and of his motives in perpetrating it.

About the 21st of June he was found to be intoxicated, on his way with the Company to rifle practice. The deceased, Sergeant Quinn, being on duty at the time, sent him back to barracks under the care of two men, and in this he acted strictly within his duty. The next morning he was brought up, and punished by confinement to Barracks for seven days. You will understand that this punishment did not comprehend confinement in a cell, but merely a prohibition to pass beyond the limits of the barracks. About the 24th of June the Company returned to Montreal, and the prisoner with them. A few days after their return 20 rounds of ball cartridge were served out to the men, and among them the prisoner, for on the morning of the 8th of July his pouch was examined by the Sergeant of the guard, Sergeant Kelly, and the 20 rounds were found in it. On the following evening he was at supper at five o’clock: shortly afterwards he went out with Corporal Barker, who was orderly Corporal that evening, and returned about six. At nine o’clock he was present at roll call, in the room with the rest of the Company, and was subsequently seen to undress himself and go to bed. About half-past twelve o’clock the men were awakened by the discharge of a gun in the room, and a man was seen standing at the bedside of Sergeant Quinn, with a rifle in his hands at the charge, and a bayonet under his left arm. This man fixed the bayonet on the rifle, made steadily and bayonet at the charge, and on being interrupted by Connell came a desperate attack on him. The soldiers came to Connell’s assistance, the man was overpowered, and recognized, and that man was the prisoner at the bar. He was dressed in his usual fatigue costume; the rifle taken from him was found to have been recently discharged; his pouch was open, and two of the ball cartridges were missing from it; one of them was subsequently under his own directions, taken from his pocket; and a ball of similar kind to those in the cartridges was found near the bed of Sergeant Quinn, with indications upon it of having been discharged; and the unfortunate Sergeant was pierced through his body with a gunshot wound, which from its direction must have been caused by the discharge of a gun or rifle

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from the hip and not from the shoulder. During the three hours that elapsed from between the time of the prisoner's retirement and that of the firing of the shot, no human eye saw his occupation, but the circumstances enable us to describe it with absolute certainty. We may conclude as confidently as if we saw the whole, that the prisoner arose, dressed himself, took his rifle from the rack beside his bed, took down his pouch and opened it, opened one of the packages of cartridges and abstracted from it two cartridges, put one of them in his pocket for subsequent use, loaded his rifle with the other, took down from the wall his bayonet and placed it under his arm; thus prepared passed stealthily among the beds of his comrades till he reached that of his victim; then holding his rifle across his person, he shoots the object of his hatred through the body, and in another instant the eyes of sixty men are upon him. Gentlemen, we are certain of the accuracy of this detail of his actions, both while he was seen by no eye but that of his God, and while he was before the eyes of the Company to which he belonged! But let us follow him one step further, and hear, from his own lips, an account of the dreadful deed, and of his motives for perpetrating it.

He said to Sergeant Carroll that "Sergeant Quinn had confined him at Chambly which he need not have done, and that he had told him he would be revenged on him dead or alive."

He said to Private Conway in the guard-room: "I promised him that in Chambly and if it ran to the end of twelve months I would shoot him," and afterwards, "now I have shot him and I hope he is dead and damned."

He made similar statements before Captain Rooke and Major Garrett the next morning adding his regret that he "had not taken another."

Is any argument required, gentlemen, to convince you that the killing of Sergeant Quinn cannot be held to be, and is not manslaughter? Was his death caused by a blow struck "in a sudden transport of passion—upon a grievous provocation acted upon on the instant of the provocation and without an interval of reflection."? Or was the deed "a deliberate act, with premeditation," and accompanied not only by a presumption of malice—but by acts and declarations proving malice by declarations of the clearest possible kind? I should ignore the patience and intelligence you have displayed during the long trial: I should insult your understanding were I to argue this point further. You cannot but be of opinion that the killing of Sergeant Quinn was premeditated; that it resulted from a feeling of revenge which the prisoner had cherished towards him for the previous three weeks; in other words that it was a deliberate and awful murder.

But, gentlemen, there is yet another question before you, to which you are bound to give the most careful attention; for if it can be resolved in favor of the prisoner, it would be contrary to the most obvious dictates of humanity to punish him for the act with which he stands charged.

His counsel has argued that he must be relieved from responsibility to any human tribunal for the killing of Sergeant Quinn upon one of two grounds, though he has not made it clearly appear upon which of them he relies. These are that the prisoner at the time of committing the offence was insane, as the result of long continued constant and habitual drunkenness; or, that he was then in a state of temporary delirium produced by drinking spirituous liquors the evening before his crime.

If the prisoner were really insane, gentlemen, there is no doubt that it would be your duty to find a verdict accordingly; notwithstanding that the remote or original cause of such insanity was habitual drunkenness. But no evidence of such insanity has been produced before you. Insanity is not by any means a necessary result of intemperate habits; on the contrary—among the numerous unhappy victims of the too prevalent vice of drunkenness, but a moderate percentage suffer from aberration of intellect. If the learned counsel had succeeded in proving that the prisoner was a man addicted to habitual intoxication he would have been also obliged to shew that such habitual intemperance had resulted in insanity. But he did neither.—He failed in proving more than the fact that the prisoner during several years of service had become occasionally intoxicated, but that his habits were not much, if at all below the average sobriety of men of his class. And it was never even attempted to be proved that the prisoner's mind was in the slightest degree affected.

Upon the other ground taken by the counsel for the defence it would be necessary to say but little, were it not that the doctrine that drunkenness excused or palliated crime, had been urged for the defence, as a legal ground of acquittal—and it might be feared that you, gentlemen, could entertain such an idea. I think it my duty therefore, to state to you what I believe to be the true doctrine on this point; and what I have no doubt his Honor will also tell you, if he thinks it necessary to lay down the law upon it at all. And I wish you to understand that I do so, not because the drunkenness of the prisoner has been proved, but because I think it becomes me publicly and authoritatively to contradict the pernicious and dangerous pretensions which have been placed before the Court and before you as rules of law. For this purpose I will read to the Court in your hearing, certain extracts from books of authority, containing my pretensions on this point: and as being not only sound law, but good common sense; and although you cannot take the law which is to govern this case either from me or from the books to which I am about to refer, you will doubtless appreciate the sound conclusions to which these authors have arrived.

The learned Solicitor General then read to the Court the following extracts from Wharton and on Medical jurisprudence, at pages 50, 51, 52, 53, 56, 57, 58; and from the cases then cited:



"Insanity immediately produced by intoxication does not destroy responsibility where the patient when sane and responsible made himself voluntarily intoxicated. There can be no doubt upon this point, either on principle, policy or authority. Drunkenness, so long as it does not prostrate the faculties, cannot be distinguished from any other kind of passion. If the man who is maddened by an unprovoked attack upon his person, his reputation or his honor, be nevertheless criminally responsible—if hot blood form no defence to the fact of guilt—it would be a most extraordinary anomaly if drunkenness voluntarily assumed should have that effect independently of all extraneous provocation whatever. If, as is assumed, or else there is no ground for the exception, drunkenness so incapacitates the reason as to make it at least partially incapable of distinguishing between right and wrong, or else so inflames the passions as to make restraint unupportable, then comes in the familiar principle that the man who voluntarily assumes an attitude or does an act which is likely to produce death in others, is responsible for the consequences, even though he had at the time no specific intentions to take the life of any one.

"As a mere matter of legal policy the same position holds good. There never could be a conviction for homicide if drunkenness avoided responsibility. As it is most of the premeditated homicides are committed under the stimulus of liquor. The guilty purpose is at first sedately conceived, but there are few men whose temperaments are so firmly knit as to enable them to enter a scene of blood without at first fortifying themselves for the task to be performed. The head dreads the heart's cowardice, and seeks to insure against it by drink. It will be found in fact that there is scarcely a case of violent homicide in which it does not appear that the defendant strengthened his nerves for the execution of his guilty plan by drink: just in the same way that he strengthened his hand by the fatal weapon. If therefore drunkenness imparts irresponsibility, there are not only but few convictions which have heretofore taken place which are good, but there will be no convictions at all for the future. If the assassin will not take liquor to strengthen his nerves, he will to avoid conviction. There would be no species of deliberate homicide under such a dispensation that would not avoid punishment. It would be the indeliberate only that would be made responsible. The tenor of common and civil law authority to this effect is clear. Even the German text writers, who generally attenuate to so wide and thin a texture the doctrine of moral responsibility, do not undertake to treat drunkenness as a defence. Sir E. Coke scarcely goes beyond the tenor of civil as well as of common law writers when he says: "As for a drunkard who is *voluntarius demon* he hath, as has been said, no privilege thereby but what

"hurt or ill soever he doeth; his drunkenness doth aggravate it. *Omne crimen ebrietas et incendit et detegit.*"

Baron Alderson said in 1836, "If a man chooses to get drunk, it is his own voluntary act; it is very different from madness which is not caused by any act of the person. That voluntary species of madness which it is in a party's power to abstain from, he must answer for." And this decision is in harmony with the whole current of English authority.

I can add nothing, gentlemen, to the weight of these words. They are the *dicta* of men to whom every lawyer looks with respect; and the sentiments they embody are as just as they are clearly and forcibly expressed. The immunity of our persons from injury, of which we boast as one of the essential and most important characteristics of constitutional freedom would be at an end, if any man could qualify himself, by voluntary intoxication, to maim or slay us with impunity.

But, gentlemen, even the state of intoxication has not been proved. You have heard from the witnesses the exact quantity of liquor which the prisoner had taken, and you did not require the testimony of Dr. Robillard to satisfy you that it could have produced no perceptible effect. The utmost that any of the witnesses say is that they could perceive that he had taken liquor, but not one has been found who could be brought to declare that his intellect or his capacity for duty was affected by it.

You have been told that no sane man could have shot Sergeant Quinn; he would rather have stabbed him, and silently escaped. Well, gentlemen, it is impossible for us to enter into the mind of the prisoner and fathom his designs. He may not have intended to try to escape; he may have thought that the confusion caused by his shot, and by the darkness would be so great, that he would escape in the midst of it, and such would in fact appear to have been his expectations—and the preparation of his bayonet and the retention of a second cartridge would appear to indicate his determination to fight his way out in such confusion. But fortunately gentlemen those who commit great crimes are seldom successful in escaping detection; providentially great criminals are never supremely wise or cunning—and their detection generally results from some miscalculation they have made or some combination they have overlooked. Whatever may have been the prisoner's designs as to escaping, their insufficiency or futility forms no ground for adjudging him to have been insane.

But gentlemen let us apply another test, one which the prisoner himself has afforded us, and one which conclusively disposes of all the pretensions as to his unconsciousness of his own acts.—

The learned Counsel tells you that the prisoner instructs him to say that he was perfectly unconscious of what he did, and that he only awoke to such consciousness when he found himself on the floor, struggling with three men. But how does this agree with the facts: did he not himself,

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within fifteen minutes after the commission of the crime, actually state what he had done and his motive for doing it? And have you not yourselves heard witness after witness in that box detail to you the statements he so made, not only a few moments after the murder, but on the morning afterwards when he had ample time for reflection and for recollection? And moreover, gentlemen could you hear without horror, how he added to his half exultant admission of the awful crime he had committed, a regret that the fatal shot had not been more effectual? And that his victim had not been deprived of the few short moments left him to make his peace with his maker?

Gentlemen it is useless detaining you longer. It appears to me that you cannot for a moment doubt that Sergeant Edward Quinn was killed by the prisoner—that he was so killed deliberately and premeditatedly—and therefore that the prisoner is guilty of murder. But gentlemen it is not by my opinion that the prisoner is to be judged—and if in your judgment there be any doubt of his guilt, it is in accordance with the humane spirit of our Institutions that he should have the benefit of it. It is no more my duty as a public officer than it is yours as jurymen to press this case further than the dictates of justice tempered with mercy would lead it. But let me entreat you, gentlemen, to cast aside all sophistries which would tend to lead you to the belief that if, in your consciences, upon the evidence, you believe this man to be guilty of murder, you may with propriety find any other verdict. Recollect that you have taken a solemn oath to do your duty—and that duty is to pronounce upon the prisoner's guilt or innocence. With his punishment you have nothing to do—that rests with the law, and with the Court, but of the facts you are the sworn and the final judges. And if being satisfied that he is guilty of murder you find him guilty of manslaughter, the responsibility of a broken oath will rest upon you as heavily, as believing him to be only guilty of manslaughter, you were to convict him of murder. Though your duty involves responsibility the most momentous, it is plain before you; and your country which you represent, expects of you its performance. And it is clearly and forcibly expressed in the simple and expressive words of the oath you have taken—that you will a TRUE VERDICT GIVE ACCORDING TO THE EVIDENCE: SO HELP YOU GOD.

Judge Mondelet summed up:—There was no reproach attaching to the officers or men of the regiment in their conduct in this case, and the observations of the counsel for the defence were uncalled for. No one thirsted for the prisoner's blood; but no one could allow his fellow-man to be murdered, either in the open streets, or in his bedroom, with impunity. We were all bound to submit to the laws, and see that they were carried out in the spirit of the glorious constitution which we inherit from the old country. Because the law savoured of barbarism, that was no reason

why it should be disregarded. Until it was repealed, it must be recognised and carried out. The Jury was bound to take the law from the Court—the facts and circumstances of the case they had to take before God and man and the innermost recesses of their souls, and a true verdict give. This was the oath they had taken—he was sure it would not be violated. The learned Judge proceeded to define the law as to murder, manslaughter, and temporary insanity, and then to test the authorities cited. As to malice, the commission of an unlawful act, should death ensue, malice would be implied, and the offence would be murder. Manslaughter was supposed to be without malice and without premeditation. The Jury had only to consider whether at the time this act was committed, prisoner committed a murder or not. As to being under the influence of liquor, that developed itself in several ways, and any man who tasted anything strong was liable to it. But a man might not be sober, but drunk to some extent, and yet know what he was about. It was for the prisoner to show that he was in a situation either of insanity or unconsciousness, that would make him irresponsible, which in a general hypothesis could not for a moment be admitted. There must be made out a clear case of insanity or unconsciousness at the very moment the act was committed, and no sufficient evidence had been given of this. The prisoner's own witnesses, Dr. Robillard especially, had proved that no bad consequences could have resulted from the liquor drunk by the prisoner. The learned Judge went over the whole evidence, pointing out how fearfully it told against the prisoner, and how connected it was in every link. In fact the prisoner never denied the crime—he determined upon having revenge, and he had it. His Honor severely censured the prisoner's counsel for declaring there was no military justice in the country, and for his remarks upon what was done in the orderly room. Such remarks had no bearing on the case, were uncalled for, and most injurious. They might have the effect—he sincerely hoped they would not—of inducing some of the many out of the hundreds of soldiers who listened to him to pursue the unhappy course which the prisoner at the bar had purposed, and shoot their officers. His Honor ridiculed the idea that the men of the regiment could have been kept from saying anything they had it in their power to testify in favor of the prisoner:—it was all moonshine, and unworthy the serious attention of the jury. His Honor concluded by telling the jury if there was any reasonable doubt it must be given the prisoner, but was there any such? He could not think it. He could not see there was a possibility to doubt, and for their verdict they would be responsible to God. The doubt must not be a fanciful, or imaginary one, but founded upon the evidence.—There could be no verdict of insanity unless the jury were prepared to say that the prisoner, at twenty minutes to one o'clock on the morning of the murder, was insane.—A verdict of manslaughter was out of the

the hour appointed, there was nothing like a crowd outside the prison; scarcely a female was to be seen, and of respectable males, there were very few. Nor did the soldiers turn out in the numbers anticipated. There was a sprinkling of redcoats among the spectators, but very meagre: but looked as if when their comrade was handed over to the civil power, they had abandoned all interest in his fate. Such as assembled outside the prison were grave and orderly, except for a few moments after the drop fell. Then some one raised a shout of "run, run," and the people, panic-stricken, took to their heels; but we have heard of no accident resulting, nor do we believe there was any. Inside the prison every thing was conducted with decency and in order. The unfortunate man who since his sentence had slept well and eaten well, was only watched during the last night he had to remain on earth. The Rev. M. Toupin sat up with him, and several of the nuns, who have been more or less with him during every day since sentence was passed. Mawn conversed with them freely; expressed deep contrition for his crime, and said he only prayed he would suffer enough to make ample atonement for it. This, indeed, was the burden of his desires until his last moments. He spoke of his family, and the scandal he had brought upon them, and thanked God his poor mother was dead—that she had not lived to know of this. It appears he has brothers and sisters in the United States, and that his father is still alive, residing in Leitrim. The kind sisters who attended him undertook to convey to his relatives the intelligence of his melancholy fate when all was over, and at this he expressed himself very much pleased. Yesterday morning the Sacrament of Mass was administered to the prisoner; but as he had not been confirmed, His Lordship Bishop Bourget though seriously suffering from indisposition, arrived at the prison at five o'clock this morning to confer upon him that sacrament. He received it with much emotion, and over and over again exclaimed how happy he was! The writer saw the prisoner about nine o'clock. He had just partaken of his last breakfast, and exchanged his military uniform for a plain, dark-colored citizen's dress, provided, we believe, by the generosity of Mr. McGinn the jailor. The appearance of his countenance would scarcely be believed if we could describe it. Though only a few moments hung between him

and eternity, he seemed to be in ecstatic state of rapture—longing for the time to come—smiling as if he had won a crown, instead of being about to bear his cross.

The writer spoke to him, as did several others, and he expressed to all of them frankly and freely his hopes and his fears. He could not be grateful enough for the kindness with which he had been treated—and oh how thankful he was to Mr. Villeneuve and the sisters. They had taught him what a bad man he had been, and shown him it was better to die than to live! We spoke of the jury who had condemned him, and the Judge who had sentenced him. He said, "how could they do else—I did the deed; and if you mean do I forgive them, I have nothing to forgive." To his counsel he desired to be kindly remembered. He said "he did all he could to save me, but when the case came on I had no hope." All this he said with a smile on his face; he seemed, in fact, rejoiced to meet his fate.—Mr. Deputy Sheriff Sanborn, Mr. Coursol, Judge of the Peace, Mr. Schiller deputy clerk of the Crown and other officials arrived a few minutes before ten o'clock. The scaffold was erected at the south east angle of the jail wall, and executioner and everything else by that time was in readiness. No time was lost. The condemned was taken from his cell into the surgery, where the hangman was introduced. There his hands and arms were pinioned and the rope passed around his neck. The Litany of the Saints was recited while this was being done, and Mr. Villeneuve told the prisoner to speak if he suffered any, "oh no," he said, "I don't suffer at all." He seemed, however slightly to shudder when the hangman masked and shrouded was brought into the room. The Litany over, the procession to the scaffold was formed the nuns chanting the *miserere* as they walked along. On coming to the steps leading from the jail yard the convict was anxious to run up them, and nearly tripped the executioner who had to ascend with him. The rope was scarcely adjusted round his neck, and the Priest on his knees in prayer when the drop fell. A sensation of horror seemed to pervade the crowd—only on the murderer himself was all feeling lost. He scarcely moved a muscle, and in six minutes was pronounced dead.

May his fate be an example and a warning, the like of which we may never have occasion to look upon!

