

**START**

2854

**CASE**

**CASE #2854**

1930

- : INDEX : -

WITNESSES:

|                  | <u>Direct:</u> | <u>Cross:</u> | <u>Re-Dir.:</u> | <u>Re-Cro.:</u> |
|------------------|----------------|---------------|-----------------|-----------------|
| James Gallagher, | 2              | 4             | 11              |                 |
| Edward Roth,     | 12             | 18            | 33              |                 |

-----

CASE #2854



- : I N D E X : -

| <u>WITNESSES:</u>           | <u>Direct:</u> | <u>Gross:</u> | <u>Re-Dir.:</u> | <u>Re-Cro.:</u> |
|-----------------------------|----------------|---------------|-----------------|-----------------|
| Edward Roth,                |                |               |                 | 35              |
| Samuel Phillips,            | 37             | 43            |                 |                 |
| James Ryan,                 | 52             | 53            |                 |                 |
| Officer Michael Cotter,     | 56             | 59            | 64              | 64              |
| Officer Herman Blohm,       | 64             | 67            |                 |                 |
| James Gallagher,            | 68             |               |                 |                 |
| John Dorgan,                | 72             | 76            | 93              |                 |
| Frank H. Dayton,            | 95             | 97            |                 |                 |
| Edward Roth,<br>(Recalled), | 99             | 99            |                 |                 |

CASE #2854

186  
106  
53  
265

The People v. Dorgan.

- : INDEX : -

August 16th, 1920.

WITNESSES:

Direct:

Cross:

Re-Dir.:

Re-Cd:

Joseph P. Donna,

104

105

-----

CASE #2854

1933



COURT OF GENERAL SESSIONS OF THE PEACE, #3340

City and County of New York, Part II.

-----  
THE PEOPLE OF THE STATE OF NEW YORK :

vs. :

JOHN DORGAN, impleaded with JOHN :  
DIGBY, indicted as GILBERT POWERS. :  
-----X

New York, August 13th,

Indicted for robbery in the first degree,  
and receiving in the first de-  
gree.

Indictment filed June 21, 1920.

A p p e a r a n c e s:

For the People:

ASST. DISTRICT ATTORNEY DONOHUE.

For the Defendant:

KEVIE FRANKEL, ESQ.

Tried before HON. CHARLES C. NOTT, JR., J., and  
a jury.

The jury was duly impaneled and sworn.

Mr. Donohue opened the case on behalf

witnesses excluded if

1934  
CASE #2854



2.

MES GALLAGHER, called as a  
sworn on behalf of the People, testified as  
(Residence: 415 West 55th street).

DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. Gallagher, on June 6th of this year, was  
bartender in the employ of the man named

Q Where was the saloon in which

A North-west corner of 99th street and

Q In the City and County of New York.

Q How long had you been bartender  
three months.

Q And always in the employ of

Q Were you there on the morning of

A Yes, sir.

Q At about 1:40 that morning? A Yes.

Q Will you tell us, Mr. Gallagher, what  
opened from that time on? First, tell us what  
and then what happened after that? A About  
6th of June I was cleaning up behind the bar,  
to the side door, and they asked to get in. I  
was after hours and I wouldn't open up.  
in, broken in, and this man Dorgan  
got hit in the face and knocked out  
thing after that.

BY THE COURT:

Q When you say you got

1935  
CASE #2854

hit, who hit you? A Dorgan hit me.

Q Well, say so. Do not say you got hit, tell us who did it? A Yes, sir.

BY MR. DONOHUE:

Q When you say you were hit, tell us how you were hit?

A I was hit in the face. I don't know what I got hit with.

Q Then what happened after that? A I was knocked down on the floor. I don't remember anything after that.

Q What is the next thing you remember? A I seen these two men in the back room with the officer --

Q Do you know how much money was in the cash register before you received this blow? A I don't know exactly what amount, but it was something around, I figure about two hundred dollars.

Q When was the last time you had looked at that cash register before you had received this blow? A About half past twelve or quarter to one.

Q Had you put any money in the cash register from half past twelve until you received this blow? A Well, I didn't put anything in until after one o'clock or a quarter to one.

Q And you were in charge of that cash register, weren't you? A Yes, sir.

Q Everytime that was opened the bell rang, didn't it? A Yes, sir.

Q Did anybody else have a right to go to that cash register during the time you were there? A Well, Mr. Roth had.

CASE #2854



Q Well, did he go to it, do you know, in your presence?

A Well, he was behind the bar.

Q Well, the only one that you also saw go to it, that was you and Mr. Roth? A Yes, sir.

Q How much was in it at the time? A I think it was around two hundred dollars. I couldn't say what was the exact amount.

Q Did you examine that register after you received this blow? A No, sir, I did not.

Q You did not examine it at all? A No, sir.

Q Were you there when anybody else examined it? A No, sir.

MR. DONOHUE: Well, that is all. Your witness.

CROSS-EXAMINATION BY MR. FRANKEL:

Q Mr. Gallagher, this was about two o'clock in the morning, wasn't it? A No, sir, it was not about two o'clock. It was about 1:45.

Q You want to be accurate in your statements, is that it? A Well, as near as I can.

Q And your saloon was closed or was it open for business? A It was closed at one o'clock.

Q Closed at one o'clock? A Yes, sir.

Q And your lights were darkened, I suppose? A Yes, sir.

Q The saloon was darkened and the entire place darkened? A Yes, sir. The back room was dark but there was a light inside.

BY MR. DONOHUE:

Q Wait a minute. The light inside where? A Inside, in

CASE #2854

1937



the front saloon, there was always a light out there.

BY MR. FRANKEL:

Q How far away from the door where you heard this knock was this light? A About 25 feet.

Q On the inside? A Yes, sir.

Q Behind a wall or partition, I suppose? A Yes, sir.

Q And tell us what part of the building this door was where you heard this knock? A It is on 99th street, on the side of the building.

Q The side entrance? A Yes, sir.

Q About how many feet, if you can tell us, from the corner of Third avenue? A I think it is about 50 feet.

Q About 50 feet? A Yes, sir. From Third avenue?

Q From Third avenue, yes, from the corner of Third avenue?  
A I figure it's about 50 feet, as near as I can say.

Q How deep is that saloon? A Do you mean what is the length of the saloon?

Q Yes, what is the length or width of the saloon? A I don't exactly know.

Q And you were working there three months? A Yes, sir.

Q And you can't tell us approximately in feet how wide or how long that saloon is? A About 150 feet long, I guess.

Q What? A About 150 feet long, I guess, I couldn't exactly say.

Q 150 feet long? From the corner into the street, 150 feet? A From the corner of Third avenue.

CASE #2854

Q 150 feet, you say? A Yes, sir.

Q And it was pretty dark at that spot, was it, where you heard this knock? A Yes, sir.

Q It was night, it was dark, wasn't it? A Yes, sir.

Q And when you opened this door how many men made a rush towards you? A I didn't open the door. The door was forced in.

Q All right, the door was forced in? A Yes, sir.

Q And you became rather excited then, I suppose? You were not excited, you were cool? A I got hit, I was not excited until I got hit in the face and knocked down.

Q I didn't ask you that. I asked you whether you were excited or cool or calm? What was your demeanor at the time this door was being forced in on you? A I had my senses, that's all. I don't know what way I did feel. I don't remember what way I felt that time.

Q You could not state to the Court and jury how you felt at that time? A No, sir.

Q You felt dazed, I suppose? A No, I did not.

Q Well, why didn't you yell or scream or something if you felt calm? You did not do that, did you? A No, I did not scream.

Q But you could not tell us now how you felt at that particular moment? A Well, I guess about the way I feel now.

Q Are you nervous now? A No, sir, not a bit nervous.

Q You thought it was a perfectly natural thing for some-

CASE #2854



body to force the door open on you at 1:30 in the morning?

A Yes.

Q You did? And when this door went in, where were you, were you still standing there on the other side of the door?

A I was standing inside the door when the door was forced in, right inside.

Q You were standing there waiting for these men to force the door in? A I was waiting - no, I was trying to keep the door back. I had my hands against the door trying to keep it back and it was forced right in.

Q Just stand up now, if you will, and just show us the position you were in, assuming the door is in front of you now, as my hand is? A (Illustrating) I had my arms and my shoulder against the door like that, with my weight against the door, keeping it back.

Q Which way, were these men coming in that way (Indicating)? A They were coming in off 99th street.

Q I am assuming with reference to my finger. Will you stand up again and show us the attitude you were in? A I was standing like this (Illustrating).

Q Just the other way, assume the door was as this card board is, just show us with reference to this how you were trying to hold this door back? A (Illustrating) I can't go by that cardboard. Supposing that window was the door, it was on that side of the building.

Q You cannot tell this way, can you (Indicating)? I ask

CASE #2854

you to do it this way.

THE COURT: Well, what difference does it make which way he does it? We all know how a man holds a door.

BY THE COURT:

Q Now, put your hands up the way you held the door? A I had my hands and shoulder against the door like that (Illustrating), all my weight against the door, and the door was forced in.

BY MR. FRANKEL:

Q Which way were these men coming in, to the left side of you or to the right side when you were holding the door this way, which way were these men coming in? A They were coming in right opposite me, off 99th street.

Q I ask you which side of your body were these men coming in? A Coming in right opposite my face.

Q Right opposite you? Well, you had to move away from the door, didn't you? A Sure I had to move away, when it was forced in, they jumped in on top of me.

Q When you moved away from the door, which way did you look? A I kept facing them.

Q Just stepped back one or two steps and kept facing them? A Yes.

Q Which way did the door fall, backward or forward? A The door did not fall at all. The door was just bursted in and swung right back.

Q Swung which way, toward you? A Yes, sir.

CASE #2854



Q Swung toward you? A Yes, sir.

Q How many men got in to you, how many forced their way in on you? A There was about four in the crowd. That was the first man that entered (Indicating).

BY MR. DONOHUE:

Q Four men, is that what you say? A There was about four men altogether.

BY MR. FRANKEL:

Q And that particular spot inside the room was dark, was it? A Yes, it was.

Q Wasn't it very dark? Wasn't it?

MR. DONOHUE: Wait until he finishes his answer.

A Before the door was forced in it was dark but as soon as the door was bursted in there was light off the street, you could see everybody that came in.

Q Well, outside of the building line you have a little box formation, haven't you? A No, sir.

Q You have not? A No, not in that saloon, there is none.

Q You said he was behind the bar? A I never said he was behind the bar.

Q You said that just now on direct examination, didn't you?

MR. DONOHUE: I object. He never said anything like that. He said all he remembers was that he saw them coming in and the next he saw them with the officer.

CASE #2854

1942

THE COURT: Well, the jury can recollect that.

Q Did you say on direct examination that Dorgan was behind the bar? A No, sir, I didn't say that.

Q At any time after he forced his way in? A No, I didn't say he was behind the bar.

Q Well, did you say on direct examination, - or what did you say about he was behind the bar, who do you mean? A I didn't say that.

Q You know Dorgan, don't you, did you ever see him before that night? A Never saw him until that night, no, sir.

Q Never saw him until that night? A No, sir.

Q Did he have anything in his hand at the time? A I couldn't say whether he had anything in his hand or not.

Q Had you been drinking that evening? A No, sir, I never touch liquor.

Q Never touch any liquor or any intoxicant? A Except beer

Q How long have you been a bartender? A About four or five years.

Q And in the section of the city such as 99th street and Third avenue? A Three months around 99th street and Third avenue, something around three months.

Q Where did you work before that? A I worked for Mr. Maynard, 59th street and Tenth avenue, Amsterdam avenue.

Q You did not touch anything but beer there? A No, sir.

Q And immediately after you were hit you were knocked senseless, is that right? A Yes, sir.

Q And you had been hit rather hard, I suppose?

CASE #2854



MR. DONOHUE: I object to that. He said he was knocked senseless.

THE COURT: Well, I will allow it.

Q Will you answer that? A What is it you asked me?

Q You felt the knock rather hard on you? A Yes, sir, I was hit in the face and knocked down and kicked around the body.

Q And you were pretty dizzy then, weren't you? A Yes, sir.

Q How long were you senseless, do you know? A About half an hour.

Q And you were treated by a physician after that? A No, sir.

Q Did you go to a hospital? A No, sir.

Q Did you work next day? A No, I did not, I did not work for two days after.

Q You felt sick for two days? A Yes, sir.

THE COURT: Well, is that all now?

Q This look that you say you gave to this Dorgan, it just took a minute, didn't you, he just looked and then he went right by you? A He was the first man I saw entering when I got hit in the face.

BY THE COURT:

Q Had you ever seen him before? A No, sir, I never saw him before.

MR. FRANKEL: Well, that is all.

RE-DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. Gallagher, just one question: What injury did you

CASE #2854

sustain that night? A My lip was all out here (Indicating).  
My arms were all black.

Q How about your clothes? A Well, there was a little cut  
on my clothes but I don't know how I got that.

Q Were you kicked when you were knocked down? A Yes, sir.

Q I see, that is all, Mr. Gallagher.

EDWARD ROTH, called and duly sworn as a witness on  
behalf of the People, testified as follows:

(Residence: 333 East 112th street).

MR. FRANKEL: Your Honor, may I request, your Honor  
that the testimony on the direct examination of the pre-  
vious witness be read, the last part?

MR. DONOHUE: Well, we can have it read after we get  
through with this witness.

THE COURT: Why do you wish it read?

MR. FRANKEL: On this question whether he stated that  
the defendant was behind the bar.

THE COURT: Well, take that up later. We cannot  
take the time now.

DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. Roth, on June 6th, 1920, were you the owner of a  
cafe at 99th street and Third avenue, in the City and County of  
New York? A Yes, sir.

Q How long had you owned that place? A From about Feb-  
ruary, 1920.

Q Did you have in your employ at that time a man named  
Gallagher as a bartender? A Yes, sir.

CASE #2854



Q Were you in those premises on the morning of June 6, 1920? A Yes, sir.

Q Now, Mr. Roth, will you just briefly describe that saloon there, please? A There is a partition between the rear, the back room and the bar room, what you call a horse shoe bar, and I had been in the front of the bar.

Q No, just give us a brief description, how deep is this saloon, in the first place? A The entire place?

Q Yes, about? A The entire place is about 80 foot deep.

Q And is the bar separated from the rear room? A Yes, sir.

Q By what? A By a partition.

Q And how many entrances are there to that saloon? A There is four entrances.

Q How many on the avenue? A Three.

Q How many on the side street? A One on the side street.

Q Is there any vestibule on the side street or is it just an entrance right into the saloon? A An entrance right into the saloon.

Q Where do you go into the back room, or into the bar room from the side entrance? A Right into the back room.

Q Is there a restaurant on those premises? A There is, an oyster house.

Q Run by whom? A By Sam Phillips.

Q Will you just tell us where his oyster counter is, please?

A Between, or right in front of the bar, between the two doors.

Q On the outside? A On the avenue.

CASE #2854

Q Is it in the bar or is it separated from the bar?

A Separated from the bar, by a partition.

Q And you say he occupied this space between both entrances on the avenue, is it? A Yes, 5 by 10, his space is.

Q Were you there in your saloon on the morning of June 6, 1930? A Yes, sir.

Q Where were you? A In the front, in the bar room.

Q Now, had you been to the register that night, Mr. Roth,--

A (Interrupting) No, sir.

Q (Continuing) -- before 1:40 in the morning? A No, sir.

Q Will you tell us what happened while you were in there on the morning of June 6th, first tell us the time? A It was about between 1:40 and 1:45 in the morning.

Q I just want to interrupt you. Who was in there at this time? A Myself and Mr. Gallagher.

Q That was in the bar room? A Well, in the place.

Q You were in the bar room? A I was.

Q Where was Gallagher? A In the rear, cleaning up.

Q There was nobody else there? A No, not a soul outside us two.

Q That is in the bar room and in the back room? A Yes, sir.

Q Who was in the restaurant you do not know? A No, there is a partition there, you can't look there.

Q You say you cannot look through? A No, except that little broken glass that is there.

1947  
CASE #2854



Q Go on, tell us what happened? A A knook came on the side door, on the 99th street side, and I went to the rear, and Mr. Gallagher got there too. They called a name out, Sharkey, that they wanted to come in. I told them the place was closed until six o'clock in the morning and nobody can come in, and the next words I heard were, "I will be damned" --

Q Now, wait a minute. Did you still stand there when you heard these words? A I did.

Q Go on? A "I will be damned if the place is closed," he says, "we will open it." I says, "I don't care what you do, I wouldn't open it."

MR. FRANKEL: I move to strike this all out unless properly connected.

MR. DONOHUE: I will connect it, your Honor.

THE COURT: Motion denied.

Q Go on, Mr. Roth? A I went to the front to finish my work cleaning up, that's all I had to do, was to put sawdust, after I mopped up, put sawdust over to dry it. The first thing I know I heard a sound of the door, the panels of the door was broke in.

Q Where were you when you heard that? A In the front.

Q In the front where? A On the 99th street side.

Q Go on, what happened after you heard this noise? A And the whole door broke in, the whole door was broke in.

Q What did you see after that? A I couldn't see nothing after that. Only I seen where two men jumped in the front.

CASE #2854

Q What two men jumped in the front, do you see any of them here now? A This gentleman right there (Indicating).

Q Which gentleman? A He ran behind inside the bar room.

Q Which gentleman, this one here (Indicating counsel)?

A No, sir.

Q This one (Indicating defendant)? A Yes, sir.

Q That is Dorgan? A Dorgan.

Q What did you see him do? A Run behind and go to the register.

Q Did you hear the register ring? A I did.

Q What did you do after that? A I ran out to get help.

Q You ran out? What do you mean, what did you do, you ran out of where? A The front door was open.

Q Yes? A Because we sweep the water out and we had the door open.

Q Yes? A I ran out through that door to get help.

Q Wait a minute. You ran out, did you? A Yes.

Q Did you talk to somebody on the outside? A I did.

Q Who, just mention the name? A Ryan.

Q What did you do after that? A I told him to go inside in a hurry.

Q Do not tell us what you said. You talked to him, did you? A Yes.

Q After you talked to Mr. Ryan what did you do? A I ran further for help.

Q Did you go back to the saloon after that? A After I came back.

CASE #2854



Q Who did you talk to after you talked to Mr. Ryan, anybody, before you went back to the saloon? A The officer.

Q When you say you heard this crash and saw Dorgan run in, you were in the front part of the bar, were you? A I was.

Q Separated from the back room by this partition? A Yes.

Q You could not see the door actually broken in, could you?

A I heard the noise.

Q I say, you could not see it? A No.

Q You heard it, did you? A I heard it.

Q Then after you heard this noise, then it was you saw one of these two men go behind the bar? A Yes.

Q That was Dorgan, you say? A Yes.

Q And then you ran out to get help? A Yes.

Q Then you spoke to Mr. Ryan, did you? A I did.

Q Did you go back after you went out of the saloon? A I did.

Q And about how long afterwards did you go back? A Well, it must have been about twenty minutes.

Q Did you examine the cash register? A Afterwards.

Q About how long after? A When we got there, when they were going to the station house.

Q Talk up loud? A When they were going to the station house I was told to go to the register and see what is there and how much is missing.

Q Did you go, tell us? A I did.

Q What did you find? A I found there \$17.35.

CASE #2854

Q You had not taken any money out of the register that night, had you? A No, sir.

Q Whose duty was it to take money out of the register? A Mine.

Q And now you are sure, are you, that Dorgan was one of the men who came in and was the man who went behind the bar and went to the register? A Yes, sir.

Q Positive of that? A Positive of it.

BY THE COURT:

Q Wait a minute. You said something about seeing him going to the station house when you came back? A I saw when they were gone.

Q They had already gone when you came back? A Yes, sir.

CROSS-EXAMINATION BY MR. FRANKEL:

Q What was the place of your residence within the last three or four weeks? A Sir?

Q Where were you living the last three or four weeks? A The House of Detention.

Q The House of Detention? A Yes, sir.

Q Where is the House of Detention? A 125 Worth street.

Q So far as you know you were committed there by order of the Court? A That's all I know.

Q That was after you had testified in the proceeding of the People against Powers, I suppose? A No, sir.

Q After or before? A Before.

Q You did testify in the case of the People against

CASE #2854



Powers here on trial in court? A I did.

Q And in that case you were asked whether or not you could identify the men inside of the saloon? Were you asked that question? A I was.

Q And do you recall what your answer was? A That I could not possibly identify the man on the outside, the outside of the bar.

Q Did you or did you not testify that you could not identify any of the men that came into your place that night? A I don't remember.

Q You don't remember whether you testified to that? A I don't remember that I said I can't identify.

Q You don't remember --

MR. DONOHUE: Let him finish his answer.

BY MR. DONOHUE:

Q What did you say? A That I can't identify both. I said I can't positively identify this man Powers, that's what I said.

BY MR. FRANKEL:

Q You did not testify that you could not identify any of the men in there? A By name. I never knew the names.

Q Did you testify that you did not know who was behind the bar that night, that you could not testify as to that? A I did not.

Q What do you mean by "I did not?" A I never said that, that I could not identify who was behind the bar, because I knew this man well.

1952  
CASE #2854

Q You knew this man well? A Yes.

BY THE COURT:

Q Had you seen him before? A I did.

Q Well, that is very important. How long had you known him by sight? A I didn't know him before but I knew him when he jumped over the bar and tried to hold me up before, about a couple of weeks before.

MR. FRANKEL: I ask to strike that out.

THE COURT: I will allow him to state that he saw him before.

Q How long was it before? A About three weeks before that, on a Saturday night.

BY MR. FRANKEL:

Q Is it not a fact that you testified at the Powers' trial - Question withdrawn.

Q Did you at the Powers' trial testify that a man by the name of Dorgan was behind the bar? Did you say anything about that at that time in answer to any question asked by any counsel or by the Court? A I don't know if I did or not.

Q In telling your story in the Powers case did you tell us what you told us this morning?

MR. DONOHUE: I object to that, your Honor, because he would not be allowed to tell the same story as he told in the Powers case.

THE COURT: I will allow it.

BY THE COURT:

Q Tell us what you testified to in the Powers' trial, as

CASE #2854



near as you can recall? A I said that I couldn't positively identify Powers.

MR. FRANKEL: I ask to strike that out.

Q Well, you have already said that. He wants you to give your testimony, everything you said in the Powers case <sup>after</sup> the door was broken in. <sup>z</sup>

Q What did you tell the jury in that case? Just give us the same story, now, that you told that jury?

MR. FRANKEL: Well, let me straighten this out.

BY MR. FRANKEL:

Q Now, I will try to help you.

MR. DONOHUE: No, we do not want any help.

THE COURT: Well, go on now.

Q Powers is the man who was arrested on the same case, wasn't he? A Yes.

Q One of the men who is purported to have been there and attempted to break into your place? A Yes, sir.

Q He was tried in this court? A Yes.

Q You remember that? A Yes, sir.

Q You remember testifying on the witness-stand in that case? A Yes.

Q And do you remember being asked to tell us everything you know about this incident, about what took place that night? Do you remember that question, do you remember that? A I don't remember everything.

Q Is your memory bad? A Well, I don't remember all the questions were asked. A good many questions were asked.

CASE #2854

Q You don't remember what was asked you? A No.

Q Why is it you don't remember, is your memory bad, isn't your head good? A Well, it is not my memory. I don't specify that, keep things in my mind always.

Q How long were you in the House of Detention? A Going on about three weeks.

Q And that made you rather dizzy? A Certainly did.

Q Will you just try to refresh your recollection as to whether or not you gave an explanation of what took place that evening, and whether or not you said that you could not identify any of the men who were in your store?

MR. DONOHUE: I object to the form of that question. It is all complicated.

THE COURT: Well, it is cross-examination. I will allow it.

MR. DONOHUE: I think the simpler way would be to ask him what he said at the Powers trial.

A I said I could not positively identify Powers.

MR. FRANKEL: I ask to strike that out, your Honor.

MR. DONOHUE: I object to striking it out.

THE COURT: No, I will allow it. You asked him what he said.

Q You understand my question, Mr. Roth? A I do.

Q I ask you now again, did you testify that you saw Dorgan in your store that night, at the Powers trial? A That I seen the two men, but I could not --

CASE #2854



Q (Interrupting) You said you saw two men? A (No answer)

BY THE COURT:

Q You say you saw this man there? A I seen this man, yes.

Q Did you say that on the Powers trial? A I think I did.

BY MR. FRANKEL:

Q You what? A I think I did.

Q You think you did? A Yes, sir.

Q You said at the Powers trial that you saw two men inside the place, is that correct? A I did, but I didn't remember the names. I don't know the names.

Q You did not know Dorgan's name at the Powers trial, you did not know the name of Dorgan then? A I did not know, I never paid no attention.

Q But since the Powers trial you have learned Dorgan's name? A I only know him when I see him. When they call his name, that's why I know Dorgan's name, that is Dorgan.

Q What part of the store were you standing in when you saw Dorgan, as you say Dorgan came into the store and behind your bar? A At the time they came in I was right at the centre of the bar, in the front.

Q Behind the bar? A In the front of the bar.

Q In the front of the bar? A Yes, sir.

Q What were you doing there? A Putting saw dust on the floor.

Q This was immediately after you heard the door being

CASE #2854

crashed in in the back of you? A No, a couple of seconds after.

Q A couple of seconds after? A Yes.

Q It was almost simultaneously, wasn't it? I withdraw that question.

Q That is, you heard the knock on the door, the attempt to force your door open in the rear, you heard that first, didn't you? A Yes. What is that?

Q When were you putting saw dust on the floor in front of the bar, after you heard the crash from the back door, or before that? A I was putting saw dust before the crash.

Q What were you doing after the crash? A After the crash?

Q After the door was opened in the rear, what were you doing? A I was still putting saw dust, and Gallagher hollered out, "Roth, get help."

Q And you were putting saw dust on the floor? A I threw the bag down.

Q How long a time did it take for these people to crash this door in? A It didn't take them long.

Q Which way did you go out into the street? A Third avenue.

Q The Third avenue side? A Yes, sir, on the north door.

Q When Gallagher hollered, "Roth, get help," he was at the door, I suppose, in the other room, in the back room? A Yes.

CASE #2854



Q He hollered, "Get help?" A Yes.

Q Then you went immediately to the front door and out into the street to get help? A I didn't go immediately, because I went to run out when I seen two men run behind the bar.

Q Two men ran behind the bar? A Yes, in the front bar room, one behind the bar and one alongside of the bar. One came in from the swinging door and the other ~~went~~ one ran inside.

Q How long did you wait after that? You say you saw two men coming towards you, is that right? A Into the front.

Q From the rear you saw two men coming towards you? A Yes.

Q And you went the other way out toward the front? A I went out through the front door. The door was open, on the north side of the building.

Q You did not pay any attention to what Gallagher said when he asked you to get help, did you? You did not go out then, did you, to get help when he said, "Roth, get help?" You didn't pay any attention to that? A When he hollered I went right out, and at the time I was going out through the door, when opening the door I seen this man at the register, ringing up.

Q You were going out towards the door and then you turned around to look at what was going on? A I had to turn around to get the door open, because the door opens on the inside. I could not go out straight. The door does not open on the outside, it opens on the inside.

Q How far away from the door were you at the time you started to walk towards the door? A About seven foot.

1959  
CASE #2854

Q Seven foot away? A Seven or eight foot.

Q How far behind you was that partition from which these two men came? A Behind what partition?

Q The partition separating the front and back rooms?

A Well, from the part where I was working, from the partition it must have been about 20 feet.

Q Twenty feet, that is twenty-seven feet to the front bar of the store, is that right? A It must be.

Q And the entire store is 80 foot deep? A There is a big back room.

Q Well, 60 feet <sup>of your store</sup> ~~of your store~~ is the big back room, is that right? A I couldn't say exactly. I never measured it exactly how many feet it is, I never measured it.

Q About 60 feet, according to your own figures?

MR. DONOHUE: All right, we will say it is 60 feet.

A I never measured exactly.

Q Have you been previously ~~be~~ convicted of any crime?

A Sir?

Q Have you been previously convicted of any crime? A Yes.

Q How many times were you convicted? A Sir?

Q How many times were you convicted of crime? A Once.

Q Did you serve a jail sentence? A Yes, and pardoned by the Governor.

Q Was it for perjury? A No, sir.

BY MR. DONOHUE:

Q What was it for, tell us? A A frame-up.

CASE #2854



Q No, no, what was the crime? A Receiving.

Q Receiving stolen goods? A Yes, sir.

BY MR. FRANKEL:

Q They framed you up? A Yes.

BY THE COURT:

Q What year was that? A 1916.

Q When were you pardoned? A 1917 or 1918.

BY MR. FRANKEL:

Q Mr. Roth, that front part of your store was absolutely dark, wasn't it? A No, sir.

Q It was not? A No, sir.

Q Was it lighted? A Yes, sir.

Q Doing business there, A After one o'clock, no.

Q You never do business after one o'clock? A No.

Q How long are you in the saloon business? A Since February.

Q February of what year? A 1920.

Q Where was this light, where was this place lighted up?  
A Over the register.

Q Where, extending from a chandelier, like? A No, sir, about ten inches above the register.

Q Ten inches above the register? A Yes, sir.

Q And these men were running towards you, you say, when you went towards the door, is that right, is that what I understood you to say?

CASE #2854

A One man ran alongside of the bar and the other man inside the bar room, back of the bar.

Q That place was rather dark, was it, at 1:40 o'clock?

A The rear room was dark.

Q The front room was light? A Light.

Q You could see everything, couldn't you, you could see everything that was going on there? A Why, certainly you can. We have a big light in the front there and through the glass that comes right in, a 100 volt lamp in that oyster house, and we got all the light from that.

Q Well, the oyster house is separated from your store?

A By a glass partition.

Q By what sort of glass partition? A Plain glass and ornamental glass, different colors.

Q Ornamental glass with different colors? A Yes.

Q Is there anything behind this glass to obstruct the light? A No, sir.

Q Isn't there a hole in this glass? A In the partition, a piece of glass broken out, one of the ornamental glasses.

Q What sort of glass is this partition glass, what color of glass is that little hole? A There is no glass in the little hole, that was all exposed.

Q There is no glass covering that little hole? A No glass at all.

Q No isinglass, do you know what that is? A No glass at all.

Q No colored glass? A No glass at all.

CASE #2854



Q You are sure about that? A Positive.

Q You were not hurt, were you, or anything done to you?

A No, I ran out, I had \$1,393 in my pocket and I made sure I would get out before I got hit on the head.

Q You made sure you were going to get out to the street, you were hurrying out? A I was.

Q When did that idea that you had thirteen hundred and some odd dollars strike you, when did it first come to your mind? A I always had it in my mind.

Q I mean that night, when did that idea strike you so as to tell you to go to the street? A When I seen the men rush in.

Q You got excited, did you? A I did not get excited.

Q But you thought of your thirteen hundred dollars and made for the street as quick as you could? A Well, of course I thought of my life just as well as the money.

Q And you say while you were in that condition you looked around and saw two men coming in and you know the two men? A I didn't say I know the two men. I know this man.

Q You know this <sup>is</sup> one of the men, under that state of fact you say you recognized this man, is that correct? A No, no, not at all.

Q You do not want to say that? A No, because I saw him before, and I seen him that night.

Q Tell us if you know why you were taken to the House of Detention by the District Attorney?

CASE #2854

MR. DONOHUE: I object to that, if your Honor please.

THE COURT: Objection sustained.

MR. DONOHUE: It was not done by the District Attorney.

Q Well, by order of the Court?

MR. DONOHUE: I object to that as immaterial.

THE COURT: Objection sustained.

Q In the Powers case, Mr. Roth, wasn't the District Attorney compelled to refresh your recollection from testimony that you gave in the Magistrate's Court?

MR. DONOHUE: I object to that, if your Honor please. He was testifying solely at that time against Powers.

THE COURT: I will allow it.

MR. DONOHUE: I do not think the witness understands the question.

THE COURT: If he does not understand it, <sup>he</sup> may say so.

Q Do you understand that question? A What is that?

Q (Question repeated by the stenographer). A He had a book there and called out from the book or whatever it was.

Q He held a book up before you? A Not to me.

Q Well, he held it up in his hand then? A In his hand, to himself.

Q And he refreshed your recollection? Do you know what that means, refreshing your recollection? A Yes.

Q About some testimony you had given previously, do you recall that? A Yes.

CASE #2854



Q And you were not testifying according to that book, were you, before he showed you that book?

MR. DONOHUE: I object to that, if your Honor please.

THE COURT: Objection sustained.

MR. DONOHUE: We do not know what book he is talking about. If he names the book I will be very glad to show it to him.

MR. FRANKEL: There is the book right here (Indicating).

MR. DONOHUE: Go on, then, take it.

Q Did the District Attorney hold this book up, do you remember, is this the book? A I can't say this book or not, or what book. It was not shown to me before.

Q Well, he held a book up to you in his hand like this, didn't he (Indicating)? A No, to himself.

Q And he asked you - or the questions asked you first were in that book, is that correct?

MR. DONOHUE: I object to that, if your Honor please.

THE COURT: I do not understand that question.

MR. DONOHUE: I have no objection to putting the book in evidence.

THE COURT: Proceed. How can he tell what questions were in the book?

MR. FRANKEL: Well, by the next question, your Honor.

THE COURT: Well, go on, then.

Q What is your answer to that?

THE COURT: He cannot answer the question. How does

CASE #2854

he know what was in the book?

Q Then he read questions in this book and asked you whether or not you had testified other than you had testified that morning in the Magistrate's Court, is that correct?

MR. DONOHUE: I object to any reference to this book. The witness says he does not know the book at all.

THE COURT: Objection sustained.

MR. DONOHUE: If you want to put it in evidence, all right.

MR. FRANKEL: I am not putting the book in evidence, the contents of the book, only for the purpose of testing his credibility.

Q When you testified in the Powers case you remember that--

THE COURT: Well, he has already said that.

Q You testified differently in the Court of General Sessions than you did in the Magistrate's Court, didn't you?

MR. DONOHUE: I object to that, your Honor.

THE COURT: I will allow it.

BY THE COURT:

Q Did you give the same testimony in the Powers case as you gave in the Magistrate's Court hearing? A I don't know what the questions were over there but I said I cannot recognize or I am not positive to identify Powers. That's all I said.

MR. FRANKEL: I ask that the answer be stricken out as not responsive.

THE COURT: Yes, motion granted. How much longer is your cross-examination of this witness going to last?

1965  
CASE #2854



MR. FRANKEL: A few minutes, your Honor.

BY MR. FRANKEL:

Q Well, did you give the same testimony in the Court of General Sessions that you gave in the Magistrate's Court about this case?

MR. DONOHUE: This particular case we are trying now?

MR. FRANKEL: In the Powers case?

BY THE COURT:

Q Do you remember testifying as a witness in the Magistrate's Court? A Yes, sir, but there was a good many questions asked. I don't know if they were the same or not. All different questions were asked.

Q The same questions were not asked you? A In different ways, that's all.

BY MR. FRANKEL:

Q Didn't you know what you were talking about in the Powers case in the Court of General Sessions?

Objected to. Objection sustained.

RE-DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. Roth, in the Magistrate's Court, both Powers and Dorgan were there, were they not? A They were.

Q At the Powers trial, Powers was the only one there, was he? A At the trial here.

Q At the trial of Powers in the Court of General Sessions, he was the only one there, was he? A Yes.

Q Now, did you give the same testimony in the Powers case

1966  
CASE #2854

that you gave in the Magistrate's Court, with reference to Powers, at the Powers trial held in the Court of General Sessions? A Well, it must be, because --

Q Well, all right. I will withdraw that. Did you ever say in the Court of General Sessions that Powers was one of the men you saw in your saloon that night? A I said that I could not positively identify him.

Q Did you ever say in the Magistrate's Court that Dorgan was not one of the men who was in your saloon that night? A I did not say that.

Q Did you say he was? A Yes, sir.

MR. FRANKEL: There are two answers to that question. Can I have that read?

(Last two questions and answers are repeated by the stenographer).

MR. DONOHUE: Well, that is all, Mr. Roth.

(The Court here admonished the jury in accordance with section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until Friday, August 13, 1920, at 10:00 o'clock A.M.).

---

1967  
CASE #2854



THE PEOPLE v. DORGAN.

349

New York, August 13th, 1930.

- : TRANSCRIPT OF STENOGRAPHER'S MINUTES : -

James E. Lynch,  
Official Stenographer.

CASE #2854

1968

THE PEOPLE v. DORGAN.

New York, August 13th, 1930.

- : TRIAL RESUMED : -

EDWARD ROTH, a witness for the People, recalled for further cross-examination, testified as follows:

RE-CROSS EXAMINATION BY MR. FRANKEL:

Q Mr. Roth, do you remember whether or not the man you saw go towards the cash register had anything in his arms, a bundle or packages or anything like that? A I didn't see nothing in his hands.

Q Did you see Dorgan after his arrest? A I did.

Q How soon after? A Well, when I got to the station house.

Q Do you know whether he had a bundle in his arms at the time he was at the station house? A I do not.

Q Do you know whether he had a bundle under his arm at the time of his arrest? A I do not.

Q A bundle of clothes? A I don't know, I didn't see.

Q You did not see? A No, sir.

Q Now, just for a moment, you remember you testified how you went out towards the front door yesterday, and you saw these two men approaching the cash register, or one of the men approaching the cash register, and you went out towards the front door, that is correct? Now, you were in the centre of the floor about seven foot from the entrance, throwing saw dust when you saw these men come toward you, is that correct, as you testified

CASE #2854



1  
yesterday? A Not towards me.

Q Well, one towards the cash register and the other somewhere else? A Yes.

Q And you went immediately towards the door because you had this money in your pocket? A I went towards the door, yes.

Q You went out of the door? A I did.

Q Did you have any reason to stop at the door and talk - did you have any reason to stop at the door in going out? A I stopped outside.

Q You stopped outside? A I did.

Q How far outside? A Right at the door.

Q Right on the outside of the door? A Yes.

Q What did you do then? A I seen Ryan standing outside.

Q What did Ryan do after that, did he go -- A (Interrupting) I told him to go inside to help.

Q Never mind what you told him, what did he do, what did Ryan do?

MR. DONOHUE: What do you mean, what he saw him do?

Q Yes, what did Ryan do after you spoke to him? A He went inside.

Q Which way? A Through that front door.

Q Yes, that is all.

SAMUEL PHILLIPS, called and duly sworn as a witness on behalf of the People, testified as follows:

(Residence: 224 East 100th street).

MR. FRANKEL: Before the next witness is called may I

1970  
CASE #2854

recall the witness Gallagher for one or two questions?

THE COURT: No, we will go on now with the next witness.

DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. Phillips, on June 6, 1930, and for some time before that day did you have an oyster counter on the premises on the saloon of Mr. Roth? A Yes, sir.

Q At 99th street and Third avenue? A Yes, sir.

Q Now, talk so that we can all hear you? A Yes, sir.

Q Where was your lunch counter? A In the front towards the street.

Q Well, on the side street or on the avenue? A No, on Third avenue.

Q Where was it, in front of the store or in back of the store? A In front of the store.

Q How far was it from the bar? A About ten or fifteen feet.

Q Was it separated from the bar room itself by anything? A Yes, sir.

Q By what? A By a partition.

Q What kind of partition? A A round partition there with glass and a frame.

Q Was it all glass or part glass and part wood? A Part glass and part wood, frame.

Q Which part of it was glass, the upper or lower? A The lower, towards the bar.

CASE #2854



Q The what? A The back part, the back part.

Q No, I am talking about the partition that separated your lunch counter from the saloon, what was that made of? A It was, or it used to be the front of the saloon.

Q No, do you understand what a partition is? A Yes, sir.

Q A wall between your place and the saloon? A Yes.

Q What was that made of? A Made out of wood.

Q Any glass in it? A Yes, sir.

Q Wood and glass both? A Yes, sir.

Q Where was the wood and where was the glass? A The glass was towards the back of the bar, towards facing the bar.

Q Where was the wood? A In the side.

Q Could you see into the bar room from your lunch counter?  
A I see very little, yes, sir.

Q How could you see? A Through a little hole.

Q How big was the hole? A About that big (Indicating).

Q How far was that hole from the bar? A About ten or fifteen feet.

Q Were you in your lunch counter or in the room where your lunch counter is on the morning of June 6th of this year? A Yes.

Q About what time were you there when something happened?  
A I was there about one o'clock.

Q Well, did something happen after one o'clock? A Yes, sometime after one o'clock.

Q About what time? A About 1:30 or 1:45.

Q Tell us what happened? A I heard a noise in front, a noise was going on. I turned around and saw Gallagher lying

CASE #2854

in there.

Q What did you see? A Gallagher, the bartender, was lying there.

BY THE COURT:

Q Did you look through this hole? A I looked through this hole, yes, sir.

BY MR. DONOHUE:

Q You were looking through this hole and you saw Gallagher?

A Yes.

Q Where did you see Gallagher? A Towards my place, outside the bar, between my place and the bar.

Q Did you see anybody else in there besides Gallagher?  
A I didn't see anybody at the time, only a man outside the bar and a man inside towards the register.

Q You saw a man outside the bar and a man inside the bar towards the register? A Yes, sir.

Q Now, do you see any of those men in court now that you saw either inside the bar or outside the bar? Just look around, now? Step down and look around if you want to. Do you understand what I mean? A You mean if I seen the fellow in there?

Q I will reframe the question. Do you see anybody in court now that you saw either behind the bar or in front of the bar as you looked through this partition on the morning of June 6th? A I think I do.

Q Whom do you see that you saw there? A That fellow sitting down there (Indicating).

Q Well, step down and put your hand on him?

CASE #2854



MR. DONOHUE: May I have that done, your Honor?

THE COURT: Well, he may indicate.

BY THE COURT:

Q Which one, the first or second man? A The second man.

BY MR. DONOHUE:

Q This man here (Indicating defendant)? A Yes, sir.

Q What did you see him do at that time? A He opened the register.

Q Tell us everything he did? A And the fellow outside told him to take the money.

Q Did you hear that? A Yes, I heard this fellow say, "Take the money, take it all." That's what I heard.

Q Who said that? A The fellow outside.

Q You mean outside the bar? A Outside the bar.

Q And who was inside the bar, you say? A He was inside (Indicating).

Q This defendant was inside? A Yes.

Q Tell us everything you saw and heard? A I just saw him take money out of the register and the other fellow said, "Take it all," and then they go away.

Q Who took the money out of the register? A I guess he took it.

Q No, do not guess, what did you see? A He went to the register and took something, money or something out of the register.

Q You saw this defendant hit the register and you heard a noise, did you? A Yes.

CASE #2854

Q What kind of noise did you hear? A The register ring.

Q Then did you see him put his hand in the register?

A Yes, sir.

Q You didn't see what he took out? A I didn't see what he took out or not.

Q Well, what happened? A Then they go away.

Q Tell us what happened after? A After that I saw the cop come.

Q You say you saw him ring the register? A Yes.

Q You saw him take something out of the register? A Yes, sir.

Q Did he stand there all the time after that? A No, they got away from there.

Q Did you see them run away? A I saw them get away from there, yes, sir.

Q Are you sure that this defendant is the man you saw behind the bar that night at the register, are you sure this man is the man? A I think that's the man, yes, sir.

Q Now, are you sure it is? Are you sure this defendant is the man? A Yes, sir, that's the man, that is the man.

Q That is the man? A Yes, sir.

Q No doubt in your mind about that? A No, sir.

BY THE COURT:

Q What became of this Gallagher? A Gallagher was there, I don't know, he was lying there.

Q You say you saw him lying on the floor? A Yes.

1975  
CASE #2854



Q Did you see him get up? A No, I didn't, I couldn't get in there.

BY MR. DONOHUE:

Q Did you see Gallagher that? A After they took us up to court.

Q When did you see him after that? A I saw him after I went up to the police court or police station.

Q Didn't you see him in the saloon after these men got out? A Well, Gallagher was there lying there.

Q Well, did you go around to where he was lying? A No, I couldn't go around there unless they opened the side door to go in, I couldn't get in.

Q Didn't you see him before you saw him in the station house? A Gallagher, I saw him when they opened the door back there with the cops.

Q Didn't you see him in the back of the saloon with the cops? A Yes, sir.

Q Did you notice his condition at that time? A Well, he was hurt, that's all.

Q When you say he was hurt, what do you mean by that? A Well, he was bleeding, that's all; he was hit.

Q What was the matter with him? A I don't know, I couldn't say what was the matter with him.

BY THE COURT:

Q Where was he bleeding, where was the blood? A Right on his mouth.

CASE #2854

1976

BY MR. DONOHUE:

Q Did you notice his clothes? A I don't remember if I did or not.

Q Well, that is all, Mr. Phillips.

CROSS-EXAMINATION BY MR. FRANKEL:

Q Were you waiting on any customers at the time? A Yes.

Q How many customers did you have at the time, do you remember? A I don't remember.

Q Two, three or four? A I couldn't say.

Q That is right at the "L" station, isn't it, with people coming down from the "L" station? A Yes.

Q Eating their oysters right there? A Yes.

Q When you are serving them with oysters or other food you are facing the street, aren't you? A Yes.

Q Your back is against the saloon? A Yes, sir.

Q Now, you spoke of a little hole there. That is the only means of looking through into the saloon? A Yes, sir.

Q And you know that positively? A Yes, sir.

Q And Roth should have known that too?

MR. DONOHUE: I object to that, if your Honor please.

THE COURT: I will allow that.

MR. DONOHUE: Roth testified that he did know about it.

Q Should Roth have known that the only means of looking into the saloon was, from your stand, was by means of this little hole? A The glass was broken. He didn't fix that. We didn't have that to look in through there.

CASE #2854

1977



Q How is this little hole painted, is there glass covering this little hole? A No, the glass was broke there. They never fixed it back, that's all, just a piece of glass broke off the other glass.

Q Was there glass covering this little hole? A A piece of paper covering it now.

Q A piece of paper covering it? A Yes, now.

MR. DONOHUE: Now, he says.

Q Well, on that night? A There was nothing covering it.

Q Did you have green colored glass covering that hole?

A No, there was nothing on that hole.

Q There was nothing covering that hole that night? A No.

Q Now, looking into the saloon, was it dark in there?

A There was light up above the register.

Q Light above the register, and how far did that light spread, about? A Well, you can see around there, around the register.

Q How many feet? A About a couple or three feet around there.

Q A couple of feet? A About two or three feet around the register anyhow.

Q About two or three feet around the register, you could see what was going on? A Yes, sir.

Q And outside of that space, it was dark? A Yes, sir.

Q And could you see outside that space? A Well, you can see a little outside, yes, sir.

1978  
CASE #2854

Q You would say that it was dark and you could hardly see anything? A I say the light was up there over the register, you could see around the register two or three feet square.

Q Outside of that, the other part of the saloon, could you see anything at all? A Well, you could see up across, it was dark, but the light you could see a little bit flash outside a little. That is, outside the bar.

Q Where this cash register is respecting your stand, is it parallel with your stand? Do you know what I mean by parallel? A It is just right straight back.

Q Looking from this little hole towards the cash register, did you look straight right at the cash register? A Yes, you can look to the cash register.

Q Or did you look to the side one way or the other? A Just right on the side.

Q On the side? A No, just a little bit, you can see the square there, the hole is in the centre and you look just a little bit to the side.

Q And the cash register faces you? A Yes, sir.

Q The full front of the cash register faces you? A Yes.

Q You understand that, so that anybody standing in front of the cash register would have his back turned towards you? A Yes, sir.

Q That is correct, isn't it, and you were looking through this little hole while this man was taking money from the cash register? A Yes, sir.

1979  
CASE #2854



Q And was that the only time that you looked at this man -  
Question withdrawn.

Q Did you see this man, or how long did you observe this man when you saw him taking this money from the cash register?

A What do you mean, I can't get you?

Q Well, what did you see, just tell us what you saw this man do, just this man standing at the register? A He just opened the register, that's all.

Q And took money out? A He took something out, I don't know if it was money, or something.

Q Then did you stop looking at him? A Who, me?

Q Yes? A I just looked in and he went away, I had to stop looking then.

Q You saw him at the cash register and you heard a noise, I suppose? A Yes.

Q You saw something drawn out of the cash register? A Yes.

Q And you stopped looking and had to go away? A After he got away I had to stop looking.

BY THE COURT:

after

Q How long was it that you saw him again? A After the cop had him.

Q Well, how many minutes, how long? A About ten minutes.

Q Ten minutes after you saw him in the bar room you saw him again? A No, I didn't see him in the bar room. I saw him when the cops had him.

Q I say, you saw him first in the bar room at the cash register? A Yes, sir.

CASE #2854

Q And ten minutes after that you saw him again with the police officer? A Yes.

Q And the man you saw ten minutes later was the same man you saw in the bar room? A Yes, sir.

BY MR. FRANKEL:

Q You say that the reason you say this man was the defendant was from the fact that you saw him take this money from the cash register, as his back was turned against you?

MR. DONOHUE: I object to that. He did not say that at all.

THE COURT: Objection sustained.

Q Well, is it so, is that the reason? Is that the way you identify this defendant, from the fact that his back was turned against you and he was taking money from the cash register? A He didn't have his back towards me.

Q He was taking money from the cash register? A Yes, but his side was.

Q Is that the time that you discovered this man and knew him to be the defendant? A That's the only time I saw him.

Q Did you see him before that? A I never saw him before.

Q Did this man have anything in his arms at the time of his arrest, this defendant? A I don't remember.

Q What? A I don't remember.

Q That is all, or just a moment. Where were you living in the last three weeks? A 224 East 100th street.

Q I mean, where have you been in the last few weeks? A At

CASE #2854



the House of Detention.

Q Were you committed there by order of the Court? A Order of the Court, yes, sir.

Q Did you testify in the Powers case? A Yes, sir.

Q Did you testify in the Powers case in this court differently than you did in the Magistrate's Court?

MR. DONOHUE: I object to that, if your Honor please.

THE COURT: I will allow it.

MR. DONOHUE: Counsel has the minutes in front of him and if there are any inconsistencies he can point them out.

THE COURT: Well, he may answer the question.

BY THE COURT:

Q Did you testify in the Magistrate's Court? A Yes, I testified.

Q Where was that, in 57th street? A 127th street, I think.

Q Did you testify there as a witness? A Yes, sir.

Q Did you say the same thing there that you are saying now or did you say something different? A I said the same thing, yes, sir.

BY MR. FRANKEL:

Q Did you testify in the Powers case differently than you did in the Magistrate's Court? A I didn't testify, of course, that I knew him.

Q Did you testify differently in the Powers case in the Court of General Sessions than you did in the Magistrate's Court, in that case? A No, I did not testify.

CASE #2854

Q Didn't you testify? A Yes, I did.

Q You want to tell this Court and jury that while you saw this man, this defendant or a person like him taking money from the cash register with his back against you --

THE COURT: He did not say with his back against him.

MR. FRANKEL: I will ask him that over again.

Q I ask you again whether the cash register was placed in your view, right in front of you, on the night of this crime?

THE COURT: What do you mean by that? I do not understand that question.

Q Well, through this hole, you looked straight at the cash register, with a full view of the cash register?

THE COURT: Well, he has already said he looked right at the cash register. That does not mean that his back was to him, because he was looking at the cash register.

Q As this man was taking the money from the cash register, was his back facing you? A Sideways.

Q Or was his back as I point out to you now, like this (Indicating)? A No, he was sideways, like.

Q A little sideways? A Just like that (Indicating), he come like that. He didn't turn around his back towards me.

BY THE SIXTH JUROR:

Q Is there a looking glass behind that register? A That I don't remember if they have a looking glass there.

Q No big glass there? A No, I don't remember.

BY THE COURT:

Q Did they have a big mirror there behind the bar? A No,

CASE #2854

1983



I don't remember anything like that.

BY MR. FRANKEL:

Q Well, you saw a man, or the defendant arrested a few minutes after that, ten or fifteen minutes after that? A There were plenty of men outside.

Q Well, you saw the defendant arrested after that? A Yes, I saw him there, the cop had him.

Q Is that the reason you say this defendant was the man inside because he was arrested, is that the reason you say this man was inside, because he was arrested? A I didn't say that.

Q Well, is that part of your reasoning? I ask you whether or not the fact that this defendant was the person arrested immediately after this crime, if that leads you to believe that he was the person behind the counter? A No, I didn't say that.

Q Do you understand me? A I don't understand that.

Q I ask you whether it is or not? A Well, I wouldn't see a man arrested and say he was the man unless I know something about it.

BY THE COURT:

Q The other man, you did not see the other man? A No, well, I couldn't recognize him.

Q You could not recognize him? You did not say he was the man? A No, sir.

BY MR. FRANKEL:

Q How far away from the cash register was Gallagher on the floor? A Gallagher was right towards me.

CASE #2854

Q How far away from you? A Right beside the partition.

Q What? A Right close between the bar and my partition there.

Q What was the first thing that attracted your attention to this saloon, that was the ringing of the cash register inside, was it? A No, I heard hollering in there, somebody hollered in there.

Q What did you do when you heard somebody hollering? A I just looked over there and saw this fellow lying in there.

Q You looked through and saw the fellow lying there? A Yes, sir.

Q And then what did you do, look up again? A No, I just stand there looking, that's all. I just stood there looking in.

Q Looking towards the back of the store? A Sir?

Q Which way were you looking? A I was looking back towards the saloon.

Q Towards the back of the saloon? A Yes, sir.

Q Are you married? A No, sir.

Q Do you know a woman by the name of Constantino? A No, sir.

Q Were you living with a woman, a married woman, recently, as man and wife? A No, sir.

Q At East 101st street, that is the address you gave her? A No, sir.

Q You were not? A No, sir.

Q You know Mina or Anna Constantino? A No, sir.

Q Do you know Mrs. Rizzo? A I don't know any woman like that.

CASE #2854



Q What? A No, sir, I don't know her.

Q Weren't you living with Mrs. Rizzo as man and wife?

A No, sir. I live with two fellows together. We have a flat, three fellows together. I live with two more fellows together.

Q Did you have trouble recently with a Mr. Rizzo? A No, sir.

Q Have you ever been convicted of any crime? A No, sir.

Q Well, that is all.

J A M E S R Y A N, called and duly sworn as a witness on behalf of the People, testified as follows:

(Residence: 200 East 96th street).

DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. Ryan, on the morning of June 6, 1920, were you in the neighborhood of 99th street and Third avenue? A Yes, sir.

Q About what time were you there? A Between half past one and a quarter to two.

Q Did you see Mr. Roth there at that time? A Yes, sir.

Q Did you see Mr. Roth come out of the saloon? A He was inside the door.

Q No, just did you see him come out, yes or no? A No.

Q Did you see him in the saloon? A Yes, sir.

Q Did you hear a noise in the saloon while he was there?

A Yes, sir.

Q Did you see any man in there besides Mr. Roth? A No, I didn't see any.

CASE #2854

BY THE COURT:

Q Where was he? A He was inside the front door.

Q Where were you? A I was outside coming down, going south, at 99th street and Third avenue.

Q Did you look in the door? How did you see Roth inside? A Mr. Roth called me from inside the door, and opened the front door and let me in.

BY MR. DONOHUE:

Q Where did Mr. Roth go, do you know? A I don't know where he went to.

Q Did he go back in the saloon or go away from the saloon? A I didn't see him afterwards.

Q What happened then? A I went in, there was a noise at the side door in the back, I went back to see what it was, what the excitement was, and the very minute I got in the back I got hit and knocked down unconscious and my nose was broken.

Q Do you know how many men hit you? A I do not.

Q Well, that is all, Mr. Ryan.

CROSS-EXAMINATION BY MR. FRANKEL:

Q How many men were there, do you know? A I don't know.

Q Which way did you go, in the side door? A No, I went in the front door.

BY MR. DONOHUE:

Q Did you see Mr. Gallagher after that? A No, not that night.

Q Well, that is all, Mr. Ryan.

CASE #2854



THE COURT: Wait a minute. I do not understand this witness's testimony at all.

BY MR. FRANKEL:

Q Just one question: Before the trouble started, you remember that? A Yes.

Q You were standing on the corner? A No, I was going south on 99th street and Third avenue, walking south.

Q You were walking? A Yes, sir.

Q Where did Mr. Roth meet you? A He was inside the door and hollered out from inside the door.

Q You were going south? A Yes, sir.

Q You were attracted by his yells or screams? A Yes, he called me in, he opened the door and let me in.

BY THE COURT:

Q How did he see you? A Well, I don't know.

Q Well, what did he do when you came in? A He opened the front door, that's all.

Q Then you went in? A Yes, sir.

Q What did he do? A I don't know, I didn't see him afterwards.

Q Well, what did he call you in for? A I don't know. There was some excitement inside. He opened the door and called me in.

Q Did you see Gallagher when you went in? A No, sir.

Q He was not lying on the floor? A No, there was an argument at the side door, so the very minute I went back I

CASE #2854

Q In the back room? A Yes, the side door is in the back, the entrance to the back.

Q You went into the back room and you got hit? A I went into the back room and got hit.

Q Where were you hit? A I got hit right here on the nose (Indicating).

Q Who hit you? A I don't know.

Q How many men were there? A I couldn't tell you.

Q Was there light there? A No, the lights were out.

Q Somebody hit you? A Yes, sir.

BY MR. DONOHUE:

Q You say the light was out? You mean the light in the back room was out? A The light in the back room was out.

Q But there was a light in the bar room? A Yes.

BY MR. FRANKEL:

Q Did you see any one in the bar room when you came in?  
A No.

Q There was no one there? A No, I didn't see any one but Mr. Roth.

Q Did you see Roth come out of the store? A No.

Q You walked into the saloon and you didn't see anybody in the front part of that bar room? A I did not.

Q And you went immediately to the back? A Yes.

Q And in the back you were attacked by a number of men?  
A I don't know how many were there, but the very minute I got to the back door I got hit and knocked down unconscious.

Q You did not see Gallagher on the floor? A No, I didn't

CASE #2854



see anybody.

Q Was Gallagher in the back room, do you know, or where was Gallagher? A I don't know where he was.

BY MR. DONOHUE:

Q When did you come to, do you remember? A Over at the Mount Sinai Hospital, that was the first thing I remember.

Q When did you regain your consciousness? A The first thing I remember was at the Mount Sinai Hospital.

Q You went into this place and you were hit, and the next thing you know you came to at the Mount Sinai Hospital? A That's the first thing I remember.

Q What was your injury, do you remember? A A broken nose.

Q A broken nose? That is all, Mr. Ryan.

OFFICER MICHAEL COTTER, 39th Precinct, called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Officer, were you a member of the Police Force of the City of New York on the morning of June 6, 1930? A Yes, sir.

Q Were you in uniform that morning? A Yes, sir.

Q Doing the tour of duty? A Yes, sir.

Q What was your patrol that morning, do you remember, or your district, the one that you had charge of? A I was assigned to patrol post No. 16.

Q What did that cover? A 96th street to 100th street, Third avenue, and half a block east and west.

1990  
CASE #2854

Q About 1:40 that morning was your attention directed to 99th street and Third avenue? A Yes.

Q Tell us what happened, what you saw and everything you did? A I was standing at the south-east corner of 98th street and Third avenue in company with Sergeant Blohm, when we heard a shout for help, and in company with the sergeant I ran in the direction of where we heard the shout coming from. When we got to the north-west corner of 99th street and Third avenue there were quite a few people collected on the corner, and we looked up the street and saw the defendant Dorgan in company with another man run from the side door.

Q The side door of what? A The premises 1786 Third avenue occupied as a cafe.

Q By whom? A Edward Roth.

Q What door do you say you saw the defendant near? A The side door, about 15 feet west of the corner, the north-west corner of 99th street and Third avenue.

Q You say you saw him coming out? A Running from the side door, yes, sir.

Q Actually coming out of the door? A Yes, sir.

Q Go on? A And the Sergeant apprehended the defendant Dorgan and I pursued the other defendant west on 99th street.

Q When you say the sergeant apprehended him, what do you mean? A He got hold of Dorgan and took him into custody.

Q And you did what? A I pursued the other defendant.

Q How far did you run after him? A I ran about 75 feet.

CASE #2854



Q Did you catch him? A Yes, sir.

Q Did you bring him back? A Yes, sir.

Q When you got back did you find the defendant Dorgan there? A On the street with the sergeant, yes, sir.

Q What did you do after that? A We entered the premises 1786, in company with the defendant Dorgan and the defendant that I had in custody, and with the sergeant, and we went in the rear of the premises 1786, occupied as a cafe, and the proprietor Edward Roth and the complaining witness James Gallagher, and the complaining witness also, Samuel Phillips, was present, and they stated that they were held up.

Q Did this defendant say anything at that time to you? A No, he did not.

Q Did he make any statement whatsoever or say anything at all? A Not at that time, but he did speak to me in the station house.

Q Did you notice Gallagher at that time, Officer? A Yes, sir.

Q What was his condition at that time, as far as you could see? A He was very excited like, and he was cut on the mouth.

Q Yes? A His trousers, his pants were cut on the right knee, his knee was cut on the right side.

Q When you went into the saloon first with these men, was Gallagher conscious or was he lying on the floor? A When we came in he was up.

Q He was up then? A He was up when we got in.

1992  
CASE #2854

Q Did you notice his clothes then? A Yes.

Q What was the condition of his clothes? A He was in his shirtsleeves, he didn't have any coat on.

Q How were his trousers? A His trousers were cut like with a knife, on the right knee, the right side.

Q Officer, then you brought these men to the station house, did you? A Yes.

Q By the way, when you chased Powers, did you see Powers do anything? A Yes, sir, I saw him throw money in the street.

Q Did you try to get that money? A Yes, sir, after I -- immediately when I apprehended him I gave him a superficial search to see if he had any weapon, for my own protection, and there had been people walked through the street, and when I got back there some one had picked up the money that was thrown there.

Q You brought these men into the station house, did you? A Yes.

Q Did you have any talk with Dorgan at that time? A Yes, sir, at the station house I asked the defendant Dorgan why he ran from the saloon and what he was doing in there. He said, "I went in to get a drink as I often done before." I said, "for?" "Why did you run from there?" He said, "Wouldn't you run if you saw five men beating people up? I didn't want to get beat, that's why I ran away."

Q Yes, that is all, Officer.

CROSS-EXAMINATION BY MR. FRANKEL:

Q Did the defendant have a package at the time of arrest-

CASE #2854



ing him? A Yes, sir.

Q Did he have the package under his arm? A Yes.

Q Do you know what was in that package? A Yes, sir.

Q What was in it? A A khaki shirt, a brown tan shirt.

Q And he held that in his arm? A He had it in his hands.

Q Were his clothes disturbed in any way? A No, sir.

Q He told you that the reason he went from the saloon a little hurriedly was because he didn't want to get beaten up inside? A Yes, sir.

Q You say the money was thrown away by the other defendant Powers? A Yes, sir.

Q In your investigation did you find whether or not Powers knew Dorgan before that night? A Yes, sir.

Q Did you find from your investigation that Dorgan did not know Powers before that night? A Yes, sir.

Q Was that your investigation? A They denied knowing one another. The defendant Dorgan said he never saw this man Powers and Powers said he never saw this man Dorgan before.

Q Did you find out from your investigation otherwise since that time? A Well, I learned, I ascertained that after I made the arrest, they say that. Of course if they know one another I don't know, whether they do or not.

Q Powers swore to that on the last trial, on his trial?

MR. DONOHUE: I object to that, if your Honor please.

MR. FRANKEL: All right, question withdrawn.

Q How far away from the entrance was Dorgan placed in custody, about how many feet? A I should judge about fifteen

CASE #2854

feet.

Q Do you remember whether or not the saloon was dark?

A Yes, sir, it was dark, that is, the rear room was dark.

Q Did you look in the front part? A Yes, sir.

Q Was that dark? A No, there was a small bulb over the cash register, an electric bulb.

Q About how many feet or inches can you say was that bulb, if you know? A You couldn't see in the rear room at all, only the illumination, you would have, that would be in front.

Q About how far? A Well, the interior, it is a horse-shoe bar, you would have light enough to see the interior of the bar. That bar, I should judge is about eight foot wide. I don't know the dimensions around the circular bar that it is.

Q Had anybody taken money from the cash register, if you know, or, anybody taken money from the cash register, would have his back turned against the opster stand, is that right?

MR. DONOHUE: I object to that, your Honor.

THE COURT: Objection overruled.

Q If anybody had taken money from the cash register, would he have his back turned against the cash register as I have against the jury-box (Indicating)? A No, he would not. The cash register is, if you will allow me to demonstrate, here is the cash register here (Illustrating), and if his back was turned like you are to the jury-box, he would be sideways to the cash register.

BY THE COURT:

Q Well, when he was in front of the register taking money

CASE #2854



out, would his side be to the oyster stand? A No, his back would be to the oyster stand.

Q Well, while he was taking money out? A Taking money. Here is the register here, the register is right there (Illustrating). This is the circular bar, that runs around in a manner like a horse-shoe, and the oyster stand is in the window, in the rear, like, here is the register here.

Q The oyster stand is in the front of the premises? A In the front of the premises, in the window.

Q And the bar runs out across? A In a horse-shoe shape.

Q Across the width of the room? A It is not the entire width. There is a space there that runs out in a circle and turns.

Q Well, is this cash register in the middle of the horse-shoe? A No. Here is the bar (Illustrating). He has a small bar here where he keeps his glasses, like your desk, your Honor, and the bar starts from your desk and runs in a circular form, and in the centre of your desk would be the register, and if it was, or whoever was at the register, his back would be turned to the front part of the bar.

BY MR. FRANKEL:

Q So that you could hardly see any part of the front part of the person from the small window of this oyster stand?

MR. DONOHUE: I object to that, if your Honor please.

THE COURT: Well, that calls for a conclusion.

Q Well, you know from your investigation as a police of-

1996  
CASE #2854

ficer --

BY THE COURT:

Q What I do not understand is, here is a circular bar, now, there is an open side, that is the back of the bar, do you understand what I mean (Indicating)? A Yes, sir.

Q Is that on the north wall of the house or to the west or east wall? A It is to the west wall of the house. The manner of your description there, if your Honor please, it is just the way it lies, just the position you are in, and the entrance from that bar, the only entrance, right at the extreme rear, which would be the west of the bar.

Q This house is on the west side of the avenue? A The west side of the avenue. About where your Honor's pencil is at the present time is where this small little place of business occupied as a restaurant is, in the front.

Q You say the bar bulges out from the west wall? A Yes, to the east. Runs from the west to the east.

Q The west wall would be in the rear? A Yes, sir, it is in the rear.

Q Then the bar bulges out from that? A In that manner, yes, sir, (Indicating), and there is two openings right where your Honor's pencil is, one at each end.

Q Where is the cash register? A Right in the centre of the extreme rear.

Q Here (Indicating)? A To the extreme rear, right there.

1997  
CASE #2854



## RE-DIRECT EXAMINATION BY MR. DONOHUE:

Q Officer, all you know about whether Powers knew Dorgan is what they told you themselves? A That's all.

## RE-CROSS EXAMINATION BY MR. FRANKEL:

Q You are stationed in front of that post about how long, Officer? A Going on ten years.

Q About ten years on the same post? A Yes.

Q And do you know whether or not Dorgan goes in this saloon often for a drink or goes around that neighborhood? Did you ever see him around there? A Yes, I know Dorgan.

Q Did you see him around there? A Yes, I know him.

Q He hangs around there? A I know he frequents them saloons.

Q He frequents those saloons around there? A Yes, along in that vicinity.

Q Very well, that is all, Officer.

OFFICER HERMAN BLOHM, 39th Precinct, called and duly sworn as a witness on behalf of the People, testified as follows:

## DIRECT EXAMINATION BY MR. DONOHUE:

Q You are a sergeant of the Police Department of the City of New York, at the present time? A Yes, sir.

Q Were you a sergeant on the morning of June 6th of this year? A Yes, sir.

Q Was your attention attracted to the premises on the north-west corner of 99th street and Third avenue that morning?

CASE #2854

A Yes, sir.

Q What happened there that you saw? A On arriving at 99th street and Third avenue I saw two men leaving the side door of the premises 1786 Third avenue. One of them ran towards Third avenue. Patrolman Cotter and I apprehended him. The other man took sort of a diagonal, that is, ran across the street diagonally, going towards Lexington avenue. I saw him and directed Officer Cotter to go after the man out in the street.

Q Which man? Well, go on? A I afterwards learned that the man I got --

Q No, no, which man did you get? A John Dorgan.

Q Is that the defendant here? A Yes, sir.

Q Where did you see him come from, you say? A From the side door.

Q What place? A The premises 1786 Third avenue.

Q That is a saloon? A This saloon, yes.

Q Occupied by whom? A Occupied by Mr. Edward Roth.

Q When you saw Dorgan coming from that saloon was he walking or running? A He was on sort of a jog.

Q Sort of what? A A jog, sort of a trot.

Q Was he running or walking? A Well, that's between a run and a walk.

Q Did you say anything to him at that time? A No, I just apprehended him.

Q Did you say anything to him later? A I brought him nearer to the corner and tried to find out what happened, and

1999  
CASE #2854



the Greek that was at the restaurant there shouted to me, and he had to repeat it a couple of times before I could understand him. He said there were a couple of fellows broke in the side door and stole some money from the cash register. By that time Patrolman Cotter with the other man came up to me and I brought them inside.

Q Where was the defendant Dorgan when this restaurant man told you that? A Standing at the corner there.

Q Standing right beside you? A Right beside me.

Q And right beside the restaurant man? A No, away down at the corner.

Q Did you leave Dorgan and go down to talk to the restaurant man? A No, I held onto Dorgan and he shouted that to me.

Q He shouted to you in a loud voice? A Yes.

Q How far away was he from you at that time? A Twenty or twenty-five feet.

Q Did Dorgan say anything to you at that time? A No, sir.

Q Did he make any reply to you? A No, sir.

Q Then you brought Dorgan back to the saloon with the defendant Powers? A Yes.

Q Did you see Gallagher in the saloon? A After we had been in a minute or two Gallagher came in again. He had some kind of club in his hand, that looked like a baseball bat, or a pick handle.

Q Did you notice the condition that he was in? A Yes.

Q What was his condition? A He seemed to be highly ex-

2000  
CASE #2854

cited and seemed to be under the influence of liquor, in my estimation.

Q What is that? A He seemed to have been drinking, Gallagher did.

Q What was his the condition of his face? A He had a cut on the lower lip, underneath the lower lip, and he started in shouting about --

Q Now, wait a minute. When was the first time that you ever mentioned that Gallagher was under the influence of liquor?

A Just now.

Q Is that the first time you ever mentioned it? A Yes, sir.

Q Did you ever tell me about that before? A No.

Q We have talked about this --

MR. FRANKEL: I object to this as not proper direct examination.

THE COURT: Objection sustained.

MR. DONOHUE: Well, that is all, Officer.

BY THE COURT:

Q You say he was excited, shouting? A Yes, sir.

Q Was he angry? A Yes, sir.

Q He wanted to use a club on these men? A Yes, sir.

Q And you judge from that that he had been drinking?

A Well, that's my opinion, that I formed of him.

CROSS-EXAMINATION BY MR. FRANKEL:

Q Gallagher came in with a baseball bat, you say? A Yes.

CASE #2854



Q How long immediately after the assault did that happen? A I didn't get the question?

Q How long after the crime was committed or this supposed robbery, how many minutes or hours did Gallagher come back with the baseball bat? A I don't know, probably five or ten minutes.

Q Five or ten minutes? A Probably that. That is only a guess on my part.

MR. DONOHUE: That is all, Officer. That is the People's case, your Honor.

MR. FRANKEL: Will your Honor allow me to ask Gallagher one or two questions?

THE COURT: Yes, if they will be brief.

JAMES GALLAGHER, a witness for the People, recalled for further cross-examination, testified as follows:

BY MR. FRANKEL:

Q Mr. Gallagher, you testified in the Magistrate's Court, didn't you? A Yes, sir.

Q Did you testify in answer to the question: "State what happened?" And did you say, part of your story, "Well, the door, started to bust the door in, there was about six men together and the first thing I know I was knocked unconscious on the floor." Did you so testify? A What I said --

Q Did you testify to that in the Magistrate's Court? Was that your testimony in the Magistrate's Court: "The first thing I know I was knocked unconscious on the floor?" A I don't re-

CASE #2854

member saying that, in the Magistrate's Court.

Q May I refresh your recollection that that was your testimony? If I read from the stenographer's minutes am I refreshing your recollection?

MR. DONOHUE: Well, read the whole thing before that.

MR. FRANKEL: The other thing is just about the time and the day.

Q "Q Did you see these two defendants? A I can't swear I saw these two men." Was that your testimony? A I don't remember saying that. The statement I made in the Harlem Court was that Dorgan hit me in the face, and when the door was broken I was knocked unconscious.

Q I am reading from the stenographer's minutes in the Magistrate's Court: "Q On the 6th day of June, 1920, about 1:40 in the morning, did you see these two defendants? A I can't swear I saw these two men."

2003  
CASE #2854



THE COURT: Well, he cannot swear to that now. He has not sworn to it. He says he only identifies one.

MR. FRANKEL: Well, I respectfully except to your Honor's opinion as to the interpretation of that statement.

THE COURT: He was asked if he saw these two men and he says he did not.

MR. FRANKEL: I respectfully except to the statement. That is a question for the jury as to what he meant at the time he made that statement, and I most respectfully object to your Honor's statement of that fact.

THE COURT: Very well.

Q Did you testify in the Magistrates Court as follows as I read to you before, namely "On the 6th day of June, 1920, at about 1:40 in the morning did you see these two defendants? A I can't swear I saw these two defendants." A I didn't see the two. I could never identify Powers.

Q Did you testify as I ask you, as I read to you?

MR. DONOHUE: Well, I will concede that he did.

Q Well, did you testify in answer to a further question:

"Q Go on? A I went to the door and they asked to come in. I said it was after hours and they couldn't come in. Q Yes? A Well, the door started, to bust the door in, there was about six men together and the first thing I know I was knocked unconscious on the floor." Is that your testimony, was that your testimony in the Magistrates Court? A I couldn't identify

CASE #2854

Powers.

Q Now, I did not ask you that.

BY THE COURT:

Q Did you say what he read? A I don't remember, your Honor.

BY MR. FRANKEL:

Q Your memory was much better then, in the Magistrates Court than it is now, wasn't it? A (No answer.)

BY MR. DONOHUE:

Q As a matter of fact, as soon as these men burst in the door as you say, you were knocked unconscious, weren't you?

A Yes sir.

Q And you say now that Dorgan was one of the men that hit you, is that right? A Yes.

Q And that happened all in the fraction of a second, we will say? A A minute or so, somewhere around there.

Q You are sure it was Dorgan that hit you, are you? A Yes sir, he was the first man into the door when it was busted in.

MR. DONOHUE: That is all, your Honor. The People rest.

MR. FRANKEL: The defendant rests, just a moment, will your Honor pardon me just a moment?

For the purpose of the record, may I make the formal motion to dismiss the indictment?

Motion denied. Exception.

CASE #2854



THE DEFENSE

JOHN DORGAN, the defendant, called and duly sworn  
as a witness on behalf of the defense, testified as follows:

Residence 126 East 120th Street.

DIRECT EXAMINATION BY MR. FRANKEL:

Q How old are you, John? A 31.

Q 31 years of age? A Yes sir.

Q What is your business? A I am a laborer.

Q Were you working at the time of your arrest? A Yes  
sir.

Q Where? A Down in New Dorp, Staten Island.

Q For what firm? A Schmidt & Isaac.

Q Where were you working before that? A For Samuel  
Thompson & Nephew, 142 Duane Street.

Q Working there as what? A I was porter.

Q Where were you before that? A In the Army.

Q You were in the Army? A Yes sir.

Q How long were you in the Army? A About 16 months.

Q Where were you, over in France? A Yes sir.

Q Did you enlist in the Army? A Yes sir.

Q You were enlisted? A Yes sir.

Q Before you enlisted in the Army you were in trouble before? You had been convicted of the crime of assault, is that right? A Yes sir.

Q On two occasions? A Yes sir.

Q You admit that you had been doing wrong some years

CASE #2854

ago? A Yes sir.

Q When was this, in 1907 and 1913? A 1907 and 1913.

Q But you have been in the Army since and you have been working regularly after you got out of the Army? A Yes sir.

Q That night, where were you coming from? A Well, it was Saturday afternoon, it rained all day, and we couldn't work on account of ours being outside work. I stayed over there, we boarded down there and was at the boarding house. I hung around until about 5 or 6 o'clock seeing if the rain would clear up. Well, I went to the boarding house and had my supper and washed up.

Q Talk up loud. A I am trying to do the best I can. I hung around the boarding house, we were pitching pennies, about 8 or 9 o'clock.

Q Go ahead? A We hung around the boarding house until about 8 or 9 o'clock pitching pennies. Then I decided to go out and stay over Sunday with my brother.

Q Where is your brother? A He lives in 120th Street.

Q What is his name? A Thomas Dorgan.

Q How long have you been around 99th Street and Third Avenue, how long have you been associating around that neighborhood? A I have been around there all my life, born and raised around there.

Q Any of your friends live around there? A Yes.

Q Do you go into Roth's saloon? A Yes sir.

Q Very often? A Well, every time I'm around there I

CASE #2854



go in.

Q What boat did you get into New York? A I took the last boat in, I think it was 12 or 1 o'clock.

Q When you got to New York what did you do? A I got off at the 99th Street station and come down. I thought I would have a drink before I went home.

Q And meet some of the boys, I suppose?

MR. DONOHUE: Now, wait a minute. Do not lead him.

Q Did you go down to have a drink from the 99th Street station?

MR. DONOHUE: I object to that as leading.

THE COURT: Yes, do not lead him. Let him tell us.

Q When you got downstairs did you have any package in your hand? A I had a shirt.

Q What happened after that, tell us everything? A Well, I got off the train, a Third Avenue train, and I turns around the corner, there was a bunch of fellows hanging out there and I stopped and talked to two or three of them.

Q You talked with whom? A I stopped to talk to a couple of them, a couple of fellows I knew. I asked them into have a drink and he says "It's too late, I think the place is being closed up."

Q Did you see Ryan standing on the corner? A Yes, he was standing right by the oyster-stand.

Q Yes, Ryan was standing there? A Yes, and I asked these fellows in for a drink and they didn't want it. They

2008  
CASE #2854

said they had enough, and I walks up into the side entrance; there was a bunch of fellows trying to get in, and the first thing I knew Gallagher opened the door and ran out and started to punch into the fellows that was standing there. They were trying to force an entrance in. So I turns around and walked about my business, started to walk back to the corner again when the bunch ran.

Q Which way? A Down towards Third Avenue.

Q Yes. A So I then saw Cotter and this other sergeant.

Q Did you run from the side entrance or did you walk? A I walked.

Q Walking towards the police officers? A Yes sir, right towards them.

Q You saw the police officers before you walked towards them? A I saw them crossing the street.

MR. DONOHUE: Your Honor, I ask to have counsel directed not to lead the witness.

THE COURT: Yes. I have asked counsel before to let him tell it and not put answers in his mouth.

Q Did you or did you not see the police officers before you walked towards them? A I did.

Q How far away from the side entrance were you apprehended, when you stopped? A Well, about 20 or 25 feet.

Q You had a conversation with the police officers in the station house? A No sir.

Q Do you remember the policeman testifying about a con-

CASE #2854



versation you had? A In the station house, no sir.

Q Were you at any time inside that store? A No sir.

Q Were you at any time going towards the cash register?

A No sir.

Q Or at the cash register? A No sir.

Q You are sure you were not? A Sure.

Q Did you know Powers or anybody connected with him? A No sir, I didn't know any of them fellows at all.

Q He was caught with money thrown from his hand or was seen having - question withdrawn, that is all.

CROSS-EXAMINATION BY MR. DONOHUE:

Q By the way, Dorgan, what is your right name? A John Dorgan.

Q John Dorgan? A Yes sir.

Q Were you ever known by the name of John Egan? A Yes sir.

Q Talk up so that we can hear you, will you? A Yes sir.

Q Ever known by the name of John Doyle? A Yes sir.

Q How many times have you been convicted of crime? A Three times.

Q What? A Three times.

Q When was the first time? A 1906.

Q For what? A For assault.

Q And what else? A That's all.

Q Weren't you convicted of robbery? A I don't remember.

Q You don't remember whether you were convicted of rob-

CASE #2854

bery or not? Well, what were you convicted of? A Assault. I pleaded guilty to assault.

Q What kind of assault was it? A Well, it was a fight on the street.

Q What did you use in the fight? A Nothing.

Q Didn't you have a gun? A No sir, I did not.

Q You did not have a gun in that case? A No sir, never carried a gun.

Q What name did you give there? A What name did I give there?

Q Yes. A John Egan.

Q John Egan? A Yes sir.

Q And you were sent to the Elmira Reformatory, weren't you? A Yes sir, Judge Nott prosecuted me that time, I think.

Q In 1909 you were sent back to Elmira? A For violation of parole.

Q What did you do then? A Nothing, I didn't report.

Q Oh, you didn't do anything? A I didn't report.

MR. FRANKEL: I object to the statement of the District Attorney.

MR. DONOHUE: Well, all right.

Q Now, you were convicted in 1912, weren't you? A Yes sir.

Q For burglary? A No sir.

Q Were you sent to the penitentiary by Judge Mulqueen?

A For unlawful entry.

CASE #2854



Q It was not burglary, it was unlawful entry? A Yes sir.

Q There is a distinction in your mind, is there? A Yes sir.

Q 1913 you were convicted of assault, weren't you? A Yes sir.

Q And sent to Sing Sing? A Yes sir.

Q And at that time you gave the name of Edward Dorgan, didn't you? A Yes sir.

Q November 24, 1913, you were convicted under the name of John Doyle for assault, weren't you? A Yes sir.

Q And sent to Sing Sing? A Yes sir.

Q What was the idea of giving the name of John Doyle and John Egan? A Well, I didn't want my own name, I had the privilege of giving any name, anything at all I wanted.

Q It was <sup>not</sup> by any chance so you could cover your previous convictions? A I wanted to cover my own record.

Q You wanted to cover your own record? A Certainly.

Q In other words, you wanted to hide from the authorities the fact that you had been previously convicted, is that right? A I don't know.

Q Is that right or not? A Yes, that I wanted to hide it? My previous convictions? Yes sir.

Q Now, this conviction in 1913, weren't you convicted of shooting a man with a revolver? A No sir.

Q What were you convicted of? A Of pegging two shots at him.

CASE #2854

Q Oh, pegging two shots, with what? A A revolver.

Q You were sent to Sing Sing for that, were you? A Yes sir.

BY THE COURT:

Q For how long? A Three years.

BY MR. DONOHUE:

Q For three years? A Yes sir.

Q Where did you say you work now or before you were arrested? A Worked for a firm named Schmidt & Isaac, down at New Dorp, Staten Island.

Q Schmidt & Isaac, down at New Dorp, Staten Island? A Yes.

Q Doing what? A Well, I work on a concrete machine, mixing concrete.

Q What was your title down there, do you remember? A What do you mean, my name?

Q What kind of work did you do? A Laboring work.

Q How long were you down there? A About a month.

Q About a month? A Just a month.

Q Did you ever work in any one place in your life, Mr. Dorgan, for more than one month? A Did I? Yes.

Q Yes or no? A I worked for a couple of years in one place.

Q What place did you work in a couple of years? A A firm by the name of Kelly & Son, 15th Street and Haviland Avenue, Brooklyn.

CASE #2854



Q How long did you work for them? A About two years.

Q That is the longest time you ever held a job, isn't it?

A Well, I don't know. I guess it is.

Q Now, what year was that in? A Well, that was in 1915, no, 1916 and 1917.

Q I thought you were in the Army during 1916 and 17?

A No, I didn't say so.

Q You did not say so? A No.

Q When were you in the Army? A I went in the Army in March, I think it was March, 1917.

Q March, 1917? A Yes.

Q And where is the next place you worked? A Well, after I got out of the Army I was working up in Base Hospital No. 1, 210th Street and Gun Hill Road.

Q Where did you work there? A In the hospital there, in the Army Camp, I worked there about two or three months.

Q Where did you work before this place in Staten Island, at New Dorp? A 142 Duane Street.

Q How long did you work there? A About seven, eight or nine months.

Q As a matter of fact, Mr. Dorgan, you have been out of work a good deal since you got out of the Army, haven't you? A I have not.

Q Have you got your discharge with you? A No, I think my brother has got it.

Q Where is your brother, in Court? A I don't know.

CASE #2854

Q Where is your brother?

MR. FRANKEL: I just sent for him a moment ago.

Q Do I understand you to say you were working on Staten Island on this particular day? A I was.

Q What time did you leave work? A We didn't work that day, it was raining.

Q You did not work that day? A No, we can't, it was raining outside.

Q Well then, you did not work that day? A I couldn't be working, no, if it was raining.

Q Well, then you were not working? A No.

Q What time did you leave Staten Island, or did you go down to Staten Island that day? A I am boarding down there, I am staying down there.

Q You were staying down at Staten Island? A Yes, I used to come back every Sunday or every Saturday afternoon or night.

Q What time did you come back to New York? A It was around 11 or 12 o'clock, I think it was the last boat from there.

Q What time did you leave Staten Island? A I didn't look at the time. I couldn't make a guess or anything.

Q Have you no idea at all what time you left Staten Island? A No sir.

Q Was it daylight? A No, it was night, it was near midnight.

Q And you arrived at South Ferry, did you, sometime? A Yes.

CASE #2854



Q And took the Elevated train, I suppose? A Yes sir.

Q Up to 99th Street and Third Avenue? A Yes.

Q When you get off you went down and asked some fellows to have a drink with you? A Yes sir.

Q And you have no idea of what time you left Staten Island? A No sir.

Q You asked a couple of fellows on the corner to have a drink with you, is that right? A Yes sir.

Q And you didn't go in the saloon that night at all, did you? A No sir.

Q The saloon was closed, wasn't it? A Yes.

Q Did you try to go in? A I started to walk in and there was a fight there and as I say I saw Callagher running out.

Q You said before that you stood outside for awhile asking some fellows to go in with you? A That was on the corner.

Q Could you see the saloon was closed from the corner?

A Well, he opens that place -

Q No, could you see the saloon?

MR. FRANKEL: Let him answer. You asked him a question.

Q Could you see whether the saloon was closed when you stood on the corner? A No.

Q What did you do after you stood on the corner for a little while? A I went up to try and see if I could get a drink

Q What did you do to try to get a drink? A I didn't do

2016

CASE #2854

anything. I saw the crowd there and as I say I started to walk away.

Q How many people were there? A There was about 10 or 12.

Q About 10 or 12 at the side door of Roth's saloon? A The side door of Roth's saloon.

BY THE COURT:

Q How near did you get to the side door, what was the nearest you got to it? A Well, it runs down a step like that (illustrating), the side door runs about four steps to the street, there is a hill, and these fellows were downstairs and I am out on the top step.

Q You were on the top step going down into this little areaway? A Yes sir.

Q Well, how many feet away is that from the door? A That's about 7 feet.

Q That was the nearest you got to it? A Yes sir.

BY MR. DONOHUE:

Q You never got inside? A No, I was not inside.

Q That night or morning, at least, I mean? A No sir.

Q You arrived at the top of the steps leading down into the back room? A Yes, right at the top step.

Q Then Gallagher came out and you say he hit you with a club? A No, he started to hit the bunch of fellows standing there.

Q Without any cause at all? A Well, I don't know.

2017

CASE #2854



Q What were they doing there that caused him to do that?

A They were trying to push the door in. He was inside.

Q How many were trying to push the door in? A The whole bunch of them.

Q Did they have their shoulders up against the door? A I don't know.

Q What do you mean when you said they tried to push the door in? A I don't know, it looked as if the door was not locked, there was somebody, it looked to me that was holding the door back.

Q You figured that somebody in back of the door was holding it against those on the outside trying to push it in? A That's the way it looked to me.

Q Did you hear any of the men on the outside say what they wanted to do? A No.

Q Did the men on the outside say a word? A I heard somebody holler "Sharkey".

Q Did you hear anybody on the inside say the place was closed and no drinks could be had? A No.

Q What was the first thing you heard? A The only thing I heard was that name mentioned and the door was thrown open and Gallagher ran out and started to hit in among that crowd.

Q You saw that, did you? A I did.

Q Then you walked away? A I turned around and walked down to the corner.

Q He did not try to hit you, did he? A No, not until the

CASE #2854

officer - well, he did not even then, the officer brought me back.

Q When the officer brought you back he tried to hit you, didn't he? A No.

Q What did you mean before in saying he did not try to hit you before the officer brought you back? A Well, he wanted to hit the other fellow.

Q But he did not want to hit you, did he? A No.

Q Who did he want to hit? A The fellow that was arrested with me.

Q Didn't you say a minute ago that it was not until the officer brought you back he tried to hit you? A No, I did not.

Q You did not mean to say that, but you did say that? A Well, I did not mean that.

Q And you walked away from this saloon very slowly, I suppose? A I walked.

Q An ordinary pace, then what happened as you were walking away? A As I walked down the street Officer Cotter stopped me, just grabbed me like that and turned me over to the other officer.

Q Where was Officer Cotter when he grabbed you? A He was coming up the hill, it is kind of a hill there.

Q How far was he away from the corner? A Well, I seen him coming across the car tracks and I started to walk down to these friends of mine that were standing on the corner.

Q Were you actually standing on the corner when Cotter

CASE #2854



grabbed you? A No, I was about 10 feet from the corner.

Q About how far would you say you had walked away from the side entrance when Cotter grabbed you? A About 20 or 25 feet.

Q And you were walking just an ordinary pace, were you?  
A Yes.

Q What did Cotter say when he grabbed you? A He asked me, he says "What are you running for?"

Q Yes, what did you say? A He says "What are you running for?" I says "Who the Hell wouldn't run", I says, "Do you think I want to get in that scrap?"

Q Well, then you were running, weren't you? A No, I was not.

Q Well, then why did Cotter ask you that question? A I don't know.

Q Well, he did not ask you why you were running? A That's what he did.

Q And you were not running? A No, I was not.

Q Weren't you surprised that he asked you why you were running if you were not running? A Well, through excitement I would have said anything.

Q Well, what did you say? A I says "Who the Hell wouldn't run?"

Q What else did you say? A That's all.

Q Then did Cotter leave you in charge of the sergeant and run after the other man? A He turned me over to the sergeant

CASE #2854

and went after the other man.

Q You saw the other man running away, did you? A No.

Q How did you know Cotter went after him? A Well, I saw the other fellows - the bunch just broke up as I turned to go about my business.

Q Well, didn't you see the other fellows running? A I saw one fellow running.

Q You saw one fellow running and you saw Cotter running after him? A With a straw hat on.

Q Did you see one fellow running and Cotter running after him? A I saw one fellow.

Q That is all you saw, one fellow running? A Well, there was a bunch of them, they all ran then.

Q But you said you only saw one running, now, how many did you see running? A About eight or nine.

Q You say you saw eight or nine running, is that right? A Then the bunch all broke up, I don't know whether they ran or walked. They done everything.

Q Did you see any one of them running? A Well, I couldn't say, no.

Q Well, did you see any one of them walking? A Only myself.

Q Well, you said before Cotter left you in charge of the sergeant and he ran after somebody, didn't you? A I don't know, he might have.

Q Well, did you see Cotter running? A Yes sir.

CASE #2854



Q Which way was he running, towards Lexington Avenue or towards Third Avenue? A Towards Lexington Avenue.

Q Was there anybody running ahead of him? A I didn't notice.

Q Was there anybody walking ahead of him? A I don't know.

Q Where were these eight or nine men when Cotter was running? A I don't know anything about them, only I saw them at the door, I was not bothering about them eight or nine men, I was looking out for myself.

Q You had not done anything that night, had you? A What do you mean?

Q You had not done anything wrong, had you? A No, I didn't have anything to drink.

Q No, I mean you had not done anything to interfere with the police? A No.

Q So you were walking away from this side door when Cotter picked you up? A Yes.

Q Did you hear the restaurant man tell about the hold-up that was in that saloon that night? A No sir.

Q Didn't you hear him say that a couple of fellows came in there and went behind the cash register and took money out and then ran away? A No sir.

Q Did you see the restaurant man there? A No sir.

Q You did not see him there at all right after you were picked up by Cotter and were brought to the back room, you

2022

CASE #2854

were, weren't you? A No sir.

Q Where were you brought? A Right to the side entrance.

Q Weren't you brought inside at any time at all that night? A No sir, never put my foot inside the door of that saloon.

Q In your life? A I am talking now about that time.

Q That particular night? A Yes sir.

Q You were not brought in the back of that saloon that night, were you? A No sir.

Q Sure of that now? A Sure.

Q Did you see Gallagher that night? A I started -

Q No, did you see Gallagher? A Yes, I will tell you how I seen him.

Q Where did you see him? A Half ways in the saloon door and I am on the outside.

Q With the officers? A Like a little space between the outside areaway and the inside of the store and I am standing on the outside.

Q Is that when you were in custody of the officers? A Yes sir.

Q Was that in the door-way or in the cordidor? A No, it was right on the bottom step.

Q Did you notice whether the back room was lighted at that time or not? A I did.

Q Was it dark or not? A It was dark.

Q And the saloon was closed up, wasn't it, at the time you

CASE #2854



were brought back by the officer? A Yes.

Q It was closed up? A Well, it was not closed.

Q Well, it was dark? A It was dark, yes.

Q Why didn't you tell the officer that night that you were not in the saloon at all, that you just came along? A Well, he didn't ask me anything. I didn't know what I was being arrested for.

Q Didn't you say to the police officer that you went in there for a drink? A Well, there was nothing said.

Q Did you tell the police officer you went in there for a drink? A I did.

Q That was untrue? A I didn't say I went in there, I said I was going in for a drink.

Q But you did not tell him you were in for a drink? A No.

BY THE COURT:

Q Had you ever been in Roth's place before? A Yes sir, I have been in quite often.

Q How long has Roth had the place? A As far as I know a couple of months.

Q During that couple of months had you been in there? A Yes.

Q He says he knows you by sight? A He knows me well.

Q He knows you well by sight? A Yes sir.

Q He says he saw you coming into the backroom and go behind the counter, I mean go in the bar room and go behind the

CASE #2854

counter? A Not that night, your Honor.

Q He says so? A No sir.

Q You say he does know you by sight? A Yes sir.

BY MR. DONOHUE:

Q Had you ever talked to him before this? A No, only a passing acquaintance, I used to give him the "Hello".

Q You had no trouble with him, did you, of any kind? A Well, no.

Q What is your answer to that question? A I say no.

Q You were not in the saloon one other Saturday night when you tried to go behind the bar? A No.

Q You are sure of that, are you? A I am sure, positive.

Q How long are you living down at Staten Island? A About a month.

Q Would you come up every Saturday night to New York? A Yes sir, and stay over with my brother.

Q Where did your brother live? A 126 120th Street.

Q Which brother is that? A Thomas Dorgan, the oldest brother.

Q By the way, were you convicted in 1903? A No sir. I am only 31 years old.

Q You are 32, aren't you? A No, I will be 32 in October.

Q You were convicted in 1912 under the name of Edward Dorgan, weren't you? A Yes sir.

Q Weren't you convicted in 1903 under the name of Edward Dorgan too, for manslaughter? A No sir.

CASE #2854



Q You are sure of that? A Positive.

BY THE COURT:

Q Now, these other men that you saw standing around the side door trying to push it in? A Yes sir.

Q You say then you saw the door open and Gallagher came out and started to fight? A He started to fight.

Q Were not all these men inside the saloon? A I couldn't say. As soon as the fight started, your Honor, I turned around and walked down.

Q Well, you did not see any of them go in before you saw Gallagher come out? A I seen Gallagher coming out.

Q When he came out the men were all outside? A Yes sir.

Q So you did not see any of those men go in that saloon?

A No sir.

BY MR. DONOHUE:

Q Are those men that you saw on the corner that night, Mr. Dorgan, friends of yours? A Just passing acquaintances.

Q Well, I mean, you knew them, didn't you?

MR. FRANKEL: Well, which men do you mean?

MR. DONOHUE: The men who were standing on the corner that he asked to have a drink.

Q Did you know those men? A Yes.

Q Do you know where they live? A Well, no.

Q Did you try to get any of them? You never tried to bring them down here, did you? A No, I didn't think it was necessary.

CASE #2854

Q You did not think it was necessary? That is all.

RE-DIRECT EXAMINATION BY MR. FRANKEL: —

Q Did you give me the names of those men? A Yes.

Q What were they, Spears and Mulcahey? A Thomas Spears and John Mulcahey.

Q Has Roth got any money belonging to you that you gave him at sometime? A Yes sir, \$30.

Q Did you ask him for your money? A I did.

Q And he never gave that back to you? A No sir.

Q How did he get possession of your \$30? A One night I was in there in the back room, about 3 or 4 o'clock in the morning, I was pretty well - well, I was drinking and I felt myself going. I had a little black wallet and I pulled it out and I says "Here, Mr. Roth", I says, "hold this for me, there is two bills, a twenty dollar bill and ten dollar bill". He takes them out and holds them like that and he says "A twenty and a ten", and he says "All right". Well, I had \$7 left and there was four or five fellows at the table and they were all drinking with me, and Roth says "It's about time, boys", he says, "that we close up."

BY MR. DONOHUE:

Q What time was that? A It was 3 or 4 o'clock in the morning.

BY MR. FRANKEL:

Q Were you served with liquor at that time in the morning by Roth? A Yes.

2027  
CASE #2854



Q Did you give him the \$30 to hold for you? A Yes sir.

Q Did you come back for your money? A I came back about two days after.

Q Did he give it to you? A No sir.

Q What did he say? A He says "I ain't got no money belonging to you".

Q He denied owing you any money? A He denied that I gave it to him.

BY MR. DONOHUE:

Q When was that, Mr. Dorgan? A I couldn't exactly remember the day or date.

Q Well, about when? A About when?

Q When, before this time you were arrested? A It was, I was working over here in Duane Street at the time.

Q About what time was it? A About a month.

Q About a month before that? You did not feel aggrieved over that, did you, did you feel sore about it? A Well, no I didn't, but I didn't think he intended to keep it at the time. I didn't know what to make out of it. I thought then, I says "Well, maybe he is taking advantage of me, that he thought maybe I was drunk and forgot about it".

Q But you were not drunk? A That I was drunk and forgot about it.

Q But you were not drunk, were you? A Well, I knew what I was doing.

Q Yes, that is all, Mr. Dorgan.

CASE #2854

BY THE COURT:

Q Well, did you still patronize the place after that?

A Yes sir, I didn't hold any hard feelings against him.

Q You kept right on going there just the same? A Yes, well, I figured -

BY MR. FRANKEL:

Q You have been behaving yourself since you got out of the Army, have you been in trouble since that time?

Objected to. Objection overruled.

Q Have you been in any trouble since you got out of the Army? A No sir, I have not been in trouble in the last seven or eight years.

Q Have you an honorable discharge from the Army? A Yes sir.

BY MR. DONOHUE:

Q But you have not got it with you? A Well, I can get it.

FRANK H. DAYTON, called and duly sworn as a witness on behalf of the defense, testified as follows:

Residence 912 Putnam Avenue, Brooklyn.

DIRECT EXAMINATION BY MR. FRANKEL:

Q Mr. Dayton, have you ever seen me before this very minute? A You?

Q Yes? You are connected with some firm, Thompson, Nephew & Company? A Yes sir.

Q Were they employers of John Dorgan at any time? A

CASE #2854



Yes sir.

Q Would you be able to tell us if Mr. Dorgan was employed by them and how long? A I can't tell actually the time, but I should think it was four or five months.

Q During the time he was employed there, when was that period of time, recently? A Well, I should think it was from about December last year, to probably late in the spring.

Q He worked there in what capacity? A Me or him?

Q No, this man? A Well, I am a seller of goods and he was there to pack up such goods as I sold.

Q And in the course of his work there were various articles of property more or less under his care? A Yes, burlaps, dry goods, you might call it textile goods.

Q Put under his care? A Yes, to a certain degree.

Q During that time did you find him to be a good worker and an honest man?

MR. DONOHUE: I object to that, if your Honor please.

THE COURT: Yes, you may ask him what his reputation was.

Q What was his reputation for honesty in the course of his business there? A We have not anything to say about him at all. He was willing and obliging and did everything he was asked to do and did everything I asked him to do and I had quite a good deal to do with him.

Q You did have quite a good deal to do with him? A Yes.

Q And you felt him to be satisfactory?

CASE #2854

Objected to. Objection sustained.

Q And you found him to be honest?

Objected to. Objection sustained.

Q What was his general reputation?

MR. DONOHUE: I object to that. He has not laid any foundation at all.

THE COURT: Well, if he knows what it is he can say.

Q Well, do you know of his reputation being good or bad while he was with you? A Good, as far as I know.

Q You have come here at my request? A Are you Mr. Frank-el?

Q Yes. A I was called up, yes sir, I don't know who called me.

Q All right, thank you very much, Mr. Dayton.

CROSS-EXAMINATION BY MR. DONOHUE:

Q As a matter of fact his work was to pack up your samples and carry them around for you? A Samples, no sir.

Q Well, what? A Goods that were sold.

Q What did he do with them after he packed them up? A What would he do with them?

Q What would he do with the goods after they were packed up? A Leave them where they were, on the floor. They were shipped afterwards by someone else.

Q What was your connection with this firm? A I am a salesman.

Q Was he assigned to you? A He was part of the depart-

CASE #2854



ment.

Q Was he assigned to you particularly? A Sure.

Q Assigned to you as what? A Assigned to me?

Q Don't you understand my question? A I don't understand why he would be assigned to me.

Q What is the name of this firm? A Samuel Thompson's Nephew & Company.

Q What kind of a firm is it? A They sell burlaps.

Q For what purpose, bags? A Bags, for baling purposes, such things as that, packing goods.

Q Where is this place of business? A 142 Duane Street.

Q What was your connection with them? A I have charge of a department, selling goods.

Q And Mr. Dorgan was doing what? A Pack goods after I sold them.

Q So his position was really shipping clerk, was it? A Well, he didn't make out receipts. He packed goods, got them ready for shipment.

Q How long was he working for you? A I can't say the actual time but I think about four or five months, probably in December.

Q All right, that is all.

MR. FRANKEL: That is all, that is the defendant's case, your Honor.

CASE #2854

REBUTTAL.

EDWARD ROTH, a witness for the People, recalled, and testified as follows:

MR. FRANKEL: May I make this statement, I will make it under oath if your Honor wishes - that I have made efforts to locate Spears and Mulcahey, the people who were with him at the time and I have been unable to find them.

THE COURT: Very well.

DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. Roth, did you see the defendant Dorgan in your saloon, or at least in the back room of your saloon about a month before June 6th, at 4 o'clock in the morning, just yes or no? A No sir.

Q Did he ever give you or did you ever take from him \$30? A No sir.

Q Did he ever give you any money at all? A No sir.

CROSS-EXAMINATION BY MR. FRANKEL:

Q Well, you hold money for people around the neighborhood, don't you? A No sir.

Q Never do that? A No sir.

Q Isn't it customary for a saloonkeeper to hold money for people around the neighborhood, of Dorgan's type?

Objected to. Objection overruled.

A I don't know about customary, but I never do it.

Q You never do it? A No sir.

CASE #2854



Q You had a conversation with him with reference to \$30, didn't you, three or four weeks before that? A He came in one Saturday night.

Q Did you have such a conversation with him? A He came in one Saturday night with another man.

Q Just a moment, answer the question?

BY THE COURT:

Q Just answer yes or no, did you have any talk with him about \$30? A He told me about it.

BY MR. FRANKEL:

Q He told you about \$30? A Yes.

Q That he had given to you to hold for him? A He didn't give it to me to hold.

Q Did he say he gave it to you? A Yes.

Q And you never received \$30 from him? A I never received it from him.

BY MR. DONOHUE:

Q Now, just tell us all about that? A On Saturday night he came in with another man who has been away for 20 years.

MR. FRANKEL: Now, I object to that.

THE COURT: I will allow it.

A (Continuing) He came in on Saturday night with an old man who has been away in Sing Sing for over 22 years, and he comes to the bar and asks for a drink. I told him "You can have your drink but this man can't have his drink, he will not be served at this bar."

CASE #2854

MR. FRANKEL: I object to this speech, if your Honor please.

THE COURT: Well, the defendant gave his version of the matter and now this man has a right to give his.

THE WITNESS: I said "We are not going to serve this man". Well, then he says "How about the \$30 I gave you, are you going to give it to me?" I said "Man, I never seen you before in my life", I says "you never gave me any money". He says "All right, I will see you". He walks away from the bar about five steps and he comes rushing back and grabs hold of the bar, and he jumped right over the bar and of course I didn't know if he has got something on him or not and I ran out.

Q Just tell us what he did? A He broke everything behind the bar and I went out from behind the bar. Everybody ran out when they seen that. He had another man with him.

Q Did you ever know Dorgan before that night? A No sir.

Q Did you know of him, had you ever heard about him before that night? A No sir.

BY MR. FRANKEL:

Q He broke a lot of property in your store that night, the glasses and everything? A Yes.

Q And you ran out? A Yes sir, I did.

Q You did not have him arrested for it, did you, yes or no? A I couldn't find him when I went out. He ran out.

Q Well, you ran out ahead of him, didn't you? A I did.

CASE #2854



Q You did not yell as you did that night, you did not go out to the street and scream, did you, for help, as you did this particular night? A I ran out.

Q Did you go out to the street and yell? A I ran out. I don't remember if I yelled or not.

Q You did not make any effort to get him arrested, did you? A I did. They went into 100th Street corner and they were thrown out of there.

Q That is the effort you made, you went into another saloon? A They went into another saloon and I followed them right up.

Q You understand my question, do you, Mr. Roth? I asked you what effort did you make to have him arrested for that? A I followed them up.

Q You followed them up the street? A Yes.

Q And you did not have them arrested? A I couldn't lock him up. There were two of them and I didn't see no policeman around.

Q And you stopped following them because you didn't see any policeman? A I had to go back, the place was all alone, nobody was there and the doors were wide open.

MR. DONOHUE: That is all, if your Honor please.

THE COURT: Do both sides rest?

MR. FRANKEL: The defense rests, your Honor.

THE COURT: Gentlemen, it is so near the hour of adjournment that I shall not send the case to you tonight

CASE #2854

but will let it go over.

The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until Monday, August 16, 1920, at 10 o'clock A. M.

CASE # 2854



THE PEOPLE v. DORGAN.

New York, August 16th, 1920.

- : TRIAL RESUMED: -

MR. FRANKEL: May I ask the Court if it is possible to re-open for the defendant? I want to introduce in evidence the honorable discharge of the defendant from the United States Army, which I did not have in my possession on Friday.

THE COURT: Well, it is not competent evidence, unless consented to.

MR. FRANKEL: May I submit it then to the District Attorney? It is rather <sup>hard</sup> to subpoena the Government authorities. I have also a former employer of the defendant outside here. He is a character witness. It will only take a moment or two.

THE COURT: Well, you could have gotten him before. It seems to me it is a peculiar thing to prove character when a man has been convicted two or three times before.

MR. FRANKEL: I take an exception to your Honor's statement. That is a matter for the jury.

THE COURT: Very well, call your witness now.

JOSEPH P. DONNA, called and duly sworn as a witness on behalf of the defense, testified as follows:

(Residence: 1749 Park avenue).

DIRECT EXAMINATION BY MR. FRANKEL:

Q Mr. Donna, do you know the defendant, Mr. Dorgan, here?

A I do.

CASE #2854

Q Has he been in your employ? A He has.

Q During what period of time? A Well, he worked for me for about five months in the year 1917.

Q During that period of time has he been trusted with various articles of personal property?

MR. DONOHUE: If your Honor please, I object to this line of questioning.

THE COURT: Yes, objection sustained.

Q Have you known him ever since, Mr. Donna? A I have.

Q Have you had occasion to discuss Mr. Dorgan's reputation as to good conduct and honesty since 1917? A He always has proved to be honest --

BY MR. DONOHUE:

Q Now, wait and please answer questions.

BY MR. FRANKEL:

Q What is your answer to that question? A I have not quite understood that last question?

Q Have you had occasion to talk about Mr. Dorgan, as to whether or not he was behaving himself, and was a man of good conduct, and honest, since 1917? Have you had occasion to talk to people about him and his general reputation? A Not a bit.

Q Well, he was employed by you and how did you find his conduct? A I always found him a willing worker and honest man during the five months he was in my employ. That's about all I can say.

CROSS-EXAMINATION BY MR. DONOHUE:

Q Under what name did he work for you? A He worked under

CASE #2854



the name of Dorgan, as I knew him.

Q Did you know at that time that he had been convicted three times for felonies and served a term in State Prison?

A Never.

Q You did not know that, did you? A No, sir.

Q That would make a big difference, wouldn't it, as to your opinion of his character, if you knew he had been convicted three times and served time in State Prison? A Yes, it would, but I never knew it.

Q Yes, that is all, Mr. Donna.

MR. FRANKEL: That is all. I offer this copy of the honorable discharge of the defendant in evidence, from the United States Army, dated the 4th of April, 1919.

THE COURT: Well, is it consented to or objected to?

MR. DONOHUE: I do not object to it. I do not care whether it goes in or not.

THE COURT: Very well, mark it in evidence.

(It is marked Defendant's Exhibit A in evidence).

THE COURT: You rest now? Go to the jury then.

Mr. Frankel summed up the case for the defense and

Mr. Donohue summed up the case for the People.

The Court charged the jury.

The Jury returned the following verdict: We find the defendant guilty of robbery in the first degree, with a recommendation to the mercy of the Court on account of his good behavior since his last conviction.

CASE #2854

THE COURT: The defendant is remanded until Friday for sentence.

MR. FRANKEL: Will your Honor permit me to reserve any motions until the day of sentence?

THE COURT: Yes. Friday, August 20, 1920.

-----

CASE #2854