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COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART III.

3639

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

THOMAS MORRISON and JAMES DURKIN.

Before

HON. OTTO A. ROSALSKY, J.,

And a Jury.

New York, N. Y., December 21, 1921.

INDICTED FOR ROBBERY IN THE FIRST DEGREE, GRAND LARCENY IN THE
SECOND DEGREE, ASSAULT IN THE FIRST DEGREE, AND CRIMINALLY
RECEIVING STOLEN PROPERTY IN THE FIRST DEGREE.

INDICTMENT FILED NOVEMBER 26, 1921.

APPEARANCES:

Theodore L. Waugh, Esq., Assistant District Attorney,
For the People.

James D. C. Murray, Esq., For the Defendants.

(A jury was duly impanelled and sworn.)

(Mr. Waugh opened the case for the People.)

JAMES LOWMEY, a witness called in behalf of the People,
having been duly sworn, testified as follows:

(The witness stated that he resides at 343 West 23rd Street,
New York City.)

DIRECT EXAMINATION BY MR. WAUGH:

Q Where do you live, sir? A 343 West 23rd Street.

Q Who do you live with? A With a party by the name of
Newburn.

Q A private family? A Yes, sir.

Q You are not married? A No, sir.

Q How old are you? A Forty-one.

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Q How long have you lived there with this family? A About eight years.

Q Now, I believe you say you were born in Scotland?

A Yes, sir.

Q And brought up to the trade of a bricklayer? A Yes, sir.

Q You have not worked at that for how long? A About five or six years; about five years.

Q Since that time what have you been doing? A I worked for the American Railway Express and then since then I have been a speculator, speculating on horses.

Q Speculating and been playing horse races? A Yes, sir.

Q Is it your custom to carry much money with you? A Yes.

Q Considerable amounts? A Well, between two and three hundred dollars.

Q On your person all the while? A Yes, sir.

Q To use in this speculating and playing horse races?

A Yes, sir.

Q You have never been convicted of any crime? A No, sir, never.

Q Do you remember when you first saw either or both of these two defendants sitting here? A Yes, sir.

Q About when? A About two weeks before this thing happened.

Q And when you say "this thing happened", you mean the month of what? A The 17th of October.

Q The 17th of October of this year? A Yes, sir.

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Q On what day of the week was that, do you remember?

A That was a Monday.

Q And you had seen these two defendants before that time some two weeks? A Yes, sir.

Q How many times? A Well, I couldn't just exactly say how many times, but frequently.

Q Well, as near as you can recollect? A Several; well, three or four times.

Q Where? A In a restaurant at Eighth Avenue and 23rd Street.

Q What is the name of the restaurant? A Batchelder's.

Q You saw them how many times? A Three or four times.

Q In Batchelder's Restaurant on Eighth Avenue near 23rd Street? A Yes, sir.

Q Was that a place where you were accustomed to eat? A Yes, sir.

Q Are you pretty well known in that neighborhood? A Yes.

Q Now, the several times that you saw these defendants previous to the 17th of October, were they always together, or what was the fact? A Oh, no.

Q What is the fact? A Well, sometimes I saw one of them with another fellow; separate, you know.

Q Did you ever see them together? A Well, I wouldn't say that I did.

Q But you have seen them both in that restaurant? A Oh, yes.

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Q Did you pay any particular attention to either of them?

A Well, in a way, yes. Loud talking; that was all.

Q You heard them talking loud? A Yes, sir.

Q That is what attracted your attention? A Yes, sir.

Q Now, did you know their names? A Yes, sir, I knew their names.

Q You knew the names of each of them? A Yes, sir.

Q What names; all their names or their last names, or what? A Just their last names.

Q You knew that before the 17th of October? A Oh, yes, sir.

Q Did you ever see them outside of the restaurant? A No, sir, I can't say I did.

Q Did you ever see them on the street in front of the restaurant? A Well, I didn't notice. I will say no to that.

Q Now, what is the Sage Social Club? A Just a social club. There were about twenty-five members and they were all working fellows and they had a social club. It was not a political club or a boot-legging club or anything like that; just a regular social club.

Q We cannot hear you. A Just a social club. It was no political club or any boot-legging club or anything like that; just a social club where these fellows used to gather, you know, and play cards and play the piano.

Q You were a member of it? A Yes, sir.

Q It is not in existence now? A No, sir. The building has been pulled down since then.

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Q The building has been torn down? A It has been torn down since then.

Q How long has it been there in that neighborhood, that club? A In the premises just pulled down, they were there for two years, and on the other side of the avenue, 304, they were there for about eight years.

Q Is there a telephone in there? A No, sir.

Q Were you accustomed to spend a considerable amount of time there? A Yes, sir.

Q Now, do you remember this day, the 17th of October?

A Yes, I remember the day.

Q This Monday? You say it was a Monday? A Monday, yes.

Q Do you remember when on that day you went into this club?

A Yes, I remember.

Q What time? A It was around noon time when I went into the club.

Q Was anybody there when you got there? A No, sir, there was no one in the club when I got there.

Q Did anyone come in while you were sitting there? A No, there was another two men went into the club with me.

Q How long did they stay? A About fifteen or twenty minutes.

Q And you went in about when; in the morning? A Around noon time, in the forenoon.

Q And the other two men left? A They left, yes, sir.

Q And you stayed there alone? A Yes, sir.

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Q In what part of the club did you stay? A In the front room, looking on towards Eighth Avenue.

Q Looking out a window on Eighth Avenue? A Yes, sir.

Q Where were you sitting? A At a desk near the window.

Q This place you speak of, where this club is, is in the City and County of New York? A Yes, sir.

Q How, what floor is it on? A One flight up it was.

Q How many rooms did it have? A Two rooms.

Q What were you doing when you were sitting there? A I was sitting reading a newspaper.

Q Did you have any money with you? A Yes, sir.

Q How much? A About \$200.

Q That was your money, was it? A Yes, sir.

Q That you use in playing the races? A Yes, sir.

Q Tell what happened to you when you were sitting there at the window, the first thing you heard? A There was a knock on the door.

Q Was the door locked? A Yes, sir.

Q Did you lock it? A It always was locked. It was a Yale lock, you know.

Q Then what? A I opened the door and as I opened the door there were two revolvers put up against my head.

Q Show how. A Like this (illustrating) and I was told to back up and I was backed up into the rear room of the club, and when I got in the rear room I was made to face the wall, and there was \$200 taken from my pants pocket and a ring from my

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finger and a stickpin from my tie. Then my arms was tied behind my back, around the wrists, and my ankles was tied.

Q Was this your money? A Yes, sir.

Q Was this stockpin and, what else was it, yours? A Yes, the ring.

Q And the ring; was that yours? A Yes, sir.

Q Did you buy the ring? A I did, yes, sir.

Q How much did you pay for it? A I paid \$70 for the two articles.

Q Now, when you first went to the door, to the two revolvers that you speak of, how many men were there there? A Two men.

Q Did you see those guns? A Yes, sir.

Q Tell the jury what they were. A They were two revolvers, small revolvers, and they looked like to be nickel plated revolvers. They shone, you know; they had a shine to them.

Q Did you feel them on your temples? A Yes, sir.

Q What, if anything, was said at the time you went to the door and this happened to you? A I was told to back up.

Q Do you remember who told you that? A No, sir, I don't know which one it was.

Q Did you look at the men? A Yes, sir.

Q How were their faces? A They had handkerchiefs on their face, over their nose down.

Q Did you recognize the men? A Yes, sir.

Q Who were they? A The two defendants.

Q Morrison and Durkin? A Yes, sir.

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Q Men whom you had seen in the restaurant? A Yes, sir.

Q When you were in the back room, in what position were the guns? A My face was to the wall and I couldn't say which way the guns were pointing at me then, because my face was to the wall and they were behind me.

Q Was anything said by the two defendants after you were told to back up? A In the rear room, yes, sir. I had another ring on my finger and they couldn't get it off and one man said to the other, "Well, we will take this one."

Q Which one said it, do you know? A I would not be certain as to which one said it, but that is what was said.

Q State to the jury whether or not you were frightened.
A Yes, sir.

Q Were you excited? A Certainly.

Q At any time did you lose your senses? A No, sir.

Q Where was this money of yours? A In my pants pocket on the right hand side here (indicating).

Q Who took your money; are you able to say which one?
A Well, I wouldn't swear to which one took the money, because I was facing the wall and they were behind me.

Q Are you able to say which man took your ring? A No, not to swear to it.

Q Or the pin? A No, sir; I wouldn't swear to which one it was.

Q How was the pin taken? Illustrate; show the jury.
A The pin was just taken out of my tie this way (illustrating).

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they took the safety clasp off the pin and just pulled the pin out, and the safety clasp dropped on the floor.

Q Did the men say anything to each other at any time when they were with you? A No, sir, only that one remark in the rear room.

Q What was that? A About the other ring on my finger.

Q What different parts did the defendants take in tying you up? Tell the jury. A It seemed that there was only one defendant tied me up.

Q Did you see the other? A No, sir; I was facing the wall.

Q One of the jurors wants to know how they took the pin from you. Were you facing the wall or were they in front of you, or how? A He was sideways when he took the pin. He just reached around and pulled the safety clasp off and dropped it on the floor and took the pin out of the tie.

Q They reached around you? A Yes, sir.

Q How? A Around the side.

Q They got in front of you? A Yes, sir.

Q How near the wall were you? A About a foot or eighteen inches from the wall.

Q Nothing else was said but what you have already given?

A No, sir, nothing else.

Q As near as you can recollect? A No, sir.

Q After you were tied, what position were you left in?

A I was left standing up.

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Q Did you hear them leave the room? A Yes, sir.

Q Was there anything said? A I didn't hear anything said, no, sir.

Q Did you hear them after they left the room at all?

A No, sir, I did not.

Q Did you hear them going away? A Oh, I heard them close the door and walk downstairs, go downstairs.

Q What did you do then? A Well, I tried my best to unloosen myself, which I did, and then I went straight downstairs the minute I unloosened myself.

Q How long did it take, do you know? A About two or three minutes.

Q What else happened then? A Well, when I got down on the avenue after unloosening myself, I walked down Eighth Avenue as far as 24th Street and there was an officer on the school crossing.

Q What were you tied with? A With the two small pieces of thick twine.

Q What has become of them, do you know? A I couldn't tell you now. I tried to get them and I couldn't get them. They were put in a drawer in the club and when the club was moved they were put in storage and somebody must have cleaned them out.

Q What size cord? A About eighteen inches or two feet.

Q What caliber; what size; how thick? A About a quarter of an inch thick.

Q About the size of a clothesline? A It was not quite

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so thick as a clothesline.

Q You say it took two or three minutes to get loose?

A Yes, sir.

Q What did you do then; went downstairs? A Yes, sir.

Q What condition was the door of the club room in? A The club room door was locked.

Q In what condition was the front door to the street?

A That was locked, too.

Q The same kind of a lock? A Yes, sir.

Q You opened that door? A Yes, sir.

Q And you went out and you saw various people, but you did not see the defendants? A No, sir.

Q Not then? A No, sir.

Q Have you ever been convicted of a crime? A No, sir, never.

CROSS-EXAMINATION BY MR. MURRAY:

Q You testified in the Magistrate's Court in this case, didn't you? A Yes, sir.

Q Now, you say that you are a bricklayer? A I said I was a bricklayer by trade.

Q Didn't you say your occupation was that of a bricklayer? A Yes, I said that.

Q When did you follow that occupation? A Up to five years ago; five or six years ago.

Q Where was the last time you ever worked as a bricklayer? A The last place I worked on as a bricklayer? I don't remember

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the last job I was on as a bricklayer, because I had so many jobs as a bricklayer.

Q In what part of the country was the last place you worked?

A New York City.

Q Five years ago. You are sure it is five years ago?

A Five or six years ago. I wouldn't say just exactly the date. If I can rightly remember, when I worked in Minors Theatre. The theatre was closed up for alterations. And I worked on the Equitable Building.

Q It might have been ten years ago? A No, sir.

Q What have you been doing for a living since you worked as a bricklayer? A I worked the the American Railways Express for two years and a half.

Q When did you work for the American Railways Express?

A All during the war I was working for the American Railways Express.

Q From what date to what date? A I don't know the exact dates.

Q In what years did you work for the American Railways Express? A Let me see now; part of 1920 and 1919 --

Q What part of 1920? A Up to around the month of April, when I left there.

Q Do you mean a year ago last April? A Yes, sir.

Q Where did you work; what part? A In the Pennsylvania Station.

Q And you worked there in April, 1920? A Yes, sir; I

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think it was April, 1920.

Q What were you doing for the American Railways Express?

A I was a sorter.

Q Why did you leave that place? A I just left. They --

Q Did you go to work?

MR. WAUGH: Let him finish.

Q You just left? A Yes. The agent up there, he left and there were several of us left when he left.

Q And after you left there in April, 1920, you never worked afterwards, did you? A Well, no; I was idle for a while after that, yes.

Q Did you ever do any work after that? A No, I haven't done any work since that, no, sir.

Q How have you lived since April, 1920, without work?

A Speculating on the horses.

Q Speculating? A Yes, sir.

Q So you say that you are a speculator? A Yes, sir.

Q And that that is how you have learned your livelihood?

A Yes, sir.

Q What kind of a speculator are you? A Just a speculator.

Q What kind of speculations do you carry on? A I play the horses.

Q You play the horses? A Yes, sir.

Q That is what you call speculation? A Yes, sir.

BY THE COURT:

Q Well, to use the popular term which ordinary people

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understand, you are a gambler? A Yes, sir.

BY MR. MURRAY:

Q Do you make book?

THE WITNESS: Do I have to answer that question, your Honor? I have never been convicted of anything.

THE COURT: The point is this: You have a right to decline to answer any questions which may tend to convict you of a crime. Now, ordinary betting is not a crime, but if you make book and make a business of the game, that is a crime under the law.

MR. WAUGH: Will your Honor explain to him, which I think he is entitled to, what making book is? Maybe he knows; I don't.

THE COURT: Possibly he knows better than you or I.

MR. WAUGH: He might make his own book. I suppose that would not be a crime.

THE COURT: If he made a business of it it would be a crime.

MR. WAUGH: If he kept a record of his own books that would not be a crime.

THE COURT: If he makes a business of it, for himself or others, that would be a crime. You are the judge, Mr. Witness, as to whether an answer to the question would tend to incriminate you and convict you of a crime.

THE WITNESS: If I answer it --

THE COURT: You see, the District Attorney makes no

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promise to you.

THE WITNESS: Oh, no; surely not.

THE COURT: A witness has a right to decline to answer any question which may tend to convict him of a crime. Now, book making, when conducted as a business, is a violation of the law of this state. But where a person makes a bet, gambles, and does not make a business of it, he is not guilty of a violation of the statute. Now, counsel wants to know whether you are engaged in business as a book maker, whether you make book or not.

A Not for myself. I never did make a book, no, sir.

Q Do you make a livelihood by getting commissions for taking bets for other men or making book? A I have made bets for other people, yes, sir, and I have got commissions for it.

Q Is that what you are doing now? A No, sir.

Q Did you do it today? A No, sir.

Q Have you done it in the past year and a half? A I have taken bets up for other people, yes, sir.

Q And got paid for it? A And got paid for doing it.

Q And that is what you call speculation; is that it?

A No.

Q You were not speculating, were you? The other people were, weren't they? A I was speculating.

Q Where did you say you live? A 343 West 23rd Street.

Q How long did you live there? A About eight years.

Q What is the name of the person with whom you live?

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A Newburn.

Q You are sure you lived there eight years? A I have lived with these people for eight years.

Q At that address? A About six years at that address and the other two on 24th Street.

Q Now, you say that on the day in question two men knocked on the door of the social club? A Yes, sir.

Q You were there at that time? A I was.

Q And you were in the habit of spending your days in this social club, weren't you? A No, sir, not all days in this social club.

Q Didn't the men who belonged to the social club work for a living? A Yes, sir, the men did.

Q They were working during the daytime, weren't they? A Not all of them, no.

Q Most of the men who belonged to the club were found there at night, weren't they? A Yes, sir, mostly at night time.

Q And they were working for their living during the daytime? A Not all of them.

Q How often during the week were you at the social club? A Every day in the week.

Q From what hours? A Sometimes I would be up there in the forenoon and read the papers, or I may be up in the evening reading the papers. No special time.

Q Since a year ago last April you spent most of your days in the social club; is that it? A No, sir, not in social clubs.

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Q In this social club? A In this social club.

Q And that is where you were carrying on your book making business from, wasn't it? A No, sir.

Q You were there every day, weren't you? A I was there in that club every day.

Q You were not working, were you? A No, sir, I was not working.

Q When and where did you do your speculating? A On the street.

Q On the street? A Yes, sir.

Q What hours of the day? A I used to go uptown and --

Q What hours of the day did you do your speculating?

A Two o'clock.

Q From two o'clock -- A To two-thirty.

Q To two-thirty? A Yes, sir.

Q So your entire day's work, which consisted of speculating lasted from two o'clock in the afternoon until two-thirty? A Yes.

Q That is, your labor of speculating lasted a half an hour during the entire day? A Half an hour.

Q Is that right? A Yes, sir.

Q The rest of the day you spent at the social club? A No.

Q Where? A I might have been in the social club in the forenoon and I may go to a ball game in the afternoon.

Q And you were at the social club every day? A Every day I was in that social club, yes, sir.

Q Now, on the day in question, what time did you go to the

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social club? A Around noon time.

Q About twelve o'clock? A Yes, sir.

Q Had you had your lunch? A No, sir, I did not have my lunch.

Q At what time did this affair of which you complain take place? A Shortly after noon time.

Q Well, how long after twelve o'clock? A About ten minutes after twelve.

Q So that it was about twelve ten? A Around twelve ten.

Q And how long did the entire transaction take? A About five minutes.

Q So the whole thing happened between twelve ten and twelve fifteen? A Yes, sir.

Q And you cannot be mistaken about the hour? A No, sir.

Q And you cannot be mistaken about the minutes? A I may be mistaken about the minutes, but not the hour.

Q I mean, between twelve ten and twelve fifteen, there is no mistake about that, is there? A No, sir.

Q So when you started to go down on the street after this transaction, what time would you say it was? A I didn't see what time it was.

Q Can you give us approximately what time it was? A Well, it may have been around twelve eighteen or twelve twenty when I went down.

Q It was not twelve thirty? A No, sir.

Q Of that you are sure? A Yes, sir.

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Q And you cannot be mistaken? A No, sir.

Q Now, two men came in and knocked on the door; is that right? A Two men knocked on the door, yes, sir.

Q Then you opened the door? A Yes, sir.

Q Did you open it full or just part? A I opened the door just the ordinary opening.

Q The door opened in? A Yes, sir.

Q You pulled the door in? A Yes, sir.

Q And the next thing you observed was two pistols against your head? A Yes, sir.

Q Of course, when the pistols were presented you were frightened? A Undoubtedly.

Q And disturbed and in an excited frame of mind? A Yes.

Q Nervous; and as soon as the pistols were presented to your head were you turned against the wall? A No, sir.

Q What occurred as soon as the pistols were placed to your head as you have told? A I walked backwards.

Q You stepped back? A Stepped back, and the two men with the pistols were in front of me following me up until I got in the rear room.

Q How was the light in the outer room; was it lighted by artificial light or by daylight? A In which room?

Q In the room where you first opened the door and you say the men walked in? A It was daylight.

Q Are there windows there? A Yes, sir.

Q And then you backed in to the inner room against the wall?

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A Yes, sir.

Q With your face turned towards the wall? A Yes, sir.

Q During all this time your view was concentrated mostly on the guns, wasn't it? A On the guns. The guns went up this way (illustrating).

Q Your view was mostly concentrated on the guns? A Surely.

Q You were not watching anything else very closely, were you? A Well, I was so excited I don't know what I was watching.

Q But you can't forget the guns? A No, I can't forget the guns.

Q You could forget some other incident, but not the guns?

A I could not forget the guns.

Q Now, when you backed up against the wall, you were told to face around; is that it? A I was told to face the wall when I was put in the rear room.

Q So that from that moment when you faced the wall until you heard the door close after the men and their footsteps on the stairs, you did not again look at them; is that right? A No, sir, I did not.

Q Now, you say you testified in the Magistrate's Court?

A I did, yes, sir.

Q Now, those men had a covering over their faces? A Yes, from their nose down.

Q What kind of a covering? A It looked like a handkerchief.

Q Tied around their face? A I don't know how it was tied,

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but it came across this way (illustrating) and hung down.

Q It covered the lower part of the nose? A It covered the lower part of the nose.

Q And the entire lower part of the face? A Yes, the handkerchief hung down by the corner and this part was out of view (indicating).

Q Did those cloths remain over the men's faces at all times? A All the time I seen them.

Q While they were with you? A I couldn't say if they did when we were in the rear room.

Q At any time when you saw the men was the covering off their faces? A No, sir.

Q And this covering extended to above the lower part of the nose? A Yes, sir.

Q Probably up towards the bridge of the nose? A Just about the center of the nose somewhere, like that (illustrating). I didn't take --

Q You do not know how the handkerchief or covering was secured over the face, do you? A No, sir.

Q Whether it was by strings or anything else? A No, sir.

Q That you do not know? A No, sir.

Q You just saw them. Now, what kind of head pieces did those men wear? A Caps.

Q Peak caps? A Yes, sir.

Q Pulled down over their faces? A No, I couldn't say whether they were pulled down. The cap just seemed to be put on,

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an ordinary cap just put on their heads.

Q Did you notice whether or not the caps covered any portion of the men's foreheads? A I did not notice.

Q Did you notice any portion of their forehead? A I did, yes. I could see their eyes.

Q Didn't the cap extend over the eyes? A No, sir, it did not exclude the eyes from view.

Q The only feature of the entire face that you could see was the eyes; is that right? A The eyes, yes, sir.

Q That is right, is it? A Yes, sir.

Q Did you know what kind of clothing the men wore? A No, sir, I did not.

Q Do you know whether or not they wore overcoats? A I couldn't say whether they wore overcoats or not.

Q Or the color of the suits they wore? A No, sir; I couldn't say what color suits they wore.

Q Or whether they wore gloves or they did not wear gloves? A I couldn't say as to that, even.

Q You don't know? A No, sir.

Q Now, you say you recognize the men because you heard the voices; is that right? A Yes, sir.

Q You identified those men because you heard their voices? A That is what I said, yes.

Q That is the reason, is it? A Yes, sir.

Q How many words were spoken from the time the men entered the door until the time they left? A I don't know just exactly

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how many words were spoken.

Q Well, can you tell us anything that was said; can you tell us anything that was said from the first moment you saw the men in the social club until -- A I was told to back up.

Q You heard someone say "Back up"? A Yes, sir.

Q Do you know who said it? A Not which one of the two it was that said that.

Q Do you know whose voice it was that said it? A I thought I knew the voice.

Q How do you know? A Well, no.

MR. MURRAY: That question is withdrawn.

THE WITNESS: I was so excited I didn't take note, but I just don't remember who said it.

Q You don't know who owned the voice who said it? A No, not that voice, no.

Q Now, besides "Back up", what else was said? A In the rear room, when they pulled this ring and it would not come off, one said, "Well, we will take this" and he mentioned the name of Jim, and that was all.

Q Now, did you know who owned that voice? A Yes, sir.

Q Who? A Morrison.

Q That was Morrison's voice, was it? A Yes, sir.

Q You can't be mistaken about that? A No, sir.

Q Now, didn't you tell Mr. Waugh on direct examination a few minutes ago that you did not know which man spoke? A No, sir, I did not.

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Q Didn't you tell Mr. Waugh that you could not distinguish which man gave the orders? A No, sir, I don't think so.

Q Didn't you say anything like that? A I said I didn't recognize the voice which told me to back up.

Q Didn't you say that when it came to the question of taking your ring and the money that you did not know which man did it? A I said I did not know which man took the ring or the money. I said that, yes.

Q Didn't you say you did not know which man spoke? A No, I don't think so. I don't remember if I did.

Q Well, are you clear now as to whether or not you did say it? A No, I am not clear as to whether I did say it or not.

Q Are you clear as to whether you know which man owned the voice? A Yes, sir.

Q And you cannot be mistaken about it? A No, sir.

Q Now, you had never seen Morrison and Durkin together before, you said. A I said I couldn't remember. I said, no, I never seen them together.

Q You say that at various occasions you saw them in the restaurant? A Yes, sir.

Q But you never remember seeing them together? A No, I never remember having seen them together.

Q On how many occasions did you ever see Morrison? A Oh, three or four.

Q Whereabouts? A In the restaurant.

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Q Did he ever engage in any conversation with you in the restaurant? A No, sir.

Q That restaurant was on 23rd Street, Was it? A It was on Eighth Avenue.

Q At 23rd Street? A Between 23rd and 22nd Street.

Q A large restaurant? A Yes, sir.

Q A restaurant that contained tables, where the diners sat at the tables? A No, sir. Upstairs they have tables in the dining room, but downstairs it is like a horseshoe bar.

Q Where one person eating sat near another? A Yes; they sat on stools.

Q How many stools away from you on any one occasion did Morrison sit? A I sat right opposite him.

Q And you heard his voice? A Yes, sir.

Q How many other persons was he in conversation with on any one occasion? A Oh, I couldn't say how many he was in conversation with.

Q But you think you saw him three or four times? A Yes.

Q You think you heard his voice three or four times?
A Yes, sir.

Q And that is the reason you now say you recognized his voice on the 17th of October, when this act was perpetrated?

A Yes, sir.

Q And that is the reason you say you recognized his voice?

A Yes, sir.

Q You did not recognize Durkin's voice? A No, sir.

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Q You had heard Durkin talk on previous occasions in the restaurant, but you could not be sure it was his voice; is that it. A No, sir, I could not be sure it was his voice.

BY THE COURT:

Q How many times did you hear Morrison speak? A Oh, just three or four times I had seen him in the restaurant.

Q And did you hear him speak on those occasions? A Yes.

Q How far away were you from him when he spoke? A About five or six feet.

Q Did you ever speak to Morrison? A No, sir.

Q Did you know him by name? A Yes, sir.

Q Did you know Durkin by name? A Yes, sir.

Q Did you ever talk to him? A No, sir.

Q Did you ever hear Durkin speak? A Well, I wouldn't say I heard him speak. I have seen him in the restaurant talking, but I didn't pay --

Q But you heard Morrison talk? A Yes, sir.

BY MR. MURRAY:

Q Do you remember when you testified in Jefferson Market Court? A Yes, sir, I remember.

Q Do you remember talking to Mrs. Durkin there? A Yes, sir.

Q Do you remember calling her out and saying you had nothing against her boy, that you did not recognize him? A No.

Q Did you say anything of that sort at all? A No, sir.

Q Did you say that you did not know whether or not her boy had anything to do with it? A No, sir.

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Q Did you say, "I have nothing against him at all"?

A No, sir.

Q Did you say, "I wouldn't make a complaint against him because I am not sure that he is the man"? A No, sir, I never said such a thing.

Q No such conversation at all? A No, sir.

Q Did you talk to Mrs. Durkin? A Yes, sir.

Q Outside the court room? A Yes, sir, in Jefferson Market.

Q Did you call her over and did you talk to her? A No, sir, I did not.

Q Did you talk to her in the street outside the courtroom? A Yes, sir.

Q Did you talk to a young lady with her named Miss Watson? A Yes, sir.

Q Did you tell Miss Watson you did not know anything against Durkin? A No, sir.

Q And that you did not know that he had anything to do with the loss of your property? A No, sir.

Q Are you sure of that? A Sure of that.

Q But you did talk to her? A I did talk to her, yes.

RE-DIRECT-EXAMINATION BY MR. WAUGH:

Q Did his mother come up to you? A Yes, his mother spoke to me.

Q She came up to you? A Yes, sir.

Q Did she ask you to drop the case? A No, sir.

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Q Did she cry? A Yes, sir; she was crying, I guess.

Q Did she try to appeal to your sympathies by what she said? A No, not exactly.

Q Did she say anything about the defendant Durkin? A She just spoke about the case and said it was an awful thing to be in and she hoped that her boy wasn't in it. You know how a mother feels toward her son.

Q You were sorry for her, weren't you? A I was sorry for the lady, certainly.

Q And you were sorry for the other lady, weren't you? You were sorry for members of his family?

MR. MURRAY: I object to this as immaterial.

THE COURT: Objection sustained.

Q Did Mrs. Durkin talk to you in the corridor of the court house here? A Yes, she spoke to me; just said, "How are you?"

Q Ask you anything about the case at all? A No, sir, didn't speak.

Q This playing the races that you do is mostly with your own money? A Yes, sir.

Q What proportion of it; all of it or what proportion of it is the betting you do with your own money? A Well, whatever I feel like playing on the horses.

Q You were talking about making bets for other people and then about making bets for yourself. How does it stand?

A Seventy-five or eighty per cent. is my own money.

Q Risking your own money? A Yes, sir.

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Q And you are not willing to positively say which one of the men said "Stand up"? A No, sir.

Q But you did hear one of them say inside, you heard Morrison say some remark in which he mentioned the name "Jim" A Yes.

Q Now, is it true that the voices are the only thing which makes you think that these are the men? A The voices and by the part of the face that I seen.

Q And so much of the faces that you saw? A Yes, sir, because I knew the men, you know.

Q You knew the men? A Oh, yes.

Q They are not of the same height? A No, sir.

Q You saw their build and stature, didn't you, when they stood there in the hall? A Yes, sir.

Q And when they were backing you in? A Yes, sir.

Q You saw their whole bodies? A Yes, sir.

Q It was only the lower part of their faces, below the bridge of the nose, that was concealed? A Yes, sir.

Q Did they both have these big handkerchiefs on? A Yes.

Q Were they pulled away down? A No, sir.

Q How much of the face were you able to see? Illustrate on your own face. A This much (illustrating)

Q You could see their eyes? A Yes, sir; I could see their eyes.

Q And part of their ears? A Yes, sir.

BY THE COURT:

Q Besides their eyes, what else did you see? Did you see

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a part of the nose? A Yes, sir.

Q Describe exactly to the jury. A I did like this (illustrating).

THE COURT: Let the record say that he saw from the bridge of the nose to the center of the forehead.

BY MR. WAUGH:

Q Eyebrows and the ears and things like that? A Yes, sir.

Q These are the things that made you testify as you have testified today? A Yes, sir.

Q Have you any doubt that these are the men? A No, sir.

Q You are positive of it? A Yes, sir.

Q You are very careful about testifying as to whose voice you heard first; is that right?

MR. MURRAY: I object to the question.

MR. WAUGH: All right; withdrawn.

Q After this thing happened, state to the jury whether or not you made complaint to the police. A Yes, I did. I went down Eighth Avenue and I met an officer and told him --

THE COURT: Don't tell what you said.

Q You did make a complaint to the police? A Yes, sir.

Q And you told them, in brief, what you told here today?

MR. MURRAY: I object to that.

THE COURT: Objection sustained.

Q How long afterwards did you see the defendants?

THE COURT: No.

MR. WAUGH: That is all.

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RE-CROSS-EXAMINATION BY MR. MURRAY:

Q Now, you just told the District Attorney that you cannot be mistaken that both of those men are the men that robbed you, did you? A Yes, sir.

Q You cannot have any doubt? A No, sir.

Q You are positive of it? A Yes, sir.

Q You cannot be mistaken? Answer yes or no. A No.

Q You cannot be mistaken? A No.

Q You have not got the slightest doubt? A No, sir.

Q You have not got the slightest doubt in your mind?

A In my mind.

Q From what you saw? A Yes.

Q You are testifying from what you saw and you cannot be mistaken? A Yes.

Q Now, you say - see if I am right - that you noticed the eyes of both men; is that right? A Yes, sir.

Q And a small fraction of the forehead? A Yes, sir.

Q And a very small part of the nose? A Yes, sir.

Q And the rest of the face and head was concealed? A Yes.

Q Did you look at any part of their bodies except their faces? A No, sir.

Q You did not see any other part of their bodies? A No.

Q That was because guns were pointing at you? A That was because guns were pointing at me.

Q You did not look down at any time from the moment you saw the men in the doorway until you turned your face against the

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wall? A No, sir.

Q You never observed any other part of their persons at all except what you saw when you looked straight at them?

A Just what I saw when I looked straight at them.

Q The reason you did not know what clothing they wore is because you did not look at them; is that right? A Yes, sir.

Q You now say your identification rested on the small fraction of the face that you saw; is that right? A Yes, sir.

Q And the fact that you say you heard Morrison speak? A Yes, sir.

Q And having heard him speak before, you recognized the voice? A Yes, sir.

Q Now, that is what your identification is based on and nothing else? A Nothing else.

Q You did not notice the height of either one of the men, did you? A I knew the two men --

Q Did you notice the height of either one of the men at that moment? A Yes, sir.

Q Did you compare their heights? A I did not compare their heights. I remember the height of the two men.

Q Not of the two men you saw outside this social club. I am not asking you about that; but of the men you saw in that club at that moment. Did you mentally compare their heights when you looked at them? A I could see the height of the two men.

Q You saw that one was taller than the other? A Yes, sir.

Q But that was the only observation you made outside of

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the fraction of the face you saw? A And the voice.

Q The voice of one of them? A That is all.

Q Durkin's voice you did not recognize? A No, sir.

BY MR. WAUGH:

Q At the time you were being robbed did you make any mental analysis of the very things by which you identified these men?

A No, sir, I can just remember what I stated to you now.

Q You were being robbed, with two guns -- A I was being robbed. You are so excited, you know, you don't know what you are doing.

Q And you are testifying to what you recall today? A Yes.

BY JUROR NO. 3:

Q You looked into their eyes? A Yes, sir.

Q Do you remember the color of their eyes? A No, sir.

Q You say you remember them by their eyes? A I got a look at their eyes and I knew the men before, and when the guns was at me that was all I could see of them was the eyes, and that is how I identified them.

Q You say you identified them by the eyes? A Yes, but I couldn't tell the color of their eyes.

BY MR. WAUGH:

Q Did you notice anything peculiar, or had you ever noticed anything peculiar about Morrison's eyes? A No, I did not.

Q Now, this talk that you had heard in the restaurant, do you remember what they said? A No, I don't remember what they said. It was only loud talking that drew your attention.

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Q How loud? As loud as I am talking? A Yes, sir.

Q How big a room is this restaurant room; twenty by thirty, or what? A No. It may be around twenty-five by about fifteen or twelve. It is not very big.

Q And you heard Morrison talk in a very loud tone of voice in that restaurant? A Yes, sir.

Q Had you ever seen him sitting at the same table with Durkin? A I wouldn't swear to that.

Q Did you ever see them together outside? A I couldn't swear to that.

Q But you had seen Durkin in there, too? A Oh, yes.

Q And you knew both these men by their last names?

MR. MURRAY: I object. He has already gone over that.

PETER CORCORAN (Detective Division, 16th Precinct)
called as a witness in behalf of the People, having been
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WAUGH:

Q When were these defendants arrested? A The 3rd of November, 1921.

CROSS-EXAMINATION BY MR. MURRAY:

Q Did you have any conversation with the defendants?
A Yes, sir.

Q Did you ask them whether they were guilty or innocent?

THE COURT: Wait a while. These are declarations which
cannot be admitted.

MR. MURRAY: Question withdrawn.

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MR. WAUGH: The People rest.

MR. MURRAY: I ask your Honor to direct a verdict of acquittal because the People have failed to make out a case.

THE COURT: Motion denied.

MR. MURRAY: Exception.

K A T E D U R K I N, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

(The witness stated that she resided at 290 Ninth Avenue, New York City.)

DIRECT EXAMINATION BY MR. MURRAY:

Q Mrs. Durkin, you are the mother of the defendant James Durkin? A Yes; I am the mother of James Durkin.

Q Do you remember the day that your son was in the Magistrate's Court? A Yes, sir, I do.

Q Did you have a conversation with this complaining witness concerning the case? A Yes, sir.

Q Will you tell the jury what was said between you and him about your son?

MR. WAUGH: To that I object as incompetent, irrelevant and immaterial, and contradicting new matter brought out by the defense itself.

THE COURT: Objection overruled.

A Mr. Lowney, after he came out of Jefferson Court Market, beckoned to me and he said, "You are the mother of James?" and I said, "Yes, sir; what is the trouble with my son and you?" Well, after I come from Jefferson Court Market —

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Q Jefferson Market Court. A Jefferson Market Court, rather, this Mr. Lowney called me to the curb and asked me was I James' mother and I said, "Yes, sir; I am James' mother" and I said, "What is the matter?" "Well," he says, "nothing is the matter, Mrs. Durkin, but I was held up." I said, "Do you suppose it would be my son?" and he said, "I don't know, Mrs. Durkin, was it your son or not." I said, "Could you identify my son?" "No, Mrs. Durkin," he said, "I could not. I can't give no identification of your son only by Morrison's saying 'Jimmie', that is all," and another young lady, Catherine Watson, was present alongside of me at this statement.

Q Now, on the morning of October 17th, was your son at home? A At the date -- at this date my son was home and I sent him --

Q Where was he in the morning? A In my home.

Q And how long did he stay in your home on that morning?

A Well, as usual --

Q I don't care "as usual"; how long did he stay in your home on that morning? A Well, it would be at the time about eleven o'clock.

MR. WAUGH: I object to that and move to strike out the answer.

THE COURT: Strike it out.

Q At eleven o'clock did you send him away? A I sent him to a lady who had --

MR. WAUGH: I object to that as involving a conclusion.

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and move to strike out the answer.

MR. MURRAY: I consent that it be stricken out.

Q Did you say anything to your son at eleven o'clock concerning the delivery of a message? A I sent my son to Mrs. Keegan.

Q What is Mrs. Keegan's full name? A I couldn't tell you, sir.

Q Do you know where she lives? A I know she lives in 31st Street.

Q And after the conversation you had with your son, he left your house at eleven o'clock? A Yes, on the errand I sent him for.

CROSS-EXAMINATION BY MR. WAUGH:

Q Where is it you live, Mrs. Durkin? A 200 Ninth Avenue.

THE COURT: Stop the cross-examination. One of the jurors says he has a very important engagement at 4:30. Gentlemen of the jury: Do not discuss this case among yourselves nor permit any person to talk with you about it, nor form or express any opinions as to the guilt or innocence of the defendant until the case is finally submitted to you. Be in your seats at twelve o'clock tomorrow.

(Whereupon, the Court, at 4:25 P.M., stood adjourned until tomorrow morning at 10:30 A.M., December 22, 1921.)

New York, N. Y., December 22, 1921.

TRIAL RESUMED.

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MARY KEEGAN, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:
(The witness stated that she resided at 443 West 31st St., New York City.)

DIRECT EXAMINATION BY MR. MURRAY:

- Q Mrs. Keegan, you are a married woman? A Yes, sir.
- Q Living with your husband? A Yes, sir.
- Q Have you got any children? A Four.
- Q Do you know the defendant, James Durkin? A Yes, sir.
- Q Do you know his mother? A Yes, sir.
- Q Did you have any business dealings with his mother last summer? A Yes, sir; I rented a bungalow from her.
- Q Where did you rent the bungalow? A Water Witch, Highlands, New Jersey.
- Q Water Witch, Atlantic Highlands, New Jersey? A Highlands, New Jersey.
- Q Did you leave any article of furniture in her bungalow? A Yes, sir, I did.
- Q What did you leave? A I left a Victrola.
- Q When did you leave Atlantic Highlands? A On the last day of July.
- Q Did you have any communication from Mrs. Durkin about going after your Victrola? A Yes, sir.
- Q When did you hear from Mrs. Durkin about getting your Victrola? A On the 17th day of October, Monday.
- Q Now, on that day, on the 17th of October, did you see the

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defendant James Durkin? A Yes, sir, I did.

Q Where did you see him? A He came to my house.

Q Do you know at what hour it was? A Eleven thirty.

Q On that mission from his mother, concerning a Victrola?

A Yes, sir, from his mother.

Q How long did he remain in your house on that day?

A Well, I started to get the table ready for lunch about a quarter to twelve and I asked him would he stay for lunch with us and he said he wouldn't at first, and then my husband came in about five minutes past twelve and asked him to stay over, and he decided to stay over. He left my house about one fifteen or one twenty with my husband and jumped on his truck and rode up as far as Ninth Avenue with him.

Q Now, could you be mistaken about that? A No, sir; I am positive.

Q Is there any doubt in your mind? A No, sir; I am positively sure of it.

CROSS-EXAMINATION BY MR. WAUGH:

Q What day was it? A Monday, October 17th.

Q You are very positive it was Monday? A Yes, sir, I am.

BY THE COURT:

Q Monday, October what? A 17th.

BY MR. WAUGH:

Q Where do you live? I didn't catch it. A 443 West 31st Street.

Q Between what streets? A Ninth and Tenth Avenues.

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Q Where does Durkin live? A Well, I couldn't tell you the number.

Q You don't know? A I know it is 22nd and 23rd on Ninth Avenue.

Q Do you know where this crime was committed? A Well, I only know what Jimmie had told me about it after he was out on bail. He came to see me.

Q Can you tell us where it was committed? A No, sir.

Q Where did he tell you it was committed? A Some place on Eighth Avenue.

Q Between what streets, do you know? A That I don't remember, either.

Q He lives on 22nd Street, or on Ninth Avenue between 22nd and 23rd Streets? A Yes, sir.

Q And you live on 31st Street between Ninth and Tenth?
A Yes, sir.

Q And did he tell you where this crime had been committed?
A No, sir. He told me it was on Eighth Avenue some place. He said he had been arrested for it.

Q When did he see you? A I seen him two days after Thanksgiving. He said he had been in prison from the 3rd of November until that time. He said he had just got out that morning.

BY THE COURT:

Q What time did you see him, about? A He came to my house about five o'clock in the afternoon.

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Q When was that? A Two days after Thanksgiving. Thanksgiving was on the 25th. It must have been the 27th.

Q On October 17th did you see him? A Yes, sir.

Q Where? A At my house.

Q What time? A From half past eleven he was at my house until twenty minutes past one or fifteen minutes past one.

BY MR. VAUGH:

Q You live at 443 West 31st Street? A Yes, sir.

BY THE COURT:

Q Where did you live at that time? A 443 West 31st St.

BY MR. VAUGH:

Q That is between Ninth and Tenth Avenues? A Yes, sir.

Q What did Jimmie say when he came to see you after Thanksgiving? A He says, "Mrs. Keegan, my mother received a letter from my sister Beatrice --"

Q After Thanksgiving? A He said that he had been arrested and I said, "What for?" and he said, "For holding up some man." So he said that he hadn't done it and he asked me -- he told me when it was done, and he says, "Do you remember the time that I was in your house that I came up to tell you about my mother sending word for you to move your Victrola out of the bungalow; otherwise she would not be responsible?" and I sat down and started to think, and on that particular day Jimmie was in my house the agent called to collect the rent, because my rent is due on the 15th and being it fell on a Saturday, he never comes on a Saturday, until Monday. While Jimmie was sitting there my

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agent came in and collected the rent. That is how I am positive of the date. Otherwise, I would not be, unless the agent called on that particular day.

Q You explained all that to Jimmie when you talked to him?

A He asked me if I remembered the date.

Q What did you say, right away quick? A I started to think, and he said, "Didn't your agent come that day?" and I said "That is right."

BY THE COURT:

Q Who asked you that? A Jimmie.

BY MR. WAUGH:

Q That is the defendant Durkin? A Yes, sir.

BY THE COURT:

Q Who is your agent? A Mr. Blenley.

Q What kind of a man is Mr. Blenley? A A dark complexioned man.

Q How old a man is he, about? A I should judge he is about forty-five.

Q What time of the day did you pay your rent? A About twenty minutes of twelve.

BY MR. WAUGH:

Q Have you got your receipt? A No; I never save only the last receipt; that is all. I have November's receipt, but I don't know whether I have October's or not. I may have it. I very seldom save, only the last one.

Q You only keep the last receipt of your rent? A Yes, sir.

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Q You have not got the October rent that was given you on that day, the receipt for it? A I may have it at home.

Q And yet that is the thing that fixes the date in your mind? A Yes, the agent coming on that particular day.

Q You had already gotten a letter from Mrs. Durkin about the Victrola, hadn't you? A No, sir.

Q And this was in October? A Yes, sir.

Q When did you vacate the house down at Highlands? A The last of July.

Q What did Jimmie say when he came in? A He told me that his mother said for me to have my victrola taken out, that she would not be responsible for it, as the boys were getting in stealing things out of the bungalows, and so I asked him if he knew when the boats stopped running and he said the Patten Line stopped around the 1st of November.

Q Is the Victrola still there? A Yes; I have never gotten it.

Q It has not been stolen by boys, so far as you know?
A No, sir.

Q Is it still there, do you know? A As far as Mrs. Durkin knows; I guess it is still there.

Q And you never got it? A No, sir.

Q Did Jimmie offer to bring that Victrola up to you; is that what he came for? A No, sir.

Q How long have you known Mrs. Durkin? A I have known her since in May.

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Q When you struck the bargain for the small cottage?

A Yes, sir.

Q How long have you known Jimmie? A Well, I have known Jimmie - well, not to speak to - I have known him by sight, I guess for about two years; but I guess for about nine months or maybe eleven months I have known him to speak to.

Q Didn't Jimmie tell you when he was there after he had been out on bail, where this thing occurred on Eighth Avenue?

A He said some place on Eighth Avenue, but I really don't remember.

Q Did he tell you where? A I don't remember whether he said 25th Street or 24th Street. That I couldn't swear to.

Q Did he tell you it was between 25th Street and 24th Street? A I couldn't remember.

Q Did he go over with you the location of it? A No, sir.

Q Did he tell you he was very anxious to have you come and testify? A No, sir.

Q Has his mother spoken to you about it? A No, sir, but I told her I certainly would.

Q Has his mother spoken to you about coming here and testifying? A No, sir.

Q Have you been down here with his mother right along?

A All this week, yes, sir.

Q You say he came in at eleven thirty? A Yes, sir.

Q That is just your best recollection at the present time?

A Eleven thirty; I am almost positive.

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Q Why are you almost positive it was eleven thirty? You know now when this crime was committed, don't you? A I think the witness said on the stand yesterday, ten minutes past twelve.

Q And Jimmie told you that when he came to see you after Thanksgiving, didn't he? A He said it was committed right after noon time.

Q Ten minutes after twelve? A Yes, sir.

Q And did he tell you the man who was robbed, in the Magistrate's Court, had testified it was ten minutes after twelve?

A No. He said it was supposed to be committed about ten minutes after twelve.

Q That he was supposed to have committed it? A Yes, that he was held for it.

Q You say that your best recollection is that he got in your house about eleven thirty? A Yes, sir, about eleven thirty.

Q How do you fix that? A Because I was preparing the dinner for my children to come in from school at twelve o'clock. About a quarter to twelve I started to set the table and I asked Jimmie to stay for lunch.

Q Do you remember looking at the clock? A Well, I look every day to see what time to start the lunch.

Q Did you look on that particular day? A Yes, sir.

Q Did Jimmie ask you when he came to see you after Thanksgiving, "Mrs. Keegan, you looked at the clock when I came in?"

A No, sir.

Q You are sure about that; that he didn't suggest that to

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you? A Positive.

Q But you do remember that Jimmie told you he was supposed to have committed this crime at twelve ten? A He said he was arrested for it and it happened at ten minutes past twelve in the day.

Q You used the word "supposed." Is that the word he used? A Yes, sir.

Q And he told you that when he was discussing this alibi with you? A Yes, sir.

Q Is your husband here? A No, sir. He would really come down, but he couldn't afford it. He is not working steady, only making four or five days a week truck driving.

Q Is he a friend of Jimmie's? A No, a perfect stranger to Jimmie.

Q How did you get acquainted with the Durkins when you got this bungalow from them; through an advertisement? A No; his lady friend lives in the next house to me and she goes with my sister.

Q She is Jimmie's friend? A Yes, sir.

Q The girl Jimmie is going to marry? A Yes, sir.

Q You don't know that, but he is keeping company with her? A Yes, sir.

Q How long have you known her? A Since she was a child about eight years old.

Q Did she call on you? A Yes. I spoke to Catherine and she told me Jimmie's mother owned three or four bungalows.

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and I said, "I wonder if she could rent me a room just for the month of July?" and she said she would speak to Jimmie and Jimmie would tell his mother.

Q And this lady friend of James Durkin was a friend of yours since girlhood? A Of my sister's.

Q And, of course, you are anxious to come here and help James Durkin in this case, if you can? A Yes, I am, because I am speaking the truth and I know he is innocent.

Q And you want to see him discharged, if it is possible? A When I know he is innocent, yes, sir.

Q Both on account of him and on account of the young lady that is such an old friend of yours? A Just on his account; and on her account, too.

Q And on her account, too? A I know that he was in my house; I know it. Otherwise, I wouldn't come here.

CATHERINE WATSON, called as a witness in behalf of the defendants, having been duly sworn, testified as follows: (The witness stated that she resides at 441 West 31st St., New York City.)

DIRECT EXAMINATION BY MR. MURRAY:

Q Miss Watson, with whom do you live at that address?

A My father and sister.

Q What is your occupation? A Keeping house for them.

Q Is your mother dead? A Yes, sir.

Q How long have you been keeping house for your father and sisters? A About two years and a half.

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Q Do you know the defendant, James Durkin? A Yes, sir.

Q Are you any relative of his? A No, sir.

Q Is there anything between you and him? A Yes, sir.

Q What? A I am engaged to him.

Q To be married? A Yes, sir.

Q Do you recollect when James Durkin was in the Magistrate's Court on this charge? A Yes, sir.

Q Were you there? A Yes, sir.

Q With whom? A With Mrs. Durkin.

Q Did you see the complaining witness while you were there?

A Yes, sir.

Q Who was present when you saw the complaining witness?

A Mrs. Durkin.

Q Did you hear any conversation between Mrs. Durkin and the complaining witness? A Yes, sir.

Q Now, will you tell the jury, as near as you remember, what you heard? A He asked Mrs. Durkin if she was James' mother and Mrs. Durkin said "Yes" and she said, "What have you got against my son?" and he said, "Nothing at all," he said, "but I was robbed," and Mrs. Durkin said, "Can you swear it was those two boys?" and he said, "I am not sure," he said, "but the detectives are making me do this."

Q Did they have any other conversation besides that?

A No, sir.

MR. WAUGH: I have no questions to ask this witness.

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JAMES LOWNEY, recalled as a witness in behalf of the People, in rebuttal, having been previously sworn, testified as follows:

BY MR. WAUGH:

Q Mr. Lowney, one or two questions. Between what streets is this club on, this Sage Social Club? A Between 25th and 26th Streets.

Q On which side of Eighth Avenue? A The west side.

Q When you were talking to Mrs. Durkin, the mother of Jimmie, I believe after the Magistrate's Court hearing, was the young lady present, Miss Watson? A Yes, sir.

Q And did she tell you that she was engaged to marry Jimmie? A She did.

Q She told you that she was engaged to marry James Durkin? A Yes, sir.

Q What did she say? A She just said to me that she knew me from working in Miner's Theatre and that she was engaged to Mr. Durkin, and she just asked me how I thought things looked, and that was all.

Q She asked you what? A She asked me what I thought of the case. She said Mr. Durkin wasn't there and I didn't say yes or no.

BY THE COURT:

Q She asked you what? A She spoke to me and said she knew me from working in the theatre and that she was engaged to marry Mr. Durkin, and she said she was sorry that Mr. Durkin -

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she knew that he was not in this case, and I didn't say yes or no to anyone.

BY MR. WAUGH:

Q Did you say to either of the ladies at any time that you only knew that Durkin was in it because the other man had said the word "Jim"? A No, sir.

Q You never said that? A No, sir.

Q That is not the truth? A No, sir.

THE COURT: Strike that out, "It is not the truth."

The witness cannot characterize the testimony of another witness.

Q Well, is it true, Mr. Witness, the only reason you thought that Durkin was in the case was that the other man had called out the word "Jim" during the process? A No, sir.

BY MR. MURRAY:

Q Now, can you tell us exactly where you were when you held the conversation with Mrs. Durkin and Miss Watson? A In the corridor in the Magistrate's Court, Jefferson Market.

Q Wasn't it out on the street? A In the corridor, and she spoke to me out on the street.

Q Now, was it in the corridor or was it on the street?
A In the corridor.

Q That you held this conversation? A Yes, sir.

Q You said a second ago that she spoke to you on the street? A No, sir.

Q Did she speak to you on the street? A She did speak to

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me on the street, too.

Q When? A The same day.

Q How long after she spoke to you in the corridor? A She spoke to me before the case was called at the Magistrate's in the corridor and then she spoke to me on the street afterwards.

Q She spoke to you on two occasions? A Yes, sir.

Q Now, did she have the same conversation with you on both occasions? A Yes, sir.

Q She told you what you have related here, in the corridor, is that right? A I beg your pardon.

Q What you have said was related between you and her, occurred in the corridor; is that right? A Yes, sir.

Q And then you went out on the sidewalk and held exactly the same conversation again; is that it? A Yes, sir.

Q Exactly the same? A Well, I don't know just exactly the same.

BY MR. WAUGH:

Q They kept after you and followed you out, did they?

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

There is no such testimony.

Q When you walked out of the corridor of the court, - this was Jefferson Market Court? A Yes, sir.

Q The Court is on the ground floor? A Yes, sir.

Q When you walked out of the corridor, were they with you walking? A No, sir.

Q Did they meet you again out on the street? A Yes, they

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met me on the street.

Q Did they call to you? A No; they were out before I was out and I was passing by and they spoke to me again.

MR. WAUGH: The People rest.

MR. MURRAY: The defense rests. I move your Honor to direct a verdict of acquittal because the People have failed to make out a case on the entire case.

THE COURT: Motion denied.

MR. MURRAY: Exception.

(Mr. Murray summed up to the jury.)

THE COURT: Gentlemen of the jury: Do not discuss this case between yourselves nor permit any person to discuss it with you, nor form nor express any opinions as to the guilt or innocence of the defendants until the case is finally submitted to you. Be in your seats, gentlemen, at two o'clock.)

(Recess until 2 o'clock p.m.)

AFTER RECESS.

(Mr. Waugh summed up to the jury.)

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