

START

43

CASE

CASE # 43

1079

The Recorder's Copy

The People

vs
James Donnelly

Murder, 1st Degree

Feb'y 26th, E.C., 1893.

Boyer, J. - 206.

Butler, J. - 207-220-260

Collins, J. F. - 2-14

Cantrell, B. - 188.

Coleman, J. - 281-283

Cahill, J. - 349-351-363

Davis, Chas. - 136

Deering, J. - 202-204

Downey, J. - 290-292

Donnelly, J. - 400-431

Frank L. Beard,
Official Stenographer

CASE # 43

Carlyle J. - 196-

Grohn, M. J. - 181-

Haight, W. - 363- 366

CASE # 43

1021

John Jerolmon - 194.
Johnson, Henry - 297-307-333

Kiernan, P.J. - 115-122-135
Knapp, A.C. - 151-

Madden, E.E. - 164
McCall, T. - 169-173-175
McKenzie, W. - 176-
McKenna, P. - 192-
McMaster, J.H. - 195
McQuigley, P.J. - 200-201

1082
I
K
L
M
CASE # 43

O'Keefe, D. - 65-80
O'Neill, E. - 153

Pine, J. - 184-186

1093

N
O
P

CASE # 43

Rich, I. - 89-95
Cafferty, F. - 335-337

Turney, J. - 197
Tucker, R. - 264-267

R
S
T

CASE # 43

Weston, A. F. - 112-115

CASE # 43

1085

COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York,

Part II.

-----x
T h e P e o p l e

against

James Donnelly.

Before
: Hon. Frederick Smyth
: and a Jury.
:
:
:
:-----x

New York, February 26, 1894.

Indicted for Murder in the First Degree.

Indictment filed July 13th, 1893.

APPEARANCES.

Assistant District Attorneys John F. McIntyre
and Randolph B. Martine, Jr., for the People;

Messrs. House & Friend, for the Defense.

CASE # 43

PATRICK F. COLLINS, a witness called on behalf of the People, being duly sworn, testified as follows:

Mr. McIntyre: The People offer in evidence a diagram of the premises described in the indictment, and where the alleged homicide occurred; and it is consented by counsel for the defendant that the same be admitted.

Mr. House: For what it is worth. I don't mean to say that it is absolutely a correct diagram.

The Court: Well, is it substantially correct? Is it conceded to be substantially correct?

Mr. House: Yes, sir; I presume it is; but I do not wish to concede that it is absolutely correct. However, we will let it go in for what it is worth.

Mr. McIntyre: Then I will have to send for Mr. Smyth and prove it. Examine the witness.

Mr. House: No, we will concede it.

The Court: Then that diagram is offered in evidence, and is received, by consent, in evidence, with the understanding that the diagram is substantially correct?

Mr. House: Yes, sir.

CASE # 43

Adams

3

The Court: Then mark it People's Exhibit 1.

DIRECT EXAMINATION by Mr. Martine:

Q Mr. Collins, where do you reside?

By the Court:

Q Where do you live, Collins? A. At the present time?

Q Yes. A. Well, I've got no regular residence now, not at the present time.

By Mr. Martine:

Q Where was your last place of residence? A. 27th Street.

Q What number? A. 207.

By the Court:

Q East or West? A. West.

By Mr. Martine:

Q Won't you speak a little louder? This last gentleman on the back seat has to hear everything you say. East or West?
A. On the West side.

By the Court:

Q 207 West 27th Street? A. Yes, sir.

By Mr. Martine:

Q Did you know Charles Madden in his lifetime? A. I did, sir.

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

Q Do you know the saloon on the northeast corner of 28th St.

CASE # 43

and 8th Avenue? A. Yes, sir.

Q Now, coming down to the 28th day of May last, do you recall where you were that afternoon? A. I do, sir.

Q Where were you? A. I was in the house, until I went into that saloon.

Q What time did you go into that saloon? A. A quarter past three.

Q Who was in there at the time? A. At the time, there was Mr. McCabe, the other barkeeper, me and George Ruch and O'Keefe, and Madden come in.

By the Court:

Q What was the name of the man who came in? A. Madden.
He come in afterwards.

By Mr. Martine:

Q What did you do while he was there? A. He come in and stepped up to the bar, and he had a cigar in his hand.

Q Now, not so fast. Did Madden take a drink?

The Court: Well, let him go on and tell it.

Mr. House: Now, don't lead him. Let him tell what he did.

By the Court:

Q At what time did Madden come in? You say you got in there at a quarter past three, as I understand you? A. Yes, sir.

CASE # 43

- Q About how long were you in the saloon? A. I remained there until the time of the affray.
- Q Well, about how long had you been in the saloon before Madden came in? A. Well, it was about five minutes ~~or~~ four I think when Madden came in; about that time.
- Q Now the deceased was there at the time -- the defendant, I mean? A. Yes, sir, yes, your Honor.
- Q Now go on and tell the jury what you saw and what you heard in that saloon? A. Madden steps to the cigar-lighter; he lights his cigar, and then he asked the defendant, Mr. James Donnelly, for a glass of beer. Mr. Donnelly says, "No. Get out of here, get out of here. God damn you, I have told you before to keep out of here," at that turning and deliberately drawing the revolver from the drawer.

Mr. House: Now, one moment. I object to that, "at that turning, and deliberately drawing the revolver from the drawer".

The Court: Yes, I will strike that out. I will strike out "deliberately". You cannot get this class of witnesses to testify, Mr. House, as a lawyer would. I will strike out "deliberately".

Mr. House: Certainly, sir. I know it is difficult to restrain these witnesses from characteriz-

CASE # 43

ing.

By the Court:

Q Now he asked for a glass of beer? A. Yes, sir.

Q And the defendant said no? A. Yes, sir.

Q This man said no? A. Yes, sir, and then he says, "I will give you no beer."

Q Yes. And what about the swearing part of it? A. He said, "Get out, get out, God damn you. I told you before to keep out of here."

Q Well, go on. A. Then drawing the revolver ----

By Mr. Martine:

Q From where? A. From the drawer.

Q Where; what drawer? A. The second drawer.

Q Can you indicate upon this diagram (People's Exhibit 1) where he took it from? (The diagram is shown to the witness). There is the bar, and there is the cigar-lighter --

The Court: Be kind enough to put a pencil mark there.

By Mr. Martine:

Q Yes, sir. This is the front of the bar here. There is the cigar-lighter. A. This is the bar?

Q Yes. A. And this is the drawer here, facing the 8th Avenue side, if this is 8th Avenue.

CASE # 43

Q No; this is 8th Avenue, and this is 28th Street?

A. Well, it is the second drawer.

By the Court:

Q The second drawer? A. Yes, sir.

The Court: Please mark it.

Mr. Martine: Yes, sir. I will marked it A.

The witness indicates the second drawer, marked A,
as the place where the revolver was taken from.

By the Court:

Q You say he drew the revolver from the second drawer?

A. Yes, sir.

Q Now go on? A. Well, at that, he told Madden, "Get out of here." I made that remark before.

Q Never mind about that. Well, go on? A. And he says, "I told you to keep out of here," and, with that, he turns, and draws the revolver and fires. Madden turns backwards and staggers out, saying, "I am shot".

By Mr. Martine:

Q Where did he go out; out of the side door? A. Out the side entrance.

Q What happened then? A. Well, I went out after him. I seen ^{him} going out, and I went out. Before he went out, Officer O'Neill came in; and Officer O'Neill took my name and

CASE # 43

took George Ruch's name, and O'Keefe's name, and he wanted to know who fired the shot.

Mr. House: I object to that, to the latter part of that answer, "he happened to be on the outside, at the time, on 8th Avenue".

The Court: Yes; I will strike that out.

(The latter part of the answer is stricken out by order of the Court).

By the Court:

Q Now keep on. What did Officer O'Neill say? A. He wanted to know who fired the shot. He first asked me and O'Keefe and Ruch, and then Mr. Donnelly replied, "I fired the shot".

By Mr. Martine:

Q Then what did he do? A. Then Officer O'Keefe ----

Q Officer O'Neill, you mean? A. Yes, sir; Officer O'Neill then told Donnelly that he would have to go with him.

Q And where did he take him?

By the Court:

Q Wait a moment. Let him go on. Then what happened, what was the next thing?

By Mr. Martine:

Q What followed then? A. He went out, and Mr. Donnelly went out with him, and he seen Madden laying on the sidewalk.

CASE # 43

By the Court:

Q Well, did you go out too? A. Yes, sir.

Q What did the officer do with the defendant? A. He asked Mr. Donnelly -- Madden was laying on the sidewalk, and he asked him, "Who shot you?" and he said, "Mr. Donnelly, and that's him, and he shot me for nothing at all."

By Mr. Martine:

Q Now, I want you to indicate where you were standing when the shot was fired, in the saloon (the diagram is shown to the witness).

The Court: Point out to him the 8th Avenue side.

Mr. Martine : This is the 8th Avenue side, and this is the 28th Street side (indicating).

The Witness: I was standing this side of the cigar-lighter, reading the paper.

Q Well, this is the bar (indicating)? A. I was standing right here (indicating), that is, on the turn of the bar, on the 8th Avenue side; and here was Madden, just this side of the cigar-lighter (indicating).

Q Well, this is the floor, right here. This would be on the bar? A. Well, it isn't on the bar. Here is the cigar-lighter, and here is the bar, and there was Madden, and I

CASE # 43

stood over there, reading the newspaper.

By the Court:

Q Just at the turn, or a little beyond the turn? A. Yes, sir.

The Court: Now, mark that B.

Mr. Martine: Yes, sir.

The Court: B is where Madden stood, he says, and C is where the witness stood. Show that to the jury now.

Mr. Martine: Yes, sir. Now the witness indicates B as where Madden was, standing facing the bar, and C is where he was standing.

By Mr. Martine:

Q Now, Madden was within the range of your vision?

By the Court:

Q No. You could see Madden plainly, couldn't you? A. Yes, sir; why certainly, I could see him plainly. He was within three feet of me.

By Mr. Martine:

Q How was he standing?

By the Court:

Q Show us his position. Stand up and show us. A. He was standing that way (illustrating), leaning with his left arm

CASE # 43

on the bar.

By Mr. Martine:

Q Did you notice where his right hand was? A. His right hand stood by his side.

Q Did he have anything in it? A. I didn't see nothing in it.

Q Did you see Madden make any attempt with his right hand towards his hip pocket? A. I did not.

Q If he had made such an attempt, could you have seen it?

Objected to.

The Court: No, that will do. You need not answer that question.

By Mr. Martine:

Q When you went outside, with Officer O'Neill and the defendant, where Madden was lying on the walk, did you remain there, after Donnelly was taken away? A. I remained there until he was taken away in the ambulance. I mean Madden.

Q I mean Madden. To what hospital; do you know? A. It was marked the Roosevelt Hospital.

By the Court:

Q You didn't go, did you? A. No, sir.

Q Did you go with the ambulance? A. No, your Honor, I didn't

CASE # 43

Q Now you saw an ambulance, did you? A. Yes, sir, I did.

Q And you saw the man Madden put in the ambulance and taken away? A. Yes, sir.

By Mr. Martine:

Q You did not go and see Madden at the hospital afterwards, did you? A. I did not.

By the Court:

Q You said you saw the defendant take the pistol out of the second drawer? A. I did, your Honor.

Q Did you see any flash or hear any report? A. I heard the report.

Q You heard the report? A. Yes, sir.

Q Do you know what the defendant did with the pistol, after using it? A. He replaced it back in the drawer.

Q When the officer came there, did the officer get the pistol?
A. Yes, your Honor, he did.

Q Well, what was said or done about that pistol, when the officer came? A. The officer asked who fired the shot.

Q Yes, go on. A. And Ruch and O'Keefe, he went to them first ----

Q Well, you told us that? A. And they said they didn't do it, and Mr. Donnelly spoke out then and said, "I fired the shot".

Q Yes. Well, now, what about the revolver or pistol?

A. Well, Mr. O'Neill then said --- Officer O'Neill said, "Well, I will have to take you. Where is the revolver?" and Mr. Donnelly took and opened the drawer and gave him the revolver.

The Foreman: Is it indicated on the diagram, your Honor, where Donnelly stood?

The Court: What is that?

The Foreman: Is it indicated on the diagram, your Honor, where Donnelly stood, when he fired the shot?

The Court: No, it is not, I think.

By the Court:

Q Now where was Donnelly, the juror wants to know? Can you point out what part of the bar he was at? A. Well this is supposed to be the cigar-lighter here?

Q Yes. Was he inside of the bar, to commence with?

A. He was inside of it.

Q He was inside of the bar? A. Yes, sir.

Q Now can you point out whereabouts he was? A. Well, I should say about here (indicating).

Q There, you say? A. Yes, sir.

CASE # 43

By Mr. Martine:

Q About here? Make a mark. A. It was about three feet from the cigar-lighter.

The Court: Now he marks it D, Mr. Juror.

Just let the jury see it, where the defendant stood.

Mr. Martine: He marks D as the place where the defendant stood when he fired the shot, about three feet from the cigar lighter.

CROSS EXAMINATION by Mr. House:

Q Mr. Collins, do you recollect that, on the 21st day of June, 1893, you were a witness before the Coroner? A. I do.

Q That was right on the opposite side of Chambers Street here, No. 32? A. I do.

Q And do you recollect that the Coroner was William J. McKenna? A. I do.

Q And you were examined there as a witness? Say yes or no. A. Yes, sir.

Q And, before you were examined there as a witness, you were sworn to tell the truth? A. Yes, sir.

Q Yes. And was your recollection of the facts as clear in your mind, in June, 1893, as it is now, regarding the circumstances of this shooting? A. Do I remember it?

CASE # 43

- Q I ask you the question: Was your recollection regarding the facts and circumstances of the shooting as clear in your mind in June, 1893, as it is now? A. Yes, sir.
- Q Now you are sure of that? A. Yes, sir.
- Q There can be no mistake regarding that? A. No, sir.
- Q The shooting occurred on Sunday afternoon, the 28th day of May of ~~last~~ year? A. Yes, sir.
- Q And, at that time, Mr. Collins, you were engaged in the ice business, were you not? A. Yes, sir.
- Q As a driver for a Mrs. Glasgow? A. Yes, sir.
- Q And whereabouts were you living on the 28th day of May, 1893? A. Whereabouts was I living?
- Q Yes; at that time? A. That was in 27th Street.
- Q No. 207? A. Yes, sir.
- Q And how long had you been residing at No. 207? A. About four months; three or four months.
- Q Was your wife residing there with you at the time?
- A. Yes, sir.
- Q How long had you been employed by Mrs. Glasgow at that time? A. Going on over two years; two years and three months or so.
- Q About two years and three months? A. Yes, sir.
- Q And you were the driver for an ice wagon for Mrs. Glasgow?

CASE # 43

A. Yes, sir.

Q And you had been for some time serving ice at this saloon,
at 28th Street and 8th Avenue? A. Yes, 'sir.

Q This was the saloon at which the shooting occurred? A.
Yes, sir.

Q Now, Mr. Collins, can you recollect about how long you have
been engaged in delivering ice at that saloon?

A. I should say, about nine months.

Q About nine months?

A. That is, I was second hand, first, with the other
driver.

Q With the other driver? A. Yes, sir.

Q But, I mean all the time, how long had you been delivering
ice at that saloon?

A. Oh, about nine months, or so.

Q About nine months or so?

A. Yes, sir.

Q And how long had you known the defendant, Donnelly? A.

Well, I guess I know him for going on two years and a
half.

Q At least two years and a half; don't you? A. Yes, sir.

Q And during those two years and a half, you had frequently

come in contact with the defendant, Donnelly; hadn't you?

A. Yes, sir.

Q You saw him at the saloon, when you delivered ice the nine months that you were engaged in that work?

A. Yes, sir.

Q And then of an evening, after your work was over, you visited the saloon?

A. Yes, sir.

Q And for some considerable time, say, possibly two years, before you were delivering ice to the saloon, at 28th street and 8th Avenue, you knew the defendant, Donnelly?

A. Well, I was slightly acquainted with him.

Q Yes. You had been in the saloon; hadn't you?

A. Yes, sir.

Q And you had seen him in the morning?

A. Well, he was not in the saloon at the time.

Q In what saloon; 27th Street?

A. No, sir; 33rd Street, I believe.

Q Well, you knew him in the saloon at 33rd Street and what avenue?

A. Eighth Avenue.

CASE # 43

61103

Q And you also knew him as a bartender in the saloon at 28th Street and 8th Avenue? A. Yes, sir.

Q And did you know him as a bartender in the saloon at 2 th Street and 8th Avenue? A. No, sir.

Q But for a period ranging between two years and three or four months, you had known him as a bartender between the saloon at 33rd Street and 8th Avenue, or 28th Street and 8th Avenue?

A. 27th Street.

Q Yes; 27th Street? A. Yes, sir.

Q And you knew other people who knew him? A. Yes, sir.

Q Yes/ Now, during the two years and three months that you had known this defendant, prior to the shooting, you had occasion to observe his conduct; hadn't yo u? A.

Yes, sir.

Q And up until this Sunday afternoon, when the shooting occurred, his conduct was always proper; was it not? A. Yes, sir.

Q You always found him to be peaceable and quiet? A. Yes, sir.

Q And during all of those two years and three months that

CASE # 43

you had seen this defendant, when he was at 33rd Street and 8th Avenue, and at the 27th street and 8th Avenue saloon, you had always found him quiet and peaceable? A.

Yes, sir.

Q Had you, at any time before this Sunday, the 28th of May, 1893, seen him in any quarrel or fight at all? A. No, sir.

Q Did you ever see him, during the two years and three months, with the exception of this Sunday afternoon, when the shot was fired at Madden, attempt to commit any act of violence on any one at all?

A. No, sir; I didn't.

Q No. And your observation of him had been, up to this one occasion, that he was a quiet and peaceable sort of man?

A. Yes, sir.

Q And, during all this time, he was a bartender, and had to contend with a great many people who came in for drinks?

(Objected.)

THE COURT: No; that will not do. You have gone far enough. You have shown that he was a quiet and peaceable man during all the time that he knew him.

CASE # 43

MR.HOUSE: What, sir?

THE COURT: You have shown him to be a quiet and peace-
able man during the time that the witness knew
him.

MR.HOUSE: Very well, sir.

BY MR.HOUSE:

Q Now, what time did you say you got into the saloon this Sun-
day, afternoon Mr.Collins, just before the shooting?

A. I guess it was about a quarter-past 3.

Q Yes. You entered there at a quarter-past 3? A. Yes,
sir.

Q Was Donnelly in the saloon when you entered at that
time?

A.Yes, sir.

Q Whereabouts was he? A. Behind the ~~room~~ bar.

Q Behind the bar. A. Yes, sir.

Q Where was the other barkeeper, Madden---no, McCabe? A.
He hadn't come home.

Q He hadn't come home? A. He was on. I beg your pardon
there.

Q That is it. Who was behind the bar when you first entered

the saloon, at a quarter-after 3?

A. McCabe?

Q And how long after you entered that saloon was it before the defendant, Donnelly, went behind the bar? A. Five minutes past 4.

Q Donnelly went behind the bar at five minutes-past 4? — A. Yes, sir.

Q Now, when you entered the saloon at a quarter-past 3, tell me, again, slowly, so that I can get it down, the people who were there?

A. There was me.

Q You were one, and McCabe, the barkeeper, was two?

A. Yes, sir. A Charlie Madden.

Q He was three?

A. Yes, sir. George Ruch.

Q George Ruch was four?

A. Yes, sir; and Daniel O'Keefe.

Q And the five people that you have named at that time were the only people in that barroom at that time? A. Yes, si.

But may I ask you a question? Do you mean the time that Mr. Donnelly came in, or before?

Q No. I am talking of the time when you first entered the saloon at a quarter-past 3?

A. Yes, sir. That was all that was in there.

Q Now, you have asked me that question, and we want to get it right. You entered the saloon at a quarter-past 3 o'clock, on this Sunday afternoon?

A. Yes, sir.

Q And you say that, when you got in McCabe, the other bartender, was there?

A. Yes, sir.

Q And Madden was there?

A. Yes, sir.

Q And Rauch was there?

A. Yes, sir.

Q And O'Keefe was there?

A. Yes, sir.

Q So that, we have it now, as McCabe, Madden, O'Keefe and Rauch, as being in the saloon at the time you entered?

A. Yes, sir.

Q Did you say anything to Madden when you went into the saloon?

A. Madden came in after I was in the saloon.

I was in before him.

Q But, a minute ago, you said when you went into the saloon, at a quarter after 3, that you found McCabe, the bartender, Rauch, O'Keefe and Madden in there?

A. No. Madden was not in there; Madden came in after-

wards.

Q Well, then, he was not in there. We want to fix that ,right. Now, go back. You entered the saloon at 3:15 that afternoon, as near as you can recollect? A. Yes, sir.

Q Now, tell me, if you can, sir, the names of the persons that were in that saloon when you entered .

BY THE COURT:

Q Whom did you find in there at the moment that you entered?

A. All that I know that was in the saloon, that I was acquainted with, was the bartender.

BY MR. HOUSE:

Q And that was McCabe? A. A. Yes, sir. Rauch and O'Keefe I was not acquainted with at the time.

Q Rauch and O'Keefe you were not acquainted with at the time?

A. No, sir. They were strangers to me.

Q But subsequently you did become acquainted with them, after the shooting?

A. Yes, sir; after we got locked up.

Q Yes; after you got locked up?

A. Yes, sir.

CASE # 43

1199

Q But, befor you went in that saloon, on that Sunday, they were strangers to you?

A. Strangers to me.

Q Yes. Now, how long had you been in that saloon before ---
Madden came in, the fellow that was shot?

A. I was there about five minutes.

Q You were in there about five minutes?

A. Yes, sir; when McCabe was on.

Q That was when McCabe was on? A. Yes, sir.

Q Well, then Madden must have come in about 20 minutes after three? A. Yes, sir.

Q Yes. Was Donnelly in the saloon, this defendant; was he in the saloon at the time that Madden entered? A. No, sir.

Q He was not? A. No, sir.

Q Well, no, are you positive, Mr. Collins, that Madden entered that saloon five minutes after you got in?

A. I should say it was about that.

Q You should say it was about that? A. Yes, sir.

Q Then, when you said to the District Attorney, in answer to his question, that it was five minutes after 4 when Madden came in, you were mistaken?

CASE # 43

MR.MCINTYRE: No; he said when the defendant came in.

THE WITNESS: When the defendant came in.

MR.HOUSE: You said Madden.

THE WITNESS: No; I didn't.

THE COURT: No; I think not.. I asked him the question myself; how long after you entered the saloon did Madden come in, and I understood him to say about five minutes after.

MR.HOUSE: Yes, sir; but I took it down as five minutes after 4.

THE COURT: I think not; but, of course, I may be mistaken.

MR.HOUSE: Very well, sir. I think I am right, but the Stenographer's Minutes will determine later.

BY MR.HOUSE:

Q Now, you say that it was five minutes after you entered that Madden came in?

A. He came in when the other bartender was on.

Q Now, what were O'Keefe and Rauch doing at the time, if you recollect?

A. They were there near the lunch-counter, against the

CASE # 43

side entrance, measuring their height between them.

Q Yes, measuring their height? A. Yes, sir.

Q What was the first thing that Madden did after he entered the saloon, that Sunday afternoon?

A. He had a cigar in his hand, that is the cigar that he was smoking, and he re-lighted it at the cigar-lighter.

Q He had a cigar that he was smoking, and he re-lighted it at the cigar-lighter? A. Yes, sir.

Q Now, you are positive that he had been smoking that cigar before he came in? A. Yes, sir.

Q Yes. A. Yes, sir.

Q And it was a half-smoked cigar that he went over to the cigar-lighter to light?

A. Well, I couldn't exactly say. I didn't take no attention to say whether it was half or three-quarters.

Q Half or three-quarters? A. No, sir.

Q But the cigar had been smoked before he went over to the lighter?

A. He re-lighted the cigar. I don't know how much it had been smoked off.

CASE # 43

Q Now, do you know whether a portion of that cigar had been smoked before he went over to the cigar-lighter to re-light it?

A. Well, I couldn't swear, but I thought, by the looks of it, that it had been smoked. I wouldn't swear to it.

THE COURT: Well, that is all. That is enough.

BY MR. HOUSE:

Q Now, can you tell us whether or not, when he went to that cigar-lighter, that cigar had been lit at all?

A. I could not.

Q You could not?

A. No, sir.

Q Now, who was behind the bar at the time that Madden went over to the cigar-lighter?

A. Mr. Donnelly.

Q Mr. Donnelly?

A. No; the time---certainly Mr. Donnelly was behind the bar at the time. He had been in the saloon before, when Mr. McCabe was on.

Q Well, I asked you a minute ago what Madden did first when he entered, when McCabe was behind the bar, and you said that he went over and re-lighted his cigar.

CASE # 43

A. Well, I thought ~~when~~ you meant when Mr. Donnelly was behind the bar.

Q Now, if you will only pay attention to my questions, we will get along.

THE COURT: No; that will do for the jury after a while. It is better to argue with the jury than with the witness.

MR. HOUSE: Very well, sir. I stand corrected.

BY MR. HOUSE:

Q Now, I ask you again Mr. Collins, if you can tell me what was the first thing that you saw Madden do, after he entered that saloon, that Sunday afternoon?

A. At what time do you mean?

BY THE COURT:

Q Oh, no, no; the very moment that he came in. Did you see him come in the door?

A. I did.

Q Well, now, what was the first thing that you saw him do after he got into the door, after he got inside of the saloon?

A. Well, when he first came in, that is before Mr

CASE # 43

Donnelly come---

Q Well, never mind anything else. When he first came into the saloon, what was the first thing that he did?

A Well, at the time that Mr. Donnelly was on, he went over to the cigar-lighter first.

Q Well, was that the first thing that you saw him do?

A Well, he was in there before that.

Q Well, never mind about before. We will take it again. He was in the sale? You saw him come in; didn't you? A. Yes, sir.

Q Very well. Now, can't you tell us what was the first thing you saw him do when he came into the saloon? Leave out everybody else.

A. He went right to the cigar-lighter and lit the cigar.

Q Now, who was behind the bar when at the time when the deceased lit the cigar?

A. MR. McGOWAN. Donnelly.

BY MR. HOUSE:

Q Mr. Donnelly? A. Yes, sir.

Q What time did Mr. Donnelly come into that barroom? A.

CASE # 43

Five minutes past 4.

Q Five minutes past 4? A. Yes, sir.

Q So that from 20 minutes after 3 o'clock until five minutes past 4, Madden had been in the saloon, before he went to the cigar counter to light his cigar; is that it?

A. No sir. Madden was in there previous.

BY THE COURT:

Q Well, what was the first time that you saw him in there?

A. About a quarter past 3.

Q Did he go out then?

A. Yes, sir; he went out and went to where he works, to take care of his horses.

BY MR. HOUSE:

Q Did you go with him? A. No, sir.

BY THE COURT:

Q Well, he left the place? A. Yes, sir.

BY MR. HOUSE:

Q What door did he go out of? A. The side entrance.

Q Did you see him go out of the side door, on to the street?

A. I saw him go out of the door.

Q You saw him go out of the door?

A. I did.

Q Now, what I want to know is, and I must get it, too, if I can, Collins--you entered that saloon, according to your own testimony here to-day at a quarter-after 3; didn't you?

A. Yes, sir.

Q And you say that five minutes after you had entered the saloon that Charlie Madden came in; is that correct? A.

Yes, sir.

Q So that, if you went in there at a quarter after 3, Madden must have come in there at 20 minutes after 3?

A. Yes, sir; about.

Q And Donnelly was not there at the time; was he? A. No, sir.

Q Now, I don't care anything about Donnelly at this time. McCabe was behind the bar?

A. Yes, sir.

Q Now, I will ask you, at 20 minutes after 3, when Madden, for the first time, as you say, came into that saloon, that Sunday afternoon, what was the very first thing that he did after he entered?

CASE # 43

A. He bought a glass of beer.

Q He bought a glass of beer? A. Yes, sir.

Q From whom? A. From McCabe.

Q Did he have a cigar in his mouth or in his hand at the time?

A. Listen what I am saying; not at that time.

Q I am asking you what he did at the time.

BY THE COURT:

Q Well, did you see, at the time that he asked for the glass of beer from McCabe---did he have a cigar in his hand at the time?

A. I didnt notice it.

BY MR HOUSE:

Q You did not notice it? A.No, sir.

Q And, after he got the glass of beer from McCabe, what did you see Mallen do?

A. Nothing out of the way.

Q I didn't ask you whether it was in or out of the way. What did he do?

A. Well, after getting his glass of beer, he went out again.

CASE # 43

Q. Out of the side door? A. Yes, sir.

Q. Now, did you see him when he returned for the second time? A. I did.

Q. What time was it when he came in the second time?

A. About five minutes past 4.

Q. About five minutes past 4? A. Yes, sir.

Q. And you say that Donnelly came in at five minutes past 4 also?

A. Donnelly came on at five minutes past 4, and he happened to come at the same time. Donnelly had just got up behind the bar when he came in; it might be a minute or two difference.

Q. Did you see Donnelly when he came in first? A. I did.

Q. What was the first thing that he did?

A. Donnelly put on his apron.

Q. Donnelly put on his apron?

A. Yes, sir; he took off his coat and hat and put on his apron.

Q. Did you say anything to him?

A. I said, "How do you do, Jim?"

Q. What did he say to you?

A. He said, "Hello, Pa_ddy!"

CASE # 43

Q Did he appear to be pleasant? A. Yes, sir.

Q He did not act cross? A. No, sir.

Q He did not act as if he was angry?

A. He never did, as long as I knew him.

Q And he appeared just as pleasant and quiet as you had always seen him? A. Yes, sir.

Q Now, the next thing that you saw, after Donnelly went behind the bar, was Madden coming in the door?

A. Madden came in; yes, sir.

Q Yes. Madden came into the door?

A. Yes, sir.

Q And what did Madden do, Donnelly being behind the bar?

A. He went up to the cigar-lighter.

Q Now, tell us --- you tell us that you do not know whether that cigar had been lit before or not.

A. I wouldn't swear to it.

Q You wouldn't swear to it? A. No, sir.

Q But you saw him go over to the counter; didn't you? A. Yes, sir.

Q And you looked at him? A. Yes, sir.

Q And you saw that he had a cigar? A. Yes, sir.

CASE # 43

Q And you couldn't tell us whether it had been lit before or not? A. No, sir.

THE COURT: Well, he has told us that half a dozen times already. That forecloses that matter.

MR. HOUSE: Very well, sir.

BY MR. HOUSE:

Q Now, at which end of this bar is this cigar-lighter situated, or was it at the time?

A. Just on the Northwest corner.

Q And is that the end of the bar nearest to 8th Avenue? A. Yes, sir.

Q Right on the 8th Avenue end of the bar?

A. Yes, sir; on the uptown side.

Q On the uptown side? A. Yes, sir.

Q The bar has a round turn to it there, at the corner, has it not?

A. Yes, sir.

Q Now, was the cigarlighter on the round turn, or a little way from it?

A. Well, I should say about 8 or 10 inches or a foot from the turn of it.

CASE # 43

Q From the turn?

A. Yes, sir; just right at the turn , pretty near.

Q Now, whereabouts was Donnelly standing, in relation to his being behind the bar, at the time that Madden walked up to the cigarlighter?

A. He was standing about four feet from the cigarlighter, behind the bar.

Q Behind the bar? A. Yes, sir.

Q And the first thing that you saw Madden do was to go up and light his cigar? A. Yes, sir.

Q After he lit his cigar, what did Madden do, if anything?

A. He asked for a glass of beer.

Q Whom did he ask? A. Mr. Donnelly.

Q Mr. Donnelly.

A. I went over that once before.

BY THE COURT:

Q I know, but, unfortunately, you will have to go over it again. Go on, Mr. House.

BY MR HOUSE:

Q Now, what did he say to Donnelly when he asked for the glass of beer?

A. He said, "Give me a glass of beer."

CASE # 43

Q And what did Donnelly say? A. Donnelly says, "No, I will give you no glass of beer. Get out of here, get out God damn you, get out. I told you before to keep out of here."

Q "I told you before to keep out of here"? A. Yes, sir.

Q Now, do you recollect when you were before the Coroner's inquest you were asked to tell what Donnelly said to Madden, at the time he asked for the glass of beer, and just before the shooting? A. What did I say?

Q I ask you if you recollect that, when you were before the Coroner, you were asked to tell what Donnelly said to Madden, just before the shooting? A. I do.

Q And did you tell us then what was said by Madden and Donnelly? A. I think I did.

Q You think you did? A. Yes, sir.

Q Well, now, let us see. Do you remember this question being put to you, on page 6 of the Coroner's Minutes, by Mr O'Hare, who represented the District Attorney's office, at that time: "Will you say what you saw and heard? A. I came in about half-past 3, and I stood there until Mr. Donnelly came on, to relieve the other bartender, and Madden came in and stepped up to the cigarlighter and lit

1123

38

his cigar." Was that question put to you before the Coroner, and to that question did you make that answer?

A. It was.

Q Yes. Now, see if this question was put to you: "Q. At half past 3? A. No; five minutes of 4; and he (referring to Madden) asked Donnelly to give him a glass of beer. James Donnelly said, 'No. Get out. I told you to keep out before.' He turned to the drawer and took out a revolver and shot him." Now, did you make that answer? A. I did.

Q Well, now, if you were under oath, and your recollection on the 21st of July was just as clear regarding what took place in that saloon as it is now, why didn't you tell us at the Coroner's inquest that he said, "Get out of here, God damn you. I told you not to come in here any more"?

A. Well, that is what he said; if I made a mistake.

" I don't care whether it is what he said or not.

BY THE COURT:

Q No, no. But why didn't you tell that to the Coroner, when you were asked that question?

A. Well, I suppose nothing.

Q What is that, sir?

CASE # 43

A. Well, I don't know. I thought I made the statement right, as far as I seen it.

BY MR HOUSE:

Q And that is your answer? A. Yes, sir.

Q You thought that the statement that you made before the coroner was the right statement? A. Yes, sir.

Q Now , here you add the words, "God damn you;" do you?

A. Well, no. I would leave that out. I would stick to my own first statement.

Q You would stick to your own first statement? A. Yes, sir.

Q So, now we have it that what Donnelly said to him was, "No. You can't have a drink. Get out of here. I told you before to stay out"?

A. Yes, sir.

Q Now, Mr Collins, you think that he didn't say, "God damn you;" don't you?

A. No, I ain't---my recollection is again that way, but my first statement what I made is right.

Q The first statement that you made is correct? A. Yes, sir.

Q You say that, at the time the shot was fired, that Madden had his left arm resting on the bar? A. The bar rail.

Q

CASE # 43

Q On the bar rail? A. Yes, sir.

Q And you say that his right hand was down by his side? A.
Yes, sir.

Q Yes. Now Mr Collins, how far away from Madden were you
standing at the time the shot was fired?

A. Just around the round corner of the bar.

Q Just around the round corner of the bar? A. Yes, sir.

Q Now, show me on this diagram where you were standing.

A. Here is the cigarlighter. I was standing around
there, where the papers were.

Q Where the papers were ? A. Yes, sir.

Q Now, show me where Madden was standing at the time he was
shot.

A. Yes, sir.

Q At the point marked B? A. Yes, sir.

Q And you were standing around at the point marked C? A. Yes,
sir.

Q Now, we will mark that.

THE COURT: Do you want to put another mark?

MR. HOUSE: Yes sir; where he was standing at the
time the shot was fired.

CASE # 43

THE COURT: He has already indicated it, at C.

MR. HOUSE: The witness says that, at the time the shot was fired, Madden was standing at the point indicated by B, gentlemen of the jury, and that the witness was standing at the point indicated by C.

THE 2ND JUROR: What is that?

MR HOUSE: That cross there.

THE JUROR: I thought Madden was standing here, where the cross is. No, B, where the cigarlighter was.

THE COURT: No. There is where the witness ceased, he says, was standing, at B. There is where he was standing, Marked C, and there, he says, which is intended for a D, made by Mr Martine, was where the defendant was standing.

MR HOUSE: Yes, sir.

THE COURT: Now, we will make that D a little plainer, if you have no objection to me doing it.

MR HOUSE: Of course not, sir; not at all.

BY MR HOUSE:

Q

Mr Collins, this bar that we have been speaking of is on

CASE # 43

the North side of the saloon; is it not? A. Yes, sir.

Q Yes. And Madden was standing, at the time the shot was fired, at the point that you have indicated here as B, and that would be about how far from the turn of the bar, if you can give it?

A. It was be about 3 feet or so.

Q It would be about 3 feet or so? A. Yes, sir.

Q About three feet away from the turn of the bar; and you were standing at the point indicated by C, which would be about 3 feet from the turn of the bar; would it not?

A. About that.

Q About that? A. Yes, sir.

Q So that there would be a distance of about 6 or 7 feet on the turn of that bar, between you and Madden?

A. Well, I wouldnt judge it over 4 feet.

Q Well, over four? A. Yes, sir; perhaps a little.

Q Well, Madden stood two or three feet away from the turn of the bar?

A. Yes, sir; about three feet.

Q And you were about three feet from the turn of the bar?

A. From the cigarlighter, I mentioned.

CASE # 43

Q Well, there is the cigarlighter, and it is right at the turn of the bar. Now, were you right up against the bar at the time?

A. Yes, sir.

Q And were there any newspapers on the bar in front of you at the time?

A. Yes, sir; the Sunday papers.

Q And were you looking at them? A. Yes, sir.

Q Now, when Madden was where you have indicated on the diagram, by the Mark B, and his lefthand was resting on the bar, in the way which you have illustrated, his left side was to you; was it not?

A. Yes, sir.

Q Now, you are positive? A. Yes, sir.

Q His left side was to you? A. Yes, sir.

Q And he was about 3 feet away from the turn of the bar? A. Yes, sir.

Q Immediately that the shot was fired, Madden started out the side door; did he?

A. Staggered out, backwards.

Q Well, you didn't follow out after him immediately?

A. No, sir; I stood in the saloon.

Q You stood in the saloon? A. Yes, sir.

Q Officer O'Neill came in; didn't he? A. Yes, sir.

Q And Officer O'Neill asked who fired that shot? A. He took the three names and asked who fired the shot.

Q And Donnelly said that he did? A. Yes, sir.

Q Was there any hesitancy on the part of Donnelly in saying that he fired the shot? A. No, sir.

Q Owned it right up at once? A. Yes, sir; he said, "I fired the shot."

Q Now, after firing the shot, did Donnelly make any endeavor to get away, to get out of the saloon? A. No, sir.

Q Did he stay right there? A. Yes, sir.

Q And when the officer asked him for the pistol, he handed it over directly to him? A. Yes, sir.

Q Didn't try to hide or conceal or or keep it back?

A. No, sir.

Q Now, how long was Officer O'Neill in that saloon, taking your names and asking who fired the shot and getting the pistol from Donnelly, before you went out into the street?

CASE # 43

A. Well, I would say it was not five minutes any way to take three names.

Q Well, you would say that it was not five minutes any way to take three names? A. No, sir.

Q Well, it would take at least 3 or 4 minutes to do all that; wouldn't it?

A. Yes, sir. He took the names and went out.

Q Did he write them down? A. Yes, sir.

Q On a piece of paper? A. Yes, sir.

Q With a pencil? A. Yes, sir.

Q And do you remember whether or not he searched this fellow Ruch or O'Keefe before he got the names? A. He didn't.

Q He didn't? A. Yes, sir.

Q You are positive that he didn't search anybody in that saloon before he asked who fired the shot? A. No, sir.

Q Well, when you went out---Who went out into the street first, after the officer had got the names, and had asked who had fired the shot, and Donnelly had said, "I did," who went out first? A. Mr. O'Neill.

Q And who followed him? A. Ruch and O'Keefe.

Q And where did you go? A. I went out.

Q Where was Donnelly? A. He was behind the bar.

CASE # 43

Q Didnt he take him out, at that time, the officer? A. Yes, sir ; he did.

Q Now, what I want to get at is: when the officer started out of the barroom with Donnelly, did you immediately follow them, or did Ruch and O'Keefe? A. Ruch and O'Keefe went out first.

Q Ruch and O'Keefe went out first? A. Yes, sir.

Q And then you went out ? A. Yes, sir. I stopped in the saloon until I saw that Tommy went on, and Mr O'Neill took Donnelly out, and then I followed them out.

Q Yes. And then you followed them out? A. Yes, sir.

Q And then O'Keefe and Ruch went out first? A. Yes, sir.

Q And then Officer O'Neill and Donnelly went out? A. Yes, sir.

Q And then you stayed in there long enough to see that the other bartender went behind the door again? A. Yes, sir.

Q And then you went out?

A. He come right on, when he come in; but he went to the closet at the time that the affray happened.

Q Yes. But O'Keefe and Ruch and Officer O'Neill and Donnelly had got out of the door, on the street, before you did?

A. I followed O'Neill---I followed Officer O'Neill and D

CASE # 43

Donnelly right out. I was right behind them.

Q You were right behind them? A. I was.

Q Now, where was Madden lying at the time? A. Right on the sidewalk, at the side entrance.

Q In front of the saloon?

A. Well, at the side entrance.

BY THE COURT:

Q He was lying on the sidewalk in front of the side entrance?

A. Yes, sir.

BY MR. HOUSE:

Q Now, were there many people around him?

A. Yes, sir; quite a crowd.

Q How many, about?

A. Well, I should judge---I couldn't say exactly---but I should judge about 100 or 150 people.

Q You should judge about from 100 to 150 people? A. Yes, sir.

Q Were they right close up around him? A. They were.

Q Right near him? A. Well, yes; gathered around, the same as if any accident happened.

Q Well, did you know any of those people at the time that were there? A. I didn't.

CASE # 43

Q Now, have you since leanned that you knew any of them? A. I didn't.

Q You say that you have no particular place of residence at present, Mr. Collins; is that so? A. Not at present.

THE COURT: Is he in the House of Detention?

THE WITNESS: I was.

MR. MCINTYRE: No, sir; he was in the House of Detention, but was liberated on a bond.

BY MR HOUSE:

Q Well, you were not very long in the House of Detention?

A. A couple of days and nights.

Q So that, along in the month of June, 1893, you were taken out of the House of Detention on bond; weren't you? A.

Yes, sir; I was.

Q And you have not been back in the house of detention since; have you? A. I was.

Q For how long?

A. No; I was not taken down there, but I was taken down to "The Market," again, after leaving the employ that I was at.

BY THE COURT:

CASE # 43

Q No. Let us see. When did you leave the House of Detention; about?

A. Well, I couldn't tell the date.

Q Well, was it in June? A. It was in June.

Q You think it was in June? A. It was.

Q And were you let out on bail, then? A. Yes, Your Honor.

Q And did you then go back to the House of Detention again?

A. No. The lady that I was working for, after leaving her employment, she surrendered herself, and I had to get another bondsman.

Q And were you a day or so getting another bondsman?

A. No, sir; the same day I was arrested. I was taken out of the house, and I got the bail before I left "The Market"

BY MR HOUSE:

Q So that you were only locked up in the house of Detention about two or three days? A. Yes, sir.

Q Now, when did you leave Mrs. Glasgow's employ, Mr Collins?

A. That I couldn't exactly tell you, the date.

Q Well, it was along last summer some time, was it not? A.

It was.

CASE # 43

Q What is her son's name; George? A. I have no son, sir.

Q Mrs. Glasgow has no son? A. Oh, Mrs Glasgow?

Q Yes?

A. Oh, she has two sons.

Q Well, which one of them was it that used to go on the wagon with you, once in a while? A. That is William.

Q That is William? A. Yes, sir.

Q And did you leave her employ yourself, or were you discharged?

A. Well, she discharged me because I abused the boy.

Q Yes. You and her son had a fight? A. Yes, sir.

Q And you abused him; you licked him?

A. Yes, sir.

Q And because of that Mrs Glasgow discharged you ?

A. Yes, sir.

QM And have you had any employment since then?

A. Yes, sir. I have been working off and on.

Q Well, whom have you been working for since then?

A. Well, I have been working down around the dock. I got odd jobs, putting in coal or anything .

Q Well, you havent had a steady job since? A. No, sir.

CASE # 43

1136

51

It was pretty hard to get it this winter.

Q Yes. Nor since you were discharged by Mrs. Glasgow, you haven't had any steady place of residence; have you?

A. No; no steady place of residence.

Q And then you had no particular place of residence? A. No, sir.

Q Or no particular place where you have worked? A. No, sir.

Q Were you born in Boston, Mr. Collins? A. I was.

Q When did you come to this City, about, to live? A. When did I come to this City?

Q Yes; to New York?

A. Well, I couldn't exactly tell you. I went off and on there.

BY THE COURT:

Q Well, about when was the first time, about how many years ago?

A. About ten years ago.

BY MR. HOUSE:

Q About 10 years ago? A. Yes, sir.

Q And have you been steadily a resident of the City of

CASE # 43

New York, for the past ten years?

AA. Well, I have made two trips to Boston in that time.

Q You have made two trips to Boston in that time A. Yes, sir.

Q How long did you remain in Boston during those two trips?

A. Not over a week.

Q A little over a week, each time?

BY THE COURT:

Q Not over a week each time? A. Yes, sir.

BY MR. HOUSE:

Q So that, having come to the City of New York, about ten years ago, and having made, during that time, two trips to Boston, of not over a week each time, you have been a resident of New York right through? A. Yes, sir.

Q Now, who did you first go to work for, when you came first to New York?

A. The New York Co-operative Lead Works.

Q The New York Co-operative Lead Works?

A. Yes, sir.

Q How long did you work for them?

A. About a year.

Q And after you left them where did you go? A. I got hurt in the New York Cooperative Lead Works, and I was shifted down to T.J.Pope & Sons, on Pearl Street.

Q Well, how long did you work for them?

A. Well, it is the same firm; and I stood there as a porter.

Q For how long?

A. Ey?

Q For how long?

A. Well, I was over a year.

Q That is two years. And then, after you left down there, where did you go?

A. Eh?

BY THE COURT:

Q When you left Pope's, where did you go?

A. I worked for Skidmore & Sons.

BY MR. HOUSE:

Q The coal people? A. Yes, sir.

Q And how long did you work for them? A. About a year or so.

Q Well, you guess so?

CASE # 43

A. I said about a year or so.

Q Now, which was it; a year or two years? A. Well, about a year and three months.

Q About a year and three months? A. Yes, sir.

Q And, after you left Skidmore, where did you go?

A. I went to work for Scott.

Q He is in the ice business?

A. Yes, sir.

Q How long did you work for Mr Scott? A. Four years.

Q Four years? A. Yes, sir.

Q And, after you left Mr. Skidmore, where did you go?

A. I went boating for the New York Central & Hudson R.R.Co. I wasn't exactly boating for them.

BY THE COURT:

Q Well, what did you do for them? A. Oh, I was on the boat that they call the "Houghataling."

BY MR. HOUSE:

Q How long were you there? A. About a year.

Q Did you ever make a trip to Havana?

A. Yes, sir.

Q On a coasting steamer? A. Yes, sir.

Q As a coal passer? A. Yes, sir.

Q What was the name of the fellow that used to work with you on the wagon as a helper, shortly before the shooting---Bob Clifford, was it?

A. Bob Clifford---let me see?

BY THE COURT:

Q Well, what was the name of the man that used to work with you as helper on your wagon?

A. His first name is Bob. I don't remember now what his last name was. His first name was Bob, any way.

BY MR. HOUSE:

Q Well, Bob had charge of the wagon, while you were down at the coroner's inquest; did he not? A. He did.

Q And he made some collections?

MR MCINTYRE: Well, what has that got to do with this case. I object.

MR. HOUSE: Well, I am just asking the question, yes or no.

THE COURT: Well, why? What materiality has it in this case?

MR HOUSE: Well, I will withdraw the question.

BY MR HOUSE:

CASE # 43

Q Well, he was discharged shortly after you had given your testimony before the Coroner; was he not?

A. He was.

Q Yes. A.Yes, sir.

Q And do you recollect of having any conversation with anybody regarding the reason for his discharge?

(Objected to, as immaterial.)

THE COURT: Well, that is immaterial. It is certainly material at this stage of the case.

BY MR.HOUSE:

Q Did you say to any person, after his discharge, that he had been discharged for collecting \$8.00, an ice bill, while you were before the Coroner, and keeping it?

(Objected to, as immaterial.)

THE COURT: I will exclude it. I do not see the materiality of it.

(Exception.)

Y MR HOUSE:

Q And did you tell any one, in the course of a conversation, that it was easy for the driver of an ice wagon to skin the boss?

MR.MCINTYRE: Well, I will not object to it.

CASE # 43

1142

It is a matter of common knowledge.

THE COURT: I will allow it, as it may tend to affect his credibility.

A. I didn't.

BY MR HOUSE:

Q What?

A. I didn't.

Q Now, Collins, do you mean to swear under your oath, that, within a short time after you had been a witness before the Coroner, upon the Madden inquest, if, in a conversation with a certain person, you referred to the fact that Bob had been discharged for stealing \$8.00, which he had collected while you were there; that you did not relate to a certain person the various tricks in the ice business, and show how the driver could skin the boss, and how the driver upon the wagon could always make a little money for himself?

A. Did you ever see an honest iceman?

THE COURT: Now, you can answer that question.

MR HOUSE: And, judging from my ice bills, I should say not.

THE COURT: Never mind about that. Repeat that ques-

CASE # 43

tion, Mr. Stenographer.

(Question repeated.)

A. I didn't remark it.

BY THE COURT:

Q Well, whom did you say it to? A. That I don't remember;
but I didn't say no \$8.00.

Q You did say part of it, and not the part relating to the
\$8.00?

A. No, sir.

BY MR. HOUSE:

Q But the rest you did speak of, but not the part relating
to the \$8?

A. Yes, sir.

Q Do you know a fellow by the name of Kiernan before the
shooting?

A. I did.

Q Yes. And also a fellow by the name of Davis? A. I did.

Q Well, you were on very good -- friendly terms with Kiernan
and Davis for some time prior to the shooting; were you
not? A. I was in friends with all of them.

Q Friends with all of them? A. Yes, sir.

CASE # 43

Q But not friends with O'Keefe and Ruch before the shooting?

A. I didn't know them, at that time.

Q But, since the shooting you have become quite familiar with them?

A. I got acquainted with them by being in court and in the House of Detention with them.

Q Hadn't you met them anywhere else? A. Not before the shooting.

Q But, I say, since the time of the shooting, haven't you met Ruch and O'Keefe?

BY THE COURT:

Q Or at any other time than when you were in the House of Detention?

A. No, sir; and only when we were ordered to come to court.

BY MR. HULSE:

Q And only when you were ordered to come to court? A. Yes, sir.

Q Now, you know where the Oak saloon is, at 23rd Street and 8th Avenue, down in the basement; don't you? A. Yes sir.

CASE # 43

Q Do you mean to tell me that Ruch and you and another party did not meet in that saloon one night?

A. We didn't.

Q You are positive? A. Yes, sir; I am.

Q And the man that was with Ruch you said had been your partner for some time, and you asked Ruch where he got acquainted with him?

A. My partner?

Q Yes; had been a partner of yours, after Bob left the wagon?

BY THE COURT:

Q Now, let us see, Mr House. Now, you are talking of a meeting in the Oak saloon at 23rd Street and 8th Avenue?

MR. HOUSE: Yes, sir; 23rd Street and 8th Avenue.

THE COURT: Now, he says that he was not there, and did not meet those people, and that ought to end that.

BY MR. HOUSE:

Q Now, let us see, Mr Collins. Do you know where you were-- were you in the Oak saloon, at the corner of 23rd Street and 8th Avenue on the night of the 19th of August, last?

A. I could not tell you.

CASE # 43

Q You couldn't tell?

A. No, sir.

Q And don't you remember that, upon that night, that while you were in there, Ruch and another man came in, and that you said, "Hello. We haven't met since we were before the coroner's jury"?

MR.MCINTYRE: Don't answer that. That is assuming, Your Honor, that he was there.

THE COURT: Well, he has said that he can't tell whether he was there or not. I will allow it, on that ground.

BY THE COURT:

Q Now, having heard that question, do you recollect whether you were in the Oak saloon on the night of the 19th of August?

A.I dont recollect.

Q Now, did you make any such statement as is referred to, to anybody, on the night of the 19th of August, or on any night in August in that saloon?

A. I don't remember it; and if I did, I don't remember it.

CASE # 43

BY MR.HOUSE:

Q And do you remember that, after you had got in there, and had had several drinks---

THE COURT: Now, you are assuming that he was there.

You can get down at it in some other way than by assuming that he was in there.

BY MR.HOUSE:

Q Very well, sir. Did you ever have any conversation with Ruch about a little fellow from the Herald coming to see you?

A. From the Herald?

Q Yes; from the Herald.

A. I don't know anybody that works in the Herald.

Q I didn't ask you whether you did or not.

A. The Herald office, do you mean?

THE COURT: What Herald, the newspaper?

MR.HOUSE: Yes, sir; the Herald office.

BY MR.HOUSE:

Q A little fellow who claimed to be working in the Herald office?

A. No, sir.

Q You never had any conversation with Ruch about that?

CASE # 43

A. No, sir.

Q And Ruch said, "The Mugsey has been to see me. Has he been to see you?"

A. No, sir.

THE COURT: Well, he says he had no such conversation.

BY MR. HOUSE:

Q And you said that you had heard of the 'bloke' and that he had been to see O'Keefe and Davis?

MR. MCINTYRE: Well, he says that he don't remember it.

THE WITNESS: I don't remember of hearing it; not to my knowledge have I heard any such thing.

BY MR. HOUSE:

Q And you say that that is not so?

A. Not to my knowledge.

Q How many times have you been in saloons drinking with Ruch, since this shooting, Mr. Collins?

A. Very few; I guess it is about twice.

Q About twice?

A. That is something---and he don't keep company with me and I don't keep company with him.

THE COURT: That will do. That is an answer.

CASE # 43

BY MR HOUSE:

Q That fellow, Bob, that used to work with you as a helper; do you remember his name as being Bob Cawfield? A. Yes, sir.

Q Do you know where he is now, Mr. Collins?

A. I dont.

Q How long after the shooting was it that you were discharged by Mrs. Glasgow?

A. That I could not exactly tell you.

BY THE COURT:

Q Well, as near as you can?

A. Oh, it was four months or so; three or four months.

Q Three or four months?

A. Yes, sir.

BY MR. HOUSE:

Q Do you know a man by the name of Barney McCullagh, who was employed by Dr. Betts?

A. Barney McCullagh?

Q Yes?

A I know a man named Barney McCullagh, but I don't

CASE # 43

O'Keefe

1150

65

know whether he is employed by Dr. Betts or not.

BY THE COURT:

Q Do you know a man by that name? A. I know a man by that name.

BY MR. HOUSE:

Q Do you know whereabouts McCullagh lives? A. I don't, sir.

DANIEL O'KEEFE, called by The People, being duly sworn, testified as follows:

D i r e c t - E x a m i n a t i o n .

BY MR. MCINTYRE:

Q Mr. O'Keefe, what is your business? A. Tin and sheet-iron worker.

Q And where is your place of business?

A. 433 and 435 West 42nd Street.

Q Were you engaged in that business on or about May 28th, of last year?

A. Yes, sir.

Q At that time where did you reside, Mr. O'Keefe? A. 242

CASE # 43

West 19th Street.

Q Do you remember on the afternoon of the 28th day of May, 1893, being in the saloon owned by one Felix Donnelly? A. Yes, sir.

Q Where was that saloon situated?

A. On 28th Street and 8th Avenue.

Q In the City of New York?

A. In the City of New York.

Q What time did you go there?

A. Well, I should judge about 4 o'clock in the afternoon; between 3 and 4.

Q You should judge about 4 o'clock in the afternoon; between 3 and 4?

A. Yes, sir.

Q In whose company did you go?

A. Mr. George Ruch.

Q Mr. George Ruch? A. Yes, sir.

Q Now, where had you met Ruch, previous to going to the saloon?

A. I met him at 29th Street between 9th and 10th Avenue.

Q And went from that point---

A. On my way home.

CASE # 43

1152

Q And from that point you went to the saloon kept by Felix Donnelly?

A. I stopped in there, in the afternoon, on my way home, to dinner, to have a glass of beer.

Q And you fix the time as between 3 and 4 o'clock? A. Yes, sir.

Q And when you got into the saloon, whom did you see in there?

A. Well, I didn't know anybody when I got in there.

BY THE COURT:

Q There were people in there, however?

A. Yes, sir; but I didn't know who they were.

Q Well, about how many people did you see when you went in there?

A. Well, there were two, in my judgment.

Q Two people?

A. Yes, sir.

Q Exclusive of the bartender?

A. Well, there was a bartender there that served me, and there were two bartenders afterwards.

Q No. I am talking of the number of people that you remember

CASE # 43

1153

seeing in the saloon when you went in, and you Mr. +---
what is his name?

A. Mr. George Ruch.

Q You went in there together? A. Yes, sir.

Q And when you went in, how many people did you see, about,
if you recollect?

A. Well, there were the bartender, Mr. Collins, Mr. Ruch
and myself. That was four.

BY MR. MCINTYRE:

Q Well, when you got into the saloon, or rather, how did
you enter the saloon?

A. Through the side entrance, on 28th Street.

Q Through the side entrance on 28th Street? A. Yes, sir.

Q And when you got into the saloon, what did you do? A.
I called for a glass of beer.

Q Were you served with the glass of beer? A. I was.

Q And did your friend, Ruch, have a glass of beer, too? A.
Yes, sir.

Q And after you got the glass of beer what did you do in the
saloon?

A. Well, Mr. Ruch and I got arguing between our heights
and measurements. He claimed he was taller than I was,

CASE # 43

and I claimed I was taller than him; and the argument came to measurements, and we went over to the side entrance of the saloon.

Q To the side entrance of the saloon?

A. Yes, sir; the 28th Street entrance.

Q And what was there near that door---a machine to measure with?

A. No, sir; we just measured it off with a pencil.

Q On the wall?

A. No, sir; on to the partition that was there, at the side entrance.

Q Now, how long were you engaged in doing that?

A. Well, I don't know. I couldn't exactly say the time, but about ten or fifteen minutes, probably.

Q And that brought you down to what time, as near as you can remember.

A. Well, I can't remember at the present time, how long it did take, but probably half an hour altogether, between the two drinks we had.

Q Well, while you were measuring, did you see the defendant at the bar?

CASE # 43

A. Yes, sir.

Q Where did he come from? A. Well, I believe he came in the side entrance. Who is that you are speaking about?

Q The defendant at the bar.

A. Mr. Donnelly? Is that it?

Q Yes.

THE COURT: Stand up, defendant. Now, when did you see that man first?

A. I seen him come into the side entrance. I couldn't tell the time, though, and I believe he went behind the bar.

BY MR MCINTYRE:

Q And, when he went behind the bar, was there another bartender there?

MR HOUSE: Well, Your Honor, I must object to the District Attorney leading the witness. It is not fair or proper.

BY MR. MCINTYRE:

Q Now, did you see a bartender behind the bar when you went in?

A. Yes, sir.

CASE # 43

BY THE COURT:

Q Now, you and Mr. Ruch went in to have a glass of beer before your dinner, you say?

A. Yes, sir.

Q And did you have a glass of beer, before you measured yourselves?

A. Yes, sir.

Q And who was behind the bar, then?

A. Thomas McCabe, I believe, was behind the bar.

BY MR. MCINTYRE:

Q And it was after you got the glass of beer that you saw the defendant?

A. Yes, sir.

Q And then he came in through the side door? A. Yes, sir.

BY THE COURT:

Q The side entrance?

A. Yes, sir.

BY MR. MCINTYRE:

Q And where did he go?

A. Behind the bar, as far as I saw him.

Q And did you see what became of McCabe, then?

A. I saw him go into the closet.

Q You saw him go into the closet?

A. Yes, sir.

Q Well, did you know Charles Madden? A. I didn't, sir.

Q Well, did you see anybody there whose name you learned afterwards to be that of Charles Madden?

A. I did. I heard of it after the case.

Q You did; you heard of it after the case? A. Yes, sir.

Q Well, the man that you heard of as being Charles Madden, did you see him in the saloon on that occasion?

A. I saw his back, but I couldn't recognize his face.

Q Where was he standing?

A. At the end of the bar.

Q And who was he talking to?

MR.HOUSE: Objected to. "Was he talking with anybody?"

I suppose, would be the fair question, Your Honor.

THE COURT: Yes, it is not exactly fair, but he is getting into your way of examining witnesses, Mr. House.

MR.HOUSE: Then, he should object, Your Honor.

CASE # 43

THE COURT: Well, it is very easy to get along, without all this discussion.

THE WITNESS: Well, as far as I saw, he was leaning over the bar, talking to the bartender, as far as I could see.

BY THE COURT:

Q Now, at what end of the bar, Mr. Witness?

A. At the 8th Avenue entrance.

BY MR. MCINTYRE:

Q Now, you say that he was talking ~~mb~~ to the bartender?

A. Yes, sir.

Q What bartender, if you know?

A. Well, at the time we were measuring heights, he was talking to Donnelly.

Q The defendant here?

A. Yes, sir; the defendant.

Q Now, how were they talking; in a loud way or quiet?

A. No, sir; in a quiet way, as far as I could see. I was close enough to hear it.

Q In a quiet way? A. Yes, sir.

Q Now, during the course of the conversation that you have

CASE # 43

just described, did anything attract your attention, on that occasion?

A. The movements of the men; that is about all.

Q Well, what men ?

A. Why Donnelly.

Q Donnelly?

A. Yes, sir.

Q Did you see him?

BY THE COURT:

Q No, no. Now, please, Mr. Witness, go right on and tell us what you saw and what you heard, commencing at that point.

A. Well, at that point---

Q Slow and loud. All that you saw and heard said in that saloon.

A. Well, I heard the report of a pistol.

Q Yes; go on. And what did you do?

A. And I faced about---I didn't have to face about. I just merely took a side glance of my eyes, and I saw Mr Donnelly return the pistol to the drawer; and, with that, I made a motion to go to the side door, and I was stopped

CASE # 43

1160

CASE # 43

by the officer coming in.

BY MR. MCINTYRE:

Q Now, when you heard the report of the pistol, did you see anybody standing at the bar then?

A . There was one man standing at the end of the bar.

Q Yes. Well, who was that man? A. Collins.

Q And he stood at the extreme end of the bar? A. Yes, sir.

Q Well, now, did you notice anybody who was injured or hurt?

A. Well, this Madden. He staggered past me.

Q He claimed he was shot?

A. Yes.

Q Did you hear him say anything?

A. He said "That man shot me.

Q He said, "That man shot me"?

A. Yes, sir.

Q Pointing to what man?

A. Well, he did not say.

Q Well, where did he go to?

A. He went out of the side entrance. I don't know where he went to afterwards.

CASE # 43

Q After you heard that declaration, "That man shot me" was it then that Officer O'Neill came in?

A. He came in the side door; yes.

Q What did O'Neill do, the officer?

A. He stopped first Ruch, who was in front of me, going out of the side door, and he asked who fired the shot, and Ruch said he didn't, and he asked me who did it, and I said I didn't, and then the bartender claimed that he did it.

Q What did he say?

A. "I shot the man."

Q Then, what next did you see?

A. That is all I saw of it, Your Honor.

Q Did you leave the saloon then?

A. I left the saloon then.

Q By the side entrance?

A. Yes; by the side entrance.

Q Did you see the man on the sidewalk?

A. I didn't. I didn't stop; there was too much of a crowd there.

Q And you left directly, after seeing the deceased on

CASE # 43

the sidewalk?

A. Yes, sir.

BY MR. MCINTYRE:

Q Now, I want you to indicate, on this diagram, where the man---

THE COURT: You had better let him look at it first.

There is the 8th Avenue, and there is 28th Street.

MR. MCINTYRE: This indicates the bar.

BY MR. MCINTYRE:

Q Now, state, if you can, where you saw the man Collins standing.

A. Well, this is the bar?

Q Yes.

A. Collins was standing about there (indicating), where it is marked here.

THE COURT: He indicates the same place as Collins did.

BY MR. MCINTYRE:

Q And the man who was shot, where was he standing?

A. A little below this circle of the bar.

BY THE COURT:

Q You indicate B?

A. Yes, sir; about that.

CASE # 43

BY MR. MCINTYRE:

Q And the defendant at the bar, where was he standing at the time?

A. About there (indicating).

THE COURT: He indicates the same place as the other witness.

BY THE SECOND JUROR:

Q Now, where were you standing?

BY MR. MCINTYRE:

Q The juror wants to know about where you were standing.

THE COURT: When the shot was fired?

THE JUROR: Yes, sir.

THE WITNESS: I was standing about a foot this way inside of the door, at the side entrance.

THE COURT: Now, mark that. I will mark it E. I will make a cross and E.

THE WITNESS: About a foot inside of that entrance. That extends inside of the store, you know. I was standing about a foot inside of that.

THE COURT: Let the jury see that.

MR. MCINTYRE: The witness indicates that he was standing right there---you see it, gentlemen---by the side

CASE # 43

entrance.

THE COURT: We may as well suspend here. Now, gentlemen, the statute requires me, on every occasion when the jury separate, and before they agree upon a verdict, to admonish the jury that they must not speak, even among themselves, in reference to the case; that they must not make up their minds on the question of the guilt or innocence, until the entire case is presented; and that, of course, they must not, under any circumstances, permit any person to approach them or speak with them in reference to the case.

I have called your attention specifically to what the law requires me to do; and, instead of repeating it hereafter, I will ask you to bear that admonition in mind, and to obey it.

You will be here at a quarter-past 2 o'clock.

CASE # 43

CROSS EXAMINATION BY MR HOUSE:

Q Mr. O'Keefe, at the time of this shooting, I believe, you were residing with your parents at 242 West 19th Street, in this City.

A Yes, sir.

Q You are a tin-smith by trade, are you?

A A sheet iron worker.

Q For the last three or four years have you had any steady employment or have you been working at your brother's.

A Mostly, yes.

Q So that during the last two years you have really had no steady employment except at your brother's?

A That is it.

Q Who have you been working for in the last few years?

A Gillis & Geoghegan and Bonnell & Court.

Q You have got a couple of brothers who are working in a tin store?

A One.

Q You sometimes work for him?

A Yes, sir.

Q You knew Madden in his lifetime?

A I did not know him.

Q You didn't know him at all?

A No.

Q Do you know a fellow by the name of Kiernan?

A I do not.

Q Do you know a fellow by the name of Charles Davis or did you at that time?

A Yes, sir.

Q You say that you were around there frequently with Kiernan?

A Well, it was a little later I got acquainted with Kiernan.

Q Before the shooting you didn't know Madden at all?

A I did not. I never saw him before in my life. I would not recognize the man to day.

Q Possibly not?

A I don't suppose I would.

Q Madden was a good sized man, was he not?

A I only saw the back of him and I could not tell you.

Q Well, now, the greater part of the afternoon when you were in that saloon you were engaged with your friend Ruch in measuring yourselves?

A Yes, sir.

Q And you were paying more attention to what you were doing than to what anyone else was doing in the saloon?

A Slightly, yes.

Q So that when the defendant first got the pistol, you did not see it?

A I did not see it taken out, no.

Q And the first that you knew that there was anybody having any trouble there in that saloon was when you heard the report of it?

A Yes, that was it.

Q At the time you heard the report of the pistol you and Ruch were measuring yourselves, were you not?

A Yes, sir.

Q Now, you say that you heard some little conversation passing between some persons in the saloon but what that conversation was you do not know?

A I do not know, no.

Q You really don't know who it was that was talking?

A I saw the bartender and this man Madden talking.

Q But what they were talking about you don't know?

A I don't know.

Q As a matter of fact, you did not pay any attention at all? ⁸³

A Not particularly, I did not.

Q Immediately after you heard the shot, what did this man Madden do, that you recall now?

A He claimed that he was shot.

Q Did he go out of the side door?

A He went out of the side door, yes.

Q Immediately after he went out of the side door did the police officer appear upon the scene?

A In through the side door--Ruch and I were on the way out.

Q Ruch and you were on your way out and you came in contact with the police officer?

A Yes, sir.

Q And then you went back in the saloon?

A The officer put us back in the saloon.

Q Was the officer in uniform?

A Yes, sir.

Q He asked if you fired the shot?

A Yes..

Q Did he ask the same question of Ruch?

CASE # 43

84

A Oh, yes.

Q Both of you denied it?

A Yes, sir.

Q And then what did the officer do?

A He asked Donnelly.

Q What did Donnelly say?

A He said he had shot the man.

Q You were present when the officer asked Donnelly that?

A Yes, sir.

Q Did Donnelly show any hesitancy when he answered that?

A Not as far as I seen.

Q As far as you saw, there was no hesitancy by him at all?

A No.

Q He said, "Yes, I fired the shot?"

A Yes, sir.

Q And then do you know what the officer did with Donnelly?

A I don't--took him outside, as far as I saw.

Q Did you go outside after that?

A I did.

Q Did you see Madden lying down?

CASE # 43

A I did not.

Q Was there an ambulance there at the time?

A No, there was not.

Q You did not wait for that?

A I went right off.

Q That is all you know about it?

A That is all I know about it.

Q Now, Mr. O'Keefe, tell me as near as you recollect what time it was you entered that saloon this Sunday afternoon?

A I think it was somewhere between 3 and 4 o'clock, as I have said.

Q Was Donnelly, the defendant, in there when you entered the saloon?

A Not at the time.

Q Are you sure?

A Well, I am pretty sure of it.

Q You got a drink of beer?

A I did.

Q Your friend did?

A Yes, sir.

Q Who served you that beer?

A I forget the man's name--

86

Q McCabe?

A McCabe, yes.

Q See if you don't recollect that before you went into the saloon that you and Rush were standing at the side door and the defendant went in before you?

A I don't recollect that. We didn't stand there at all. We came right up from 29th. Street.

Q You came right up from 29th. Street and went inside of the saloon between half past three and four o'clock?

A Somewheres around about that time.

Q You are positive that it was the other bartender who served you? A We had two drinks...

Q Did you get one of those from this defendant?

A Yes, sir.

Q And McCabe served you the other?

A McCabe served the other.

Q And the defendant Donnelly served you with a drink before the shooting?

A Yes, before the shooting.

Q At that time he appeared pleasant, didn't he?

A He seemed to. I did not know the man.

CASE # 43

Ruch

BY THE COURT: Q So far as his appearance was concerned?

A He seemed to be all right enough.

G E O R G E R U C H, a witness called on behalf of the people, being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. McINTYRE: Q Mr. Ruch, what business are you engaged in?

A I am taking care of a house, now, a janitor at present.

Q Where?

A In 36th. Street between Eighth and Ninth Avenues.

Q What business were you engaged in on the 28th day of May last?

A Tending bar.

Q For whom?

A Daniel O'Shea.

Q Where was his place of business?

A 344 West 36th. Street.

Q Where did you live on the 28th day of May last?

A 319 West 36th Street.

Q On the afternoon of May 28th, 1893, do you remember

CASE # 43

meeting anybody?

A Yes, Daniel O'Keefe.

Q Where did you meet him?

A On 29th. Street between Ninth and Tenth Avenues.

Q After your meeting him where did you go?

A We walked over towards Eighth Avenue and 28th. Street.

Q Into what place did you go, if into any place?

A Into Donnelly's.

Q Situated where?

A 28th. Street--on the northeast corner of 28th Street and the Avenue.

Q In the City of New York?

A In the City of New York.

Q What time was it when you went into that saloon?

A It might have been around half past three, or something like that.

Q When you went into that saloon, what did you have, if anything?

A We each had a glass of beer.

Q Who waited on you?

A The other bartender.

Q Do you know his name?

CASE # 43

A No, sir.

Q When you went into the saloon with O'Keefe, who did you see there that you recognized?

A Well, there was another gentleman I did not know at the time.

Q Did you learn his name since?

A Yes, sir.

Q What is his name?

A Patrick Collins.

Q Who else did you see there?

A Then about that time James Donnelly walked in?

Q The defendant at the bar?

A Yes, sir.

Q Did you observe from what direction he came?

BY THE COURT: Q Did he come in the front door or in the side door?

A The side door.

BY MR. MCINTYRE: Q Where did he go to?

A Behind the bar.

Q Was there anybody else behind the bar when he went behind the bar?

A No, sir. The other man was going toward the closet.

Q What did you do after Donnelly went behind the bar?

A We went over towards the side door and we began measuring ourselves. 90

Q You and O'Keefe?

A Yes, sir.

Q How long did you stay there making your measurements?

A Well, about twenty minutes--fifteen or twenty.

Q While you were doing that did you see anybody that you recognized at the bar on the outside of it?

A A young fellow there.

Q Did you know who he was?

A No.

Q Have you since learned?

A Yes, sir.

Q What is his name?

A Charles Madden.

Q Where was he standing?

A Right at the end of the bar, toward the front door.

Q What was he doing there? Did you see him doing anything?

A No, sir. I was not looking that way--towards Eighth Avenue.

Q Did you see anybody behind the bar?

A Yes, sir.

Q Who did you see behind the bar?

A James Donnelly.

Q The defendant?

A Yes, sir.

Q Where was he, what part of the bar?

A Right towards the Eighth Avenue end of it.

Q Was he holding a conversation at that time with anybody that you saw?

A I did not hear. They had their own private conversation, whatever it was.

BY THE COURT: Q Was he apparently talking to anybody at that time?

A No, sir.

Q Did you see him talking?

A No, sir.

Q You were not asked to tell what was said. Did you see anybody speak to him or he speak to anybody?

A They were speaking to each other. I did not hear any conversation.

Q He was behind the bar?

A Yes, sir.

CASE # 43

Q How many were outside?

A Only two.

BY MR. McINTYRE: Q Now, while those two people were in the relative positions that you have described, did anything attract your attention?

A Yes, sir.

Q What was it?

A The report of a pistol.

Q And in consequence of a report of a pistol did you look in any direction?

A Yes, sir.

Q Which way?

A Toward the bartender?

Q What did you see?

A He opened a drawer and put the pistol back in the drawer.

Q Did you see anything else after that?

A No, sir.

Q What became of the man who was standing at the end of the bar?

A He went toward the side door holding his hand towards his left side and he said, "I am shot."

Q Did the bartender Donnelly say anything? 93

A No, sir; I didn't hear him.

Q After the man said, "I am shot," where did he go?

A Outside on the sidewalk.

Q Where did you go then?

A We went right out after the officer had our names.

Q The officer came in and asked you your names?

A Yes, sir.

Q Did you hear the officer say anything to the bartender Donnelly?

A Yes. He asked him who it was that done it. He asked me at first if I done it and I says, "No." He asked us all and then he went to the bartender and asked him and he said, "Yes." He asked him for the revolver and took him along?

Q Took Donnelly along?

A Yes, sir.

Q Did you go away then?

A A little after that.

Q Did you see Donnelly with the officer in the presence of Madden outside?

A I did.

Q Did you hear any conversation between those three men

namely, the officer, Donnelly and Madden? 94

A The officer asked Madden if he knew who it was that shot him and he says, "James Donnelly."

Q What else did he say? What else did Madden say?

A He said he didn't do a damned thing. He asked him for a glass of beer and he shot him.

Q Did he say, "I asked him for a glass of beer and he shot me?"

A Yes, sir.

Q The defendant was there when that was said?

A Yes, sir.

Q And the officer?

A Yes, sir.

Q And the officer put the questions in the presence of the defendant to Madden?

A Yes, sir.

Q And in response to a question such as I have just suggested by the officer to the deceased, he said "I didn't do a damned thing; I asked him for a glass of beer and he shot me?"

A Yes, sir.

Q Was there any quarreling that you observed in the store?

CASE # 43

A No sir; I didn't see any. 95

Q Everything was quiet ?

A Everything was quiet.

CROSS EXAMINATION BY MR. HOUSE: Q Mr. Ruch, where was O'Keefe at the time you heard the conversation between the officer, Madden and the defendant?

A He was right at the side door inside.

Q He was not out on the street then?

A No, sir. We were both inside.

Q You were both inside of the door?

A In the saloon.

Q At the time I am asking you now, Mr. Ruch--by the way, I will withdraw that. You were not present in Court, when O'Keefe was testifying, were you?

A No, sir.

Q You do not know what O'Keefe testified to?

A No, sir.

Q Now, I ask you, at the time that the officer had Donnelly and asked Madden who shot him and Madden said, "It was Donnelly; I asked him for a glass of beer and didn't do a damned thing," where was O'Keefe?

A I don't know where he went to.

Q You don't know where he went to?

CASE # 43

1192

96

A No.

Q Didn't you go away with O'Keefe?

A I did after Madden went away in the ambulance. I met him again and we walked off together.

Q Where did you meet him?

A At the corner of 28th. Street.

Q So that you don't know whether O'Keefe was near the officer and Donnelly at the time this conversation took place or not?

A No, sir.

Q Who did you say you were working for on the 28th day of May, 1893?

A Daniel O'Shea.

Q Whereabouts is Mr. O'Shea's place?

A At present?

Q Yes.

A He is not in business any more.

Q Where was his place at the time you were working for him.

A 344 West 36th Street.

Q How long did you work for Mr. Daniel O'Shea?

A About six months.

CASE # 43

Q Before you went to work for Mr. O'Shea who did you work for? 97

A I was taking care of the same house I am now.

Q Were you taking care of the house or is your mother taking care of it and are you helping her?

A I am doing work around the house.

Q She is recognized as the janitress there, isn't she?

A Yes, sir.

Q And you are her assistant?

A Yes, sir.

Q How long has your mother been janitress of those premises?

A About four years.

Q During those four years you have been assisting her, more or less, have you not, as her assistant in helping her take care of the premises?

A Yes, sir.

Q Now, the tenants in that property that your mother and you have supervision over are sporting people, are they not, a good many of them?

MR. MCINTYRE: Objected to.

THE COURT: How is that the question in this case?

MR. HOUSE: I am leading up to the question.

CASE # 43

THE COURT: Come right down to the point and lead up⁹⁸ to it afterwards.

Q Well, Mr. 'Ruch, in the care and management of that house with your mother do you ever find it necessary at times to carry with you what you have denominated upon various occasions as a little protector?

MR. McINTYRE: Objected to. There is no evidence here that he ever did.

Q Did you ever make a statement to anybody that you sometimes had trouble with your tenants but you always got along very well because you carried with you a little protector?

MR. McINTYRE: That is objected to as immaterial.

THE COURT: I do not see how that affects this case at all.

Q What time was it that you got into this saloon on this Sunday afternoon?

A About half past three.

Q Now, who was behind the bar as near as you can remember when you went in?

A The other bar tender.

Q That was McCabe?

A I don't know his name sir. 99

Q You went in with Mr. O'Keefe, did you?

A Yes, sir.

Q You had a drink when you first went in?

A I did.

Q Did you have a drink after that?

A We did.

Q Who served you the second drink?

A Donnelly.

Q Now, at the time that you got the first drink, how many people besides yourself, O'Keefe and the other bartender do you recall as being in the saloon?

A Only Collins.

Q Only Collins?

A That is all.

Q Did you know Collins at that time?

A No, sir.

Q You became acquainted with him after the shooting?

A Yes, sir.

Q You and he have met upon a number of occasions since the shooting, have you not?

A Yes, sir.

Q And you have had drinks with him?

A I have. 100

Q Do you recollect that some time last fall you met him down in the Oak saloon at 23rd. Street and Eighth Avenue?

A In the Oak?

Q You know where it is.

A I don't remember the name.

Q You know the saloon down in the basement?

A A basement?

Q Yes, the shop is down in the basement and the bar is off the street.

A And level with the walk?

Q Yes, level with the walk.

A Yes, sir.

Q It is known as the Oak?

A I don't remember the name of it. That is a neighborhood I am not very frequently in.

Q Do you recollect being in there say in the middle of August last year with another party when you met Collins there?

A Yes, I do.

Q Was that the time that you asked Collins if he had

seen a little fellow who represented himself as coming
from the Herald?

Objected to.

Q Did you ask him that?

A No, sir.

Q Did Collins ask you if you had seen the little fellow?

A Not that I remember of.

Q And then did you reply to Collins, "Well, if the
monkey had been around to see Kiernan--

MR McINTYRE: That is objected to.

THE COURT: It is not a logical question to ask him.

MR McINTYRE: Collins denies that any such meeting
took place. He is concluded by Collins's answer, any-
way.

THE COURT: No. (To the witness.) On any occasion
when you were there with Collins did you hear any talk
about a little fellow or a monkey from the Herald office
spoken of?

A I do remember, now. There was a man came to the house
one day and he said he was from the Herald.

Q Do you remember speaking with Collins in reference to
a conversation of that kind?

A I don't remember mentioning that to Collins.

101
1187
CASE # 43

BY MR. HOUSE: Q Do you remember that you said, "He
came to see me but I was on to him?"

Obtected to.

Q And then did Collins or anybody else while you were
in the Oak saloon say, "I have heard of the bloke and he
has been to see Davis and Kiernan but he has not been to
see me?"

Same objection.

THE COURT: Strike out "and then," and then read
the question.

Q (Read.) A No, I did not,

Q How long do you think you were in that saloon, Mr.
Ruch, before Donnelly came in?

A Only about ten minutes.

Q Can you now fix about the time that you entered the
saloon?

A Not exactly. As near as I can tell, it was half past
three.

Q Half past three?

A Yes, sir.

Q You think you had been in there at least ten minutes
before Donnelly came in?

A About that.

Q Had you been in there much longer than ten minutes, as near as you now recollect?

A Not before Donnelly came in.

Q How long after Donnelly came in was it before you heard the pistol shot?

A Well, in all, it was about twenty minutes.

Q You don't recollect where he got the pistol from, do you?

A No.

Q You did not see him at the time that he had the pistol?

A I did not.

Q And you did not see him at the time that he aimed it at Madden?

A No, sir.

Q The first thing that you knew of a pistol being in the hands of anybody was when you heard the shot?

A That is all.

Q And then you say you turned around and saw the defendant was putting the pistol back into the drawer?

A That is right.

Q How long before the officer came had you and O'Keefe

started to go out? 104

A We were there at the side door. We didn't move through it. We didn't have a chance.

Q You didn't have time, did you?

A The officer was in too quick.

Q So that when the officer came in neither you nor Donnelly had made any effort to go out of the saloon?

A No, sir.

Q When the officer came in did he ask you to throw up your hands?

A He didn't ask me. I had my hat off and it was lying on the lunch counter.

Q Was your coat off?

A No, sir.

Q Just your hat--that is all?

A Yes, sir.

Q And you remember before that that you and O'Keefe have started to measure yourselves to see which was the tallest of the two?

A Yes, sir.

Q When the officer came in?

A Yes, sir.

Q What did the officer say to you when he came in?

A He asked me if I done the shooting.

Q What did you say?

A I said, "No."

Q Did he search you?

A No, sir. I don't remember it.

Q Don't you remember he told you to open your pockets?

A He put his hands on to me and he asked me if I done the shooting and I said no.

Q What next did the officer do?

A He asked O*Keefe and he asked Collins.

Q All three of you denied doing the shooting?

A Yes, sir..

Q Neither one of you told the officer who did it?

A No.

Q What did the officer say to Donnelly, if anything?

A He asked Donnelly if he done it and he said, "Yes."

Q Donnelly didn't appear to hesitate to tell the officer the truth?

A Not that I saw.

Q Mr. Ruch, upon that night in August, 1893 when you met Collins in the Oak saloon at 23rd. Street and Eighth Avenue did you know who that other party was that was with you?

A I did not know his name. I got acquainted with him.¹⁰⁶
He was a man from the neighborhood where I lived. We
got acquainted with him some way.

Q You scraped an acquaintance with him?

A That is all.

Q Do you know whether or not after Bob Cawfield was
discharged that this fellow that you scraped an acquaint-
tance with was a laborer with Collins?

Objected to. Question not pressed.

Q Do you know Bob Cawfield?

A No, sir.

Q Do you know whether this fellow that you scraped an
acquaintance with and who was with you in the Oak saloon
on the night that you met Collins had ever worked on the
ice wagon with Collins?

A I had heard it remarked that he was on it for a while.

Q He used to come up to your house?

A He used--he was not in my house. I met him outside
of the house.

Q Did you ever go to the theatre with him?

A I did.

Q How many times?

A I went twice.

Q Do you recollect that after the second visit that¹⁰⁷ you two had been to the theatre that you were going up Eighth Avenue and he asked you to go in to Donnelly's to have a drink and you said you did not want to go in there?

A I don't recollect.

Q Do you say that such a thing never occurred?

THE COURT: Oh, no. He doesn't recollect it.

Q A little while after that shooting were you afflicted with an abscess in your groin?

A Yes, sir.

Q You never told me that before, did you?

A No, sir.

MR McINTYRE: You have not been handling the peoples witnesses before this, have you?

MR. HOUSE: No.

Q Now, bearing in mind if you can this party that you scraped an acquaintance with, see if you can recall that one night after you had been to the theatre with him and some little time after the shooting that you two went up Eighth Avenue and you did go into Donnelly's saloon and have a drink?

No answer.

BY THE COURT: Q You know the man you went to the theatre with?

A Yes, sir.

Q You went there on two occasions?

A Yes, sir.

Q Did you go into Donnelly's saloon with that man and have a drink?

A I don't recollect.

BY MR. HOUSE: Q Can you recollect that when you started to go in the front door you saw Mr. Felix Donnelly sitting in a chair outside and you said, "Don't let us go in this door?"

A I can't remember that.

Q Can you remember it?

A I don't believe it ever happened.

Q You don't believe it ever happened?

A No, sir.

Q Did you ever say to any person in your life after the shooting and before the hearing before the Coroner that you and Collins and the rest of you had stood back expecting that Donnelly would offer you some money, that it was his chance to have done so then and that you could

CASE # 43

have made a statement which would have helped him out¹⁰⁹
but that they did not come to see you and it was too
late now?

BY THE COURT: Q Did you ever make any such statement to
anyone?

A No, sir; I don't believe--

Q Did you?

A No, sir.

BY MR. HOUSE: Q You swear positively you never made
any such statement?

A I don't recollect making it at all.

Q Do you recollect having an uncle who was killed in a
fight on Seventh Avenue by an Italian at one time?

Objected to.

A I do.

Q Do you recollect that in a conversation in Donnelly's
saloon one night with this man that you said the Italian
had made his defense on the ground on the ground of self
defense?

Objected to.

A If he made it?

Q That the Italian's defense was self defense and that
there was one witness for the Italian who was a woman.

Do you recollect that? 110

A There was a woman.

BY THE COURT: Q You heard what the counsel said?

A Yes, sir.

Q About the Italian?

A Yes, sir.

BY MR. HOUSE: Q Do you recollect making a statement that the defense that was put in for him, for the Italian, was that of self defense?

A No, sir.

Q And the only witness there was was a woman who testified that the Italian had done it in self defense?

A No, sir. The woman was all right but I don't remember saying anything about self defense--not that I remember of.

Q Now, do you recollect that on the night that you did make the statement about your uncle being killed and saying that there was a woman in the case--

THE COURT: He did not say there was a woman in the case.

THE WITNESS: Not in the case. I said there was a woman but I did not say there was a woman in the case.

Q Did she testify to your knowledge?

A I don't know anything about it. I was not there. ///

Q We have got the fact of your uncle having been killed by an Italian?

A Yes, sir.

Q And there was a woman and whether she testified in the case you don't know?

A No, sir.

Q Having got those facts, let me put the question over to you again on your oath. After having had the conversation about your uncle and the Italian and the woman, did you say to the person whom you went with to the theatre that night that you had hung back expecting that the Donnelly's would offer some money and that if they had offered some money before the first hearing that your statement could have made a difference but that now having made one statement it was too late to make another?

BY THE COURT: Q Did you make any such statement?

A No sir; I did not.

BY MR. McINTYRE: Q This person that has been referred to as having gone to the theatre with you, you can not recall?

A I forget his name.

CASE # 43

Q Do you know whether he was seen by the other side? 112

A I could not say.

Q Have you been approached in this case by the other side?

A No, sir.

ALBERT F. WESTON M. D., a witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McINTYRE: Q You are a physician?

A Yes, sir.

Q You were a physician on the 28th day of May last year?

A Yes, sir.

Q What official position did you hold at that time?

A One of the Coroner's physicians of the City of New York.

Q Did you make an autopsy on the body of Charles Madden?

A I did.

Q At what place?

A At Roosevelt Hospital.

Q What time, if you remember?

A On the morning of the 10th of June.

CASE # 43

Q Will you state from the examination made on that autopsy and from your observation what you saw? 173

A I found on external examination of the body a small line wound just below the point of the breast bone and a little to the left of the middle line of the body.

THE COURT: Went you stand up and indicate on your own body where the wound was?

A It was about that point--about an inch to the left of the median line of the body. The wound had almost entirely healed. On the left forearm there were two small wounds in the fleshy portion of the forearm, almost completely healed; upon opening the body there was found a track of a bullet from this wound in the body passing backward and to the right. It passed through the liver, through the diaphragm and into the right lung where the bullet was found. There was an abscess of the liver along the track of the bullet and the pleural cavity contained a large quantity of exudation, the result of an inflammatory process.

BY THE COURT: Q Caused by what?

A Caused by the bullet wound. The other organs of the body were in a healthy condition.

BY MR. McINTYRE: Q In your opinion, what was the

CASE # 43

cause of death? 114

A The cause of death was the result of pleurisy and abscess of the liver resulting from a pistol shot wound.

Q Now, you spoke about these two wounds on the fore-arm. On which arm were they?

A The left fore-arm.

Q Just about where--what point?

A Just by the wrist. (Indicating.)

BY THE COURT: Q How far did those wounds extend? Did they extend along the arm?

A They seemed to be one opposite the other--one on the outside and one on the inside of the fore-arm. They were apparently in a line with one another.

BY MR. McINTYRE: Q And apparently made by the shot?

A Apparently made by the shot.

Q Did you find the bullet Doctor?

A I did. The bullet was in the right lung.

MR. McINTYRE: We offer the bullet in evidence.

(Producing same.)

THE WITNESS: The bullet was a 38 calibre.

THE COURT: Put it in an envelope and let it be marked People's Exhibit 2.

(Envelope containing bullet marked People's Exhibit