

Reunion

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2, February 27, 1894.)

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CROSS EXAMINATION BY MR. HOUSE: Q At the time you performed the autopsy, did you find the rest of the organs in fairly good condition?

A Yes, sir.

Q What was the appearance of the body, Doctor, so far as the indication being that it was that of a fairly strong muscular man in life--did it show that?

A It did, it seemed to me.

Q You say that the wound that entered the body was where?

A A little to the left of the median line--about that point. (Indicating.)

Q Would that be about the breast bone?

A It was just about one inch to the left of the point of the breast bone.

Q Just about one inch to the left of the point of the breast bone?

A Yes, sir.

PATRICK J. KIERNAN, a witness called on behalf of the people being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARTINE:

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THE COURT: Is there any question that the body
that the Doctor made the autopsy on was the body of
the deceased?

MR. HOUSE: We have no evidence to the contrary.
There is no doubt but what it was the body of the deceased.

Q Where do you reside?

A I reside at 231 West 35th. Street.

Q What is your business?

A Well, it was up to the 12th day of last January running a freight elevator in a silk house at 469 Broome Street.

Q For whom?

A A For William Shroeder & Company.

Q What business are you now in?

A I aint doing anything now, sir.

Q Were you acquainted with Charles Madden during his lifetime?

A Yes, I was.

Q And the defendant James Donnelly?

A I was for a short time.

Q Do you know the saloon on the northeast corner of 28th Street and Eighth Avenue in this City?

A I do sir.

Q By whom was it kept?

A By a man named Felix Donnelly.

Q Did Donnelly, the defendant, occupy any position in that saloon?

A I believed he occupied the position of bartender.

Q Do you know of any disagreement between the defendant Donnelly and the deceased Madden?

A No, I don't.

Q Did you ever hear any threats made by the defendant?

MR. HOUSE: That is objected to.

THE COURT: Not in that shape.

Q In the neighborhood of the middle of April did you hear the defendant Donnelly say anything against the deceased Madden?

MR. HOUSE: I object to the question.

THE COURT: He has a right to put the question in another way.

Q How long have you known this defendant?

A About two years, sir.

Q Did you ever hear any conversation or did you have any conversation with the defendant or were you present at any conversation between the defendant and anybody

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else when the dead man's name was brought out? 118

A I was.

Q When was it and where was it?

A Well, about six weeks previous to the time Madden was shot I heard James Donnelly--

MR. HOUSE: Not what you heard.

Q Did you hear Donnelly say it?

A I did.

Q The defendant?

A Yes, sir.

Q You heard Donnelly say what?

A That he would shoot that cock-eyed son of a bitch on sight.

Q Where was that said?

A Right in Felix Donnelly's saloon on Eighth Avenue and 28th Street.

Q Were you in the saloon?

A I was.

Q What was it that led up to that conversation?

A Well, I could not exactly say.

Q What door did you start to enter the saloon by?

A The front door on the Eighth Avenue side.

Q Did anyone pass you as you entered?

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A He went under the door. 119

Q Who did?

A Madden. Madden came out from the saloon under the screen doors.

Q Did you look into the saloon?

A I did.

Q Who did you see there?

A I seen James Donnelly with a pistol in his hand.

Q The defendant?

A Yes, sir.

Q With a pistol in his hand?

A Yes, sir.

Q Which way was he pointing it?

A He had it down toward the bottom of the bar like.

Q What did you do then?

A As soon as I seen the pistol, of course, I wasn't going to go in there and I went around into the side door.

Q Into the saloon?

A Yes, sir.

Q What did you see then?

A We had two glasses of beer. James Donnelly said then he "Would shoot that cock-eyed son of a bitch on sight."

We had our beer and walked out. 12a

BY THE COURT: Q Who was with you at that time?

A Charles Davis was with me.

BY MR. MARTINE: Q Did you see Madden afterward that evening?

A Only just outside, that is all--on the walk.

Q Did you have any conversation with him?

A I asked him what was the trouble and he said he didn't know, he didn't do anything.

BY THE COURT: Q Who said this?

MR. MARTINE: The deceased, Madden.

THE COURT: That wont do. Strike that out. That wont do unless the defendant was actually present.

BY MR. MARTINE: Q What sort of doors were there at the front of the saloon?

A Rattan swinging doors.

Q Which door did Madden go out of?

A Out of the rattan swinging doors.

Q On which side?

A Going out of the saloon it was on the right side or the left side going in.

Q How did he go out of the saloon?

A He came down on his hands and knees.

Q He crawled underneath?

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A Yes, sir.

Q Did you look into the door and see Donnelly with the pistol in his hand?

A I did, sir.

Q When Madden had just gone out and you looked into the saloon and saw Donnelly with the pistol in his hands, did he say anything?

A No sir; because we did not wait to hear him say anything.

Q You went around and entered through the side door?

Objected to by Mr. House as leading and improper.

THE COURT: He has already testified to it.

A Yes, I entered, on the 28th. Street side.

Q You took a drink?

A Yes, I took a drink.

Q When was it that he said that he would shoot--

A To the best of my recollection about five or six weeks previous to the shooting.

Q I mean, upon this occasion--at this time?

A That night--a little after, yes.

Q When you went around and went in to the side door was it then?

A No, sir; when we were up to the bar and had our beer. ¹²²

Q Did he still have the pistol in his hand?

A No, sir. He had it in his hand before we got to the bar and then he came and served us and then made that threat.

CROSS EXAMINATION BY MR. HOUSE: Q How are old are you Mr. Kiernan?

A I will be 22 the 18th day of March.

Q Have you ever been arrested?

A Yes, sir.

Q Whereabouts did you live on the 28th day of May, 1893.

A 226 West 27th Street.

Q Was that in the same house where Madden lived?

A No, sir.

Q Did you ever live in the same house with Madden?

A I did, sir.

Q How long ago was it that you lived in the same house with Madden?

A Well, about 11 years ago.

Q How long did you and Madden reside in the same house together?

A Madden resided there after I left but we were there.

about three years. 126

Q You and Madden were warm personal friends?

A Pretty friendly.

Q You were a warm personal friend of Davis who was with you?

A Yes, sir.

Q And he was likewise a warm personal friend of Madden's?

A I could not say.

Q For how many years had you and Madden been warm personal friends?

A For about seventeen years.

Q You have been out together frequently?

A Yes, sir.

Q And have drank together frequently?

A Once in a while, sir.

Q Well, more than once in a while?

A I could not say. I say once in a while.

Q But I am saying more than once in a while.

A No, only when we would meet.

Q You met quite frequently?

A Yes, sir.

Q Now you were a witness before the Coroner, were you not?

A I was, sir. 124

Q You were sworn before you gave your evidence, were you not?

A Yes, sir.

Q Sworn under oath to tell the truth?

A Yes, sir.

THE COURT: He could not have been sworn in any other way.

Q Now, do you recollect this question being put to you?

"Where was Madden after going in under the screen doors?"

Do you recollect that question?

A Coming out of the screen door, yes.

Q (Read.) "Q. What door? A. The screen door.

When he saw the pistol he ran into the street. We went to the side door and Donnelly still had the pistol in his hand and said, I will kill him on sight--

A He would shoot that cock-eyed son of a bitch on sight.

Q Did you say that before the Coroner?

A I did, yes.

Q If it does not appear on the stenographer's minutes the stenographer has misquoted your testimony at the Coroner's inquest?

THE COURT: You need not answer.

MR. HOUSE: Will your Honor give me the benefit of ¹²⁵
an exception?

THE COURT: Yes.

Q I ask you, sir, on your oath, did you say a word at
the Coroner's inquest about the cock-eyed son of a bitch?

A I did, yes.

Q You did?

A I did; yes sir.

Q You say this was about six weeks before the shooting,
Mr. Kiernan?

A Five or six weeks--about that.

Q Where had you and Davis been that night?

A Up to 31st. Street and Eighth Avenue.

Q Whereabouts in 31st. Street?

A I was up to Davis's house and I met Davis at the
house and we came along then Eighth Avenue and had a
drink--

Q At whose place?

A A corner place, Clark's I believe it is.

Q How many drinks did you have there?

A One drink.

Q What was it?

A Larger beer.

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Q And then you started to go down where? 126

A Down to 28th Street. We walked down to that corner.

Q Why that corner in preference to any other?

A Only we used to stand upon that corner and I said,
"Come in Charley and have a glass of beer."

Q Whose place were you going in then?

A Donnelly's.

Q How did you go into that saloon?

A In the front way.

Q When you got to the front door what did you see?

A As I opened the door on that side Madden came from
under right past me.

Q Whereabouts was Donnelly?

A Donnelly was standing right behind the cigar lighter.

Q Behind the counter?

A Yes, sir.

Q Behind the bar?

A Yes, sir.

Q Did he have the pistol in his hand?

A He did.

Q Did he try to shoot it off as you could see?

THE COURT: Oh, no.

Question not pressed.

Q was the pistol fired off?

A No, sir; it was not, as I seen.

Q If that pistol had been fired, wouldn't you have heard the report?

A Yes, sir.

Q You say that Donnelly stood behind the bar with the pistol in his hand?

A Yes, sir.

Q Was there anything to prevent him at the time you came in from firing it, as far as you could see?

A No, except his courage or that it wasn't loaded.

Q Or it wasn't loaded? With the exception of the lack of courage and the possibility that the pistol might not have been loaded, there was nothing to prevent him from firing it?

A No sir, as far as I could see.

Q You say he did not fire that pistol?

A No.

Q Did you see him attempt to fire it?

A He held it up in his hand.

Q I say, did you see him attempt to fire it?

THE COURT: "He says he held it up in his hand."

That is his answer.

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MR. HOUSE. Give me an exception please. 128

Q Did you see Madden afterward, after you came into the store?

A Not immediately after.

Q Did you see him that night?

A I did.

Q Did Madden ask you to go to the Police Station that night?

A Not that night.

Q Did you go to the Police Station that night?

A No, sir.

Q Did you ever go to the Police Station with Madden when he had complained--when he made a complaint because of this assault upon him by this defendant?

A Never.

Q Do you know whether Madden ever went to make a complaint or not?

A That I can not say.

Q But you know you never were with him?

A No.

Q How many times have you talked over this subject with Davis since it happened?

A Only once in a while--

Q You and Davis have talked it over frequently? 129

A Once in a while we have had a little conversation.

Q I mean about your going in and seeing the defendant with the pistol?

A I did not mention that.

Q You didn't talk about that?

A No, I did not have anything to say at all about that.

Q From the time, five or six weeks before the shooting, down to this present time, haven't you talked that occurrence over at all?

A No sir, not at all.

Q And have never compared notes in regard to it at all?

A No, sir.

Q And never have spoken to one another about what you were going to testify to?

A No, sir.

Q Now, you say, Madden was coming from under the swinging door and you went in to the saloon and saw Donnelly with the pistol and he said he would shoot the cock-eyed son of a bitch on sight?

A Yes, sir.

Q Where did you go then?

A We had a drink of beer and went out.

Q Where to?

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A To Miner's Theatre.

Q Madden went out into the Street?

A Yes, sir.

Q You did not follow him out to see where he went to?

A No, sir.

Q Or to see whether he had been injured?

A We remained and went around--

Q And went around into the side door?

A Yes, sir.

Q And got your drink?

A And got our drink.

Q What did Donnelly do with the pistol?

A I remember then he put it into the drawer.

Q He didn't come around from behind the bar and go out into the street to see what became of Madden?

A No, sir.

Q So far as you know, he might have followed Madden out into the street?

A No sir; I didn't see him.

Q You say that you did not know that there was any cause of a quarrel between him and this defendant?

A No, I did not.

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Q You have been in that saloon on more than one occasion¹³¹
have you?

A I have, sir.

Q Do you know a colored fellow by the name of Johnson?

A I do, sir.

Q Were you present in the saloon one night when Johnson
was there and Madden was there and this defendant was
there?

A Well, I was, one night.

Q There was some young men that came in there who
began shaking dice, didn't they?

A Yes, sir.

Q Donnelly was behind the bar?

A Yes, sir.

Q There was something said in Donnelly's presence
about the loss of an umbrella?

A Yes, sir.

Q And Madden took up a glass of beer from the bar and
struck Johnson over the head with it and cut his face with
it?

A He done it for cause.

Q But he did it?

A He did.

Q Did you go with Johnson, the colored man, around to the station house?

A I went over to the drug store and they refused us admittance there.

Q And then where did you go?

A I took him up and left him at the 37th. Street Station.

Q Did you see Johnson that night afterward?

A No.

Q Did you learn whether he went to the hospital and had his face sewed up?

A He told us afterwards he did.

Q Now, at the time that Johnson and this stranger had had some talk about an umbrella did Madden say to Johnson "I will let no nigger son of a bitch call a white friend of mine down?"

A No, sir.

Q What caused him to strike that man and cut his face open, if you know?

A This fellow came into the saloon. He is a pretty good spender and he came in to throw dice and he had a silk umbrella in his hand and he put it up against the bar and it was missed in a little while and Madden was

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standing there with a glass of beer in his hand and 133
Johnson said he didn't take the umbrella as somebody had
accused him of. He said he didn't take the umbrella.
Madden turned and said, "One of you fellows took it,"
pointing around to the bar, to Johnson. Johnson said,
"You are a white son of a bitch." Madden said, "Don't
call me a son of a bitch", and with that Madden threw
the glass and hit him.

Q Did you see Johnson pull out a knife?

A I seen him pull out a pen-knife.

Q Was the pen-knife open?

A No, sir.

Q Did he strike at Madden?

A He made a lunge and went over toward Madden and Madden
fired a glass at him then and hit him.

Q And cut his face open?

A Yes, sir.

Q Were you present when Madden kicked Tucker, the
colored fellow?

Objected to as assuming that he did do it.

Question withdrawn.

Q You went to the drug store with the colored man John-
son, did you? A Yes, sir.

Q Where did Madden go?

A I don't know where Madden went.

Q Madden didn't go with the colored fellow?

A No.

THE COURT: The witness said that he went with this colored man to the drug store and they wouldn't admit him and then he was taken to the hospital.

THE WITNESS: No, sir. I took him up to the 37th Street Station House.

Q Now, don't you recollect that the occurrence which you were talking about, of Madden and Donnelly, and Donnelly saying that he would shoot the cock-eyed son of a bitch on sight, that you tried to get Madden to go out of that place that night?

A No, sir.

Q And that Madden said that he would not leave that place?

A No sir, I don't.

Q And that you said, that you were not the man to stay here and see anybody killed?

A No sir; I didn't hear anything like that and I wasn't there at that time.

Q You have no knowledge as to what was the difficulty

between Madden and Donnelly before you went into the place? 135

A Not the slightest.

RE-DIRECT EXAMINATION BY MR. MARTINE: Q Have you testified ~~to~~ now to all that you remember?

A I have as far as I can.

Q Have you exhausted your memory?

A No sir; I have not.

Q I mean concerning what occurred at that time?

THE COURT: At what time?

MR. MARTINE: I am speaking of the night that he went to this saloon when Donnelly was pointing the pistol at the door out of which he had gone.

BY THE COURT: Q Have you stated all that you now recollect with reference to what took place on the night that you saw the deceased come under the door?

A I have said all that I recollect about it, yes.

BY MR. MARTINE: Q You have told me and you have also told Mr. House that Madden ran out under the right door?

A Coming out of the saloon.

Q And you were going in on his left?

A On his left.

Q You saw Donnelly pointing the pistol in the direction,

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of the door?

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A Yes, sir.

Q Did you hear Donnelly say anything at that time?

A No sir; I did not.

Q Did you hear him say this, "I thought he stood in under the bar and I was waiting to shoot him?"

A That is what he said, yes, after we went inside.

Q "I thought he stopped in under the bar and I was waiting to shoot him?"

A That is right.

Q Now, coming down to the time of the fight between Madden and the negro Johnson, did the negro Johnson make any attempt to open a knife?

A Not as I seen.

THE COURT: He has told you all he knows about that.

CHARLES DAVIS, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARTINE: Q Where do you reside Mr. Davis?

A 327 West 29th Street.

Q What is your business?

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A Painter. 137

Q Do you know the saloon on the corner of 28th Street and Eighth Avenue in this City?

A Yes, sir.

Q By whom is it occupied?

A By Felix Donnelly.

Q Do you know the defendant at the Bar, James Donnelly?

A Yes, sir.

Q Did you know Charles Madden in his lifetime?

A Yes, sir.

Q Do you know whether Donnelly in May last occupied any place in the saloon of Felix Donnelly?

A Did Mr. Donnelly keep any place?

BY THE COURT: Q Did he work in there?

A Yes, sir.

Q Doing what?

A Bartender.

BY MR. MARTINE: Q Do you know Patrick Kiernan?

A Yes, sir.

Q (By the Court.) Do you recollect the shooting?

A No, sir; I wasn't there.

Q You heard of it?

A Yes, sir.

Q You recollect about the time the shooting took place? ¹³⁸

A It took place in the afternoon about three or four o'clock.

BY MR. MARTINE:

Q Now, were you present at any conversation where anything was said by the defendant with reference to this deceased man?

A About six weeks before that I was going in the front door--

MR. HOUSE: I wish to object to the question on the ground that it is irrelevant, immaterial and incompetent.

THE COURT: I suppose the object is to show threats.

Q You were present at such a conversation?

Exception by defendant.

A Yes, sir.

Q What was it the defendant said?

A He said he would shoot Mr. Madden on sight.

Q Whom were you in company with, if any one?

A Myself--not with anybody.

Q I mean in the early part of the evening, where were you?

A I was walking up the Avenue.

Q I mean when you started out after dinner?

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A I went to Donnelly's saloon.

Q In company with whom?

A Myself.

Q (By the Court.) Did you meet anybody in Donnelly's saloon that you knew?

A There was a couple of young men in there.

BY MR. MARTINE: Q Was Kiernan there?

A No sir; not at that time.

Q Was Madden there?

A No, sir.

Q Did you sign that statement, Mr. Davis? (Showing paper to witness.)

A Yes, sir.

Q You have read that statement of Mr. Kiernan's, have you?

A Yes, sir.

Q When you went into Donnelly's saloon what door did you start to enter?

MR. HOUSE: One moment, if your Honor please. That is objected to. They are trying to get a threat. Does it make any difference whether he went into the front door or not?

THE COURT: It may.

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MR. HOUSE: I will take the benefit of an exception.¹⁴⁰

Q (Repeated.)

A The front door.

Q Did you see anyone then?

A Not at the time of this remark.

Q When was it?

A It was about six weeks previous.

Q Who were you with?

A With Mr. Kiernan. Mr. Madden came out underneath the door as we were going in and Mr. Donnelly held a revolver in his hand.

Q Where was he?

A Behind the bar. We went around to the side door and came in and he says, "I will shoot the cock-eyed son of a bitch." We had a glass of beer and walked out.

Q Was there any conversation concerning Madden?

A He told ^{me} he didn't know that he would shoot or not. I said it would be a foolish thing to do. He said he would be justified in doing it.

Q When was that?

A Some time after he and Madden had that little dispute.

A After the first time?

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A Yes, sir. 141

CROSS EXAMINATION BY MR. HOUSE: Q Of course, when he told you this that he would shoot Madden on sight you went right around and told Madden that?

A No, sir.

Q You did not?

A No, sir.

Q How long had you known Mr. Madden, Mr. Davis?

A Well, five or six years.

Q You were quite friendly with Mr. Madden?

A Yes, I was quite friendly with Mr. Madden.

Q You met him very frequently, did you not?

A Yes, sir.

Q And drank with him?

A Yes, sir.

Q And went to places of amusement with him?

A Sometimes.

Q And you were very frequently in his company?

A Yes, of an evening.

Q You say that this night when you were in the saloon Donnelly said to you, "I will shoot Madden on sight," and you told him it was very foolish if he would do that?

A Yes, sir.

Q You never went and told your friend, however, that ¹⁴²
Donnelly said he was going to shoot him on sight?

A No, sir.

Q Where had you and O'Keefe been on the night when you
went into the saloon and saw Donnelly with the pistol
in his hand?

A I was not with O'Keefe.

Q You were with Kiernan then?

A Yes, sir.

Q Where had you and Kiernan been that night before you
went into Donnelly's place?

A Coming down 31st. Street.

Q Who was in Donnelly's saloon when you went in there?

A I could not name the men that was in there.

Q There was quite a number of them?

A Two or three men?

Q In the saloon?

A Yes, sir.

Q That was the time that Madden was coming out when
Donnelly had the pistol in his hand?

A Yes, sir.

Q Didn't you know those two or three people that were
in the saloon?

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A I didn't pay any attention. I wanted to get out of ¹⁴³ the saloon when I saw him with the pistol in his hand.

Q How do you say Madden was coming out of the saloon that night?

A Underneath the doors.

Q Donnelly was where?

A Over the bar with a revolver in his hand.

Q The revolver went off, didn't it?

A No, sir.

Q Are you sure?

A No sir; it didn't go off.

Q Didn't Donnelly make any attempt to fire the pistol off?

A He did not.

Q Then after your friend Madden ran out of the saloon Donnelly went from behind the bar and followed out to see where he was?

A No, sir.

Q Didn't he go out at all?

A No, sir.

Q He did not attempt to follow him out?

A No, sir.

Q You went out to see if any injury had been inflicted

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upon your friend Madden?

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A No, sir.

Q You saw Madden that night?

A No, sir.

Q You saw him the next morning?

A No, sir.

Q Didn't Madden come down to your house the next morning and ask you to go to the Police Court to make a complaint against Donnelly?

A No, sir.

Q Didn't Madden ever ask you to go with him to the Police Court and testify that you had heard Donnelly say anything of that kind?

A No.

Q Do you know whether Madden ever made a complaint or not?

A No, sir.

Q What became of all these other people that were in the saloon that night?

A I don't know.

Q Did they run out the same as you did?

A I don't know whether they did or not. I looked out for myself.

Q And you came right out after that--

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A Madden was going out as I was going in.

Q Then you went around to the side door. Did you go into the saloon?

A Yes, sir.

Q And then you got over being frightened?

A Yes, sir.

Q From the front door around to the side door, your people had all disappeared?

A Yes, sir.

Q What did you go in there for?

A Curiosity.

Q For curiosity?

A Yes, sir.

Q What curiosity led you to enter there after you were frightened out of the place?

A To find out what it was about.

Q Did you find out what it was about?

A No, sir.

Q Then your curiosity was not satisfied?

A No, sir.

Q Did you have anything to drink after you went around there?

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A I had a glass of beer.

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Q Were these other people in the saloon then?

A No, sir.

Q They had gone out?

A Yes, sir.

Q Did you see which way they went out?

A No sir; I didn't.

Q Donnelly told you all about what it was?

A No, sir.

Q Never said a word to you about it?

A No, sir.

Q He just put his pistol up?

A Yes, sir.

Q You called for a drink?

A Yes, sir.

Q And got it?

A Yes, sir.

Q Now, it was when Madden was going under the screen door and you and Patrick Kiernan were going in that

Donnelly said, "I will shoot the cock-eyed son of a bitch?"

A When we went around to the side door.

Q Did you ask what the trouble was about?

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A No, sir.

Q You didn't say a word to him at all?

A No, sir.

Q When you came around and asked for a glass of beer he volunteered the statement to you that he would shoot the cock-eyed son of a bitch on sight?

A That is it.

Q Did he say that before or after he got the beer for you?

A Before.

Q You said nothing to him to cause him to make that remark?

A No, sir.

Q And Patrick Kiernan didn't?

A Not to my knowledge.

Q You were in Kiernan's company?

A Yes, sir.

Q And being in Kiernan's company if he had said anything you would have heard it?

A Most likely I would.

Q Didn't he say he was going out that night to look after him, to kill him?

A Who?

Q Donnelly?

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A No, sir.

Q He didn't say that?

A No, sir.

Q What did you do after you got that glass of beer?

A Went out.

Q Where?

A Went around the corner--down to Miner's--some place of amusement.

Q You did not go out to find Madden?

A No, sir.

Q Madden and you had been personal friends for several years?

A Yes, sir.

Q You went into the front door of that saloon and saw Madden coming out under the swinging doors?

A Yes, sir.

Q You say Donnelly was behind the bar with a revolver in his hand?

A Yes, sir.

Q You were frightened and ran?

A Yes, sir.

BY THE FOREMAN OF THE JURY: Q In what shape was Madden

in when he was coming out?

A He was crawling underneath.

BY THE COURT: Q Underneath the swinging doors?

A Yes, sir.

Q They did not go right down to the ground?

A No, sir.

Q As you were going in at the left hand door this man was coming out underneath the door?

A Yes, sir.

Q And instead of going in the front door you turned and went around and went in the side door and then had the conversation with this defendant?

A Yes, sir.

BY THE EIGHTH JUROR: Q Do you know the cause of his going out that way?

A Yes, the defendant was pointing his pistol at him.

THE COURT: That is his idea only. They were about entering and they found the deceased crawling out under the right side of that door. According to his testimony the defendant was standing behind the bar with the pistol in his hand and then this man and his friend, instead of going in the front door, went around and went into the side door and had a conversation with the defendant.

BY THE FOURTH JUROR: Q How far into the door did they¹⁵⁰
go when they saw him coming out?

BY THE COURT: Q How far were you inside the swinging
doors?

A I didn't go in at all--just opened the door and
Madden was coming out.

BY THE FOURTH JUROR: Q You had opened the swinging
doors?

A Yes, sir.

BY MR. HOUSE: Q They were light bamboo doors?

A I don't know that they were. They were solid doors
of wood. I don't know what. They were not made out of
bamboo.

BY THE FOURTH JUROR: Q You had actually partly entered
this swinging door when he crawled through?

A Yes, sir.

Q And then you could see what was going on inside?

A Yes, sir.

BY THE COURT: Q As I understand it, he was on his
hands and knees?

A Yes, sir.

Q Coming right out?

A Yes, sir.

Q And having seen that and the defendant behind the bar¹⁵⁷
you went around to the side door?

A Yes, sir.

Q And paid no more attention to Madden?

A No, sir..

BY MR. HOUSE: Did you converse with Madden after that
regarding that transaction?

Question withdrawn.

ARNOLD H. KNAPP, M. D., a witness called on
behalf of the people, having duly affirmed, testified
as follows:

DIRECT EXAMINATION BY MR. McINTYRE: Q What is your
profession?

A Medicine.

Q Were you physician on or about the 28th day of May
last?

A Yes, sir.

Q Connected with what public institution?

A Roosevelt Hospital.

Q Tell us what your hospital duties were at the time?

A I was the third man on the surgical staff.

Q And associated with Dr. Cox?

A Yes, sir. 153

Q Do you remember when Charles Madden was brought to the hospital which you have referred to?

A Yes, sir.

Q What time was he brought there?

A What time of day ?

Q No, the date?

A 28th of May.

Q On the evening of that day?

A I don't remember.

Q Do you remember making an examination of his body in conjunction with Dr. Cox?

A Yes, sir.

Q Now, will you state from your examination then made what you saw?

A There was ^a small round hole in the skin directly below the breast bone or the sternum which led into a track which traced backwards and to the right.

BY THE COURT: Q Let the Jury know. They don't know as much as you and I do about the sternum. Get up and point out on your body where it was.

A This is about the lower part of the sternum--a little to the left--and the direction of the track seemed to be

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backwards towards the right. 153

Q Was there any wound upon the arm?

A There was a slight wound.

Q On which arm?

A The left fore-arm.

BY MR. McINTYRE: Q How long was Madden in the hospital under treatment?

A Until the 9th of June.

Q On that day what occurred?

A He died.

Q You were present when the autopsy was held?

A Yes, sir.

Q And the autopsy that was held by Dr. Weston was upon the person who was received on the 28th day of May?

A Yes, sir.

No cross-examination.

EDWARD O'NEILL, a witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McINTYRE: Q You are a police officer?

A Yes, sir.

Q Were you connected with the Police Department of the

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city of New York on or about the 28th day of May last? ¹⁵⁷

A Yes, sir.

Q What precinct?

A 20th precinct.

Q Were you connected with that precinct on the 28th day of May last?

A Yes, sir.

Q What was your beat at that time?

A From the north side of 27th Street to the southside of 31st. Street.

Q On the afternoon of the 28th day of May, 1893 were you doing police duty in that vicinity?

A Yes, sir.

Q In the block bounded by 28th and 27th Streets?

A Yes, sir.

Q On the afternoon of that day did anything attract your attention?

A Yes, on or about four o'clock.

Q And in consequence of what attracted your attention where did you go, what did you do and whom did you see?

A I heard a pistol shot.

Q In what place?

A I was standing on the corner of 28th Street and

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Eighth Avenue.

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Q Who fired the pistol?

A I did not know. Then I seen Charles Madden reel and fall on the sidewalk.

Q In front of whose place?

A On the side entrance of Donnelly's.

Q Of Donnelly's store?

A Yes, sir.

Q What time was that?

A About four o'clock--on or about.

Q What did you do then?

A I seen the man reel and fall with his hands this way. I could not say whether it was his left hand or not and I seen the blood and I sent a citizen and I told him to go and get an ambulance at once and I sent another citizen for an officer.

Q And the ambulance came?

A Yes. I went into the store and there was Ruch, O'Keefe and Collins in there. Ruch had his hat off and I thought he was the man that done the shooting so I made him put his hands up.

Q You found nothing on his body?

A I asked who done the shooting and all denied the

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shooting and then I asked Donnelly and he said he done¹⁵⁶ it.

Q Where was he when you asked who did the shooting?

A Behind the bar.

Q Is that all that he said, that he did the shooting?

A I asked him for the pistol and he went to the drawer and picked the pistol out and gave it to me.

Q Let me ask you to look at this diagram. That represents Eighth Avenue. This represents the bar in that place. Will you indicate which drawer he took the pistol out of?

A The centre drawer. I don't know how many drawers there were--around the centre of the drawers.

Q He took the pistol out and gave it to you?

A Yes, sir.

Q Will you look at the pistol now handed you and state whether that is the pistol that he gave to you upon that occasion?

A Yes, sir.

Q Now, did you examine the barrel of this revolver?

A I did, yes.

Q Did you notice how many shells had been exploded?

A One shell.

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Q And there were four remaining cartridges? 154

A There was three loaded. There was one empty cartridge and one empty chamber.

BY THE COURT:

Q How many chambers are there in the revolver?

A Five.

Q There was one shell that had been exploded, you say?

A One shell had been exploded, three full cartridges and an empty chamber.

BY MR. McINTYRE: Referring to the cartridge that you took from the chamber of that revolver, is that the shell? (Shown.)

A Yes--38.

MR. McINTYRE: I offer the revolver in evidence and I offer the cartridges and the shell.

THE COURT: There doesn't appear to be any objection. Will you mark them all together?

MR. McINTYRE: Yes, sir.

The pistol, three cartridges and one empty shell are collectively marked People's Exhibit 3, February 27, 1894.

BY THE COURT: Q There was one shell which had been discharged?

A There was three full cartridges, one empty shell and

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one empty chamber.

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BY MR. McINTYRE: Q After the revolver which has just been marked in evidence was handed to you, what did you then do?

A I told Donnelly to put his coat on and come outside with me. I brought him out in front of Madden who was lying on the sidewalk. I asked Madden who shot him. He said James Donnelly. I said, "Is this the man"? He said, "Yes." I said, "What did he shoot you for?" He said, "I didn't say a God damned word to him."

Q What did Mr. Donnelly say to that?

A Donnelly didn't make any answer until on the way to the Station House. There was a big crowd of people gathered around. On the way to the Station House Donnelly told me that Madden put his hand to his pocket, to his hip pocket and that he had ordered him out of the place before. He said, "He has been raising trouble in the place and I am afraid of the man."

Q Did you examine the clothes of Madden?

A No, sir.

Q Did you see any revolver on his person?

A I did not.

Q Where was Madden taken to afterwards?

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A To Roosevelt Hospital.

Q Did you see Madden in the hospital?

A Yes, sir.

Q What time?

A The next day, but I didn't talk to him because he was lying in a stupor.

Q Was the defendant with you at the time?

A He was locked up.

A After that did you see Madden?

A Yes, I seen him afterwards.

Q Where?

A At Roosevelt Hospital.

Q Was he alive or dead?

A I seen him dead--July 9th.

Q Where was he then?

A He was in the morgue in Roosevelt Hospital.

Q As soon as you heard the shot and saw Madden you gave an order for an ambulance?

A Yes, and I sent another citizen for more officers and two more officers came there and the man was taken away.

Q You don't know whether any officers went for the ambulance?

A No, I don't know.

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CROSS EXAMINATION BY MR. HOUSE: Q Officer O'Neill, ¹⁶⁰
how long have you been attached to the Police Department of this City?

A Three years the 19th of May.

Q Upon what precinct were you attached upon the day of the shooting?

A The 20th.

Q Are you still attached to that precinct?

A Yes, sir.

Q How long have you been attached to that 20th. Precinct?

A The 19th of May next will be three years.

Q How long have you known this defendant Donnelly?

A Well, I have known him since October or November, 1889 but I was not acquainted with him until about a year ago before this occurred.

Q So that for a year before this occurred you became somewhat familiarly acquainted with the defendant?

A Yes, sir.

Q And you know other people who know him, do you know not, Officer O'Neill?

A Yes, Sir.

Q How long had you been on post in the neighborhood of

where this saloon was at 28th Street and Eighth Avenue? ¹⁶¹

A About a year before this happened.

Q was your post a day post or a night post?

A A day post.

Q While you were on post during day times you would see this defendant from time to time?

A I would see him every other day.

Q You have seen him in company with different people?

A Yes, sir.

Q You have already stated that you know other people that know him?

A Yes, sir.

Q Now, during the length of time that you have known him, state if you know what has been his character for peace and quietness--is it good or bad?

A I have known him always to be an excellent character and associated with decent people.

Q Now, you say it was about four o'clock when you heard the pistol shot fired?

A Yes, sir.

Q And then you saw the man whom you afterwards discovered was Madden reel out and fall?

A Yes, sir.

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Q At that time was there any police officer near you? ¹⁶²

A No, sir.

Q At the time that you gave the order to the citizen to go and send under your name for an ambulance was there any other police officer present?

A Not at that time.

Q Now, immediately after the report of the pistol and the falling of the man and when you sent the citizen for the ambulance, can you tell whether or not some of ~~the~~ the people in the neighborhood crowded around Madden?

A There was a crowd of about one hundred and fifty people very near to him.

Q And then you immediately went into the bar-room or the liquor store?

A I went in ^{to} ~~to~~ the bar-room first and brought Donnelly out and then the crowd commenced to come while I was taking his statement.

Q Whose statement?

A Madden's statement.

Q How long do you think officer that you were in the bar-room getting the names of the people that were in there and finding out who it was that fired the shot?

A Between five and ten minutes.

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Q The first one you came in contact with was Ruch? 163

A Yes, sir.

Q And his hat was off and you looked with suspicion upon him?

A Yes, sir.

Q And then you had some conversation with him?

A Yes, sir.

Q Did you ask for his name?

A Yes, sir. I got three of their names.

Q You put it down on paper while you were in the saloon?

A Yes, sir.

Q When you turned and asked Donnelly if he did the shooting did Donnelly hesitate at all?

A No.

Q When you asked him for the pistol was there any hesitation on his part in giving it to you?

A No, sir.

Q When you came out with Donnelly you say there was a crowd of about one hundred and fifty people around?

A On or about that.

Q There was no police officer present at the time?

A No, sir.

Q There was not?

A No, sir.

Q How soon after you got out and had the conversation with Mr. Madden in the presence of the defendant was it before the ambulance came? 1624

A While I was going up Eighth Avenue we met the ambulance coming between 34th and 35th Streets.

Q Who was in charge of Madden then?

A I met **Officer** Mitchell between 31st. and 32nd. Streets and sent him down in charge. In the meantime another officer came and I took Donnelly away first.

Q You made no search of Madden?

A No, I did not.

Q During the ten minutes after the shooting when Madden was lying out on the sidewalk with no police officer about or near to him there was a crowd of people standing about him anywhere from a hundred to one hundred and fifty?

A Yes, sir.

M r s. E L L E N E. M A D D E N, a witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McINTYRE: Q Where do you reside, Madam?

A At 228 West 29th. Street.

Q Where did you reside on the 28th day of May, 1893? 165

A In the same place.

Q Were you the mother of Charles Madden?

A Yes, sir.

Q Did you see your son in the Roosevelt Hospital in the City of New York?

A Yes, sir.

Q When?

A I seen him almost every day before he died.

Q When did he die?

A He died on the 10th of June.

Q On the 10th of June, 1893?

A Yes, sir.

Q In Roosevelt Hospital?

A In Roosevelt Hospital.

BY THE COURT: Q You saw him on the 10th of June?

A No sir; not on that day but on the day before.

Q The day before he died?

A Yes, sir.

BY MR. McINTYRE: Q Where did you see him?

A In the hospital.

Q When did you see him next?

A On the day he died.

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Q Where?

A When he was brought home.

Q Where to?

A To No. 228.

Q And he received his burial from there?

A Yes, sir.

Q Did you attend his funeral?

A Yes, sir.

Q Where was he buried?

A In Calvary Cemetery.

Q How old was your son at the time of his death?

A He was going on 22 years of age.

Q In his lifetime what did he work at?

Objected to as irrelevant.

A He used to work in a store.

THE COURT: What is the use in going into that?

Haven't you got all that you want from this lady?

MR. McINTYRE: I assume there will be an attack made on the character of this man when the time comes.

THE COURT: I will not anticipate anything.

MR. McINTYRE: If your Honor please I am almost through with this case but there is a witness, and a very material one, that we will be unable to produce

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here this evening.

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THE COURT: Why?

MR. McINTYRE: Because I have^{had} a subpoena served upon him--

THE COURT: Who is he?

MR. McINTYRE: A man by the name of McCabe who was in the bar-room at the time.

THE COURT: Did you serve a subpoena upon him?

MR. McINTYRE: Yes, sir.

THE COURT: I will let you have until to-morrow and we will adjourn until then. (To the Jury.) There is one more witness, gentlemen, who, it seems to me, is a material witness in this case. That is the bar-keeper, McCabe, and the District Attorney, for the reason that he has already stated, is unable to produce that witness to-day. So I will allow him to have an opportunity of bringing the witness here to-morrow morning. Now, at the same time, gentlemen, I will have to attend the funeral of an old friend of mine which takes place at 10 o'clock. That will probably last over an hour and I propose to adjourn this case to a later hour than usual for that reason as well as for another. The other reason is that counsel in this case

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defending this man is obliged to appear ^{before} Judge Cowing ¹⁶⁸
to-morrow morning at 11 o'clock at which time there
is judgment to be pronounced against some person who
has been tried before Judge Cowing and who was defended
by Mr. House. He tells me that he desires to make
certain motions in reference to that cause and, as he
will occupy probably half an hour, I would wait, anyway,
until after he had got rid of that engagement before
Judge Cowing. So we will not lose a great deal of time
after all but you will please be here to-morrow at
twelve o'clock. In the meantime you will observe the
statutory requirements to which I have already called
your attention. Please do not go near the premises
where it is alleged that this homicide took place, and
if anything should be published in the newspapers about
this case be kind enough not to read that portion of the
paper. The jurors should have nothing operate on
their minds except the evidence and in that way they
will come to a more proper conclusion than they would
if they read anything in the newspapers.

Adjourned to 12 M. WEDNESDAY, FEBRUARY 28, 1894.

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TRIAL RESUMED.

February 28th, 1894.

THOMAS MCCABE, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. McIntyre:

Q Where is your place of business, Mr. McCabe? A. 413 West 26th Street.

Q How long have you been engaged in business there? A. A little over -- since two days before New Years.

Q What sort of business do you carry on there? A. I have a little liquor store there.

Q Where were you employed on the 28th day of May, 1893? A. With Felix Donnelly.

Q And where was his place of business? A. 28th Street and 8th Avenue.

Q What were you doing there for him? A. Tending bar.

Q During what time did you tend bar, if at all, on the 28th of May? A. I started in about five o'clock in the morning.

By the Court:

Q And up to what time did you remain?

By Mr. McIntyre:

Q At what time did you cease tending bar on that day?

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A. About four o'clock in the afternoon, or probably ten minutes after four.

Q Were you relieved that afternoon? A. Yes, sir.

Q By whom? A. James Donnelly.

Q The defendant at the bar? A. Yes, sir, that's the man.

Q Just before you were relieved by James Donnelly ----

By the Court:

Q When were you relieved? Now, when did this defendant come on duty? A. Well, around that time, around four o'clock. It might be five or ten minutes after or before.

Q Well, you left the bar? A. Yes, sir.

Q And he came in within a few minutes afterwards? A. He came in first and relieved me.

Q He came in first and relieved you? A. Yes, sir.

By Mr. McIntyre:

Q Now, who was in the store just before you were relieved by Donnelly? A. I couldn't say exactly who was in. There was one man that I know to be in it.

Q Do you know a man by the name of Collins? A. Yes, sir.

Q Where was he standing, if he was in there at all? A. Near the upper end of the bar.

Q And do you know a man by the name of Ruch? A. He may have been there, but I didn't know him.

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- Q Do you know a man named O'Keefe? A. Yes, sir.
- Q Was he there? A. Yes, sir.
- Q Was he there or not? A. Yes, sir.
- Q Where was he standing? A. He was standing by the lunch counter.
- Q Did you see the deceased, Madden, in the saloon at the time?
- A. I saw him before Donnelly come in.
- Q What was he doing? A. He come in and bought a glass of beer.
- Q Whom did he buy it of? A. Me.
- Q And where did he go there? A. *He went in the closet.*

The Court: Who bought the beer?

Mr. McIntyre: Madden, sir, bought a glass of beer from him.

By Mr. McIntyre:

- Q When he went into *the closet*, where were you? A. Behind the bar.
- Q And was it when he was *in the closet* that Donnelly came in?
- A. Yes, sir.
- Q And then where did you go? A. I went *in the closet*, when Donnelly came behind the bar.
- Q And then did you see Madden -- was Madden *in the closet*, when you went into the closet?

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A. He must have been, because he didn't come out. It was after I went in the closet that he came out into the bar-room.

Q Did anything attract your attention while you were in the closet?

A. A pistol shot; that's all.

Q Well, did you go outside? A. I come out, and when I got through.

Q Where did you go to? A. Into the bar room.

Q And whom did you see there then? A. James Donnelly was there, and a policeman and two or three more.

Q Did you see Collins there? A. Yes, sir.

Q Where was Collins? A. He was in the same place, at the end of the bar.

Q And where was Donnelly, the defendant? A. He was behind the bar.

Q What part of the bar? A. The end of it, near the ice box.

Q Did you hear the policeman say anything to Donnelly?

A. I heard him order him to give him the revolver from behind the bar.

Q Did Donnelly give him the revolver? A. Yes, sir.

Q And what became of Donnelly then? A. He went out with the policeman.

Q Did you know Madden any length of time before that?

A. I knew him as long as I had been working there.

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Q How long had you been working there before the occurrence?

A. A year ago the 5th of April last I went to work for Donnelly.

Q And Madden went into the place frequently, didn't he?

A. Not for some time before that.

Q Not for some time before that? A. No, sir.

CROSS EXAMINATION by Mr. House:

Q Mr. McCabe, how long were you employed as a bar tended, at 28th Street and 8th Avenue, before the shooting? A. It is a year ago the last 5th of April; but I was for a couple of weeks in the 23rd Street store; and I couldn't say what day I came to the 28th Street store.

Q Now you say that Madden, for some little time before the shotting, had not been in the habit of coming into the store much; is that so? A. Yes, sir.

Q Was that because he had been ordered to stay away from there? A. I guess it must be.

By the Court:

Q Well do you know it of your own knowledge? If you don't, say so? A. Well, I ain't sure of it.

Q Did you ever hear him told not to come there? A. I told him.

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By Mr. House:

Qv Yes, you did tell him? A. Yes, sir.

Q And had you not, for some time before this Sunday, refused to sell him any more drink? A. Yes, sir. I told him one morning not to come in there any more.

Q And was that because you were told by the proprietor, Mr. Felix Donnelly, to do that? A. No, sir; he never told me.

Q Then why did you do it? A. Oh, because I heard there was some row between them before, and I told him that.

By the Court:

Q Between whom? A. Donnelly and Madden.

By Mr. House:

Q Between whom? A. Donnelly and Madden.

Q Did you hear Donnelly at any time tell him not to come in to the saloon any more? A. Not to him.

Q And when was it that you told him to stay out, and refused to sell him anything? A. I couldn't say what day it was.

Q Well, about how long before the shooting? A. Well, it was quite a little while; I don't know quite how long it was.

Q Were you present in the saloon when Madden and a colored fellow by the name of Tucker had some trouble? A. Not to

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my knowledge.

Q Did you hear about it? A. I heard about it.

REDIRECT EXAMINATION by Mr. McIntyre:

Q Now, had you seen Madden in the place frequently, off and on; hadn't you? A. Yes, sir.

Q Now every time that you saw Madden in your store his conduct was that of a quiet and peaceable man; wasn't it?

A. Yes, sir, he had no trouble with me.

Objected to.

By the Court:

Q Now, as long as you saw him in this bar room -- you saw him there, didn't you? A. Yes, sir.

Q You saw him more than once, didn't you? A. Yes, sir.

Q About how many times altogether? A. Well, I couldn't say.

Q Well, as near as you can recollect? A. Well, I couldn't have any idea. I saw him several times.

Q Well, had you seen him a dozen times? A. Yes, sir.

Q And on those occasions, in the store, did he behave as a quiet, peaceable man, or otherwise? A. Yes, sir.

Q He did? A. Yes, sir.

RECROSS EXAMINATION by Mr. House:

Q Do you mean to say, Mr. McCabe, that, as long as you had been a bar tender in that saloon, that you never knew him

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to quarrel with any one in there? A. No, sir; not to my knowledge.

Q And did you ever know him to quarrel with a colored man named Johnson?

The Court: You asked him about that before.

Mr. House: No, sir, that was as to Tucker.

The Court: Repeat the question then, Mr. Stenographer.

A. No, sir; I don't know it, of my own knowledge.

By Mr. House:

Q And weren't you on duty, and tending bar, at the time that Madden assaulted a colored fellow, by the name of Tucker?

A. I might have been, and not remember it; not to my knowledge.

Q You might have been, and not remember it? A. Yes, sir. Things might have happened that I didn't see.

Q And is it not true, as matter of fact, Mr. McCabe, that you might have seen this man Madden quarrel a number of times in that saloon, and not remember it now? A. That thing might happen, too.

Q Yes. Do you have any recollection now of this man Madden breaking a bottle over Butler's head? A. No.

Q You say you don't recollect that? A. No, sir.

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The Court: He says no.

By Mr. House:

Q How many times in all did you -- do you recollect now that this man Madden has been in that place, while you were behind the bar? A. I couldn't tell.

Q You could not tell? A. No, sir.

Q He was a man who drank considerable, didn't he? A. Well just about the same as anybody else.

Q Hadn't you ever seen him intoxicated in there? A. Well I had seen him pretty well loaded, at times.

Q You had seen him pretty well loaded, at times? A. Yes, sir.

Q Quite often? A. No, sir; not very often.

Q And wouldn't he quarrel, when he was in that condition? A. He never quarreled with anybody in the store, when I was on.

Q Are you sure of that, or don't you recollect now? A. Yes, sir, I am sure.

Q And you don't know what happened, when you were not there, do you?

The Court: How could he? You don't know, and no one else does.

Mr. House: Well, that is all. I would like

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to have Mr. McCabe remain here. I don't want him to go away.

The Court: Well, the District Attorney will keep him here for a reasonable time.

Mr. McIntyre: Mr. McCabe, you will remain in court.

W I L L I A M M c K E N Z I E, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. McIntyre:

Q What is your official position, Mr. McKenzie? A. Orderly; the first orderly in the surgical ward in Roosevelt Hospital.

Q On or about the 28th day of May ----

By the Court:

Q Orderly in what hospital? A. In the Roosevelt Hospital, sir.

By Mr. McIntyre:

Q On the 28th day of May, 1893, did you receive one Charles Madden in that hospital? A. Yes, sir, I did.

Q And did you observe the condition of his clothing? A. I did, sir.

Q What did you observe? A. Well, they were very bloody;

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the vest and coat and part of the pants, undershirt and what was on his person at the time.

Q Did you take what was on his person at the time? A. I did, sir.

Q What did you take? A. Nothing at all.

Q Any revolver or knife, or anything of that sort? A. No, sir, nothing at all.

CROSS EXAMINATION.

Mr. House: No questions.

Mr. McIntyre: The People rest.

Mr. House: If your Honor please, the State having rested their case, the defendant now moves that the Court advise -- the defendant moves that the Court take from the consideration of this jury the crime of murder in the first degree, on the ground that the people have failed to establish facts which are sufficient to constitute that degree of crime.

The Court: There is proof in the case, as it stands, that this defendant killed the deceased; that is, that he inflicted upon him a mortal wound, from the effects of which he subsequently died. He has, therefore, committed a homicide.

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Mr. House: Yes, sir.

The Court: And it will be a question for the jury to determine, what grade of homicide he has committed.

Mr. House: Your Honor will kindly give me the benefit of an exception.

The Court: And, therefore, I will deny your application, and give you an exception. Is there any other motion?

Mr. House: And I also make a like motion regarding murder in the second degree.

The Court: The same ruling.

Mr. House: The same ruling, sir; and the same exception.

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THE DEFENSE.

M I C H A E L J. G R O H, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. House:

- Q Whereabouts do you reside, Mr. Groh? A. 329 West 27th Street.
- Q And what is your business, Mr. Groh? A. I am in the brewing business.
- Q How long have you been engaged in that business in this city? A. Eleven years.
- Q Do you know the defendant, James Donnelly? A. I do.
- Q How long have you known him? A. Some where between four and five years.
- Q Do you know other people that know him? A. Yes, sir.
- Q Now, Mr. Groh, do you know what the defendant's character is for peace and quietness, and, if so, is it good or bad?
- A. It is good.

CROSS EXAMINATION by Mr. McIntyre:

- Q Now, what concern are you connected with, Mr. Groh?
- A. M. Groh's Sons.
- Q You are brewers? A. Yes, sir.
- Q And you sell lager beer and other malt liquors to the defendant, don't you? A. No, sir.

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- Q Well, then, to his brothers? A. No, sir; to his employer.
- Q Well, to his brothers too, don't you? A. No, sir.
- Q Well, you sell to Felix Donnelly; don't you? A. That is not his brother.
- Q Well, don't you sell to Felix Donnelly? A. Yes, sir.
- Q Now he is a cousin of the defendant at the bar, isn't he?
- A. Well, I believe he is.
- Q Well now you know it, don't you? A. I said so, just a minute ago.
- Q Well now you know it, don't you? A. Yes, sir.
- Q Well, what other Donnelly do you sell malt liquors to?
- A. No other Donnelly.
- Q Well, how long have you known the defendant at the bar?
- A. Four or five years.
- Q Now, are you a salesman for the concern that you represent?
- A. No, sir; I am a principal.
- Q Well, do you solicit trade yourself? A. No, sir.
- Q Well, do you have occasion to go to the saloon at 28th Street and 8th Avenue very often? A. Well, it is within four hundred feet of our place.
- Q Well how often did you have occasion to go there before this shooting? A. Well, perhaps five or six times a week, or several times a day, as the case might be.

Q Did you see the defendant there every day you went there?

A. Well I saw him there very often.

Q Well, about how many times?

By the Court:

Q How often can you state that you saw him, to the best of your recollection? A. Oh, a hundred times.

By Mr. McIntyre:

Q And you have discussed his character, you say, among people who know him? A. No, I have not.

Q Well, I understood you to say that you knew people who knew him? A. Yes, sir, I said that.

Q And that his character is good among those people? A. I presume so.

By the Court:

Q Did you ever hear any one discuss his character, Mr. Groh?

A. No one.

By Mr. McIntyre:

Q Well then all that you know about his character is that you went into that place, at 28th Street and 8th Avenue, nearly every day, as you state, and that you saw the defendant behind the bar? A. Yes, sir.

Q And that is all you know of him? A. Yes, sir.

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REDIRECT EXAMINATION by Mr. House:

Q And you have observed him all during this time? A. Yes, sir, I have.

J A M E S K. P R I C E, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. House:

Q You are a captain of police? A. Yes, sir.

Q How long have you been attached to the police department of this city, Captain? A. Twenty years, coming this December.

Q How long have you been a captain of police? A. Fourteen months.

Q To what precinct are you attached? A. To the 20th.

Q Were you attached to that precinct on the 28th day of May, 1893? A. I was.

Q And you are then familiar, or, that is, you knew of the shooting of Madden? I say, you knew then of the shooting of Madden?

By the Court:

Q You learned of it? A. Yes, sir, I learned of it that day.

By Mr. House:

Q Now, after Donnelly was brought to your station house, and the case came into your hands, did you make an investiga-

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tion, to learn the facts? A. I did.

Q And, during that investigation, did you find out anything about the character of the defendant, Donnelly? A. Nothing; only from the officers.

The Court: That will hardly do, Mr. House.
You can prove his general character for peace and quietness.

Mr. House: Yes, sir.

By Mr. House:

Q Did you, during your investigation, find out what was the character of the defendant, his general character for peace and quietness; and, if so, was it good or bad?

By the Court:

Q No, no. Do you know other people who know him, this defendant? A. I never met the man before that day.

Q No, but do you know other people who know him? A. Yes, sir.

Q In that neighborhood? A. Yes, sir.

Q Do you know what his reputation in that neighborhood is for peace and quietness, among those who know him? A. He had the reputation of being a peaceable man, previous to this thing happening.

By Mr. House:

Q Yes. Now did you come in contact with people who knew Made

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den in his lifetime? A. In my investigation, after the arrest?

Q Yes, in your investigation after the arrest. A. Yes, sir.

Q And did you find out what his reputation was for being a peaceable and quiet man?

Objected to.

The Court: That will not do, Mr. House, for the simple reason that anybody might run around -- I don't say that this captain of police did anything of the sort -- but anybody might run around, and get among people who were feeling anything but amiable, or who had any feeling of enmity against another, and might blast his character and reputation in that kind of way.

Mr. House: Very well, sir. That is all, Captain.

CROSS EXAMINATION by Mr. McIntyre:

Q Captain, how long have you been connected with the precinct in which ----

By the Court:

Q How long were you in that precinct, Captain?

By Mr. McIntyre:

Q Previous to the day of the shooting? A. I was sent to

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that precinct on the 7th of January, 1893.

Q Now, Donnelly never came to your station house, and made any complaint against a man by the name of Madden, during the time that you were there; did he? A. No, sir. I never met the gentleman until the day of the shooting.

Q You never had any complaint made there of the cutting of a negro by Madden, did you? A. I heard of it, but whether it was previous to the shooting or not ----

The Court: No, that will not do.

By Mr. McIntyre:

Q But did you have a complaint made at the station house of any such affair? A. No, sir, I did not.

Q And you knew nothing of Madden personally, did you? A. Only by repute.

Q After the shooting? A. Yes, sir.

Q And personally you know nothing about the defendant at the bar, Donnelly? A. Only by repute.

REDIRECT EXAMINATION by Mr. House:

Q Captain, did you hear by repute, after the shooting, that Madden was recognized as a quarrelsome man?

Objected to; objection sustained; exception.

B E R N A R D C A M P B E L L, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. House:

- Q Mr. Campbell, whereabouts do you reside? A. 547 West 37th Street.
- Q What is your business, Mr. Campbell? A. Fertilizing business.
- Q And how long have you been engaged in business of that character in this city? A. About three years.
- Q How long have you been a resident of this city, Mr. Campbell? A. About nineteen years, or twenty.
- Q About nineteen years or twenty? A. Yes, sir.
- Q Do you know the defendant, James Donnelly? A. Yes, sir.
- Q How long have you known him, about, Mr. Campbell? A. Well, about fifteen or sixteen years, I should judge.
- Q Do you know other people who know him? A. Yes, sir.
- Q Now, Mr. Campbell, do you know what his general character is for peace and quietness; and, if so, is it good or bad? A. Well, as far as I know, his character is very good.

CROSS EXAMINATION by Mr. McIntyre:

- Q What is your business? A. Fertilizing.
- Q Where is your place of business? A. At the foot of 16th Street, North River.

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- Q What kind of fertilizer do you sell? A. Manure.
- Q Do you do any business with the Donnelly's? A. No, sir.
- Q None at all? A. No, sir.
- Q Do you know Felix Donnelly? A. Felix Donnelly? In 30th Street?
- Q The one who keeps the place at 28th Street and 8th Avenue?
- A. Well, I couldn't say that I know him. I might have met him somewhere.
- Q Do you know Patrick Donnelly, the brother? A. Yes, sir.
- Q Did he ask you to come here and testify? A. No, sir.
- Q Who did? A. I don't know. I was served with a summons yesterday.
- Q You have known the defendant, you say, for fifteen or sixteen years? A. Yes, sir.
- Q How did you make his acquaintance? A. Well, I have met him different times.
- Q Where? A. Well, I have met him different times.
- Q Well, where have you met him? A. Well, he worked for me for about six months once.
- Q When did he work for you? A. Well, I couldn't say exactly what year it was.
- Q Well, how long ago, about? A. About three or four years ago.

- Q What did he do for you? A. He tended bar for me.
- Q He tended bar for you? A. Yes, sir.
- Q And then you kept a liquor saloon? A. Yes, sir.
- Q And where did you keep it? A. 26th Street and 9th Avenue.
- Q Well, how long did he work for you, tending bar? A. About six months.
- Q Well, did you discharge him or did he leave you? A. I can't be sure of that.
- Q Well, let us be sure about that. Did he leave of his own volition, or did you discharge him? A. Well, he left at that time.

By the Court:

- Q Well, Mr. Campbell, have you any recollection now, so as to be able to answer that question? Can you state whether you discharged him, when he left your employment, or whether he left of his own accord? A. Well, yes, sir. I would say that he left of his own accord.

By Mr. McIntyre:

- Q Now, did he work for you at any other time? A. No.
- Q How? A. No, sir.
- Q And you say that he left of his own accord? A. Yes, sir.
- Q But you are not sure about it? A. Yes, sir; I am quite sure now that he left of his own accord, and went to work

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for some one else.

- Q Well, are you in the liquor business now? A. No, sir.
- Q How long have you been out of it? A. About three years.
- Q And how long were you in it? A. About twelve or thirteen years.
- Q Yes. Now, from the time that he left your employ, down to the killing of Madden, how many times did you see this defendant? A. Well, I couldn't say positively how often.
- Q Well, now, you say that you heard people discuss his character?

The Court: No; I did not understand him to say that.

By Mr. McIntyre:

- Q Well, you say that his character in the community in which he resides is good, for peace and quiet? A. No, sir; I only say what I know about him.

By the Court:

- Q Well you said, of your own knowledge, as far as you were able to judge, that the defendant's character for peace and quietness was very good? A. Yes, sir.

By Mr. McIntyre:

- Q Well, have you ever heard anybody say that his character was good?

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By the Court:

Q Have you ever heard anybody discuss his character at all?

A. No, sir, no, your Honor, I never did.

Q You never heard anybody question his character? A. No, sir.

Q Or say anything about his character, did you? A. No, sir; not at all.

Q And so that all your knowledge of this man's character is what you saw of him, when he was in your employment, and what you happened to see of him since? A. Yes, sir; but I knew him for years before that.

Q Well, is it what you saw of him, and of your own knowledge?

A. Yes, sir.

Q And it is not what you learned from anybody else? A. No, sir; no, your Honor.

P A T R I C K M c K E N N A, witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. House:

Q Please take a seat, Father. Father, to what church are you attached in the city now? A. I am not in the city now.

Q Where are you attached? A. I am out on Long Island. The church that I am attached to is St. Joseph's.

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Q Do you know the defendant at the bar, James Donnelly?

A. Yes, sir.

Q How long have you known him, about? A. Well, I knew him when he was a baby.

Q Well, from childhood up? A. Yes, sir.

Q Well, then, you know a good many other people who know him?

A. Yes, sir, I knew his father and mother.

Q Now, what is his character for peace and quietness, if you know; is it good or bad? A. I never heard anything against him, for peace and quiet.

Q It has always been good? A. Yes, sir; I always found him to be a quiet and inoffensive man, as far as I ever heard.

Mr. McIntyre: No questions.

The Court: Now, gentlemen, you can have a recess until a quarter past two o'clock; and you will observe the statutory admonition.

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AFTERNOON SESSION.

J O H N J E R O L O M O N, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOUSE: Q. You are an attorney and counsellor at law in this City?

A I am, sir.

Q How long have you been engaged in the practice of your profession in this City?

A Since 1868 or 1869.

Q You have been Judge of one of the district courts?

A Yes, sir.

Q Do you know the defendant at the Bar, Donnelly?

A I do.

Q How long have you known him?

A I have known him and his brothers and his cousins for fifteen years.

Q Do you know many other people who know him also?

A Yes, sir.

Q Do you know what the general character of this defendant for that time has been for peace and quietness, and if so, is it good or bad?

A It has been excellent all that time, sir.

CROSS EXAMINATION BY MR. McINTYRE: Q Donnelly was one of your constituents when you were elected to the Bench?

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A I had some of the Donnellys for my constituents.

Q And that accounts for the immense majority you obtained?

A He was one of the number.

JAMES J. MCCUSKER, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOUSE: Q You are a Catholic priest?

A That is my profession.

Q Where is your church located?

A On the corner of York and Jay Streets, Brooklyn.

Q Do you know the defendant at the Bar, Father?

A I do.

Q How long have you known him?

A I have known him since he was born.

Q Do you know other people that know him also?

A I do, any number of people.

Q Now, for the time that you have known this defendant what has been his character for peace and quietness, if you know, good or bad?

A I knew him as a child for a number of years--until

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about fifteen years ago, perhaps. I knew little of him as a boy but for the past fifteen years I will say I have known him as a man, as a young man, and during that time I have never known anything against his character or what was not becoming as a respectable citizen.

No cross examination.

J O H N E A R L Y, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOUSE: Q Where do you reside, Mr. Early?

A 310 West 30th Street.

Q What is your business?

A Furnisher and carpets.

Q How long have you been engaged in that business in this City?

A Since 1867.

Q Do you know the defendant Donnelly at the Bar?

A Yes, sir.

Q Do you know other people that know him?

A I do, I know his brothers and cousins.

Q How long have you known Donnelly?

A About twelve years, I believe.

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Turney

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Q During this period of time do you know what his general character for peace and quietness has been, and if so, has it been good or bad?

A It has been good since I knew him.

BY MR. McINTYRE: Q What is your business?

A Furnisher and carpets.

Q Do you sell goods, merchandise, furniture and carpets to the Donnelly's?

A Yes, sir.

Q That is all?

A None to him.

JOHN TURNERY, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOUSE: Q Where do you reside?

A 417 West 34th. Street.

Q What is your business?

A I am connected with the firm of Bambach & Som in the cigar business.

Q How long have you been connected with that concern?

A About seven years.

Q Do you know the defendant Donnelly?

A Yes, sir.

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Q How long have you known him?

A I have known him about six years, I think.

Q Do you know other people who know him?

A Yes, sir.

Q Now, what has been his general character for peace and quietness since you have known him, good or bad?

A Good, exceedingly quiet.

BY MR. McINTYRE: Q Your concern I take it sells cigars from time to time to the Donnellys, Felix Donnelly and the other Donnellys?

A We do occasionally, yes.

Q It is because of the fact that you have had occasion to go there on business that you saw the defendant at the Bar in the store?

A Well, I have known him for many years outside of the business.

Q Were you not at one time connected with Judge Jerolomon's court?

A I was.

Q You knew Donnelly then?

A Not in connection with the court.

Q Not in connection with the court but in connection with Judge Jerolomon?

A Not the defendant.

P A T R I C J M c C A G N E, ya witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOUSE: Q Where do you reside?

A 449 West 31st. Street.

Q You have been a Juror frequently in the Criminal Courts of this City, have you not?

Objected to as absolutely immaterial.

THE COURT: I will let him answer.

A Yes, sir.

Q Do you know the defendant at the Bar, Mr. McCagney?

A I do sir.

Q How long have you known him?

A Fifteen years or more.

Q Do you know other people that know him?

A I do.

Q What is his general character for peace and quietness, if you know, and is it good or bad?

A It is good and exceedingly quiet in my judgment.

BY MR. McINTYRE: Q You say his reputation for peace and quietness is good. What observations have you made that permit you to come down here and volunteer that

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statement. How often have you been in contact with him and observed all his acts?

A His employer, Mr. Campbell--

BY THE COURT: Q How much of him have you seen during the last ten years?

A Once a week or sometimes twice.

BY MR. McINTYRE: Q What business did you say you were in?

A I am in the agency business.

Q What kind of an agency?

A I buy and sell property.

Q Stores?

A I sell liquor stores.

Q Did you ever sell any stores for the Donnellys?

A No, sir. I never had any dealings with the Donnelly family in any manner that I know of.

MR. HOUSE: Call John Deering.

THE COURT: I think you have reached your limit. You have got nine witnesses who have already testified to character. I will limit your examination to this witness.

MR. HOUSE: Very well sir.

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J O H N D E E R I N G, a witness called on behalf of the defendant, being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. HOUSE: Q Where do you reside?

A 384 Ninth Avenue.

Q What is your business?

A Plumber.

Q How long have you been engaged in the plumbing business in this City?

A About 35 years.

Q Do you know the defendant at the Bar?

A Yes, sir.

Q How long have you known him, Mr. Deering?

A I have known him about ten years, I think.

Q Do you know other people that know him?

A Yes, sir.

Q Do you know what the defendant's general character for peace and quietness is and if so is it good or bad?

A Good.

BY MR. McINTYRE: Q Do you do business with any of the Donnelly's?

A No, sir.

Q How often have you seen this man in ten years?

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A Thirteen or fourteen years.

A Sometimes I might see him once a week and sometimes

Q Do you know other people who know him?

I might see him twice a week.

A I do.

MR. HOUSE: May I be permitted to call one more

Q What has been his general character for peace and quiet

to make the compliment of twelve, your Honor? We are

ness, during that time, if you know and if so, is it

entitled to twelve.

good or bad?

THE COURT: There is no limit. It is entirely in

A Good, sir.

the discretion of the Court. Yes. We will stop on that

CROSS EXAMINATION BY MR. McINTYRE: Q Are you in busi-

ness for the present. I only do it because it is

ness for yourself.

a capital case.

A I am with my father.

MR. HOUSE: I understand that your Honor and I am

Q You sell coal to the Donnelly's?

much obliged to you.

A Occasionally.

Q Now, you have known the defendant for how long?

JOHN TURNERY, a witness called on behalf of

A Thirteen or four teen years.

the defendant, being duly sworn, testified as follows:

Q Do you visit him in his house?

DIRECT EXAMINATION BY MR. HOUSE: Q What is your busi-

A In his house?

ness?

Q Yes.

A Coal business--coal dealer.

A What do you mean by his house?

Q Whereabouts is your place of business?

Q Where he resides.

A 514 and 516 West 34th. Street.

A Not very often.

Q Do you know the defendant Donnelly?

Q Do you know where he ever resided?

A Yes, sir.

A Yes.

Q How long have you known him?

Q Where?

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A Thirteen or fourteen years.

Q Do you know other people who know him?

A I do.

Q What has been his general character for peace and quietness, during that time, if you know and if so, is it good or bad?

A Good, sir.

CROSS EXAMINATION BY MR. MCINTYRE: Q Are you in business for yourself?

A I am with my father.

Q You sell coal to the Donnellys?

A Occasionally.

Q Now, you have known the defendant for how long?

A Thirteen or four teen years.

Q Do you visit him in his house?

A In his house?

Q Yes.

A What do you mean by his house?

Q Where he resides.

A Not very often.

Q Do you know where he ever resided?

A Yes,

Q Where?

A With his brother.

Q Where is that?

A 28th Street and Ninth Avenue.

Q What brother?

A John Donnelly his name is.

Q 28th Street and Ninth Avenue?

A Yes.

Q Did you ever visit him in his house?

A I have.

Q How many times?

A Two or three times.

Q Where else did you visit him?

A Well, probably I had seen him--

Q Tell me positively.

A Corner of 28th Street and Eighth Avenue.

Q How many times?

A Two or three times.

Q Now where else did you see him?

A Probably on the street.

Q How many times?

A Several times.

Q And you come down here and you say you know his

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Boyer

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character for peace and quietness to be good?

A Yes, sir.

MR. McINTYRE: That is all.

PETER BOYER, a witness called on behalf of the
defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOUSE: Q Mr. Boyer where do
you reside?

A 320 West 32nd. Street.

Q What is your business?

A Restaurant.

Q Where is your restaurant?

A 466 Eighth Avenue.

Q How long have you been engaged in business, Mr.
Boyer?

A Since 1864.

Q Do you know the defendant Donnelly?

A Yes, sir.

Q How long have you known him?

A About five or six years.

Q Do you know other people who know him?

A Yes, sir.

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Q Do you know what his general character for peace and quietness is and if so is it good or bad?

A Good.

BY MR. McINTYRE: Q Does he dine in your place.

A Occasionally.

JOHN BUTLER, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOUSE: Q Your full name is what?

A John Butler.

Q Whereabouts do you reside, Mr. Butler?

A 210 West 29th Street.

Q How long have you been residing at that number?

A About three months.

Q Prior to your residing at No. 210 West 29th Street, where did you live?

A In the rear.

Q What is your business at present, Mr. Butler?

A Porter, but I have been driving lately on the Street Cleaning Department.

Q What was your business on the 28th day of May, 1893?

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A Porter.

Q Whereabouts were you employed in that business?

A 362 Eighth Avenue.

Q Was that the saloon that was owned by Mr. Felix Donnelly?

A Yes, sir.

Q And the saloon in which the defendant was one of the bartenders?

A Yes, sir.

Q How long had you been employed at that saloon as a porter?

A About three years.

Q Did you know Madden in his lifetime?

A I did.

Q How long had you known Madden?

A About two and one half years.

Q Where did you become acquainted with him?

A On that corner?

Q On that corner?

A Yes, sir.

Q During those two and one half years did you see very much of him?

A Yes, I saw him nearly every day.

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Q Would you see him out on the corner?

A I did.

Q Would you see him in the saloon?

A Yes, sir.

Q Did you during the two and one half years that you have seen him in the saloon and on the corner nearly every day have an opportunity to observe him?

A Yes, sir.

Q Now what was his character during that time? Was he a peaceable man or was he a quarrelsome man?

A He was a quarrelsome man.

Q Was he a man that drank?

A He did.

Q Did you ever see him drink?

A Yes, sir.

Q Did you ever see him intoxicated?

A I have.

BY THE COURT: Q Did you ever drink with him yourself?

A Yes, sir.

BY MR. HOUSE: Q Do you know a man by the name of Henry Johnson?

A I do.

Q He is a colored man, is he not?

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A Yes, sir.

Q Were you present in the saloon at the time Johnson and Madden had their difficulty?

MR. McINTYRE: Objected to.

BY THE COURT: Q When was it? You ought to find that out first. (To the witness.) Were you present at any difficulty between Madden and Johnson?

A I was not there.

BY MR. HOUSE: Q You were not there?

A No, sir.

Q Do you know about what time that difficulty took place?

MR. McINTYRE: Objected to.

THE COURT: That wont do at all.

Q You heard there was some difficulty between John son and Madden at one time?

MR. McINTYRE: Objected to.

MR. HOUSE: That is done for the purpose of fixing a time.

THE COURT: I will allow it for that purpose.

A Yes, I heard it.

Q Now, about two months after you heard of the difficulty--

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THE COURT: No, no. When?

Q When did you hear of the difficulty between Johnson and Madden?

A I heard it the same night.

Q The same night it occurred?

A I aint got the date what time it happened. I was at--

BY THE COURT: Q Never mind, now. When was it as near as you can recollect?

A Well, I think it was in May. I aint sure.

Q What year?

A 1892--1893, I should say.

BY MR. HOUSE: Q Was it in May or February, 1893?

A I can not tell the time exactly because I did not take any particular account of the month.

Q What I want to get is some time after you heard of the difficulty between Johnson and Madden, did you see Madden in the saloon at the 28th Street store?

A Yes, sir.

Q Who was behind the bar at that time?

A Tom McCabe.

Q Did you ever see Donnelly behind the bar after the difficulty between Madden and Johnson when you were

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present?

THE COURT: Wait a minute. He does not know, of course.

MR. HOUSE: He says he heard of it.

THE COURT: That wontdo. You have not fixed any time.

MR. HOUSE: I can fix the time by telling the witness but I don't want to do that.

THE COURT: You may be able to fix the time by some other witness and then you may call this witness back.

MR. HOUSE: I will try and get it another way.

Q Do you recollect the Sunday of May 28th, 1893?

A I do.

Q That was the day of the killing?

A Yes, sir.

Q Now were you in the store at the time the shot was fired?

A I were not?

A Now, at some time before that Sunday, were you in that saloon when Donnelly and Madden were present and something was said about Madden getting a drink?

A I were.

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Q Now I am trying to fix the time. Please tell me when that was, if you can, with regard to the Sunday when the shooting took place--about how long before that?

A That is about two weeks previous.

Q Whowas behind a the bar at that time?

A James DonnellyZ

Q Now, did you hear any conversation passed between the defendant Donnelly and the man Madden?

A I did not.

Q Where were you at the time?

A Well, I was in the building but I suppose I was attending to something else.

Q Did you ever before the shooting hear Madden ask Donnelly to sell him a drink?

A I did.

Q How long before the shooting? Can you fix that time, the first time that you ever heard Madden ask Donnelly for a drink?

A Well, it was about three weeks--about three weeks previous to that time.

Q I am not talking about the shooting, Mr. Butler. I am trying to come down to a time before the shooting. I ask you whether you ever heard any conversation

between the defendant Donnelly and Madden regarding Donnelly's selling Madden a drink?

A I heard Madden come in and ask for a drink.

Q How long before the shooting was that?

A About three weeks.

Q Go on.

A Madden asked him for a drink and Donnelly says, "No, I was told not to sell you any."

Q What time of the day was this, if you recall?

A It was in the afternoon.

Q Go on.

A And he says, "I will not sell you anything because it is against orders because you raise too much trouble around the place when you get drunk."

Q What did Madden say to that?

A He says, "Oh, hell; I want a drink; if I can't get it here I can get it some place else, but I want the drink while I am here." Donnelly says, "I wont sell it to you."

Q What did Madden do?

A He went out.

Q Before Madden was going out, did you hear him say any-

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thing to Donnelly, and if so, what?

A When he was going out at that time he did not say anything.

Q Did he come back again that same day?

A He came back again that same day.

Q Who was in the bar-room at that time, behind the bar?

A Tom McCabe.

Q Did Donnelly come in there at any time that afternoon?

A Not while I was there he did not.

Q Was Tucker in there at the time? A Tucker was in there but not at that same time, but on that day previous Tucker came in there.

Q Were you in there when Tucker was there?

A Yes, I were.

Q Who was behind the bar at that time?

A Tom McCabe.

Q Was Madden in there?

A Yes, sir.

Q Did you see Tucker go up to the bar?

A I did.

Q Did Tucker ask for anything?

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A He asked for a drink.

Q Who did he ask for that drink?

A Tom McCabe.

Q Where was Madden at the time?

A Well, he was standing to the right of him at the bar.

Q Did you see Madden do anything to Tucker at that time?

MR. McINTYRE: Objected to.

A Yes, I did.

Q MR. McINTYRE: Wait a moment.

HTE COURT: He says, "Yes, I did."

Q Now, I ask you what he did.

MR. McINTYRE: Objected to.

THE COURT: No. You can show the man's general reputation but you can not show a specific act. Nobody knows that better than you do.

Exception by defendant.

Q Mr. Butler, do you recollect that at any time before the shooting you were in the saloon when Donnelly was behind the bar and Madden was there and Madden had an iron cuspador in his hand?

MR. McINTYRE: Objected to as leading.

Objection overruled.

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A I recollect.

Q Will you please tell me how long before the shooting that was?

A Well, about two and one half weeks.

Q What time of the day was it that Madden was in the saloon?

A Madden was in the saloon in the afternoon about six o'clock, as near as I can come at it.

Q Who else was in the saloon?

A Well there was two or three others in there but I didn't know exactly who they were.

Q You don't know who they were?

A No, sir.

Q Now, were you in the saloon all the time?

A Yes, sir.

Q Was there any conversation passing between Donnelly and Madden-- I mean Donnelly the defendant?

A There was a conversation but what the conversation was I don't know.

Q What did you see Madden do, if anything?

A I seen Madden take up a cuspador and tell him he would brain him behind the bar.

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Q What did Donnelly say?

A Donnelly didn't say a word to him but just stood and looked at him.

Q Did Madden go out then?

A No, sir. His friends made him put the cuspador down and took him out.

Q Now, did you see Madden in the saloon at any other time before the shooting?

A Before the shooting?

A Yes.

A No, I didn't see him after that. I didn't see him in the saloon. I saw him going out of the saloon.

Q You saw him going out of the saloon?

A Yes, sir.

Q Was that the time he made some remarks?

A I was at the boot-black's stand--I was standing by my stand and he came out the swinging doors and he said--

MR. MCINTYRE: Objected to.

BY THE COURT: Q When was this--how long before the shooting was this?

A I think it was about four weeks before the shooting.

THE COURT: He has a right to show that he made

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threats.

MR. McINTYRE: Yes, threats communicated to the defendant.

THE COURT: It don't make any difference whether it was communicated to the defendant or not.

BY MR. HOUSE: Q Go on. That was about four weeks before the shooting?

A Yes, sir.

Q What time of day was it, Mr. Butler, if you recollect?

A It was near seven o'clock. He was going to his supper.

BY THE COURT: Q What did he say? You are talking now about the dead man.

A He remarked and he says, "I will do you a damned sight worse than I done the coon. I wont take any threat from you; I will make a corpse of you."

BY MR. HOUSE: Q Did you go into the saloon after he had passed out?

A I did not.

Q Did you see Donnelly after that?

A I seen him afterwards.

Q How long afterwards?

A Well, I guess about half an hour or an hour after that.

Qx Did you communicate to him then what you had heard Madden say as he was going out?

MR. McINTYRE: That is objected to.

BY THE COURT: Q He came out of the room?

A Yes, sir.

Q And he said, "I will do you a damned sight worse than I done the coon?"

A Yes, sir.

Q Who did he say that to?

A When he said that he looked back toward the door at Donnelly.

Q Was Donnelly outside the door?

A No, sir.

Q Was Donnelly in the saloon at the time?

A Yes, sir.

Q You are sure about that?

A Yes, he was behind the bar. Madden was standing at the door.

CROSS EXAMINATION BY MR. McINTYRE: Q Butler, You have been working for a gambling house, haven't you?

A I have.

Q How many times have you been convicted?

A Never.

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Q Were you not arrested and convicted for an assault?

A I was arrested at one time.

Q What for?

A For fighting.

Q What became of you?

A Dismissed--discharged.

Q Who were you fighting with?

No answer.

BY THE COURT: Q Were you fighting?

A Yes, I was.

Q Were you fined?

A No sir; I were not.

BY MR. McINTYRE: Q Were you sent to the Penitentiary?

A No, sir.

Q Were you sent to the City Prison?

A No, sir.

Q What gambling house did you work for?

A 333 Pennsylvania Avenue, Washington, D. C.

Q Where else?

Q No other gambling house.

Q Did you ever work for a gambler named Taylor?

A Yes, sir. That is the same place.

Q You were born in Virginia?

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A I were.

Q When did you leave Virginia?

A I left Virginia I guess about-- I have not been home inside of seven years or more.

Q What did you leave Virginia for?

A Looking for better wages.

Q What work did you do in Virginia?

A I worked on a farm.

Q How much did you get there?

Q I got different prices.

Q How much at any one time?

A I used to work myself by the day.

Q How much did you get per day?

A From seventy five cents to One dollar per day.

Q And you went from Virginia to Washington?

A Yes, sir.

Q And you went into a gambling house in Washing to work?

A Yes, sir.

Q You abandoned a legitimate pursuit to go into an illegitimate pursuit?

THE COURT: You have got the facts. He left farming which was a legitimate pursuit and went into the gambling business which was not.

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Q What else did you do in Washington?

A I worked for a contractor there.

Q Did he discharge you?

A No, sir.

Q You left him?

A Yes, sir.

Q What for?

A For another job.

Q What was the job?

A I went into a cabinet shop.

Q How much did you get from the contractor?

A \$1.50 a day.
much.

Q How did you get in the cabinet shop?

A \$7 a week.

Q You left a job that paid you \$1.50 a day to go to work for a cabinet maker where you earned \$2 less per week?

A Yes, sir.

Q And you left of your own accord?

A Yes, sir.

Q Now, where else did you work?

A After I left there?

Q Yes.

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A When I left there I worked a while in Baltimore.

Q What were you doing there?

A I was a porter.

Q For whom?

A I worked for the Ericsson Steamboat Company.

Q How long did you work for that company?

A About two years.

Q How much did you get per week there?

A I was paid by the month.

Q How much per month?

A Fifteen dollars.

Q What did you leave for?

A I got tired.

Q Tired of work? Where did you go then?

A I came to New York.

Q You got tired working for the Baltimore Steamship Company and then you came here?

A I went to Washington, and I went home.

Q Did you go back to Virginia?

A Yes, sir.

Q Did you go back to work on the farm?

A No.

Q What supported you when you were not at work?

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A The money I had made.

Q How much had you saved?

A I don't know exactly.

Q How long did you live in idleness?

A Not so very long.

Q How long?

A I couldn't tell you.

Q Three or four or five months?

A No.

Q Three or four or five weeks?

A Three or four weeks, I suppose.

Q And then you went down to Washington, did you?

A Yes, sir.

Q What did you do when you went down to Washington?

A I worked there a while and then came to New York.

Q What work were you doing there in Washington?

A I was working on the street.

Q What doing?

A Putting down concrete.

Q For whom?

A I don't know the man's name. I forget.

Q How long did you work there?

A I didn't work there very long.

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Q How long?

A I don't know.

Q You don't remember?

A No.

Q And then you came to New York?

A Yes, sir.

Q What did you leave the contractor for that you had been laying the concrete for?

A I was looking for another job.

Q You had a job down there.

A Yes, but you know when a man has one job he gets tired.

Q Tired of work?

A I looked for something else.

Q You came to New York then?

A Yes, sir.

Q What sort of a job did you look for?

A I got a porter's job.

Q Where?

A 7 and 9 Union Square.

Q Did you get tired of that job?

A I didn't get tired of it.

Q What kind of business were the people engaged in at

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79 Union Square?

A It was bric-a-brac place.

Q Did you leave that place?

A Yes, sir.

Q Were you not discharged?

A No, sir. I was not discharged. I was laid off when work was slack. I was the last man there.

Q When were you laid off?

A Well, I don't know exactly the date.

Q How long did you work in that place on Union Square?

A I guess about six months.

Q How long ago was it?

A In 1892.

Q What was the man's name?

Q Snyder & Campbell.

Q Were you not discharged for stealing?

A No, sir.

Q Where did you work after that?

A I went as a waiter to Watch Hill, Rhode Island.

Q What did you do there?

Q Waited, went as a waiter-man.

Q In what place.

Q At the Watch Hill House.

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Q How long did you stay there?

A Until the end of the season.

Q Were you discharged?

A At the end of the season I had to go.

Q Were you discharged?

A Certainly I was discharged when the house was closed.

Q Where did you go then?

A Came to New York.

Q And then where did you go?

A I began to work again.

Q For whom?

A For Jacob Appel.

Q What sort of a place was that?

A I was janitor.

Q What sort of a business was his?

A Real estate.

Q Where was his place of business?

A 23rd. Street--I don't know the number.

Q And Eighth Avenue?

A Yes, near that.

Q Isn't that a liquor store?

A He has a liquor store in the place.

Q What else did you say his business was?

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A Real estate.

Q Where is his real estate office?

A Next to the liquor store.

Q How long did you work for him?

A I don't know how long I worked for him.

Q You can not tell how long?

A No, sir.

Q Is your mind a blank as to the length of time you have worked in these various places?

A I don't remember.

Q Do you remember how much you got a week?

A I remember how much I got a week.

Q How much?

A \$9.

Q What did you leave him for? Did you get tired?

A Yes, I got tired.

Q And then where did you go?

A Well, I went to work in another place.

Q What place was that?

A 365 Eighth Avenue.

Q What sort of a place?

A Janitor.

Q For whom?

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A A man named, I think, Pete Volmer.

Q What were your duties there?

A I was janitor.

Q Is that a flat house?

A Yes, sir.

Q How long did you work for him?

A About four months.

Q Did you get tired at the end of the four months?

A I had another job on the outside.

Q What sort of a job?

A At Donnelly's store.

Q During what?

A Cleaning around the place.

Q How much were you paid for your work as janitor in the house of Volmer's?

A \$10.

Q A month?

A Yes.

Q How much did you get at Donnelly's?

A Well, I got \$4 a week.

Q \$16 a month?

A Yes, sir.

Q Now, the work that you did as janitor was actually

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done in the night time?

A No, sir; I done it in the morning.

Q Did Volmer object to your holding the place at Donnelly's?

A No, sir.

Q You held both places?

A I did.

Q Because you had got another job you abandoned the job at Volmer's?

A No, sir.

Q What did you leave there for?

A When they sold the place.

Q Didn't you say a moment ago you had a job on the outside?

A I said that was Mr. Donnelly's.

Q Were you working at Donnelly's and Volmer's at the same time?

A Oh, yes.

Q And then Volmer sold the place?

A Yes, sir.

Q You were discharged?

A Yes, sir.

Q How long did you work for Donnelly?

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A I worked for Donnelly a little over three years.

Q When did you first go to work for him?

A I don't remember when I first went to work because I was working around the place. I was a porter there.

Q Have you been getting \$16 a month all the while from Donnelly?

A Yes, sir.

Q What do you do, attend the free lunch counter?

A Yes, sir.

Q You have a boot-black stand outside?

A I have a boot-black stand outside.

Q That boot-black stand is situated right on the corner?

A Right on the corner.

Q You are there most of the time on that corner?

A Yes, sir.

Q Outside?

A Yes, sir.

Q From that boot-black stand you can't see the bar, can you?

A From my boot-black stand?

Q From where the boot-black stand is usually situated?

THE COURT: No, that particular stand. (To the

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witness.) You know where that stand is?

A Yes, sir.

Q When you were at your boot-black stand could you see from the stand to the bar?

A I could see to the front door.

Q Can you see to the bar?

A No, sir; not inside.

Q (By Mr. McIntyre.) You know McCabe?

A Yes, sir.

Q What time did McCabe go to work there usually?

A Well, every two weeks he used to open up in the morning.

Q What time would he quit in the evening?

A He would quit in the evening at seven o'clock.

Q What time did the defendant at the bar go to work there?

A He came to work at seven.

Q In the evening?

A Yes, sir.

Q Quit the next morning?

A No, sir.

Q When?

A It would be the next morning. I would not be in

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that shop then.

Q. What time would you be in the shop?

A I was there at night.

Q You have never stayed out as late as that?

A I have stayed out but not there.

Q How much of your time were you in that store inside?

A Well, most of the time I was inside.

Q What were you doing in there most of the time?

A Cleaning.

Q When would you go in there to clean?

A Say about half past five or six o'clock in the morning.

Q How much time would you be in there?

A Well I would probably be in there all day.

Q Cleaning all day?

A All day. I would be out sometimes.

Q But you were inside most of the time?

A Mostly.

Q Who would look out for your boot-black stand on the outside?

A There wouldn't be anybody looking after it.

Q When did Donnelly come to work there usually?

A Usually?

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Q Yes.

A As I said before, every two weeks they changed off.

Q Seven o'clock in the morning Donnelly would come and quit at seven in the evening?

A No sir; he came at five o'clock in the morning?

Q And got through when?

A Seven.

Q You have been very friendly with Donnelly all the while?

A I can not say anything against him.

Q You are friendly with his brother Patrick, aren't you?

A Well, yes.

Q And you have talked with Felix Donnelly about this case, too?

A I have not.

Q Not a word?

A No, sir.

Q Have you got any money to come down here and testify?

A Money?

Q Yes.

A I haven't so very much.

Q Have you received any money?

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A No, sir.

BY THE COURT: Q Has anybody given you any money?

A No, sir. Nobody has given me any money.

BY MR. McINTYRE: Q Haven't you since the 28th day of May down to the commencement of this trial been taken care of by Donnelly?

A No, sir.

Q You have gone to him from time to time to get money?

A No sir--never have.

Q Haven't you conversed with them on this subject?

A No, sir.

Q Where do you reside now?

A 210 West 29th Street.

Q Are you still working for Donnelly?

A No, sir.

Q What did you leave there for?

A Well I was sick when I left.

Q When?

A About three weeks before Christmas.

Q When he discharged you?

A I was not discharged. I was sick.

Q What are you doing now?

A Driving for the street cleaning department.

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