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Q How long have you been there?

A I have been there, about, I guess, four or five weeks.

Q Who appointed you?

A I am not appointed. I am extra man.

Q Who had you made extra man in the street cleaning department?

Objected to.

Q Mr. Wood.

Q Who is Mr. Wood?

A The foreman of the stable.

Q Who went to see Mr. Wood in your interest?

A No one.

Q Did you go to Mr. Wood and ask him for the appointment?

A No, sir.

Q Mr. Wood sent for you?

A No, sir.

Q Will you tell us how you got the job?

A I went and asked for the job.

Q I asked you that a moment ago.

A You said appointed. I never asked for the appointment.

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BY THE COURT: Q Did you ask Wood to give you the job?

A Yes, sir.

Q Wood put you on as extra man?

A Yes, sir.

BY MR. McINTYRE: Q Henry Johnson was a colored man, wasn't he?

A Yes, sir.

Q And a friend of yours?

A Yes, sir.

Q And you were associated with him very much?

A Yes, sir.

Q You became very much embittered against Madden when you heard that Madden had hurt your friend Johnson, didn't you?

A No sir; I didn't go so much against him but I hadn't anything to do with him.

Q Just look at that and see if that is your signature?

(Showing paper.)

A Yes, sir.

Q You signed that?

A Yes, sir.

Q And you swore to this paper, didn't you?

A I did.

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Q Now, did you state that you and Madden were very friendly up to the time that Madden had the difficulty with your friend Johnson?

A I was friendly--

BY THE COURT: Q No, no. Did you make that statement in that paper?

A I didn't say friendly. I knew him.

BY MR. McINTYRE: Q Let me see if you said this: "I heard that he had a fight with a friend of mine, Henry Johnson, of 253 West 28th Street. Madden and I were friendly up to the time of the fight with my friend and after that I had no more to do with him." Did you say that?

A No, Madden--

BY THE COURT: Q Did you say that in that paper?

A Well, we were friendly.

Q Did you say that in that paper?

A Yes, sir.

BY MR. McINTYRE: Q You swore to that in the paper?

A Yes, sir.

Q Did Johnson the man who was hurt live with you?

A At one time he did.

Q Where?

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A In 25th Street.

Q Is that the place they call the Black Chapel ?

A No, sir.

Q Did he occupy a room there with you?

A He did.

Q Have you a family?

A Yes, sir.

Q Where is your family?

A 210 West 29th Street.

Q Where you reside now?

Q Yes, sir.

Q You remember testifying at the Coroner's inquest,  
don't you?

A I recollect.

BY THE COURT: Q You gave your statement there?

A I did.

BY MR. McINTYRE: Q You recollect being sent for to come  
down to the District Attorney's office to give your  
narrative concerning this case, don't you?

A The District Attorney's office?

Q Yes.

A I recollect.

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Q You were in the office of the District Attorney in this building?

A No, sir.

Q You were not down stairs?

A No, sir.

Q Do you remember seeing this gentleman, Mr. Martine?

A I do.

Q Where did you see him?

A I don't think it was down stairs I seen him.

BY THE COURT: Q Where was it?

A I believe it was down stairs now, yes.

BY MR. McINTYRE: Q Why was it you didn't remember a moment ago it was down stairs when you could remember about throwing the cuspador?

A I know I remember seeing him.

BY THE COURT: Q Then you saw him down stairs?

A I couldn't say whether it was in this building or what building it was in.

BY MR. McINTYRE: Q You can't tell that?

A No, sir.

Q How did you come down here.

A I went by the number that was on the paper. I don't know whether it was this building or some other building.

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Q How did you come down here to-day?

A By this number.

Q Who brought you down?

A I brought myself down.

Q Did anyone come with you?

A There was some more came the same as I.

Q Who were they?

A Johnson and a man named Henry Tucker.

Q Tucker and Johnson, the man that was hurt, your friend came here this morning?

A Yes, sir.

Q Where were you about nine o'clock?

A I was at home.

Q Weren't you on the corner of Eighth Avenue and 28th Street?

A I was not.

Q At this store, weren't you?

A No, sir.

Q When you came down to see Mr. Martine to tell him about what occurred in the saloon used and occupied by Felix Donnelly, why didn't you tell him, the public prosecutor, that at one time you saw a cuspador in the

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hands of Madden and that he threatened to brain the defendant at the bar? Why didn't you tell us that then?

A Well, I did not think it was necessary.

Q You didn't think there was anything in that at all at that time, did you?

A Well, I knew I would have to tell it.

Q You didn't tell the public prosecutor anything about it?

A I didn't tell him.

BY THE COURT: Q Why didn't you tell Mr. Martine when you were talking to him and when he was taking your statement that you saw the deadman take up this cuspidor and say to the defendant, in substance, that he would brain the defendant?

A The reason I didn't tell him was--I knew it but I didn't--

BY MR. McINTYRE:

Q Why didn't you? That is what we want to know.

A Well, I had no particular reason.

BY THE COURT: Q Is that the best answer you can give?

A For not telling him.

Q Did you tell Mr. Martine, the Assistant District Attorney, that you heard the deceased man say, "I will do you still worse than I did the colored man?"

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A Yes, sir.

Q Did you tell that to Mr. Martine?

A I did.

Q (By Mr. McIntyre.) Is it not a fact, Butler, that the conversation that you have narrated hereto-day as having occurred in Donnelly's saloon at one time, namely, that you heard Madden say that he would take the cuspidor and brain the defendant with it--is it not a fact that those words have been recently put in your mouth?

A No, sir. I was in the saloon at the time.

Q You knew when you called on Mr. Martine that we were going to try this defendant at the bar for his life and you did not regard that as of sufficient importance to communicate that fact to us?

A I knew it but I did not say anything about it. This was not put in my mouth because I seen it with my own eyes.

Q You testified before the Coroner in behalf of this defendant?

A Well, I stated the truth.

Q You testified before the Coroner for this defendant at the bar?

A I did.

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Q You went down with a view to establish the defense of self defense before the coroner?

Objected to. Question not pressed.

Q Why didn't you tell the Coroner or the Coroner's Jury that at one time you saw Madden take a cuspador and threatened to brain the defendant with it?

A Because I forgot that part of it.

Q You forgot it?

A Probably I did.

Q You knew that the coroner's inquest was held on the 21st. day of June about one month after the shooting-- less than one month after the shooting-- and at that time, a little more than three weeks after the 28th day of May you had forgotten all about the cuspador episode?

A It went out of my mind.

BY THE COURT: Q Did you tell the Coroner when you were before the Coroner what you remembered about the cuspador?

A I did not.

Q Why didn't you tell the Coroner?

A It was in my mind. I forgot about it.

Q Is that all you can say?

A That is all I can say about that.

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Q Did you tell the Coroner that this deceased man came out of the saloon and said, "I will do you a damned sight worse than I did the colored man?"

A I did.

Q You told him that?

A Yes, sir.

BY MR. McINTYRE: Q Now, Butler, you said that you heard Madden come outside and say, "I will do you a damned sight worse than I did the coon?"

A Yes, sir.

Q You heard him say that?

A Yes, sir.

Q Were you standing by your boot-black stand?

A Yes, sir.

Q Were you near your boot-black chair?

A I was, yes.

Q That was on the corner?

A Yes, sir.

Q Was Doñnelly inside?

A He were.

Q Could you see him from where you stood?

A Yes, sir.

Q Standing by the boot-black chair?

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A I was standing right at the corner of the window.

Q Was Donnelly behind the bar?

A He were.

Q Were the doors closed or open?

A One of them opened and the other closed.

Q You couldn't see from the boot-black stand into the saloon?

A Well, I was standing just insdie when the door was open.

Q You said a moment ago that you were outside.

A At my boot-black chair.

Q That was on the extreme corner?

A No sir, not the extreme corner.

Q Where was it?

A Between the corner and the door.

Q Could you see in the middle of the window?

A Yes, about the middle of the window.

Q And standing by that boot-black stand you could look in?

A Yes, by the door.

Q You could look in a northerly direction and then turn way your eye through the door, and see the defendant at this Bar behind the bar?

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A Yes, sir.

Q Did you hear any quarrel inside?

A Between them two?

Q Yes.

A I didn't hear any quarreling.

Q You heard no words?

A I heard the words when I seen him.

Q When he came to the door?

A When he came to the door.

Q How did you know he addressed those words to Donnelly?

A Because I did not see anyone else.

Q Did you see anyone else in the store that day?

A I did not.

Q And you know that those words were addressed to Donnelly?

A Yes, sir.

Q Did Donnelly say anything?

A He didn't say anything to him at all.

Q Did Donnelly have a pistol in his hand?

A No, sir.

Q Did you ever see Donnelly have a pistol in that store or did you ever see a pistol in that store?

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A I have.

Q Where?

A In the drawer.

Q In what drawer?

A Behind the bar.

Q The centre drawer?

A No, it is not exactly the centre. It was only one--

Q Now, you say that the dead man was a quarrelsome man?

A He were.

Q How many times did you ever see him in his lifetime?

A I have seen him quite often. I used to see him about twice a day.

Q Do you know what he worked at?

A He was a truck driver.

Qc He worked for, whom?

A That is more than I am able to say.

Q He was engaged driving a truck?

A Yes, sir.

Q He must have been at work during the day time?

A He couldn't have been every day.

Q You say you saw him twice a day?

A Once in a while--when he went in there.

Q What makes you believe he was a quarrelsome man?

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A By his conduct.

Q What conduct did you see to indicate he was a quarrelsome man. What did you see him do?

A He was around trying to pick a quarrel--

Q Give the name of the person--who with?

A Tucker.

Q What does Tucker do?

A He is in the street cleaning department.

Q A colored man, too?

A Yes.

Q What difficulty did he have?

A Tucker came in one afternoon and asked for a drink when Madden was there. He said, "I wont drink at a bar with a God damned coon," and struck him.

Q Madden did that?

A Yes, sir.

Q Did Tucker ask for a drink?

A Asked the bartender.

Q Madden was standing right there?

A He was standing at the right.

Q Did he ask Madden to drink with him?

A No.

Q Why should Madden have said he would not drink with

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a coon?

A I don't know.

Q Tucker didn't ask him to drink?

A No.

Q Madden didn't ask him to drink?

A No.

Q And the bartender didn't ask either of them to drink?

A No, sir.

Q You want the Court and Jury to understand that Madden said he would not drink with a coon?

A "I wont drink at a bar with a coon."

Q How big a man was Madden?

A He was a good sized man.

Q Wasn't he a small man?

A No, sir.

Q How big a man was Tucker?

A Tucker is a good built man but he isn't very tall.

Q And he knocked Tucker down?

A Yes, sir.

Q What did Tucker do?

A Tucker didn't do anything.

Q Nothing?

A Didn't raise his hand.

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Q Do you mean to say that this man called him a coon and then knocked him down and Tucker didn't do anything?

A He didn't do anything when he knocked him down and I caught hold of Madden.

Q Did you strike Madden?

A No, sir.

Q When he struck your friend for nothing?

A No, sir.

Q And when he insulted your race you didn't do anything?

A No. I didn't hit him.

Q You want that to go upon the record that this man knocked Tucker down?

A He did.

Q And that your friend Tucker did not retort?

A No sir; he didn't.

Q What other quarreling did you see him have?

A Well I seen him quarreling previously to that with the Johnson man.

Q Another quarrel with Johnson?

A Yes, sir.

Q After he cut Johnson?

A Yes, sir.

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Q Where? --

A On the corner.

Q What corner?

A 28th Street and Eighth Avenue.

Q What did he say to Johnson?

A I wasn't there when it first started and I came outside and there was a quarrel. I don't know what he said because Johnson <sup>can</sup> tell it himself. Johnson told him to go away and leave him. I don't know what he said but anyhow Johnson came back to the stand.

Q This place of Donnelly's a great many of your race frequent--a great many colored people?

A Not over the average.

Q Well, a great many?

A Well the people around that district, yes.

Q More colored people come in there than white?

A I can not say.

Q Well, there is a good many that come in there?

A Yes, a good many.

Q A great many colored people?

A Yes, sir.

Q Now, did you ever have any trouble with Madden?

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A Well I can't say as I ever had any trouble because lots of times probably I would have--

BY THE COURT: Q No, did you have any trouble with him?

A No, sir, not to shoot people.

BY MR. McINTYRE: Q Did you ever have any wordy altercation with him--any words?

A I didn't have any words.

Q When you came down to the District Attorney's office to see Mr. Martine why didn't you tell us about the trouble that you had had with Madden and why didn't you tell us about the second assault upon Johnson and why didn't you tell us about the trouble that Tucker had had?

A Because you didn't ask me.

Q Who asked you since then?

A You are asking me now.

Q Mr. House asked you a little while ago?

A Yes, sir.

Q Now you told Mr. House that you knew all these things about Madden?

A Yes, sir.

Q Where?

A At his office.

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Q You went over to his office?

A Yes, sir.

Q Who brought you to his office?

A I took myself down.

Q Who told you where his office was?

A Nobody didn't tell me.

Q Nobody told you where Mr. House's office was?

A No.

Q You went and found it yourself?

A I went by myself.

Q Where is his office?

A In the World building.

Q Yes, that is right. Now, somebody told you that his office was in the World building. Who was it?

A I don't know.

Q You can't tell who it was?

A No.

Q Who asked you to go down and see Mr. House?

A I went to see him myself.

Q What for?

A On some business.

Q What kind of business--in connection with this case?

A No, sir.

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Q Some other business?

A Yes, sir.

Q It was in connection with some other business that you commenced to tell him what you knew about this case?

A That is the way it commenced.

Q You did not know that you were going to be a witness in this case at the time you went to see Mr. House?

A No sir; I did not know whether I would be in it at all.

Q I am not going to ask you what the nature of the business was that you had with Mr. House. Who told you where Mr. House's office was?

A No one told me.

Q How did you commence to tell Mr. House what you knew about Madden?

A For the reason because we were talking and he wanted to know if I was the same Butler that was at the Coroners office and I told him I was.

Q He saw you at the Coroner's office?

A Yes, sir.

Q And then for the first time you told Mr. House about these threats?

A Yes, sir.

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Q And you had never told a soul on earth about them before?

A A soul on earth?

Q Yes.

A Not outside of the Coroner's office.

Q You didn't say anything in the Coroner's office? You told me you didn't say anything?

A Not about the cuspidor.

Q You never told anything about that?

A No sir; I didn't.

Q Now, have you spoken to a single friend of the defendant at the bar since the 28th day of May?

A Have I spoken to anyone?

Q Yes.

A I can say I have.

Q Who did you speak to?

A But not about the--

Q Who did you speak to?

A I spoke to Mr. Donnelly.

Q Which Mr. Donnelly?

A Felix Donnelly.

Q The employer of this man at the bar?

A Yes, and I spoke to Mr. Pat Donnelly.

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Q That is his brother?

A Because I know them all.

Q When ~~did~~ you talk to Mr. Patrick Donnelly and Felix Donnelly did you tell them what you knew about Madden?

A No sir because the business was something else.

Q (By the Court.) Did you or not?

A I did not.

BY MR. McINTYRE: Q You did not think it was of sufficient importance to talk about?

A No.

Q And the first occasion when you ever said a word about the things you would testify to was when you saw Mr. House in his office in the World building?

A I did.

Q Who brought you down to the Coroner's inquest?

A I brought myself. I was subpoenaed.

Q Did anybody talk to you about the testimony you were going to give them?

A No, sir.

Q You did not talk to Mr. Friend, Mr. House's partner?

A No, sir.

Q You did not talk with Mr. House then?

A I did not.

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Q Mr. House put you on the stand without knowing what you were going to testify to?

A That is what he did.

MR. McINTYRE: Oh.

MR. HOUSE: That is it, because he was subpoenaed by the District Attorney and as they didn't call him I put him on for that reason.

THE COURT: There is no occasion to say anything more on that subject.

Q Did you ever live in Goat Alley?

A I did.

Q Where is that?

A In Washington.

Q Did you ever work for a Dr. Walsh?

A Yes.

Q How long,

A Eighteen months, as near as I can remember it.

Q Now, do you remember a man by the name of Jim Butts?

A I do.

Q That was the man you referred to a moment ago when you were arrested?

A Yes, sir.

Q Now, when you were arrested at that time for fighting

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with Butts Donnelly went bail for you, didn't he?

A No, sir.

Q Do you remember testifying to this before the Coroner? "Have you ever been arrested? Once in my life. For what? **Fighting.** With whom? Supposed to be fighting." You said you were fighting?

A Yes, sir.

Q With whom?

A A fellow by the name of Jim Butts.

Q Where?

A Corner of 28th Street.

Q And Mr. Donnelly went bail for you?

A No, sir.

Q You say he didn't?

A No.

RE-DIRECT EXAMINATION BY MR. HOUSE: Q Now Mr. Butler in all of these questions that were asked of you in regard to your past live by the Assistant District Attorney id you answer truthfully?

A I have.

Q You never have been convicted for the commission of any crime, have you?

THE COURT: You need not answer that. (To Mr.

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House.) He has already said he had not been.

Q Since you have been old enough have you always worked and supported yourself?

A I have.

Q You have never depended upon the charity or the benevolence of any one?

A I have not.

Q Whatever you have got you have earned it?

A I always meant to

Q Now, Mr. Butler you say that you were a porter for Felix Donnelly at this saloon on the corner of Eighth Avenue and 28th Street for a period of a little over three years?

A Yes, sir.

Q And during that time you frequently came in contact with this defendant?

A I did.

Q You saw him there when he was about in the day time?

A Yes, sir.

Q And you saw him there at night time?

A Yes, sir.

Q You have seen him there when other people were in the saloon?

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A Yes, sir.

Q And you think during those three years you have known other people who have seen him the same as you have?

A Yes, sir.

Q During that time what has been his character for peace and quietness?

A As far as I know he has been a very peaceable and quiet man.

THE COURT: I thought you had got to the end of that line? You said you would be satisfied with two more witnesses if I would allow you and now you give me the third.

MR. HOUSE: I didn't mean to call him just exactly as to character.

Q Now, Mr. Butler, some questions have been put to you by the District Attorney regarding the quarrels that you have seen Madden in. He asked you if Madden ever quarreled with you and you were about to answer and stopped. Now tell us why it was that Madden never engaged in any fight or quarrel with you?

A Because I would always be sent away.

Q Who would send you away?

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A Mr. Donnelly. He would say to me there was goin to be a fuss and he said, "It is best for you to go home."

BY MR. McINTYRE: Q When did he tell you to go home?  
Give me one night?

A At night.

Q Of course, you wouldn't stay there at night?

A Saturday night I would stay until the store closed.

Q And Madden was in the place very frequently?

A Yes, sir.

Q And you never saw an occasion when it was necessary to bring an officer and arrest Madden for disorderly conduct?

A I never saw it myself.

BY MR. HOUSE: Q Now--

THE COURT: We have had a direct examination, a cross examination a re-direct examination and another cross examination. How long is this going to last?

MR. HOUSE: This is something that I did not think of that was brought out by the other side.

THE COURT: Ask it.

Q Now, After, as you have told, Madden knocked your friend ~~Tucker~~ down did Madden attempt to do anything to Tucker after he was down on the floor of the saloon?

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A Yes, sir.

Q What did he do?

A He tried to jump on him.

Q Who if anybody prevented him?

A I did.

Q The Court: We have got all that, Mr. House.

Mr. House: Just one other question.

THE COURT: Don't answer until I tell you.

A After Tucker left the saloon did you see where Madden went?

A No, sir, I did not.

BY THE FOREMAN: Q You heard Madden threaten to make a corpse of Mr. Donnelly?

A I did.

Q Did you tell Mr. Martine that?

A I did.

Q Did you tell that at the Coroner's inquest?

A I did.

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

DIRECT EXAMINATION BY MR. HOUSE: Q Whereabouts do you live, Mr. Tucker?

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A I live in 228--me and Mr. Madden at first--

BY MR. McINTYRE: Q Let us know where you are living now.

A I am living at 210 West 29th Street.

BY MR. HOUSE: Q What are you employed at?

A In the Street Cleaning Department,

Q Driving a wagon?

A Driving a cart.

Q How long have you been employed in that work?

A Going on two years.

Q Did you know Madden in his lifetime, Mr. Tucker?

A No sir, not before he made a fuss at me.

Q Did you ever meet him in Donnelly's saloon at the corner of 28th Street and Eighth Avenue?

A I met him that night when he made the disturbance with me. That is the first time I ever met him.

Q What time was it that you went into the saloon, Mr. Tucker?

A It was at night.

Q Did you go in there with anyone or alone?

A I went by my loneself.

Q What did you go in for?

A To get a drink.

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Q Who was behind the bar, if you know?

A A man by the name of Tom. I don't know his other name.

Q Did you see Madden in the saloon?

A No sir; I didn't know the man.

BY THE COURT: Q Did you see Madden in there that night?

A I seen him there that night.

Q The night that you went in there to get the drink was Madden in there?

A I didn't know who he was.

Q Answer my question. You went in the saloon one evening, you say, and had a drink and the man behind the bar was who?

A Tom.

Q Did you see Madden in there that night?

A I seen some other men.

Q Did you see Madden?

A I didn't know him.

BY MR. HOUSE: Q At that time?

A No, sir.

Q After that night did you find out that one of the men that you saw in there was Madden?

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A Yes, sir.

Q The fellow that is alleged to have been killed on Sunday, May 28th?

A Yes. I found his name was Madden.

Q When you went in and asked for your drink did you say anything to this man Madden?

A No, sir.

Q What was it that happened?

A After I asked for my drink--I asked for my drink and he came to say that he would not take a drink at a bar with a nigger and with the next word out of his mouth he knocked me down. I hadn't spoken to the man. He hit me and knocked me down in the gutter after he followed me out and kicked me when I was lying in the gutter.

Q Now, Mr. Tucker, before ~~you~~ striking you and knocking you down had you said anything to him?

A Not anything at all.

Q Did you give him any cause or any reason for assaulting you in that way?

A Not any cause in the world, sir.

CROSS EXAMINATION BY MR. McINTYRE: Q Now, Tucker, you know Butler pretty well?

A Yes, sir.

Q You have talked about this, Butler and you, haven't you?

A No, I have not said anything more about the case to him any more than that I was talking about who this man was that hurt me. This man was Madden.

Q You live with Butler, don't you?

A Yes, right in his house now.

Q You board with him?

A Yes, board right there with him now.

Q Did you tell him last night you were subpoenaed to come down here?

A Certainly I told him.

Q You were subpoenaed the other day?

A Yes, I was here the other day.

Q And you saw Butler down here?

A Yes, sir.

Q Did you talk with Butler in the Court Room about this case?

A No, sir.

Q Did Butler tell you what you were going to testify to?

A No, sir

Q Did you tell Butler what you were going to testify to?

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A No, sir.

Q Has Butler told you what he was going to testify to?

A No, sir.

Q You never talked about this case?

A No, sir.

Q You have come down here for three separate distinct days and you two have never talked about this case?

A Never said a word.

Q No sir, because I didn't know what we would testify to.

Q Didn't you know what you were going to testify to?

A Something was said--

Q I want to know whether you knew what you were going to testify about, whether you knew you were going to testify about Madden here?

A Outside the door?

Q You knew what you were going to testify about, didn't you?

A Certainly I knew.

Q You knew the questions Mr. House was going to ask you, didn't you?

A I didn't know the questions he was going to ask.

Q Tucker, when you went upon the stand before a

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single question was asked you concerning anything you blurted out about an assault that you said was committed on you by Madden. How did you know that was what was wanted here?

A How did I know? I should think you people would want that here, in this business here--the truth and the light.

Q Have you talked with Mr. House about this case?

A No, sir; I don't know the man if I saw him.

Q You never saw Mr. House?

A No, sir.

Q You don't know him?

A No, sir.

Q Did you see Mr. Donnelly?

A Yes, I know Mr. Donnelly.

Q The defendant at the bar?

A Sir?

Q This man that we are trying. Did you see him?

A Yes, sir.

Q And talked to him about the case?

A No, sir.

Q Did you see his brother?

A I seen his brother and I didn't talk to his brother.

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Q You never said a word to his brother?

A No, sir.

Q Did you see his uncle, Mr. Felix Donnelly?

A Yes, I have.

Q Did you talk with him about it?

A No, sir, I didn't.

Q Did you ever tell anybody about the assault?

A No sir.

Q Will you tell me then how it was that you came down here?

A Because you sent for me and I had to come.

Q Who sent for you?

A Some of you gentlemen down here in this business.  
I am telling the truth.

Q Do you mean to say that none of the Donnellys have come to see you to ask you to come here and testify to the assault that was committed on you?

A No, sir. None of the Donnellys came. Some man came. I didn't know the man. Donnelly's bartender came. I don't know his name. He came with the paper.

Q What did that bartender say to you?

A He told me to come down here. That is all he said to me.



Q Did you read the note?

A I didn't read it. I looked at it. I see where I had to come, because I knew the numbers but I couldn't read.

Q You say that nobody has spoken to you about this case?

A No, sir.

Q And you didn't tell anybody about Madden and about the assault perpetrated upon you?

A No, sir.

Q What had you been working at before you went in to the Street Cleaning Department?

A I was working at the Mail stable in 28th Street.

Q Who put you in the Street Cleaning Department?

A Well I got there by working down at the time of winter--last winter in the deep snow there was an advertisement for a lot of drivers and I thought I would go down there and see if I couldn't get a place.

Q Have you been at work there ever since?

A Yes, sir.

Q What did you work at before that?

A Before I was in the stable?

Q Yes.

A I was at work on the water-works.

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Q Where?

A For Paige & Carey.

Q (By the Court.) Where are they?

A The water-works are what they call this new aqueduct.  
That is what they call the water-works.

BY MR. McINTYRE: Q Where did you work before that?

A Where did I work before that?

Q Yes.

A Before I went on the water-works?

Q Yes.

A I worked in Virginia.

Q You came from Virginia too?

A Yes, sir.

Q You have worked in gambling houses?

A Sir? Gambling houses?

Q Yes.

A No sir. I never gambled in my life.

Q What?

A Never gambled in my life.

Q Haven't you played poker in Donnelly's store?

A No, sir.

Q Don't you play policy?

A Never.

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Q Never?

A No, sir.

Q Let us come to the assault in this case?

A Yes, sir.

Q What time of day was it?

A What time do you mean when Madden made the assault?

Q Yes.

A It was at night.

Q What time?

A I couldn't tell you at what hour. It was soon after I came from my work and I came from 12th Street.

Q Had you been drinking?

A No, sir.

Q Were you sober?

A Just as sober as I am now, sir.

Q Are you sure?

A I don't think I had anything to drink at all any more than calling for that drink. The first thing I knew Butler--

Q Where was Butler?

A He was in there behind the bar cleaning up there.

Q What did you ask for?

A I asked for a drink.

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Q What sort of a drink, beer?

A Yes, sir.

Q Where was Madden standing?

A He was standing by the bar.

Q Did you ask Madden to have a drink?

A No, sir.

Q Did Madden ask you to have a drink?

A No, sir.

Q Did the bartender ask either of you to have a drink?

A No, sir.

Q You never saw Madden before?

A Never in my life.

Q And Madden then said what?

Q He said he would not drink at a bar with a nigger.

Q What did you do?

A I didn't do anything.

Q What did he do?

A He knocked me down.

Q With his fist?

A As soon as he got the words out of his mouth he knocked me down on the floor. He pounded me. This man Butler stopped him. Butler was inside the door. Then after I got out he knocked me down in the gutter and

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kicked me.

Q Where was Butler?

A I suppose he was inside.

Q Did you strike back?

A No, sir.

Q You permitted him to knock you down?

A Why, certainly.

Q Didn't you get up?

A I couldn't help myself.

Q You and he went outside and he knocked you in the gutter and you didn't do anything?

A No.

Q You didn't try to defend yourself?

A No sir; I didn't.

Q Why?

A Because he knocked me down unknown to myself as I was going outside of the door.

Q What did you do when you got up?

A I got up and got out of the way the best way I could.

Q Did you see a policeman?

A No, sir.

Q You didn't go and make any complaint against him?

A No, sir.

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Q You say that that man knocked you down once in that liquor store and you never said word?

A Never said a word--took it very easy.

Q He couldn't have hurt you much then?

A I was laid up for three or four days. I couldn't hardly walk. My side was all bent and my face was all black.

Q You just quietly submitted and didn't go to a Police Court and make a complaint?

A No sir; I didn't..

Q Why didn't you?

A Well, I didn't know who he was.

Q How do you know that it was Madden?

A After that I learned it was this man.

Q How do you know it was?

A They said this man was the one that done it.

BY THE COURT: Q What kind of a looking man was he?

A He was a tall, heavy bodied man.

Q About how tall?

A A great deal taller than I was.

Q About how old?

A I could not tell because I never saw the man before in my life.

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Q What kind of hair had he?

A Kind of sandy--red--not real red but what you call, I think, sandy but not black. I couldn't really tell because I didn't notice it.

BY MR. McINTYRE: Q How much have you got to come down here and testify?

A I have got nothing.

Q You didn't get a cent?

A No, sir.

Q Who paid your car fare down here this morning?

A I paid my own money.

Q Has any money been <sup>m</sup>promised you?

A No, not a cent. If anybody promised any I don't know anything about it.

Q You don't know anything about that?

A No, sir.

Q Has anything been said about making you a present?

A No, sir.

Q You are looking for one?

A Maybe I would like to get it.

Q You are expecting something?

A I don't know.

Q You are expecting something?

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A I don't know. If I have lost my job I wouldn't like that. If I hadn't come down here then I would be at work but being as I am a poor boy and have no one to help me along--

Q But you are expecting something?

A I supposed they would do something. I don't know.

Q Whodo you expect to get it from?

A I don't know.

Q You are expecting something, you don't know from whom you are going to get it?

A No, sir.

Q You came down here the last three or four days, did you?

A Yes, the last two days. This makes two days.

Q You have paid your own car fare?

A Yes, sir.

Q How much do you get a day?

A Working in the Street Cleaning Department, \$2 a day.

Q Do you know Mr. Patrick Donnelly?

A Pat Donnelly, yes.

Q Do you know Pat Donnelly? Of course you do?

A Of course ~~xxx~~ I do.

Q Do you know Felix Donnelly?

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*Officer Coleman*

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A Certainly?

Q Do you know James Donnelly, the defendant?

A Yes, sir.

Q Do you like him pretty well?

A I have nothing against him.

Q You have known him for a long while?

A Yes, sir.

Q You would like to help him out of this trouble?

A I would if I knew how.

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

DIRECT EXAMINATION BY MR. HOUSE: Q You are a police  
officer attached to the Police Department of this City?

A Yes, sir.

Q How long have you been a police officer?

A Since the fall of 1888.

Q What precinct are you attached to now?

A The 20th. Precinct.

Q How long have you been attached to that precinct?

A Two years and eight months.

Q So that on the 28th day of May, 1893 and for some time  
before that you had been attached to the same precinct?

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A Yes, sir.

Q Did you know a man named Madden in his lifetime?

A Yes, sir.

BY THE COURT: Q Did you know the man that was killed on the 28th day of May last?

A Yes, sir.

Q Are you acquainted with a colored man named Johnson?

A Yes, I have known him.

Q Have you seen Johnson frequently?

A Yes, I have seen him pretty nearly every day for the last two years.

Q Do you know the defendant at the bar Donnelly?

A Yes, sir.

Q Now, about three weeks before the shooting of Madden by Donnelly did you see the colored man Johnson?

A Yes, I seen him there every Sunday.

Q I ask you if two or three weeks before the shooting you saw the colored man Johnson anywhere near the liquor store on 28th Street?

A I seen him pretty nearly every Sunday.

Q Did you see Madden there?

A Yes, sir. I was on the corner of 27th Street and

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Johnson came down and said that this man assaulted him--

THE COURT: That wont do.

Q. After that did you see Madden?

A I was on the corner--yes, I saw him. He was under the influence of liquor.

Q What did he say when you saw him?

A He said he would get square with Johnson. It was Johnson and Donnelly that had put him out.

Q Because Donnelly had put him out on the corner he would get square on both of them?

A Yes, sir.

CROSS EXAMINATION BY MR. McINTYRE: Q Let us see. You have been a police officer since 1888?

A Yes, sir.

Q You profess to know your duties as a police officer?

A Yes, sir.

Q Your name is Coleman?

A Yes, sir.

Q You are the police officer who has been around here corraling witnesses in the Grand Jury room for the last two or three days?

A I have been in the Grand Jury room.

Q Did you communicate with the witnesses, the colored

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witnesses, in the Grand Jury room?

A I had business in the morning here.

BY THE COURT: Q Were you in any room in this building with the two colored men who have been witnesses here?

A Yes, sir.

BY MR. McINTYRE: Q Now, were you talking to those witnesses about this case?

A No, sir.

Q You were not telling them what to testify to?

A No, sir.

Q You are a friend of Donnelly's?

A No particular friend.

Q You play poker in his place, don't you?

A I played once there.

Q And you played poker in his place while you were supposed to be doing your duty there as a police officer?

A No, sir. I played a day when I was off duty.

Q You visit his place?

A No sir; very seldom. I live in 27th Street.

Q Now, I want to know this fact if you have not been daily since this trial commenced in communication with the witnesses for the defendant, including the two colored men who have testified?

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A Never, never.

BY THE COURT: Q You said you were in the same room with them. What were you doing in the Grand Jury room?

A I had been subpoenaed.

Q Why did you go to those two witnesses?

A They were sitting there. They refused to let me in here.

Q They were in the room?

A Yes, sir.

Q And you say you went into the Grand Jury room?

A Yes,,sir.

Q Did you talk to those two colored men?

A No sir; I think not.

Q Did you talk to them?

A Yes, I did.

Q Then you did talk to them?

A Nothing about Donnelly--not a word.

Q Did you talk to any of the other witnesses?

A Yes, I spoke to one?

Q Who?

A Collins and Kiernan.

Q Anyone else?

A No, sir, not that I know of.

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Q You would know it if you did? It is only a day or two ago officer?

A Not witnesses. I know they were not in the case.

BY MR. McINTYRE: Q What time did you go into the Grand Jury room?

A Half past eleven.

BY THE COURT: Q What case in the Grand Jury room were you subpoenaed on?

A Benjamin Butler for malicious mischief.

BY MR. McINTYRE: Q Not the Butler that testified here to-day?

A No, sir.  
time

Q What did you meet the witnesses in the Grand Jury room?

A About two o'clock.

Q Don't you know as a matter of fact that you had no business yesterday afternoon at 2 O'clock with the Grand Jury for the Grand Jury adjourns at half past one?

A They refused to let me in here and I had no place to go.

Q Knowing as a police officer that the Grand Jury adjourns at half past one o'clock you were in the Grand Jury room in company with two colored people and--

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A I was reading a paper there.

Q You saw this colored man Johnson on the corner of 28th Street and Eighth Avenue?

A Yes, sir.

Q And he informed you that an assault had been perpetrated upon him?

A Yes, sir.

Q Was his face cut?

A No, sir. He had no mark about him.

Q When you were told that this man Madden had committed the assault upon him you did not go after Madden to arrest him?

A He said he threatened him.

Q You didn't go after Madden to arrest him?

A No.

Q You made no effort to arrest him?

A No.

Q Let me ask you this question. You say that you heard a threat made?

A Yes, sir.

Q And in view of that threat made wasn't it incumbent upon you as a police officer to apprehend that man?

A He refused to make a complaint.

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Q The threat was made?

A He said he would get square with him.

Q You made no attempt to prevent any further altercation?

A No.

Q Besides that you told me he was under the influence of liquor?

A Yes, sir.

Q And as a police officer of the City of New York why didn't you arrest him for intoxication?

A He wasn't drunk enough.

Q You didn't take a man under the influence of liquor as you said he was, a man who had made a threat that he would perpetrate violence upon another person--you didn't take that man to the station house?

A I did not, no.

Q Then you don't know your duty as an officer.

MR. HOUSE: Then you don't know your duty as a public officer if you say that is the law.

Q How long had you known Madden?

A I had known him for twelve years.

Q You never had occasion to arrest him?

A No, sir.

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Q You never saw him quarreling with any one?

A I havenever seen him quarreling. I might have seen him under the influence of liquor.

Q You never saw him quarreling about the precinct to which you belong?

A No, sir.

BY MR. HOUSE: Q You were down here on a subpoena in this case for the first time yesterday?

A Yes, sir.

Q You were in the court room, were you not, when all the witnesses for the defense and the prosecution were directed to go on the outside?

A Yes, sir.

THE COURT: We have got all of that.

MR. HOUSE: I want to show--

THE COURT: You have shown. It is no use to show it over again. This officer says he was subpoenaed to appear before the Grand Jury in a case of malicious mischief and that he tried to get into this court room but the officer wouldn't permit him to do so and he went in and sat down in the Grand Jury room and read a newspaper when those two men were sitting in the room. That is the testimony.

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MR. HOUSE: Very well .

T H O M A S D O W N E Y, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOUSE: Q What precinct are you attached to Mr. Downey?

A The 20th precinct.

Q How long have you been a police officer in that precinct?

A Since 1884.

Q How long have you been a police officer in the City of New York?

A Since 1884.

Q Do you know a colored man named Johnson?

A Yes, sir.

Q In May in the year 1893 before the shooting of Madden by Donnelly did you see Johnson at the station house?

A Yes, sir.

Q What was the condition of his face at the time you saw him?

THE COURT: No, that wont do.

MR. HOUSE: The witness Kiernan says that he went with the colored man Johnson to the station house and

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that his face was bleeding and that he left him in the custody of some officer.

THE COURT: Refer me to the page of the stenographer's notes.

MR. HOUSE: I refer your Honor to page 132.

THE COURT: (After examining the minutes.) I will allow you to put the question.

Q (Repeated.)

A I was in the station house at the time.

BY THE COURT: Q We have got that. What was the condition of his face at the time you saw him?

A His face was all cut here. There were four or five scars on his cheek.

BY MR. HOUSE: Q Was his face bleeding?

A Yes, sir..

Q Where did you take him from the station house?

A Roosevelt Hospital.

Q What was done with him at Roosevelt Hospital, if you know?

A The Doctor stitched the wound?

Q Sewed it up?

A Yes, sir.

Q And then where did he go, if you know?

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A I don't know where he went after that. I came back to the station house and he went away.

CROSS EXAMINATION BY MR. McINTYRE: Q Now, you have been down here several days, haven't you?

A No, sir; this is the second time.

Q You have been with the witnesses for the defense in this case?

A I have seen them.

Q You have been talking with them?

A I spoke to Johnson?

Q You spoke to Johnson and you talked to Butler?

A I know Butler. I spoke to them but not about the case.

Q Were you subpoenaed to come down here?

A Yes, sir.

Q Did you tell Donnelly that you had seen Johnson when he was cut?

A Not as I remember.

Q Can you tell me how it was that they knew what you could testify about in this case?

A I don't know.

Q You don't know how that fact was communicated to the defendant, his counsel and his friends?

A No.

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Q Now, Officer Downey, you stated that you saw Johnson with his face cut and bleeding?

A Yes, sir.

Q And stitches placed in it?

A Yes, sir.

Q You have been an officer since 1884?

A I said 1884 but it was 1886.

Q The Civil Service rules respecting the police were in vogue when you were appointed?

A Yes, sir.

Q Do you know who assaulted Johnson?

A I don't know only what he told me.

BY THE COURT: Q He did tell you?

A Yes, sir.

BY MR. McINTYRE: Q You knew that you had the evidence of the commission of a felony before you, the cutting of his face, you knew that was an assault in the second degree, and as a police officer you didn't do anything or attempt to arrest the man who committed that crime?

A I was held by the Sergeant at the desk. I was probably ten blocks away from where the assault was committed.

Q You knew as a policeman that you had a perfect right

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to apprehend the perpetrator of that felony?

A I done what the Sergeant told me.

Q Did the Sergeant tell you not to?

No answer.

BY THE COURT: Q Did Johnson make any complaint when he was brought into the station house?

A He said he was assaulted.

Q Did he say who the man was?

A He didn't state that, your Honor.

Q Did the Sergeant order you not to arrest him?

A No, sir.

Q Here was a man brought into the station house with his face cut and bleeding and he made a complaint to the Sergeant at the desk and you were told to go and take the man up to Roosevelt Hospital?

A Yes, sir.

Q You were also told to arrest the man who cut this man's face?

A No, sir.

Q Who was that Sergeant?

A I could not tell you?

Q When was it?

A It was this month a year ago. I don't know the date.

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Q Now, just fix this date as near as you can.

MR. HOUSE: I am going to prove all that, your Honor, and I will show --

MR. McINTYRE: And I will show there was no warrant issued on the complaint made.

MR. HOUSE: I do not think a statement like that in the presence of the jury is fair.

Q According to the testimony of this officer a man was brought in cut and bleeding to such an extent that he required surgical attendance. He was brought before the Sergeant at the desk and this officer was sent all the way from 20th Street to the Roosevelt Hospital with this man to have surgical attendance. Is that so?

A That is right.

Q Now, wont you fix the date of that occurence as near as you can?

A I can not give you the date. I think it was this month a year ago.

Q This is the month of February just yet. Do you know who the Sergeant was?

A No, sir.

BY MR. HOUSE: Q Do you know whether or not the Ser-

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geant that night directed or instructed Johnson to go to the Police Court the next morning for a warrant?

A No, sir.

Q You say you don't know whether or not the next morning Johnson did go to the Police Court and get a warrant?

A No, sir.

Q And that he was up there several times in that neighborhood with an officer from the Police Court looking for Madden and could not find him?

No answer.

BY THE COURT: Q Do you know anything about that?

A No, sir.

THE COURT: Gentlemen, you will observe the statutor admonition and be here to-morrow morning at 11 o'clock.

Adjourned to 11 A. M. THURSDAY, MARCH 1, 1894.

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*Johnson*

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TRIAL RESUMED.

March 1st, 1894.

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

DIRECT EXAMINATION by Mr. House:

Q Your name is Henry Johnson? A. Yes, sir.

Q Whereabouts do you live, Mr. Johnson? A. 210 West 29th Street.

Q And how long have you lived there? A. I live there a month, in 29th Street.

Q And, before you resided in 210 West 29th Street, where did you reside, Mr. Johnson? A. In 28th Street; 253.

Q What is your business at present, Johnson? A. Well, I am attending to a sick man now, up in 55th Street; a colored man.

Q As his private body servant? A. No, sir, a colored friend of mine.

Q A colored friend of yours? A. Yes, sir.

Q Well, where did you work in the year 1893? A. 1893?

By the Court:

Q Yes; that is a year ago; last year? A. Well, a year ago, I worked in a boarding house.

By Mr. House:

Q A year ago you worked in a boarding house? A. Yes, sir.

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Q Now you know the saloon at the corner of 28th Street and 8th Avenue, do you not? A. Yes, sir.

Q That is the saloon kept by Felix Donnelly? A. I do.

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

Q Did you ever work at Butler's boot blacking establishment, at that saloon? A. Yes, sir, I have.

Q And was that during the year 1893? A. Yes, sir.

Q Did you know a man by the name of Charles Madden in his lifetime? A. Yes, sir.

Q Where did you first meet Madden, if you know, Johnson? A. In 28th Street.

Q On the corner or in the saloon? A. On the corner, part of the time; and in the saloon, was most of the acquaintance I had.

Q Well, how often would you meet Madden in that saloon, during the year 1893, if you can now recall? A. Well I would meet him in there four or five times in the week, and most especially at night, when he would get off from his work.

Q Now, do you recollect being in that saloon in the month of February last? A. Yes, sir.

Q And was that the time that a young man ----  
By the Court:

Q February a year ago? A. Yes, sir.

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By Mr. House:

Q Yes, sir. February a year ago, Mr. Johnson? A. Yes, sir, I do.

Q And do you recollect whether Madden was in the saloon on that night or not? A. Yes, sir, he was.

Q And was there any one in there, with an umbrella, at the time? A. Yes, sir.

Q Now who was that young man that had the umbrella, if you can tell, Mr. Johnson? A. I don't know his name, but he has been quite ---- he has been a visitor in there for some time.

Q Yes. Now did any discussion, during the evening, arise regarding that umbrella? A. Yes, sir.

Mr. McIntyre: Objected to as immaterial.

The Court: The 8th of February last?

Mr. House: Yes, sir.

The Court: What is the object of this testimony -- to prove a threat?

Mr. House: No; to prove the assault upon this man, and to show that, as Mr. Kiernan said, that he did not attempt to assault Madden; and then to follow it up by showing that Madden not only threatened him, but threatened the defendant, Donnelly.

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Mr. McIntyre: An assault upon this man, may it please the Court, is entirely irrelevant. That does not justify the killing of another man.

The Court: If any threat was made by the deceased against the defendant, I will let you prove it.

Mr. House: Well, then, sir, there was some question yesterday regarding whether this man, after this assault, went for a warrant. I thought we could show that to the jury, and the District Attorney went into it on the cross examination.

The Court: That was the trouble about it, that is the reason I let in so much, because the District Attorney went into it, on cross examination, and brought out what I would have otherwise excluded. That was exactly the trouble about it. I think I will let it in. Go on.

By Mr. House:

Q Now just, in your own way, Mr. Johnson ----

By the Court:

Q Now just tell us -- was the defendant there and was Madden there? A. Mr. James Donnelly was there; he was behind the bar.

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Q And was Madden there? A. Yes, sir.

Q Well, now, go on and tell what happened there? A. Well Madden came in, and I was standing in there, and Madden called for a glass of mixed ale, and Mr. Donnelly gave him a goblet with a stem to it. He was standing at the upper end of the bar, and he didn't drink his drink, and he stood there for about five minutes, as near as I can remember. So this young man came in.

Q The young man with the umbrella? A. Yes, sir; and I have met him in there lots of times, and he asked me up to have a drink with him. Him and Patsy Kiernan were shaking poker dice for a drink; and, in the meantime, he lost his umbrella, and he turned around to me and he said, "Johnson, have you seen my umbrella?" and I said, "No, sir, I didn't"; and he looked around for it and he said, "You must have known something about it. You were standing between me and Patsy Kiernan," and I said, "I don't know anything about it", and he said, "You ought to have known something about it, because you were right here", and I said "I don't, and I wouldn't take anything from you or anybody else," and Madden said, "I don't want you, Johnson, to give any of my white friends a calling down in this place," and I said, "Madden, I would give you, or anybody else, a calling down

if they accused me of stealing anything in this place"; and he said, "Neither you nor any other black son of a bitch has a right to call any white friend of mine -- to give any white friend of mine a calling down, and, moreover, no black son of a bitch has any right to give any back talk to a white man," and I walked away from him, and he whirled with the glass, and struck me on the side of the head, right here (indicating).

Q Did he throw the glass at you? A. No, sir; he held it in his hand.

By Mr. House:

Q And those scars on your face are the result of the blow?

A. Yes, sir; and he knocked me about 15 feet down the room and ----

Q Well, what happened then?

The Court: Well let him finish. What were you going to say?

A. And I landed up against the lunch bar and Mr. James Donnelly said, "Johnson, you are cut," and I didn't know I was cut; and so, with that, I pulled out my handkerchief out of my pocket, and wiped my face, and Madden run out of the front door, and I went out of the side door, and I didn't see him going uptown, and I come inside, and went

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out the front door, and I looked up 8th Avenue, and he was just turning 29th Street, and Patsy Kiernan carried me over ----

The Court: Now, you have got the man outside of the saloon, Mr. House, and I will not allow anything that occurred outside the saloon. Now go back to the saloon.

By the Court:

- Q Was there anything else that happened in the saloon that you have not stated? A. No, sir.
- Q Was anything said more than you have told us? A. No, sir.
- Q Well, now, did you go to the station house that night? A. I went to the druggist first.
- Q Where? A. At 28th Street and 8th Avenue, and at 29th Street and 8th Avenue, and neither one of them would do anything for me, and I went to the station house.
- Q And from there where did you go? A. Mr. Downing carried me to the Roosevelt Hospital.
- Q And was anything done to you there? A. Yes, sir, I was treated; the doctor attended to me there.
- Q Now, did you go to the police court, after that, and make a complaint, Mr. Johnson? A. Yes, sir; about three days after that, as near as I can remember.

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Q What police court did you go to? A. Jefferson Market.

Q Do you know whether or not a warrant was issued?

The Court: Well, if the warrant was issued, I suppose you can produce it.

By the Court:

Q Did you see the warrant? A. Yes, sir.

Q First, do you know what a warrant is? A. Oh, no, sir, I don't know.

The Court: He would not get the warrant, undoubtedly; a police officer would.

Mr. House: Well, I think I can show that a paper was issued to a police officer and this witness

The Court: Well, you can get the police officer and the warrant. This man does not know a warrant from anything else.

Mr. House: Very well, sir.

By Mr. House:

Q Now, Johnson, you were not present in the saloon, on the 28th day of May, 1893, when the shooting occurred; were you? A. No, sir.

Q Do you recollect that, two or three weeks before the shooting, on a Sunday afternoon, that you saw Madden and a fel-

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low by the name of Morris? A. Charles Morris?

Q Yes. A. Yes, sir.

Q And, after you saw them, did you see Police Officer Coleman? A. Yes, sir, I did.

Q And now, just before you saw Police Officer Coleman, what took place between you and Madden? A. I came around the corner, and Madden said, "Hello, Johnson."

Mr. McIntyre: Objected to, as not being in the saloon.

By the Court:

Q It was outside, on the street? A. Yes, sir, on the corner.

The Court: Well, finish then. If he made a threat, outside, in the street, although it was not communicated to the defendant, it is admissible.

Q Now, what did he say in reference to Donnelly, if anything? A. Well, I came around the corner, and Madden said, "Hello, Johnson." I thought it was the young man that I was working with and ----

By Mr. House:

Q Never mind what you thought. A. And I turned around and I seen who it was, and I said, "Madden, don't you never speak to me any more, unless I speak to you first, and I

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went into the saloon, and him and Charles Morris followed me in there, and Madden caught me by the collar, with his right hand, and drew back with his left hand, as if he was going to hit me, and I said, "Madden, I don't want no trouble with you or Charlie Morris neither, and the best thing you can do is to let me alone," and I went out, and they followed me out, and I met Mr. Coleman at the corner, and I explained the matter to him.

By the Court:

Q That will do about that. What did Coleman do? A. He told him, Madden, if he didn't get off the corner, he would lock him up, and two young men carried him off; and, as they were carrying him off he said, "Never mind. I will fix Johnson, and also that Jimmy Donnelly that had me put off the corner. I'll get square on both of them."

Q And that was said in the presence of the police officer?

A. Yes, sir; Mr. Coleman.

Mr. House: Mr. Coleman testified to it, yesterday, your Honor; Officer Coleman, rather.

By Mr. House:

Q Now how long had you seen Madden about that corner and in that saloon, Johnson? A. About a year and a half, as near as I can remember.

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Q Did you ever see him drink? A. Yes, sir, lots of times.

Q Lots of times? A. Yes, sir.

Q Did you ever see him under the influence of liquor?

A. Yes, sir.

The Court: Well, what do you mean by the influence of liquor? I suppose every man that drinks liquor, if it is only a spoonful, must be under the influence of it.

By the Court:

Q Did you see him drink? A. Yes, sir.

By Mr. House:

Q Did you see him intoxicated? A. Yes, sir.

Q Now, what was his character, as a peaceable and quiet man, when you saw him around there ; was it good or bad?

A. No, sir. When Madden was drinking, he was very mussy.

Q When Madden was drinking, he was very mussy? A. Yes, sir; and that was very often.

CROSS EXAMINATION by Mr. McIntyre:

Q How many times have you been convicted? A. Convicted?

Q Yes, arrested and convicted? A. Three times.

Q What were you convicted for the first time? A. The first time for fighting.

Q For stabbing a man, was it not? A. No, sir.

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- Q Well, how did you assault him then, how did you strike him  
A. The young man struck me, and I struck him.
- Q And you were sent away for it; weren't you? A. I was arrested.
- Q And the next time? A. For gambling in the street.
- Q Where? A. In Washington, D. C.
- Q And the next time? A. It was for gambling.
- Q Where? A. In Washington.
- Q Well, when next? A. Only three times.
- Q Only three times? A. Yes, sir.
- Q Now you have been working in gambling houses for a number of years; have you not? A. No, sir; I never worked in any gambling house.
- Q Didn't you work in a gambling house in Washington? A. No, sir.
- Q What did you do there? A. I was a waiter man.
- Q Where? A. In Washington.
- Q Where in Washington? A. On Rhode Island Avenue and on Connecticut Avenue.
- Q How long have you been North? A. Six years.
- Q Where were you born? A. In Memphis, Tennessee.
- Q What did you work at there? A. I was a lad there, and I was brought to Virginia quite young.

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- Q Where did you go from Tennessee? A. To the State of Virginia.
- Q And what did you do there? A. I worked on a farm.
- Q How long did you stay there? A. Well I stayed there until I left.
- Q What? A. Well I stayed there quite a number of years.
- Q How many years? A. I guess about six or seven years.
- Q When did you leave Memphis, Tennessee? A. When did I leave there?
- Q Yes. A. I left there quite young. My mother brought me away from there.
- Q When, what year? A. I don't know what year it was.
- Q Where did you go to from Virginia? A. I came to Virginia from Memphis, Tennessee.
- Q And how long did you stay in Virginia? A. All my life up.
- Q Well, how many years ago did you leave there? A. I left there in 1883.
- Q And where did you go to? A. I came to Washington City.
- Q And what did you do there? A. I waited.
- Q For whom? A. For private families, different parties.
- Q And how long did you stay there? A. About nine years, as near as I can remember.
- Q And you were a waiter all the time? A. As a waiter, part

of the time.

Q And where did you go then? A. I came to New York, I told you.

Q When did you reach New York? A. I came here the year of the Centennial.

Q 1876? A. No, sir; this last Centennial.

Q 1888? A. Yes, sir.

Q Where did you go to work in New York first? A. I went to work for a colored man at South Beach.

Q What kind of a place did he keep? A. Fruit stand.

Q How long did you work for him? A. About three or four months.

Q And where did you go to then? A. Well I came to New York, and went into a boarding house.

Q Where? A. Uptown.

Q Well where? A. In 31st Street.

Q What kind of a house was it? A. A boarding house.

Q Between what avenues? A. No. 17 East 31st Street.

Q No. 17 East 31st? A. Yes, sir.

Q Who kept the house? A. Mrs. Kent.

Q And what did you do there? A. A waiter man.

Q And how long did you work for her? A. About three months.

Q What did you leave her for? A. She discharged me.

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- Q What for? A. Because she didn't pay me, and I wouldn't work.
- Q Yes. She discharged you because she didn't pay you?
- A. Well, I asked for my money, and she discharged me.
- Q Where did you go then? A. To 23rd Street.
- Q What did you do there? A. I was a waiter man.
- Q For whom? A. I forget the lady's name.
- Q How long did you stay there? A. About three or four months.
- Q What did you leave there for? A. I didn't leave there; she broke up housekeeping.
- Q And where did you go then? A. Up to 52nd Street, and worked in a barber shop.
- Q Did you black boots there? A. Yes, sir.
- Q How long did you stay there? A. A couple of months.
- Q And then where did you go to? A. I went away to the country then.
- Q Where? A. To Newburgh, New York.
- Q Well, what did you go there for? A. To work.
- Q For whom? A. To the hotel, to the Merchant's Hotel.
- Q For whom? A. I forget his name; as a waiter.
- Q How long did you stay there? A. All the season.
- Q And where did you go to then? A. I came back to New York.



- Q And where did you go then? A. I worked in a boarding house.
- Q How long did you stay there? A. About four months.
- Q What boarding house was it? A. Up in 52nd Street.
- Q What was the woman's name, up in 52nd Street, that you worked for? A. I don't know her name; I forget it.
- Q Weren't you discharged from that house? A. No, sir.
- Q For stealing? A. No, sir; I never stole anything in my life.
- Q I ask you, weren't you discharged from that house for stealing? A. No, sir.
- Q How long did you stay there? A. I stayed there about four months.
- Q Where did you go to after you left that place? A. After I left there, I was out of work quite a while.
- Q Where did you live during that time? A. In 28th Street.
- Q With whom? A. By myself; I housekept there.
- Q You lived with a housekeeper there? A. No, sir, by myself.
- Q Did you keep house there? A. Not now, I don't.k
- Q Well, did you keep house there? A. I did, at that time.
- Q You had a housekeeper there? A. No, sir.
- Q Are you married? A. Yes, sir, I am.

- Q Where is your wife? A. She deserted me, about three years ago.
- Q Yes? A. Yes, sir.
- Q And what did you do, after you left that place in 28th Street? A. What place? The house?
- Q Yes? A. Well, I went away to the country.
- Q Did you live in a place called "The Black Chapel", in 28th Street? A. No, sir.
- Q You didn't live there? A. No, sir.
- Q Never? A. I don't know any such a place there.
- Q You don't know of any such place? A. No, sir.
- Q How? A. No, sir.
- Q Well, where did you go to work next, after that last employment that you have just mentioned? A. I told you I went away to the country.
- Q Well I know you told me that. I want to know where you went to work? A. Up to Newburgh.
- Q Well, I am not speaking of that place. You say you came back and lived in 28th Street? A. Well, I was in Newburgh more than once. I went to Johnson's.
- Q A different place? A. Yes, sir; the United States Hotel.
- Q How long did you stay there? A. About four months.
- Q What did you leave there for? A. The wages was too small.

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- Q What were you getting there? A. \$18. a month.
- Q Where did you go then? A. I came back to New York.
- Q And who did you work for? Give me the name? A. In New-  
burgh?
- Q No, sir. A. In New York?
- Q Yes. A. Well, I went to work for Mr. Johnson, the pro-  
prietor of the hotel.
- Q Well, what did he pay you? A. Well that's the same man;  
\$18. a month; and I came back to New York, and went to  
work for a colored man, named Smith.
- Q At what? A. At whitewashing; for \$2.00 a day.
- Q How much did you get a day? A. \$2.00.
- Q What did you do for him? A. Whitewashing and kalsomining.
- Q How long did you work for him? A. About two months.
- Q And why did you leave him? A. Because there was no more  
work.
- Q And where did you go to work then? A. Well, I didn't go  
to work nowhere.
- Q Then what did you do? A. I used to help my friend, on  
the corner.
- Q Doing what? A. Shining shoes.
- Q Well, who was your friend? A. John Butler.
- Q And he had a bootblack stand? A. Yes, sir.



- Q And have you worked anywheres since then? A. Yes, sir.
- Q For whom? A. Well I did jobbing around, for different persons.
- Q Well, did Butler pay you for shining shoes? A. Yes, sir.
- Q How much did he pay you? A. Half that I made on the stand, half that he made.
- Q Well, have you done anything else but bootblackening there, since that time? A. For Butler?
- Q Yes. A. I used to help him clean up the store.
- Q Well, you are a friend of the defendant at the bar, Donnelly; aren't you? A. No, sir.
- Q You are no friend of his? A. I ain't no friend of him; I know him.
- Q You have known him for quite a long time, haven't you? A. About a year.
- Q Now where did you get the clothes that you have on? A. Where did I get them?
- Q Yes? A. I bought them.
- Q When? A. About a year ago; some of them.
- Q Let me see the coat that you have on? A. There it is.
- Q You say you bought that coat a year ago? A. Yes, sir.
- Q Now let me see your underclothes. No, I don't mean those. I mean the suit under the overcoat? A. There it is.

- Q Didn't Donnelly give you that coat? A. No, sir.
- Q Or his brother? A. No, sir; they never gave me a piece of clothes in my life.
- Q Did you have that coat on day before yesterday? A. Yes, sir.
- Q The first day you came down to court here, did you have that overcoat on? A. Yes, sir.
- Q What are those -- gloves -- that you have in your pocket? A. Yes, sir. The first day I came to this court I had the coat on, and those are gloves.
- Q Now how much money have you got to come down here to testify? A. How much money have I got?
- Q Yes; how much money have you got? A. I didn't get any money to come down here and testify.
- Q No money given you at all? A. No, sir.
- Q No money promised to you by the Donnellys? A. No, sir, none of them.
- Q No money been promised you? A. No, sir.
- Q Don't you expect to get paid for coming down here? A. No, sir.
- Q You don't expect to get paid? A. No, sir.
- Q What were you working at, yesterday, and the day before that? A. I was down here yesterday.

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Q Well, did you have any visible means of support, yesterday?

A. No, sir.

Q Were you working at anything? A. No, sir; I went down here.

Q Well, what were you doing the day before that? A. I was here.

Q Where were you the day before that? A. Uptown, attending to the sick man.

Q Who is he? A. Henry Jones.

Q Where does he live? A. 532 West 55th Street.

Q What does he do? A. He don't do nothing; he is laying in bed, sick.

Q Does he pay you anything? A. Yes, sir, \$3.00.

Q What is his business? A. Janitor.

Q For whom? A. I don't know, sir.

Q Now, Johnson, you have had a number of fights in Donnelly's place, on the corner of 28th Street and 8th Avenue; haven't you? A. No, sir.

Q Do you mean to say that you have not had various difficulties in that place? A. No, sir.

Q Various troubles? A. The only trouble I ever had was from that mark there (indicating his head).

Q Haven't you assaulted people in that place? A. I never assaulted a man in my life, sir.

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Q How long did you know Madden? A. I knew Madden about a year and a half, as near as I can remember.

Q Before the difficulty between you and Madden there was no other trouble between you; was there?

A. I never had no trouble with Madden before.

Q And as far as you know, he was quiet and peaceable before that?

A. Oh, no sir; when he were drinking he weren't.

Q Well, have you seen him frequently drunk? A. Yes, sir.

Q How many times?

A. Ten or twelve times.

Q And did he have a difficulty with you every time he was under the influence of liquor?

A. Once or twice he walked towards me, but I would always get out of his way.

Q Now, who was the young man who was in the store the night you were assaulted?

THE COURT: The young man with the umbrella.

BY MR. MCINTYRE:

Q With the umbrella?

A. I don't know, sir.

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Q Did you ever see him before?

A. Yes, sir; lots of times, in the store.

Q Now, didn't you, lots of times before the alleged assault, steal handkerchiefs out of his pocket?

A. No, sir.

Q Weren't you accused of it?

A. One night I were, but he found it afterwards.

Q But weren't you on other nights? A. No, sir.

Q Wouldn't you stand on his right side, at the upper end of the bar, and take handkerchiefs out of his coat pocket?

A. No, sir; I didn't.

Q And he accused you, on more than one occasion, of doing it; didn't he?

A. Not as I knows of.

Q Well, you said that he did accuse you, one night.

A. He accuse me one night, but he received the handkerchief back. Some of his wife's friends had it.

Q You were drinking with him; were you?

A. Yes, sir; I had one drink with him.

Q Now, the night in question, this young man, whose name you don't know, had an umbrella with him; didn't he?

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A. Yes, sir; he had an umbrella with him when he came in.

Q And he put the umbrella down outside of the bar,  
leaned up against the bar? A. Yes, sir.

Q And you were standing right up by him, when he did that?

A. I were.

Q And shortly afterwards the young man missed his umbrella;  
is not that so?

A. Three of us were standing there.

Q Well, now, don't bring anybody else into it. I am talking  
of you.

A. Yes, sir.

Q And he told you that he stole his umbrella?

A. He asked me did I see anything of it.

Q (Question repeated)?

A. No, sir; he didn't.

Q Well, he charged you with taking it?

A. No, sir; he asked me had I seen it.

Q Yes. And you told him that he was a damned liar, and  
that you did not take it; didn't you?

A. No, sir.

Q How?

A. No, sir.

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Q Well, what did you say to him? A. I told him--- I says, "I wouldn't take your umbrella, and I wouldn't steal nothing from you or no one else."

Q Well, who was tending bar that night? A. James Donnelly.

Q Now, do you remember taking that umbrella from the place where the young man put it, and passing it over the bar and giving it to the defendant? A. No, sir.

Q Didn't you see the umbrella afterwards, behind the bar?

A. No, sir.

Q Do you know who took it and put it behind the bar? A. No, sir.

Q Who else was there?

A. Well, there were lots of others.

Q Who else was there?

A. Patsy Kiefman and the young man that lost the umbrella and James Donnelly was behind the bar and several others were standing around.

Q But they were not standing near you; were they?

A. Yes, sir; standing all around the floor,

Q Drinking with you? A. No, sir.

Q Well, the party that I am speaking of was composed of you

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and Kiernan and the man that lost the umbrella and Madden, and you were standing together; weren't you?

A. Madden was standing up, above all of us. I wasn't standing there.

Q Who were you drinking with?

A. The man that had the umbrella, individually.

Q You were drinking with him? A. Yes, sir.

Q Now, didn't you pick up that umbrella and pass it over the bar and hand it to Donnelly? A. No, sir.

Q Well, don't you know, as matter of fact, that, after that man went out of the place, the umbrella was found behind the bar? A. No, sir.

Q Did you ever see that it was? A. No, sir.

Q You never heard what became of the umbrella? A. No, sir.

Q You stood right there, and didn't see anybody take it?

A. No, sir.

Q Now, the dead man, Madden, came to you and he said, "Now, you have been in the habit of stealing this man's handkerchief, and I think you have stolen the umbrella from him;" didn't he?

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A. No, sir; he didn't.

Q "You were nearest to him, and no one else could have done it;" did he say that to you?

A. No, sir.

Q What did he say to you?

A. All that he said was, "Johnson, I don't want you to give any of my white friends a calling down in here," and I said, "I would give you or any one else a calling down that accused me of a crime that I am not guilty of."

Q Now, I want to know if Malden charged you with stealing the umbrella.

A. No, sir; he didn't charge me with the stealing of it.

Q But the young man that you were drinking with charged you, you say?

MR. HOUSE: No, sir; he said that he asked him where it was.

THE WITNESS: No, sir; he didn't.

BY MR. MCINTYRE:

Q Well, didn't he say that you stole it?

(objected to, on the ground that

the District Attorney has three



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times asked the question,  
and the witness has said that  
he didn't accuse him of steal-  
ing it.)

THE COURT: That is a slightly different question. I will allow it.

BY THE COURT:

Q Well, did Madden say that you stole the umbrella?

A. No, sir.

BY MR. MCINTYRE:

Q Well, what did Madden say to you?

A. I told you what he said, Your Honor.

Q Well, what did he say?

A. He said, "Johnson, I don't want you to give any of  
my white friends a calling down in this place."

Q Well, had you called any of his white friends down?

A. Well, after this young man insisted that I knew  
something about it, I told him that I wouldn't steal any-  
thing from him or any one else.

Q Well, now, you say that he did insist upon stating that  
you knew something about?

A. He asked me--he said, "You must know something of

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of it, because you were standing here.

Q And then you called him down, as you put it?

A. Yes, sir.

Q Now, what did you say to the young man?

A. I told him I knew nothing of it, and that I wouldn't steal anything from him or any one else. That was all that was said.

Q Now, Mr. Kiernan was there that night; wasn't he?

A. Yes, sir; Patsy Kiernan.

Q And Paddy Kiernan?

A. Yes, sir; Paddy Kiernan.

Q Now, I want to ask you whether you remember anything like this having occurred. I will read you Kiernan's testimony. He said, "This fellow came into the saloon. He is a pretty good spender, and he came in to throw dice. He had a silk umbrella in his hand, and he put it against the bar, and it was missed in a little while, and Madden was standing there, with the glass of beer in his hand, and Johnson said he didn't take the umbrella, as somebody had accused him of it; he said he didn't take the umbrella. Madden turned and said, "One of you fellows

took it.' pointing around the bar to Johnson. Johnson said, 'You are a white son-of-a-bitch,' Did you say that?

A. No, sir; I didn't.

Q "Madden said, 'Don't call me a son-of-a-bitch,' and, with that, Madden threw the glass and hit him."

A. He didn't throw it, sir.

Q How?

A. He didn't throw the glass.

Q He didn't throw the glass?

A. No, sir; he held it in his hand.

Q Now, when Madden accused you of taking that umbrella, if he did accuse you, did you go down in your pocket and take out a knife?

A. Madden didn't accuse me, and I didn't go down in my pocket and take out a knife. I had no occasion to do it.

Q Well, if anybody said that you took the umbrella, did you take out the knife? A. No, sir.

Q Now, didn't <sup>you</sup> assault Madden first? A. No, sir.

Q Didn't you rush at him with a knife? A. No, sir.

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Q Didn't you threaten to use the knife upon him? A. No, sir.

Q Didn't you put your hand in your pocket and take out a knife?

A. No, sir; I didn't.

Q How many people were in the store?

A. I don't, know, sir.

Q You can't tell? A. No, sir.

Q How many friends of yours were there? A. I have no friends there.

Q Well, did you see anybody there that you knew, that you were friendly with?

A. Well, I knew James Donnelly.

Q Yes.

A. And Madden.

Q Well, where was Butler?

A. He was home, I suppose.

Q He was home; was he?

A. I suppose he were.

Q You didn't see Butler there that night?

A. He was there the early part of the night.

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BY THE COURT:

Q At what time of the night?

A. He was there about half-past 8, and I walked to the corner of 29th Street with him, and then I came back.

BY M. MCINTYRE:

Q Now, did you see Tucker there?

A. No, sir; Tucker was not there.

Q And you are sure that Butler was not inside there that night?

A. Butler was there the early part of the night.

Q Well, when you were hit? A. No, sir; he was not.

Q Well, when you were struck with the glass, what did you do? Did you strike back?

A. I had no chance.

Q No. Did you?

A. No, sir; I didn't.

THE COURT: Answer the question.

BY MR. MCINTYRE:

Q Did you strike back? A. No, sir.

Q Did you attempt to defend yourself? A. No, sir; not in the least.

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Q Well, what did you do?

A. Well, he knocked me about 15 feet down the room.

Q He knocked you about 15 feet down the room?

A. Yes, sir; as near as I could judge; up against the lunch counter.

Q Well, you say that he held the glass in his hand?

A. Yes, sir; and he pounded me like that(illustrating).

Q And it knocked you down the room 15 feet?

A. Yes, sir; as near as I can judge.

Q And what did you do then?

A. I whipped off my vest and went out the side door, and I don't see Madden, and then I came in again and went out again, out of the front door. and I saw him turning the 29th Street corner.

Q And then you went to the drug store?

A. Yes, sir.

Q And the hospital?

A. Yes, sir.

Q Well, why didn't you go to a police officer and complain that you had been assaulted without any cause?

A. I didn't see any police officer on my way up there,



and I was bleeding so that I went on.

Q Well, you saw police officers after you went to the hospital; didn't you?

A. Yes, sir; I saw more than one.

Q Did you go to the station-house at all? A. Yes, sir.

Q Well, you saw plenty of police officers there; didn't you?

A. Yes, sir; but the sergeant sent me in the back room, and the doctor was sent for, and the doctor said that he couldn't do anything for me, and I must go to the hospital, and I was taken to the hospital by Mr. Downing.

Q Did you walk or ride?

A. I rode on the car. Mr. Downing paid the fare.

Q Who did?

A. Officer Downing.

Q Well, did you tell him what Madden had done to you? A. Yes, sir.

BY MR. MCINTYRE:

Q Well, do you remember the day of the week that this assault occurred? Was it Monday, Tuesday or Wednesday?

BY THE COURT:

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Q What day of the week was it that you were hit with the glass?

A. It was the 6th, I know; I am not sure, but I think it was on a Monday.

BY MR. MCINTYRE:

Q It was on a Monday?

A. If I am not mistaken.

Q And after you had your wounds dressed, you came back to Donnelly's saloon; didn't you?

BY THE COURT:

Q You said that you found out in the station-house that it was Monday; did you?

A. No, sir; I said as far as I could remember it was Monday.

Q Did you find out in the station-house what day it was?

A. No, sir; I didn't try to find out the day.

BY MR. MCINTYRE:

Q Well, did you go back to Donnelly's saloon that night after your wounds were dressed?

A. Yes, sir; I stopped in on my way home.

Q And how long did you stay there that night?

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A. In Donnelly's place?

Q Yes?

A. I stayed in about three minutes, because a couple of the stitches were broke, and I had to go back to the hospital.

Q And the next day did you go back to Donnelly's place?

A. No, sir I was unable to go.

Q Did you go out at all?

A. No, sir.

Q The next day after that did you go to Donnelly's place?

A. No, sir.

Q When did you go to Donnelly's place for the first time, after that?

A. I went there about the 4th day afterwards. I stopped up there on my way to the hospital, and borrowed ten cents from my colored friend there, to pay my way up and back.

Q Now, you say that those scars on your face were made by the glass?

A. Yes, sir.

Q That was thrown at you or pitched at you at the time?

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A. He held it in his hand, at the time.

Q Did the glass break?

A. Surely it did. It broke up in little pieces.

Q Yes. And the push that he gave you with the glass in his hand shoved you 15 feet?

A. As near as I can judge.

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

BY MR. HOUSE:

Q Now, Mr. Johnson.

A. Sir?

Q Did you hear the Recorder, yesterday, put this question, yesterday, to Butler: "Q. Were you present at any difficulty between Madden and Johnson?" And did you hear Butler swear, "I was not there"?

A. No, sir.

Q You were outside?

A. Yes, sir.

Q And Butler was not there?

A. No, sir.

BY MR. MCINTYRE:

Q Now, did you hear the Recorder say that to the witness yesterday?

A. No, sir.

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Q Well, where were you?

A. I was outside.

BY MR.HOUSE:

Q Now, you have been asked about your criminal record.

You say that you have been arrested three times?

A. Yes, sir.

Q The first time you were ever arrested was for fighting?

A. Yes, sir.

Q What disposition was made of that case, Mr.Johnson; what was done with it?

A. I was fenned \$5.00.

Q Did you pay it?

A. Yes, sir; I did.

Q Now, you were twice, after that, arrested for gambling? A.

Yes, sir.

Q On the street?

A.Yes, sir.

Q Was that the kind of gambling which you colored people sometimes indulge in, which is called "shooting craps"?

A. Yes, sir; shooting ~~dices~~ to a dice.

Q And what was done with you on both of those occasions?

A. Well, I paid my fine the first time, \$5.00.

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Q And the second time? A. The second time, I got discharged.

Q You got discharged?

A. Yes, sir.

Q And with the exceptions of these three occasions, where you were fined \$5.00 for fighting, and \$5.00 once for shooting craps, and once discharged, upon being arrested for shooting craps, you have never been charged with the commission of any crime?

A. No, sir; nowhere.

Q And have you ever been convicted of stealing anything of any kind and sent to prison for it?

A. No, sir; never in my life.

FRANK RAFFERTY, called by The Defense, being duly sworn, testified as follows:

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

BY MR. HOUSE:

Q Mr. Rafferty, whereabouts do you live? A. 447 West 37th Street.

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BY MR MCINTYRE:

Q Have you been outside of the court-room all the while?

A. Yes, sir.

MR.HOUSE: Yes; he has just been brought in.

BY MR.HOUSE:

Q What is your business, Mr.Rafferty? A. Bartender.

Q And by whom are you employed? A. By Felix Donnelly.

Q The cousin of this defendant? A. Yes, sir.

Q How long have you been employed by Mr.Donnelly as a bartender?

A. Something over three months.

Q And whereabouts are you tending bar?

A. 362 8th Avenue.

Q Is that the saloon where the shooting occurred? A. Yes, sir.

Q Do you know a fellow by the name of Davis? A. Yes, sir.

Q One of the witnesses for The People in this case? A. Yes, sir.

Q Do you remember that, one day last month, that Davis was in the saloon?

A. Yes, sir.

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Q Who else was in the saloon at the time, if you recollect?

A. Thomas Rawley and James O'Keeffe.

Q Now, while they were in there, was any conversation started regarding the Donnelly case? A. Yes, sir.

Q And what, if anything, did Davis say regarding it?

A. Davis said that he knew nothing at all concerning the affair, nothing whatsoever.

Q Yes.

A. And he said he wouldnt be implicated in it only for Patrick Kiernan.

C r o s s - E x a m i n a t i o n .

BY MR. MCINTYRE:

Q He said he wouldnt be implicated in it excepting for Patrick Kiernan?

A. Yes, sir.

Q That Patrick Kiernan had gone and told somebody what Davis knew about it.

A. What the words he said to me were, he wouldnt be implicated in it only for Patrick Kiernan.

Q Yes. That, if Patrick Kiernan hadn't told somebody

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What he knew about the case, he wouldn't be implicated in it ?

A. He didn't say any more than I said.

Q Well, give us his conversation as fully as you can.

A. That was the whole conversation.

BY THE COURT:

Q Well, how is this conversation brought about?

A. We were conversing about the Donnelly affair.

Q Who was?

A. Charles Davis, Thomas Rawley and James O'Keefe.

BY MR.MCINTYRE:

Q Look me in the face, and don't through your head down.

A. Yes, sir.

Q Now, what were they saying about the Donnelly affair?

A. Well, they were talking about how he would make it.

Q Now, look me in the eyes. What?

A. They were conversing how he would make out, and when his trial would come off.

Q Who was saying that?

A. Davis and Rawley .

Q What did Davis say? Give me Davis's exact words.

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A. Davis's exact words? That he didn't know anything at all concerning the affair, and that he wouldn't be implicated in it whatever, only for Patrick Kiernan.

Q That he wouldn't be implicated in it?

A. Yes, sir.

Q Now, didn't you hear him say that the prosecution would not have known anything of what he knew about the case?

A. No, sir.

Q If it hadn't been for Kiernan telling it? A. No, sir.

Q Did you hear all that said?

A. No, sir; I didn't.

Q It might have been said and you might not have heard it?

A. Yes, sir.

Q Well, then, you don't know whether that was said or not?

A. I don't know. He said that he didn't know anything whatsoever about the affair.

BY THE COURT:

Q What did Rawley say?

A. He didn't say anything at all, while I was there.

Q And what did James O'Keefe say?

A. I don't know anything at all what he said only

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what Davis said. I only come down to the end of the bar then.

Q No. I asked you what James O'Keefe said. What did he say?

A. I don't know.

Q And you don't know what Rawley said? A. No, sir.

Q Now, what did you say?

A. I asked him if he knew anything about it, and that is what he said.

Q If he knew anything about what?

A. About the shooting affair.

Q The shooting of whom?

A. Charles Madden.

Q Well, what did you say to him?

A. I asked him did he know anything at all about it, and he said he didnt.

Q And is that all you said? A. Yes, sir.

Q And that is all he said to you?

A Yes, sir; that is all. I went on, then, and attended to my business.

Q Well, didn't you say something to the other man that was

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with him?

A. No, sir.

BY MR MCINTYRE:

Q You can't remember what the other men said?

A. I didnt wait to listen to that. I was attending to my business.

Q But you can remember what Davis said?

A. Yes, sir; because he was conversing with me at the time.

Q Now, why did you ask him what he knew about the Donnelly affair?

A. For information.

Q Well, what information were you seeking?

A. Well, I only wanted to know about it.

Q You did? For what purpose?

A. I hadn't any purpose in view atball.

Q Well, you stated, a minute ago, that you wanted to find out for information. What were you going to do with the information when you found out about it?

A. I had no idea at all about it.

Q And yet you stopped and asked him that question, and he said he diin't know anything about it; and you dont re-

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member what Rawley said, or what the other man said? A.

No, sir.

Q But you do remember what Davis said? A. Yes, sir.

Q And that may be an impression on your mind?

A. Yes, sir.

Q Now, whom did you tell that to afterwards?

A. I didnt tell it to any person.

Q You never told it to a soul?

A. Ch, yes; I did.

Q Whom did you tell it to?

A. My side partner.

Q Who is he?

A. James Mulligan.

Q Is he in court?

A. No, sir.

Q Outside?

A.No, sir.

Q He isn't here at all?

A. No, sir.

BY THE COURT:

Q Was James Mulligan present when the conversation oc-

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cu      curred?

A. No, sir.

BY MR.MCINTYRE:

Q      Well, was there anybody behind the bar assisting you?

A. No, sir.

Q      Well, did you tell anybody else besides Mulligan?

A. Yes, sir; I told Patrick Donnelly.

Q      Now, you are working for the Donnellys?      A. Yes, sir.

BY THE COURT:

Q      And has worked in the same saloon for the last three months, he says.

BY MR.MCINTYRE:

Q      Now, do you remember yesterday morning your being in 28th Street, near 8th Avenue, with Patrick Donnelly and a man by the name of Thomas Carroll?

A. I was in the saloon.

Q      Do you remember being in 28th Street with those men yesterday morning, about 9 o'clock?

A. Not on 8th Avenue; not on 28th Street.

BY THE COURT:

Q      Well, were you with those two men?      A. Yes, sir.

Q      Now, where were you together?      A. On 8th Avenue.

Q      Where?

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A. On 8th Avenue and 28th Street.

Q On 8th Avenue and 28th Street? A. Yes, sir.

Q Out on the street?

A. Yes, sir, on the avenue.

Q Were you on the avenue? A. Yes, sir.

Q Well, then, you were together? A. Yes, sir.

Q With those two other men? A. Yes, sir.

BY MR MCINTYRE:

Q It was about 9 o'clock, yesterday morning; was it not?

A. Yes, sir.

Q Now, do you remember talking about this case then to these people?

A. No, sir.

Q You didn't say a word, yesterday morning, about the case?

A. Not to those people.

Q Well, who were you talking to yesterday morning about the case?

A. I was not talking to any person about the case.

Q Well, what were you doing with Patrick Donnelly yesterday morning?

A. I was on the cars with him.

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Q Well, he came after you, to bring you down to testify; didn't he?

A. (No answer.)

Q Didn't he?

A. To bring me down where? Here?

Q Yes..

A. I came down myself.

Q Well, what were you doing with Patrick Donnelly yesterday morning?

A. (No answer).

BY THE COURT:

Q Dont you remember what you did yesterday morning?

BY MR HOUSE:

Q Didnt you come to my office?

THE COURT: Wait a moment, Mr.House.

A. I went with Patrick Donnelly and Carroll down to Mr. House's office.

BY MR.MCINTYRE:.

Q Well, now, you remember that? A. Yes, sir.

Q And yet that occurred only yesterday morning? A. Yes, sir:

Q Yet you couldnt remember it a moment ago, but you can

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remember that you heard Davis say, some time ago, that he knew nothing about this case?

A. Yes, sir.

Q Now, didnt you rehearse your testimony yesterday morning with Donnelly and Carroll, and didn't you go over then the facts that you proposed to testify to in this trial?

A. I rehearsed it in Mr.House's office.

Q You rehearsed it in Mr.House's office? A. Yes, sir.

Q And how long were you rehearsing it in Mr.House's?

A. About three minutes.

Q About three minutes?

A. Yes, sir.

Q Now, was that the first time that you ever told Patrick Donnelly about it?

A.

Q When did you tell him about it before?

A. The night before.

Q The night before last? A. Yes, sir.

Q Not before that? A. No, sir.

Q Never said a word to him before that?

A. No, sir; never said a word to him previous.

Q How long have you been working for the Donnellys?

A. Between 3 and 4 months.

Q What were you doing before?

A. Tending bar.

Q For whom?

A. For Mrs. Donnelly; 33rd Street and 7th Avenue.

Q Mrs. Donnelly?

A. Yes, sir.

Q Well, is that one of the Donnelly family here?

A. She was married to one of them.

Q Yes; she belonged to the Donnellys here?

A. I don't know whether she is any relation or not;  
the husband was.

Q Well, what did you do before that?

A. I attended bar previous.

Q For whom?

A. For Peter McGirr.

Q Where is his place of business?

A. 37th Street and 11th Avenue.

Q Well, is he any relation to the Donnellys? A. No, sir.

Q How long did you work for him?



A. Six months.

Q And whom did you work for before that? A. Joseph  
McSorley.

Q Who?

A. Joseph McSorley.

Q As a bartender? A. Yes, sir.

Q Now, this Thomas Rawley---He hangs out in 28th street  
and 8th Avenue, in that liquor store; doesn't he?

A. He be's around there once in a while.

Q He is around there a good deal; isn't he?

A. Well, he be's there pretty near every day.

Q In the day time?

A. Yes, sir.

Q Now, he doesn't work, that you know of; does he?

A. Yes, sir; he works.

Q What does he do?

A. He was working there steady, cleaning up.

Q Then, he works for the Donnelly's?

A. Yes, sir; he isn't working there now.

Q Well, when did he stop working there?

A: About two weeks ago.

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Q And did he leave there? A. Well, he left, or else  
got discharged; I couldn't tell you.

Q And is he working anywhere now? A. No.

Q Well, did he merely clean up the place?

A. Yes, sir; he attended to the lunch-counter and got  
up the lunch.

Q And was he paid regularly or did he get an occasional  
drink?

A. No, sir; he was paid regularly.

Q Do you know how much salary he got?

A. Yes, sir; \$5.00 A week.

THOMAS CAHILL, called by the defense, being duly sworn, testified as follows:

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

BY MR. HOUSE:

Q Now, whereabouts do you live, Mr. Cahill? A. In 17th  
Street.

BY THE COURT:

Q Where do you live? A. 253 West 17th Street.

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BY MR. HOUSE:

Q What is your business, Mr. Cahill? A. Coach driver.

Q For whom?

A. Mr. Farrell, 8th Avenue and 33rd Street.

Q Do you know a young man by the name of Patsey Kiernan?

A. Yes, sir.

Q You have seen him a good many times; have you?

A. Yes, sir.

Q Do you remember that, about two weeks ago, you were on the corner of 28th Street and 8th Avenue? A. Yes, sir.

Q Did you see Kiernan there?

A. Yes sir.

Q Was it in the day time or night time?

A. Around half-past 7 o'clock at night.

Q Did you have any conversation with him?

A. Only he asked me, "Who is inside?" And I said, "Mr. Donnelly." And he said, "I have got a subpoena to come down here, and I know nothing about this" he says.

Q And that is all?

A. Yes, sir.

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Q And you were at my office yesterday, weren't you?

A Yes, sir.

Q With this other young man, Rafferty? A. Yes, sir.

Q And you saw this young man here, by my side? A. Yes, sir.

Q And you made a statement to him? A. Yes, sir.

Q And he took it down in writing? A. Yes, sir.

C r o s s - E x a m i n a t i o n .

BY MR.MCINTYRE:

Q What is your business? A. Hack-driver.

Q Who do you drive for? A. Mr. Farrell.

Q Where is his place of business?

A. 33rd Street and 8th Avenue.

Q Keeps a stable there? A. Yes, sir.

Q How long have you worked for him? A. About two years.

Q And what did you do before that?

A. I always drive a hack.

Q Where do you live? A. In 17th Street.

Q Are you married? A. No, sir; single.

Q Now, have you ever been in Donnelly's place, at 28th Street and 8th Avenue?

A. Yes, sir; once in a while.

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Q Well, you drink there occasionally? A. Well, no.

Q Well, don't you drink at all? A. Well, yes.

Q Well, then, don't you drink in there occasionally? A. Well, yes.

Q Well, when were you in there last? A. This morning.

Q When, at what time?

A. Around about 5 o'clock.

Q And whom did you see there? A. The bartender.

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

Q You didn't talk about this case at all? A. No, sir.

Q Who is the bartender there?

A. Frank Rafferty.

Q And then the former witness, Rafferty, and you met, at 5 o'clock this morning? A. Yes, sir.

Q And yet you never said a word about the Donnelly case?

A. No, sir.

Q And you never said that you were coming down to court to-day?

A. No, sir.

BY THE COURT:

Q Well, now, what did Rafferty say to you? A. He didn't

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say anything.

Q Nothing at all? A. No, sir.

Q Well, what did you say to Rafferty?

A I didnt say anything either.

Q Neither of you opened your mouth?

A. No, sir.

Q Well, when did you start from this place?

A. I started down about half-past 10.

Q Well, then, from about 5 o'clock in the morning until about 10 what were you doing?

A. I was after getting done with a call.

Q Well, you were in the store at 5 o'clock or about that time?

A. Yes, sir.

Q And how long did you remain in the store?

A. About half an hour.

Q Did you make any appointment to go back, and meet Rafferty again? A. No, sir.

Q Well, did you go back? A. No, sir.

Q Well, where did you meet Rafferty? A. Down here.

Q Well, is that the first place you met him?

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A. Well, several places before I have met him.

Q Well, we are talking of this morning. Was it this morning?

A. Yes, sir; this morning.

Q Well, you met Rafferty about 5 o'clock in Donnelly's store?

A. Yes, sir.

Q In the store?

A. Yes, sir.

Q Or out on the street? A. In the store.

Q Now, you remained there how long? A. About half an hour.

Q Well, now, did you and Rafferty talk about this case at all?

A. No, sir.

Q Did you have any conversation at all? A. No, sir; we only met down here.

Q No. I didn't ask you about the meeting down here. Did you have no conversation whatever with Rafferty; do you mean that?

A. Yes, sir.

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Q And where did you meet Rafferty after that? A. Down here.

Q In the court? A. Yes, sir; outside.

Q you didn't come downtown with him? A. No, sir.

BY MR MCINTYRE:

Q Why didn't you come downtown to Mr. House's office, with Rafferty, this morning?

A. So I did, but not this morning.

Q Was it yesterday morning? A. Yes, sir.

Q Well, when did you see Rafferty before yesterday?

A. I seen him up on the Avenue, 8th Avenue and 33rd Street.

Q When?

A. Day before yesterday.

Q What time?

A. Well, I can't say exactly the time.

Q In the morning? A. No; in the evening.

Q And that was before you went to Mr. House's office? A. Yes, sir.

Q And did you tell him that you were going to Mr. House's office?

A. Well, we all went together there.

BY THE COURT:

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Q "We all went." Who went?

A. Mr. Rafferty.

Q And who else? A. Mr. Donnelly.

Q And who else?

A. Mr. Haigh, and myself and Mr. Rafferty.

BY MR. MCINTYRE:

Q Mr. Haigh?

A. Mr. Walter Haigh.

Q And he is one of the witnesses here; is he? A. Yes, sir.

Q Did you hear what he said there? A. No, sir.

Q You don't know what he will testify to? A. No, sir.

Q Now, do you remember, yesterday morning, being with Frank Rafferty and Patrick Donnelly, about 9 o'clock, in 28th street, near 8th Avenue, about 9 o'clock?

A. About 9 o'clock?

Q Yes?

A. I guess it was a little later than that.

Q How much later?

A. About half an hour later.

Q Well, you all met there? A. Yes, sir.

Q Where?

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A. At 28th Street and 3th Avenue.

Q In the store? A. Yes, sir; in the store.

Q And where did you go to then? A. We came down here to the lawyer's office.

Q And when you met in the store, yesterday morning, you and Patrick Donnelly and Rafferty, did you talk about what you were going to testify to? A. No, sir.

Q Never said anything about it? A. No, sir.

Q Did you know what you were going down to Mr. House's office for?

A. Yes, sir; to see the lawyer.

Q Well, but you didn't know what you were going to testify to?

A. Well, everybody knew what he was going to say himself.

Q You didn't say to Rafferty, "Well, I am going to say about two weeks ago, that I heard Kiernan say that he didn't know anything about it"?

A. No, sir; I never mentioned a word.

Q And Rafferty didn't say, "About three or four weeks ago, I heard Davis say that he knew nothing about it"?

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A. No, sir; he didn't say that to me.

Q Now, did you tell Donnelly what you were going to testify to?

A. No, sir.

Q Well, to whom did you tell what you say you heard Kiernan say?

A. Well, I told Mr. Donnelly

Q When did you tell him?

A. I guess it was about Tuesday I told him.

Q Now, where was this conversation that occurred between you and Kiernan?

A. 33rd Street and 8th Avenue; the other store.

Q And have you known Kiernan very long?

A. No, sir; not very long.

Q Well, would you know him if you saw him again?

A. Certainly I would.

Q Where did you make his acquaintance?

A. In the 28th Street store.

Q And when did you make his acquaintance there?

A. A couple of months or so ago.

Q And on 33rd Street and 8th Avenue you had this conversation?

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A. Yes, sir.

Q Was it in the evening? A. Yes, sir; on Saturday night, about half-past 7 or 8 o'clock, at night.

Q And how did you come to talk about the Donnelly case?

A. I didn't speak to him about it; he talked to me about it.

Q Well, what did he say?

A. Well, he said, "I have got a subpoena to go down but I don't know nothing at all about the case."

Q And, after he told that what did you say? A. I didn't say nothing.

BY THE COURT:

Q Well, what did you do?

A. I went in and told Mr Donnelly about it.

BY MR MCINTYRE:

Q Well, why did you go in and tell Donnelly about it?

(Objected to.) (Allowed.) (Ex-  
ception.)

A. Well, there was no use of interfering, when he didn't know anything about it.

Q I say, why did you go in and tell Donnelly about it?

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A. Why did I go in and tell him?

Q Yes? A. Well, I don't know.

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

Q Where did you go to tell Donnelly? A. Up, in 33rd Street.

Q? Where? A. 33rd Street and 8th Avenue.

Q In his store? A. Yes, sir; Mr. Donnelly's store.

Q Whose store?

A. Mr. Felix Donnelly.

Q Well, that is 23th Street? A. No, sir; he has two stores.

Q Well, did you go right away and tell Felix Donnelly about this conversation?

A. No, sir; I told Patrick Donnelly first.

Q You told Patrick Donnelly first? A. Yes, sir.

Q Right after the conversation was had? A. Yes, sir.

Q Well, how soon afterwards? A. Well, an hour, I guess, or so.

Q Well, why did you go and tell him? Now, I want a specific answer to that?

A. Well, I don't know.

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