

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

Q Well, did you regard it as important? A. Well, I don't know.

Q Well, what did Mr. Patrick Donnelly say to you then?

A. He told me to come down here; that is all.

Q He told you to come down here?

A. Yes, sir.

Q To come where, to this court-house? A. Yes, sir.

Q He didn't tell you to go to Mr. House's office?

A. I went to Mr. House's office first and then I came here.

Q And you perceived the importance of that testimony, just as soon as Mr. Kiernan spoke to you about it, and told you that he didn't know anything about it? You regarded it as important, and you ran right off to Mr. Donnelly and told him?

A. No, sir; I didn't. He asked me and I told him.

Q Now, give me the exact language that you used when you went in and told Mr. Patrick Donnelly.

A. I told him what I knew; that is all.

Q Now, tell me what you said to him.

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A. I told him that I met Mr. Kiernan and what he said to me, I told him about it.

Q Did you ever talk to Kiernan before in your life?

A. Well, not much.

Q At any time before in your life? A. Well, very little

Q Well, will you tell me something that he said to you on any other occasion?

A. Well, he said nothing to me.

Q Well what did he say? Nothing at all?

A. Well, only how things is.

Q Anything about this case whatever? A. No, sir.

Q You can't remember any other conversation that he ever had with you?

A. Not exactly. I didn't have any conversation with him at all.

Q No other conversation whatever?

A. No, sir.

Q On this occasion a man that you never before had a conversation with came up to you and told you that he knew nothing about the Donnelly case, and you want us to believe that?

A. Well, that is as far as I know.

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

By Mr. House:

Q Now, you were interrogated by the District Attorney and asked about yesterday, if you were not with Patrick Donnelly, and Cahill and Rafferty, about 9 o'clock, and you say you think it was a little after?

A. Yes, sir.

Q And you went right out and got on an Eighth avenue car?

A. Yes, sir.

Q And you rode right down town?

A. Yes, sir; and went right over to your office.

Q And Mr. Haight rode down with you; didn't he?

A. Yes, sir.

W A L T E R H A I G H T, 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 Where do you live, Mr. Haight?

A. 552 Broome street.

Q What is your business at present? A. Clerk.

Q For whom? A. For the -- for Mr. Anderson, 169

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Eighth avenue.

Q You know James Donnelly, the defendant?

A. I do, sir.

Q Do you know the premises at 28th street and Eighth avenue, the liquor store where this shooting occurred?

A. Yes, sir.

Q Did you know Charles Madden, in his life time?

A. I did.

Q Now, did you meet Mr. Patrick Donnelly, Mr. Cahill, and Mr. Rafferty yesterday morning, around about 9 o'clock?

A. Yes, sir.

Q And you took an Eighth avenue horse car? A. Yes, sir.

Q And where did you get off?

A. We went to your office.

Q You went to my office? A. Yes, sir.

Q That was yesterday morning? A. Yes, sir.

Q Do you remember seeing this young gentleman here (Mr. House indicates his clerk)?

A. Yes, sir; I do, sir.

Q And you made a statement; did you not?

A. Yes, sir.

Q And did he take it down in writing? A. He did.

Q Now, Mr. Haight, about three days before this shooting, were

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you coming through 28th street, from Seventh avenue going to Eighth avenue? 36

A. I was, sir.

Q About what time of day was it? A. Well, probably it would be between 8 and 9 o'clock in the evening, as I should judge.

Q Is there a stable in that street?

A. Yes, sir; two or three.

Q Well, did you see Madden that night?

A. Yes, sir.

Q Where did you see him standing? A. I saw him standing opposite the stable door in which he worked.

Q Was there any one else with him?

A. Yes, sir; another young man.

Q Who was it?

By the Court:

Q Do you know his name? A. No, sir; I didn't know the other party. He was a stranger.

By Mr. House:

Q Now, as you passed, did you see anything in Madden's hands?

A. As I walked down the street, I saw the other party with a pistol in his hands.

By the Court:

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Q The other party, whose name you don't know?

A. Yes, sir; and just as I was in the act of passing, he handed it to Madden, and Madden put it in his hip pocket, in his right hand hip pocket, here (indicating).

By Mr. House:

Q In his right hand hip pocket? A. Yes, sir.

Q And that was three or four days before the shooting?

A. Yes, sir.

Cross Examination.

By Mr. McIntyre:

Q You said you were a clerk? A. Yes, sir.

Q How? A. Yes, sir.

Q Who are you a clerk for? A. I am going to work for Mr. Anderson.

Q Who is he? A. 169 Eighth avenue.

Q What? A. 169.

Q Well, 169 what? A. Eighth avenue.

Q Now, what sort of a business does he carry on, Mr. Anderson?

A. He is a tea merchant there.

Q Has he a store there? A. Yes, sir.

Q Well, do you act as a clerk there? A. Well, I am

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going to.

Q When? A. Directly I get through with this business, sir, I hope.

Q Well, have you been a clerk for him? A. Yes, sir.

Q For how long? A. I worked for him three or four or five years.

Q Well, who else has he employed there, besides you?

A. Well, he has five or six persons.

Q Now, how long is it since you have worked there as a clerk?

A. Four or five years.

Q No. Since you worked there as a clerk?

By the Court:

Q Are you working there now? A. No, sir; not at present.

Q Well, when did you work last for him?

A. About six years ago; five or six years ago.

Q Well, you have not worked for Anderson during that five or six years?

A. No, sir; I have not.

By Mr. McIntyre:

Q Well, now, you stated to me and to Mr. House, and I believe that the Jury understood you to say that you were a clerk for Mr. Anderson?

A. Oh, no; not at present.

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Q Well, I want to know if you didn't say that, in your direct -
examination? A. Well, then, it is a mistake.

Q That is a mistake?

A. Yes, sir, that's a mistake. I am going there, when
I get through here.

Q Well, you are going to go to work for Mr. Anderson, when you
get through the trial? A. Yes, sir.

Q And you have not worked for him for six years?

A. No, sir.

Q Now, has Mr. Anderson employed you? You swear that he has
employed you to go to work at the termination of this trial?

A. No, sir, he hasn't.

Q No? A. No; I won't say that.

Q Well, you said, a moment ago, that you were going to work
for Mr. Anderson at the conclusion of this trial?

A. Well, I presume that I am going to do it.

Q Well, then, it is a mere presumption on your part?

A. Yes, sir; a mere presumption.

Q Is it not a mere presumption about this pistol that you
saw in some body's hands?

A. No, sir, it is not.

Q Well, what have you been doing for five or six years?

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A. Working in the ice business.

Q For whom? A. Mr. Winch.

Q Where is that? A. 521 West 21st.

Q How long did you work for Winch? A. Last Summer.

Q Only during the summer?

A. In the season; that's all, sir.

Q And that was only last summer? A. Yes, sir.

Q Now, I want to get something about your history, from the time you left Anderson's place down to the time that you saw this man with the pistol in his hand. Now, commence with the time that you left Anderson?

A. Well, I could give you a pretty good idea of who I worked for, sir. I will have to just collect my thoughts a little bit.

Q No, don't disconnect them?

A. I didn't say disconnect them. Well, I have been working in the furniture business, with D. O. Farrell.

Q Where did you work for him? A. I can't give you the date.

Q And how long? A. Three or four months, at 31st street and Eighth avenue.

Q And why did you leave Mr. Farrell?

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A. Well, I neglected my duties.

Q And he discharged you?

A. No, sir.

Q Well, how did you neglect your duties?

A. Well, I failed to show up, one morning, and he put another man in my place.

Q Well, then, you were discharged?

A. Well, you can put

it that way, sir, if you like.

Q Well, he didn't run around for you, to come back; did he?

A. No, sir; he didn't.

Q And you worked for Mr. Farrell for a couple of months?

A. Yes, sir.

Q Now, give me another man's name?

A. Well, it is longer than that; and I worked for Mr. J. J. Coogan, on the Bowery.

Q Well, when did you work for him?

A. Well, that was

previous to Farrell's. That was some time ago, sir.

By the Court:

Q Well, how long ago did you work for Mr. Coogan?

A. Well, about four years ago, sir.

Q And how long ago is it since you worked for Farrell?

A. Well, I guess it is about three years ago.

Q About three years ago?

A. Yes, sir.

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By Mr. McIntyre:

Q And how long did you work for Coogan?

A. I guess I was with him three or four months.

Q You guess you were with him three or four months?

A. Yes, sir.

Q And did he discharge you?

A. No, he did not, sir.

Q Well, why did you leave him?

A. Because I didn't

show up.

Q You didn't show up?

A. No, sir. I claimed

to be sick.

Q And he put another man in your place?

A. No, sir, he didn't. In fact, the business was slow and I claimed sickness, and he told me I could stay away.

Q Well, you worked for Coogan and you didn't show up, and business was rather slow, and he told you that you needn't come any more?

A. Yes, sir.

Q And then he discharged you?

A. Well, if you like

to put it that way, you can.

Q Well, I will put it that way?

A. All right.

Q Now, please give me the name of some other person that you worked for?

A. Well, I worked for Mr. Glasgow, the summer before.

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Q When did you work for him?

A. The previous summer.

By the Court:

Q How many years ago is that?
ago this summer.

A. That is two years

By Mr. McIntyre:

Q Now, what is his name?

A. Glasgow.

Q And how long did you work for Glasgow?

A. I worked for them during the summer season.

Q What was the character of the business carried on?

A. Ice business.

Q And that is the man that Collins worked for?

A. The same party.

Q And how long did you work for him?

A. During the season.

Q And next where did you work?
of work six or seven months.

A. And then I was out

Q Now, give me the name of some one else that you worked for?

A. Nothing that would be worth any mention, that I can
recollect. I worked for odd people, doing odd jobs for
them. That was all, sir.

Q Well, the only three people that you can call to mind now,

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the only four, that you have worked for in a period of six years, are Glasgow, D. O. Farrell, Coogan and Winch?

A. Yes, sir; I guess that's about all.

Q And you worked for Coogan three months?

A. Yes, sir.

Q For Farrell about two months? A. Yes, sir.

Q And Glasgow for the season, four or five months?

A. Yes, sir.

Q And Winch? A. About four or five months.

Q So that, for about six years, you have worked about thirteen months in all?

A. Yes, sir, you may say that, about that.

Q Now, what have been your means of support?

A. Well, I have friends in the old country, sir, that send me a remittance once in a while.

Q You have friends in the old country that send you a remittance once in a while?

A. Yes, sir.

Q What part of the old country? A. They are in England, sir.

Q Well, during the time that you haven't been doing anything, during the past five or six years, you were an habitual frequenter of Donnelly's place, on 28th street and Eighth avenue; weren't you?

A. Yes, sir; I may say that I

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was.

Q And you used to go in there and get a drink occasionally?

A. Yes, sir.

Q And you became familiar with the defendant at the bar here; didn't you?

A. No more familiar than anybody else.

Q Well, you were friendly with him, and familiar with him?

A. Yes, sir; as a bartender and a customer.

Q And you could go in there, from time to time, and, as they call it, in the common parlance of the day, and hang up a drink; couldn't you?

A. Well, I don't know: I have done such a thing.

Q And this man, at the bar gave you such credit, from time to time?

A. Well, seldom, sir. I couldn't get the second one, unless I paid for the first.

Q Well, did you pay for the drinks out of the remittances that you got from the other side?

A. Yes, sir.

Q Well, how frequently are those remittances made, and what do they amount to?

By the Court:

Q When did you get the last remittance?

A. Well, I have had no necessity to send for one, sir.

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Q (Question repeated)? A. About nine months ago, sir.

Q And where did it come from? A. From my father,
John Haight, sir.

Q From what part of England? A. From Leicester.

By Mr. McIntyre:

Q Well, for the last four or five months can you tell me any
legitimate work that you have been doing?

A. No, sir, I can't; for I belong to the great army of
the unemployed.

Q You can't, because you belong to the great army of the un-
employed? A. Yes, sir.

Q Oh, you have been hangig around Donnelly's saloon right
along; haven't you? A. No, sir.

Q Well, for nine months you have not had a remittance from
the other side? A. About that time, sir.

Q And you haven't had any money upon which to exist?

A. Well, yes. I have done odd jobs occassionally.

Q Well, now, haven't you got money from Donnelly?

A. No, sir.

Q Haven't you been promised remuneration to come here and tes-
tify? A. No, sir; emphatically, no, sir; I
have not.

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Q And do you mean to say that you have not been promised compensation to come here and give the testimony that you have given to-day? A. No, sir, I have not.

Q Who has paid your expenses during the last four or five months? A. No, one, sir.

Q How have you existed? A. I have existed the best way I could. I have had odd jobs for people, and I have made a little money.

Q Well, where do you live now? A. 552 Broome street.

Q In the City of New York? A. Yes, sir.

Q How long have you resided there?

A. Well, about -- probably, ten months.

Q Oh, tell me; you know. A. I can't tell you exactly.

Q You can't? A. No, sir, not to swear to it. I simply sleep there.

Q Have you a room there? A. Yes, sir.

Q Where do you go, when you get up in the morning? You have a room there? How much do you pay for it?

A. Sometimes I pay by the month, and sometimes by the week.

Q How much do you pay, when you do pay at all?

A. \$1.25 a week, I am supposed to pay for it.

Q Where do you get your meals? A. In a restaurant.

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Q And where do you get the money to pay for them?

A. Well, if I earn any-----

By the Court:

Q Where do you get the money to pay for your meals?

A. Well, if I get an odd job, I pay for them; and, if not, I very often go without my meals. That's what I have to do, and I have done it pretty often, too, and I can't do anything else.

By Mr. McIntyre:

Q Now, this man, Mr. Anderson, that you speak of, have you talked with Mr. Anderson recently, who keeps the store on Eighth avenue?

A. No, sir.

By the Court:

Q When did you see Anderson last?

By Mr. McIntyre:

Q When did you see him last?

By the Court:

Q To speak to?

A. Well, I haven't seen Mr. Anderson personally, but I have seen his manager.

Q I asked you when you saw Anderson last?

A. The last time?

Q Yes, the last time? A. To speak to him, do you mean, to

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address him?

Q Yes, to speak to him?

A. Well, I haven't seen

him for a long time.

Q Well, how long?

A. Well, probably it is two or

three years ago since I spoke to him.

Q Now, what is the name of the other man?

A. That I was speaking to?

Q Yes?

A. Arthur Bennett.

By Mr. McIntyre:

Q When did you see Bennett last?

A. It was -- let me

see -- I believe it was Monday morning, sir.

Q Monday morning of this week?

A. Yes, sir, of this week.

Q Now, is Bennett the manager up there?

A. Yes, sir.

Q Are you swearing now positively that there was an inducement held out to you to go to work in that place on Monday morning last?

A. Yes, sir.

Q It is no presumption now? You swear to it positively?

(Objected to)

(Objection sustained)

Q Now, have you seen anybody in Anderson's place since Monday morning?

A. No, sir.

Q You have not?

A. No, sir.

Q How long did you know Madden?

A. About 12 months.

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Q How much? A. 12 months.

Q What sort of a looking man was Madden?

A. Well, I would call him a kind of tall -- kind of tallish, raw-boned sort of man.

Q A kind of tallish, raw-boned man?

A. Yes, sir; that is the kind of man I would call him.

Q Well, what is his height? A. Well, taller than myself.

Q Well, you stand up? A. Well, about five feet ten, or six feet.

Q Well, how many feet do you measure?

A. About five feet seven or seven and a half.

Q About five feet seven or seven and a half? A. Yes, sir.

Q And you think he was about six feet?

A. Yes, sir. Well, he was a pretty tall man.

Q Now, I want to get some idea of his height from you.

Mr. House: Well, he has told you.

Mr. McIntyre: Now, don't interrupt me. I have this witness in custody.

Mr. House: Well, if your Honor please, I object.

The Court: Just put the question, and do not answer until I rule.

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By Mr McIntyre:

Q I want your estimate of his height?

Mr. House: Objected to, as already asked
and answered.

By the Court:

Q Now, can you state once more what was Madden's height? Give
us your best idea of what it was?

A. Well, I should say it was five feet ten.

By Mr. McIntyre:

Q And about his weight; can you state what his weight was?

A. Well, that I couldn't say.

Q How? A. Well, he was a big raw-boned fellow.
They are very deceptive sometimes. I never saw him weighed.

Q Yes. Now, just think once more and state whether you can
state now whether he had any hair on his face?

A. I think he had a clear face.

Q Now, which is it? A. Well, yes; he had a clear
face.

Q He had a clear face? A. Yes, sir. I don't know
whether he had a little bit of down for a mustache or not.

Q A little down for a mustache? A. No; he shaved clean,
I believe.

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Q Well, now, you want to change it? A. Eh?

Q Do you want to change it now?

A. No, sir; he had a clear face; he was clean shaven; that's what you would term it.

Q He had a clear face, he was clean shaven, and that is what you would term it? A. Yes, sir.

Q Now, what was the color of his hair?

A. I would term it light complexion.

Q I am speaking of his hair? A. Light, sir.

Q How light? A. Well, lighter than -- between the blond and the brown, I would say.

Q Between a blond and a brown? A. Yes, sir; I would call it a light -- what we would properly term it, light hair.

Q Yes; light in color? A. Yes, sir.

Q Of course, it was not black? A. No, sir.

Q You are sure it was not black? A. I wouldn't call it black, no, sir; certainly not.

Q Now, are you sure about it? A. Certainly I am. It was not black.

Q Well, was it red? A. No, sir.

Q Will you swear that it was not red; how?

A. It was not red, sir.

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Q What? A. No, sir, it was not.

Q Well, you would know a red head, if you saw it; wouldn't you? A. Well, I think so.

Q Don't you know that you would?

A. Well, some people would call red what I would call fair.

Q Some people would call red what you would call fair?

A. Yes, sir. I would term him a fair complexioned man.

Q About five feet ten, fair complexion, clean shaven; and you can't tell us his weight, you can't estimate it?

A. Well, as far as I could estimate it, it would be about 170 pounds.

Q About 170 pounds? A. Yes, sir.

Q Well, now, when you -- where did you say you saw him on this night in question? A. Well, when the pistol--

Q Yes, this is the pistol episode?

A. It was on 28th street.

Q What part of the street? A. Right opposite the stable where he worked. He was standing on the side-walk.

Q Well, where? A. Well, it was about 150 yards East from Eighth avenue, on the north side of the street.

Q On the north side of the way? A. Yes, sir; and on --

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the east side of Fifth avenue.

Q Between 7th and 8th; is that it?

A. Yes, sir; between 7th and 8th.

Q Now, how was he dressed that night?

A. He was standing in his shirt sleeves.

Q In his shirt sleeves?

A. He had a vest on; he had

no coat on.

Q Standing in his shirt sleeves, with his vest on? Had he a hat on?

A. Yes, sir; he had a hat on.

Q And you saw him there, in company with another man?

A. Yes, sir.

By the Court:

Q Now, will you tell us, before we go any further, what day this was?

A. This was either Tuesday or Wednesday.

Q It was either Tuesday or Wednesday?

A. Yes, sir.

By Mr. McIntyre:

Q In what month?

A. In May.

Q Eh?

A. It was in May.

By the Court:

Q What part of May?

A. Well, the latter part of

May, about the last week. It was previous to the occurrence.

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By Mr. McIntyre:

Q How? A. This shooting affair occurred at the last of the week, I know. It was before that.

Q Now, do you know when the shooting occurred?

A. Yes, sir.

Q When? A. It occurred on the 28th of May, sir.

Q It occurred on the 28th of May? A. Yes, sir.

Q Well, how do you know it was the 28th of May?

A. Well, I wasn't there when it was done.

Q (Question repeated)? A. Well, I know by the calendar.

Q Well, did you look it up this morning? A. No, sir.

Q Well, who told you it was the 28th of May?

A. I know it occurred on Sunday, and that was the 28th, sir.

Q Now, who told you that? A. I don't know.

Q Well, what made that impression on your mind, so that you can carry it from that time to this, that the shooting occurred on May 28th?

A. Well, if you really want to know, I will tell you.

Q I do. I really want to know.

A. Well, I read it in the newspapers, this morning.

Q Well, now, is that all you know about the case, what you

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read in the newspapers, this morning?

A. No, sir.

Q Now, how do you know that it was three or four days before the shooting that you saw Madden?

A. Well, because I passed the remark to Donnelly, in the store.

Q When? A. On the very night that I saw this man with the weapon in his hand.

Q You told the defendant at the bar that you saw Madden with the weapon in his hand? A. Yes, sir.

Q How long did you know Madden, about twelve months?

A. Yes, sir, about twelve months.

Q Well, had you met him in the saloon?

A. Yes, sir.

Q Well, had you ever heard of any trouble between Madden and Donnelly? A. Yes, sir.

Q Well, why did you go and tell Donnelly?

A. Because I knew there was trouble between them, and I heard Madden threaten to do him up and finish him.

Q Whom did you hear that threat from? A. From Madden.

Q When did you hear him make that threat?

A. Oh, that was six months previous.

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Q You heard him say that he would do Donnelly up?

A. Yes, sir.

Q Did you tell Donnelly that? A. Oh, he was in
the store at the time.

Q And you were in the store at the time, too?

A. Yes, sir.

Q And you didn't say anything about that on your direct-examination to-day? A. No, sir.

Q No. Mr. House didn't ask you that question?

A. No, sir.

Q And you volunteer the statement now?

A. Well, you asked me if I heard of any trouble, between Donnelly and Madden, and I have to give it to you in that way, to explain the matter.

Q Now, six months before the killing of Madden, you want to say that you heard Madden say, in Donnelly's store, that he would do this defendant up?

A. Yes, sir.

Q You want that to go on the record, too?

A. Yes, sir.

Q Now did you ever see Madden after that?

A. Yes, sir, I seen him in the store; and I have known

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Donnelly to order him to get out of the store; that he didn't want him in there.

Q And you have seen Donnelly order him out?

A. I have heard him order him out.

Q And you didn't say anything about that in your direct-examination; did you? A. I was not asked that question.

Q Did you tell Mr. House that, when you were communicating to him the facts of the case?

A. No, sir; I told him that I had seen altercations between them, and that was all. He didn't ask for particulars.

Q Well, did you tell Mr. House, in Mr. House's office, that, six months before, you heard Madden make a threat?

A. Yes, sir; and I think he will find it on the notes of my statement.

Q And you did tell Mr. House that, six months before, a threat was made, and on several occasions you saw Donnelly order Madden out of the place?

A. Well, if you are speaking directly, I didn't see Mr. House at all; I saw his representative.

Q Well, his representative then?

A. Yes, sir.

Q And you told Mr. House's representative all that?

A. Yes, sir; and he abbreviated them and put them all on paper.

Q Yes. Now, as soon as you passed through 28th street that night and saw what you have related here, namely as to the pistol, you went right in to Donnelly and told him; did you?

A. Yes, sir.

Q And what did Donnelly say to you?

A. He said -- well, will you allow me to use the remark that he made?

Q Yes, why, of course.

A. Well, I went in and ordered a glass of beer, and I said to Donnelly, "Jimmy, you had better look out. I saw the fellow that you had trouble with, and he has got his pop-gun," and he laughed, and he says, "Oh, I guess not; I guess there will be no further trouble between us."

Q No. He was not at all afraid when you told him that?

A. Well, he didn't appear to me to be so.

Q Well, he had no fear at all, from his actions and apparent conduct?

A. Not at that time.

Q Well, you can answer me?
ing.

A. No, sir, not to my thinking.

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Q And when you told him that, he did not go to the drawer and take out a revolver and put it in his pocket, or anything of that sort?

A. No, sir.

Q Well, how long did you remain in the store that night?

A. About an hour.

Q And did Madden come in that night?

A. Not while I was there.

Q Did you ever hear that he went in at all that night?

A. No, sir.

Q Now, the man that Madden was with, that had the pistol, do you know who he was?

A. No, sir.

Q Did you ever see him before?

A. No, sir.

Q Did you ever try to find out who he was?

A. No, sir; I didn't; I had no reason to do so.

Q No reason to do so?

A. No, sir.

Q Well, you stated, a minute ago, that you knew that there was bad blood between the two men, and you saw a revolver in Madden's hands, and you never went up to ascertain who gave the revolver to him?

A. No, sir. I didn't think it would come to this, this affair.

Q Well, you didn't think it was of any importance, to see a

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revolver passed from one man to another?

A. No, sir; I didn't think it would amount to anything.

Q Well, you heard him say, six months before, that he would do him up?

A. Yes, sir.

Q And you told Donnelly that you saw a pop-gun in his enemy's hands?

A. Well, I told him in a kind of jocular manner. I didn't think for a moment that anything would ever come out of it -- just the same as I might tell you. I never dreamt for a moment that anything would occur.

Q Now, just about what time of day was it?

A. It was in the evening, sir.

Q How late in the evening?

A. About 8 o'clock.

Q Well, it was dark?

A. Well, it was getting dusky.

Q Getting dusky, about 8 o'clock, three or four days before the 28th of May?

A. Well, I should call it so.

Q Well, you say it was getting dusky, about 8 o'clock at night, on or about the 28th day of May?

A. Yes, sir.

Q Were they standing in the stable door?

A. No, sir; on the side-walk.

Q How far were you from them? A. I was coming down the street. I was about ten paces away from him.

Q You were coming down the street, and you were about ten paces away from him? A. Yes, sir.

Q And how were they standing; facing you?

A. Well, one was standing with his back to the stable door.

Q Who was standing with his back to the stable door?

A. This friend of Madden's was standing with his back, and Madden was standing with his face towards Seventh avenue. They were forming what I would call a right angle between the two of them, and I was in this direction (illustrating).

Q Yes. And, at ten paces away, you saw him take a revolver out of his pocket?

A. No, sir; I didn't see him take it out of his pocket.

THE COURT: No; he said that he saw him hand the revolver to Madden, and he put it in his pocket.

MR. McINTYRE: Yes, sir.

By Mr. McIntyre:

Q You saw the other man hand Madden a revolver?

A. Yes, sir.

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- Q You say it was a revolver? A. Yes, sir.
- Q Are you sure? A. Well, as near as I could judge, from the appearance of it.
- Q Well, how did it look? A. Well, like that one (indicating the weapon on the district Attorney's table).
- Q How large? A. About similar to that one.
- Q How? A. I guess so.
- Q Well, what pocket did the man take it out of?
- A. Well, the other party had it in his hand and gave it to Madden, and he put it in his hip pocket.
- Q And, as you came up, the other party had the revolver in his hand? A. Yes, sir.
- Q And gave it to Madden?
- A. Yes, sir; and Madden put it in his pocket.
- Q Did he have one hand or both hands on it?
- A. Only one, as I recollect.
- Q And Madden put it in his hip pocket?
- A. Yes, sir.
- Q Did Madden say anything to you? A. No, sir.
- Q Didn't speak to you at all? A. No, sir.
- Q What? A. No, sir.
- Q Didn't salute you or recognize you at all?

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A. No, sir.

Q Why, you knew him for twelve months?

A. Yes, sir.

Q And you passed a man that you knew for twelve months, and didn't speak to him?

A. Well, I know a good many men-----

Q I say, you knew him for twelve months? A. Yes, sir.

Q And drank with him? A. No, sir; I knew him from coming into the store.

Q And you never said a word to him, as you were passing?

A. No, sir.

Q And you never stopped and asked him what he was doing with the revolver?

A. No, sir, I didn't. I passed on.

Q Passed right on? A. Well, I never said anything to Madden at all.

Q Just as if that revolver didn't concern you at all?

A. It didn't concern me.

Q Well, what did you mean, a minute ago, when you said that you went into Donnelly's place, and told him that you saw a pop-gun in his enemy's hands?

A. Well, I meant by that, as I told you before -- I said

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to Donnelly, in a jocular manner, "You had better look out. That friend of yours has a pop-gun."

Q In a jocular manner?

A. Yes, sir. I didn't mean anything by the remark. I didn't think any notice would be taken of it whatever. Nothing was meant by it, on my part.

Q No. Now, have you talked about this case to the Donnellys, since the imprisonment of this defendant?

A. No, sir.

Q Never said a word?

A. No, sir.

Q Never said a word?

A. Well, all that I said was, Mr. Donnelly asked me did I know anything pertaining to the case, and I told him, and he said, "Well, I wish you would go down to his lawyer's, and tell him what you know."

Q When did Donnelly tell you that?

A. About a week ago, I guess.

Q A week ago?

A. Yes, sir.

Q Where did he tell you?

A. On 8th avenue, sir.

Q Well, where?

A. On the corner of 28th street.

Q On the corner of 28th street?

A. Yes, sir.

Q And 8th avenue?

A. Yes, sir.

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Q What time of day was it?
ing, I guess.

A. It was in the morn-

Q How early?

A. About 11 o'clock.

Q About 11 o'clock?

A. Yes, sir.

Q And what were you doing up there then?

A. Well, I was taking a walk around, seeing whether I could get anything to do, I suppose.

Q Well, you live down in Broome street?

A. Yes, sir.

Q Well, did you ever walk around Broome street, to see if you could get anything to do?

A. Yes, sir.

Q And did you ever walk around the docks, on the west side?

A. Yes, sir; and on the east side, too.

Q Well, which Donnelly did you speak to?

A. Mr. Pat Donnelly.

Q Mr. Patrick Donnelly?

A. Yes, sir.

Q And he said to you, "Can you tell me anything that will help James Donnelly?"

A. He asked me did I know anything about the case, and he says, "You ought to, being that you have been in and out of the saloon for a number of years, and you knew everybody," and I said -- I told him I didn't know very much, but lit-

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tle, and he said, "What you do know, you ought to go down and tell."

Q And he said, "You ought to know something about it. You have been in and around the saloon for a number of years?"

A. Yes, sr; about that.

Q And then you said that you would go down to the lawyer's office?

A. Yes, sir.

BY THE COURT:

Q Now, can you tell me what kind of a day this was when you met those two people or saw those two people in 28th street near Eighth avenue?

A. What do you mean? As regards the weather, sir?

Q Yes? A. Well, I believe it was a fair evening.

Q Well, was it a wet night? A. No, sir.

Q Well, was it a fine night?

A. No, sir; a kind of hazy night. There was a kind of cloudiness in the atmosphere. It wasn't raining at the time.

Q You are sure about that? A. Yes, sir; because the man was standing in his shirt sleeves, and I was carrying my coat on my arm at the time. I know that.

Q Well, what took you up there at the time?

A. Well, I was taking a walk, as I generally did every night about that time.

Q What were you doing up there? Must repeat that.

A. I was walking around; I was going to this saloon.

Q What saloon? A. To 28th street.

Q Well, just mention the name of the saloon?

A. Well, 28th street, where the defendant was the bartender.

Q You were going there? A. Yes, sir.

Q Then you just happened to pass by?

A. No; I made it a regular calling place; I was there pretty near-----

Q No; I am talking of where you met those two men, and where you were within ten paces of them, you say?

A. Yes, sir; I was passing through the street.

Q Now, I want to know what took you up there at that hour if the night, if you can recollect?

A. Well, it was a practise of mine to call there every evening.

Q Well, you have no recollection then of anything calling you up in that neighborhood? A. No, sir; no more

than to have a glass of beer.

Q Now, who else was there when you saw thesetwo men and the pistol passed from one to the other?

A. No one else.

Q No one except you and those two men?

A. No, sir; those two men were standing in the street, when I passed by.

Q Well, on the street, or up against the stable?

A. On the side-walk, sir.

Q By the stable?

A. Yes, sir.

Q And there was no one else that you could see, except those two men and yourself?

A. No, sir.

Q Now, what kind of a looking man was the other man?

A. A short, stockily built man.

Q A young fellow?

A. Yes, sir; a youngish

man.

Q You don't know his name?

A. No, sir.

Q And you never saw him before?

A. No, sir, I never saw him before; but he looked to me to be a truckman.

Q He looked like a truckman?

A. Yes, sir; dressed

like a truckman.

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THE COURT: Are you through with this witness?

MR. McINTYRE: Yes, sir.

MR. HOUSE: Yes, sir.

THE COURT: Gentlemen, I am, ex-officio, a member of a great many Boards, and I find that there is to be a meeting to-day of the Sinking Fund Commissioners, and I must attend it, at the Mayor's office; and you will have, therefore, an opportunity to lunch, from 1 to 2 o'clock, and I will have no opportunity, except to attend to some public business. Please bear in mind the Statutory admonition, to which I have already called your attention.

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Donnelly Dep

AFTERNOON SESSION.

Ked

JAMES DONNELLY, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOUSE: Q Mr. Donnelly, take it easy and speak up loud so that this last gentleman can hear and then we all can. Your full name is what?

A James Donnelly.

Q How old are you Mr. Donnelly?

A Thirty-three years of age.

Q Where were you born?

A County of Tyrone, Ireland.

Q When did you come to the United States?

A In 1878--July 27.

Q On or about July 27th, 1878?

A Yes, sir.

Q When you came to this country, where did you land, Mr. Donnelly?

A I landed at 341 Eighth Avenue.

Q I mean did you come through Castle Garden?

A Yes--I didn't--I got off--

BY THE COURT: Q You landed in New York?

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A Yes, sir. K01

THE COURT: That will do.

BY MR. HOUSE: Q You landed in New York City?

A Yes, sir.

Q Immediately after you landed in New York City where did you go?

A I went to my cousin's, Felix Donnelly.

Q Where was his residence?

A Corner of 27th Street and Eighth Avenue.

Q What business was he engaged in at that time?

A Liquor business.

Q Did you go to work for him then?

A Yes, sir.

Q At what store did you go to work for him?

A 27th Street and Eighth Avenue.

Q How long did you remain working there for him at that time at that store?

A I worked there until the year 1880.

Q And then where did you go?

A I went to work in the store 26th Street and Eighth Avenue.

Q One of his stores?

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A One of his stores also.

Q How long did you work there?

A I worked there until 1891.

Q And then did you leave?

A I left then and I went to work for my brother who had started in business.

Q Where was his place of business?

A Corner of 28th Street and Ninth Avenue.

Q How long did you work for your brother?

A Until 1885.

Q And then when you left him in 1885 where did you go?

A I started in business for myself.

Q Where?

A 44th Street and Ninth Avenue.

Q How long did you continue in business for yourself?

A I continued in business for myself going on two years.

Q And then what did you do?

A I hadn't very good health then and I sold out to a man named Fitzwilliams and I took a trip across to the old country.

Q How long did you stay in the old country on that trip?

A I stayed there about, I presume, three months and then

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came back.

Q And then you returned to New York again?

A Yes, sir.

Q Do you remember what season of the year it was that you returned?

A I returned in the latter part of September, 1887.

Q Upon your return did you go to work for anyone?

A I went to work in March, 1888 for a man named Barney Campbell.

Q How long did you work for him ?

A Five or six months.

Q Did you leave his place?

A Yes, I was laid up with rheumatism.

Q After you recovered from your attack of rheumatism did you go to work for anyone?

A After I got recovered I went to work for my cousin at 33rd. Street and Eighth Avenue.

Q Felix Donnelly?

A Yes, sir.

Q That is the same man who owns the saloon at 28th Street and Eighth Avenue?

A Yes, sir.

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Q How long did you work for him at the 33rd. Street saloon? *it's*

A I worked for him until some time in July, 1891.

Q And then where did you go?

A He sent me down to the other store.

Q That is at the corner of 28th Street and Eighth Avenue?

A Yes, sir.

Q Did you remain in that store as a bartender down to the Sunday afternoon of May 28th, 1893?

A Yes, sir.

Q You were about seventeen years of age when you came to this country, were you not?

A Yes, sir.

Q Now, before you left Ireland and came to this country, had you ever been arrested or charged there with the commission of any crime?

A No, sir.

Q After you left Ireland and came to this country have you ever been convicted of a crime?

A Never, sir.

Q Now, from the time you first came to the City of New York down to the 28th day of May, 1893, Mr. Donnelly,

had you ever been charged with the commission of any crime? 425

A Never, sir.

Q Have you at any time since you have been in the United States been convicted for the commission of any crime?

A I have not.

Q With the exception of your arrest for the shooting of Madden on the 28th day of May, 1893, have you ever been arrested for perpetrating physical violence upon the person of any one?

A I have not sir.

Q You knew Madden in his lifetime, did you not?

A Yes, sir.

Q About how long had you known Madden prior to the afternoon of the shooting?

A I had known him about eighteen months.

Q When did you first become acquainted with Madden?

A In the 28th Street store.

Q From his coming in there?

A Yes, sir.

Q From his coming in alone?

A Coming in with some other men.

Q Did you know where he was supposed to be working?

A Not first off. It was a long time before I found out.
I knew him by his coming in with the others.

Q What were usually your hours, Mr. Donnelly, in this saloon at 28th Street and Eighth Avenue?

A I would come on at 10 in the morning and work until 2 in the afternoon and then go off at 2 and come on at 7 and close at one o'clock.

Q When Madden would come in the saloon and when you would see him, would it be in the day time or in the evening?

A I saw him sometimes in the day time but most generally it would be at night.

Q Do you mean it was his habit to lounge on the corner at 28th Street?

A Generally.

Q With other people in the neighborhood?

A Yes, that corner and the 27th Street corner.

Q And the 27th Street corner?

A Yes, sir.

Q Now, Mr. Donnelly, as near and as best you can will

you describe Madden, his height, as you think, about his weight, and the color of his hair. Give us as fair a description of him as you can.

A I presume he was a man about five feet eleven.

Q Yes.

A He was a man who would weigh about one hundred and sixty pounds, a tall, large-boned man, not very fleshy and fair complexion and a clean face.

Q A clean face?

A Yes, sir.

Q Did you ever see him intoxicated about the saloon?

A I have.

Q During the two years that he from time to time came into the saloon and was about that neighborhood, you observed his conduct, did you?

A Yes, sir.

Q What was his general conduct as regards being a quarrelsome man or not?

A He was always for raising a disturbance when he got a drink.

Q He was always for raising a disturbance when he got a drink?

A Yes, sir.

Q Now, at any time have you refused to sell him a drink?

A Yes, sir.

Q And at any time have you requested him to go out and remain out of the saloon?

A Yes, sir.

Q Now, can you fix about the first time that you ever refused to sell Madden a drink and told him to keep out of the place?

A The latter part of March.

Q What year?

A 1893.

Q You know this colored man Johnson, do you not?

A Yes, sir.

Q Were you present in the saloon on the night that the difficulty occurred between Madden and Johnson?

A Yes, sir.

Q Now, at any time during that night did Johnson pass the umbrella that was the subject of discussion over the bar to you?

A No, sir.

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Q At any time on that night did you see the umbrella which was the subject of that discussion behind your bar?

A No, sir.

Q When the young man came in did you see him with an umbrella?

A I did not notice it.

BY THE COURT: Q What was the name of that young man?

A I do not know his name, your Honor.

BY MR. HOUSE: Q Were you present at the time of the difficulty between Madden and Tucker?

A Yes, the latter part of it.

Q At the time that Madden knocked Tucker down, as he has testified and as Butler as testified, down in the saloon, were you present?

A I was not present in the saloon at that time.

Q But you did know that there had been some trouble between Madden and Tucker?

A Yes, sir.

Q Now, do you know whether the trouble that occurred between Madden and Tucker was brought to the attention of Mr. Felix Donnelly, your employer?

A Yes, sir.

Q And in consequence of that, did Mr. Felix Donnelly give you any instructions?

A Yes, sir.

Q What were they?

A He instructed me not to sell him any more drink and ordered him to keep out of the place and for him to go and spend his money some place else, that he had done damage enough in the place by cutting up this colored man and he said that he didn't want to have him come there.

BY THE COURT: Q Did you communicate all that to Madden?

A Yes, sir.

BY MR. HOUSE: Q After you had first told Madden what you have just stated now do you recall whether for a time he remained away from the place?

A Yes, he remained away at that time for about two or three days.

Q Would that bring you down to about the fore part of April of last year?

A Yes, the beginning of April.

Q Now, do you recollect that at the beginning of April

Madden came into the saloon when you were behind the bar?

A Yes, sir.

Q Did you have any conversation with him?

A On what day?

Q The beginning of April, 1893.

A Yes, he came in and he asked for a drink. I refused him and I told him that my boss had told me that he could have no more drink, that I had got instructions to keep him out of the place. He said that my boss couldn't keep him out of the place if he wanted to come in it.

Q And then what happened?

A There was two of his friends waiting--when he saw that I wouldn't give him a drink he said he would pull me out from behind the bar and ^{with} that two friends that was with him got him to go out--to go out of the side door at that time.

Q Mr. Donnelly, you heard Kiernan and Davis when they were on the stand the other day, did you not?

A Yes, sir.

Q You heard them testify that about five or six weeks before the shooting, which would be some time in the

month of April, that they were coming down Eighth Avenue ^{4/2} when Madden crawled out from under the swinging doors?

A Yes, sir.

Q And that they went around to the side door and came in and saw you behind the bar with a pistol in your hand?

A I had not sir.

Q Did you hear them testify to that?

A Yes, sir.

Q And did you then hear them say on the stand here that you said to them that you would shoot the cock-eyed son of a bitch on sight?

A I did not.

Q Did you hear them say that?

A Yes, sir.

Q Now, Mr. Donnelly, upon the occasion mentioned by Kiernan and by Davis, did you state to them or either of them that you would shoot the cock-eyed son of a bitch on sight?

A I never did, sir.

Q Did you ever in your life make a threat against Madden to Kiernan or Davis or to anyone else?

A I did not sir.

Q Did you ever in your life make a threat to anybody that you would shoot the cock-eyed son of a bitch on sight?

A I did not.

Q Did you ever threaten in the presence of anybody to shoot Madden at any time?

A I have not.

Q Now, you heard Davis also testify that about a week after that occurrence, that he came into the saloon and in a conversation with you you said that you would shoot Madden the next time you saw him?

A Yes, I heard him say that.

Q And that he said he would not do that "Because you will only get yourself in trouble?"

THE COURT: "It would be a very foolish thing for you to do."

Q Yes, and that you then replied, "Well, I would be justified in doing it?"

A I heard him say that.

Q Did you ever have a conversation of that kind with Davis?

A I did not sir.

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Q Did you ever have a conversation with Davis where you used words in substance as he used in his testimony yesterday?

A I have not sir.

Q You say that at no time, in no place and in the presence of no persons did you ever threaten to commit violence against the person of Madden?

A I did not.

Q Now, Mr. Donnelly in your own way, I want you to tell us what did occur upon the day that Kiernan and Davis testified to when Madden first came into the saloon, and all about it.

THE COURT: You mean now the 28th day of May?

MR. HOUSE: I am referring to the day that Kiernan and Davis said they were going down the Avenue when Madden crawled out from under the swinging doors.

A That was about the 5th or 6th of April--about the 5th of April. I got to the store about four o'clock in the afternoon. The other bar-keeper went off. It was three hours earlier than I was accustomed to go on. I got to the store about four o'clock and I was behind the bar when Madden came in with two friends that came along

with him. 4/5

BY THE COURT: Q Did you know them?

A I did not know them--and he called for a drink. This was after I had refused him previous. That was the second visit after I had refused him and I told him he could have no drink and ordered him to leave the place. He says, "If you don't sell me a drink I will come in behind the bar and pull you from behind the bar and kick you all over the store"and used language so filthy that I am ashamed of it.

BY MR. HOUSE:

Q Go on and tell your story and leave the language for the District Attorney if he wants it.

A Then I came from behind the bar and his two friends ran out and catched him and pulled him and got him to go out of the store at that time.

BY THE COURT: Q Now you are testifying about the second visit?

A Yes, sir.

Q I understood you to say there were two visits on that day?

A Yes, sir.

Q You have already testified about his telling you to

come out from behind the bar. Was that on the first occasion or the second? K16

A No, it was previous, in March. This was in April.

BY MR. HOUSE: Q Go on.

A They got him out of the store then. That afternoon, between six and seven o'clock, he came back in alone and he came over to the bar and he struck it with his fist and said, "You are a son of a bitch if you don't sell me a drink and I will kick you all around the store." I says, "I told you before you couldn't have a drink." I said, "I want you to get out of here, I don't want to have any more trouble with you; you have done damage enough in this place." And he struck the bar again and he says, "You can't put me out." He says, "You come from behind the bar and put me out if you are a man." With that Kiernan and Charlie Davis came in the side door and Kiernan walked up to him and took him by the shoulder and he said, "Let me get hold of the son of a bitch and I will kill him." And then Kiernan went around to the door front, and says, "I don't want to be in a place where there is going to be any killing," and then Davis went out through the front door.

Q Where was Butler at that time?

A He was by the front door. Madden came in and made a rush to the front of the bar and picked up a large iron cuspidor that was in front of the bar. That was the first I seen him have the cuspidor. I reached under the counter where the pistol was left and got it and I says, "If you fire that at me or strike me with it you wont get out of this place--" He dropped the cuspidor and made off toward the door and he dropped on to the floor and made a dive on his knees through the folding doors. I laid down the pistol.

Q Did you point it at him?

A I didn't point it. I just held it in my hand. He turned around in the door-way and he says, "I will get you, you son of a bitch, no matter who is with you. I will do you but not the same as Johnson, but I will make a corpse of you." At the same time Davis came in the side door and walked over to the bar and Butler was talking to him in front of the door.

Q Now, did you see Madden again after that until the Sunday afternoon of the shooting?

A No, sir. I didn't see him until the Sunday when he

came in on the 28th. 48

Q Before this day that you have just spoken of had Madden ever said to you or in your presence that he would do you any act of violence?

A Yes, sir.

Q When do you recollect was the first time when he threatened to do you any act of physical violence?

A In the latter part of March, after the first time I refused to sell him a drink.

Q Who was present at that time?

A The first time?

Q When he said that?

A They were two of his own friends whom I did not know-- two friends of his own.

Q At what time was it and where was it that he said,

"Jim, I'll do you up," when Hay was present?

A That was a week previous to the shooting. That was about the 21st.

Q When Hay told us it was about some six months before when he heard of that threat, he was mistaken?

A No, that was long ahead of this. That was away back some time. He had trouble with a man and struck the man

and knocked his head through the panel of a door and I ⁴⁶⁹ grabbed him at that same time and I told him to keep out. After we had had that trouble he came around and apologized and he said he wouldn't do anything of that kind again. That was a long while ahead of this trouble.

Q Now, come down to the Sunday of the shooting. What time did you go into the saloon that day?

A I got to the store about a quarter to four o'clock.

Q And when you entered the saloon, who did you find there?

A There was none in there but the other bar-keeper and Paddy Collins.

Q Didn't you see O'Keefe and Ruch at that time?

A No, sir.

Q They say they were in the saloon when you went in.

A They were standing at the side door--the up-side entrance of the storm door.

Collins

Q When you entered the saloon whereabouts was ^A standing, if you recollect?

A Collins was standing away at the far part of the bar--the end of the bar.

Q Around at the turn?

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Q Yes, sir.

Q Near the Eighth Avenue entrance?

A Yes, sir.

Q Is that near where the cigar lighter was?

A Yes, it is between seven and eight feet away.

Q Do you know what Collins was doing at the time you came in.

THE COURT: He says standing at the bar.

A Leaning across the bar reading a paper.

Q Were there some papers on the bar in front of him?

A All the days papers.

Q Who was in charge of the saloon at the time you entered?

A Thomas McCabe.

Q When you went in where did McCabe go?

A He unfastened his apron and went into the closet in the rear part of the store.

Q What did you do?

A I took off my coat and went behind the bar, and my hat, and put them into the closet and I opened the drawer and I took my apron out of it and I was tying the apron around me when Ruch and O'Keefe came in through the side

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door and came over to the bar and had some drinks. What
it was I don't know.

Q Who served them?

A I served them.

Q Did you see Madden in the store at that time?

A No, sir. He was not in it yet.

Q That is, you had not seen him yet?

A No, sir.

Q Did you see Madden when he came into the store?

A I did not.

Q Whether Madden had been in the store before and gone
into the closet, as some of the witnesses have testified,
you don't know?

A I don't, sir.

Q When you entered that bar-room on that Sunday afternoon
the 28th of May, you did not know where Madden was at the
time?

A No, sir.

Q Now, when did you see Madden for the first time?

A I saw him about seven or eight minutes after those
two came in.

BY THE COURT: Q Which two?

A O'Keefe and Ruch.

BY MR. HOUSE: Q Where was he standing when you first saw him?

A He was coming from the rear part of the store.

Q Is there a side entrance to the rear part of the store?

A Yes, sir.

Q What were you doing at the time you saw Madden coming from the rear part of the store?

A I was putting some soft stuff in the ice box back of the bar.

Q When Madden came up to the bar?

A Yes, sir.

Q Where did he come from first?

A These two people were standing there and when I was putting my soft stuff in the ice box back of the bar I saw Madden coming from the rear of the store. Whether he came from the street or from the rear of the store, I could not say. He came walking up to the bar and asked me for a drink.

Q What did you say?

A I said, "Haven't I told you you can't have any drink."

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in here." I says, "I want you to get out of here. He says, "I want you to come around her and put me out." And he walked up to the cigar lighter--the cigar, he had it in his mouth, and he put fire to the cigar and he came back. He came back where I was standing about the centre of the bar, right near the ice box back of the bar. He says, "I won't leave this place unless I get that drink." I replied and I says, "Haven't I told you you couldn't get any drink here?" He says, "If you don't sell me a drink I will knock you down right where you stand." I says, "I want you to get out of here. You have damage enough already; have have cut a colored man here. You can't come in here." With that he says, "Dam you, I'll fix you, "and going for his hip pocket --

Q With which hand?

A His right hand.

Q Where was his left hand?

A In this form. (Indicating). Right opposite. That was the form in which he was standing, like that. (Indicating.)

Q When he said, "Dam you, I'll fix you, "and put his hand to his hip pocket, what did you do?

A He says, "Dam you, I'll fix you," and was going for his hip pocket, and as I had been threatened--

BY THE COURT: Q Never mind. Tell us what you did as soon as you saw him go for his hip pocket.

A Fearing my life of him, and as he had threatened he would kill me, on the impulse of the moment I grabbed for the pistol and taking it in my hand I snapped the trigger without taking any aim. He threw up his hand and said, "I am shot" and held his arm in this manner (indicating) and turned from the bar.

BY MR. HOUSE:

Q Now, Donnelly, at the time that Madden put his hand back to his right hip pocket and said, "Dam you, I'll fix you," did you fear that he was about to do some great bodily harm to you?

A Yes. I was afraid of my life.

Q Did you fear that at the time he intended inflicting upon you some great harm?

A I thought that was his intention.

Q Did you ~~fear~~ that at the time he put his hand back to his hip pocket that he intended to inflict some great injury upon you?

A I felt sure of it, yes..

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Q When you took the pistol in your hand, did you take any deliberate aim at him? 425

A No, sir.

Q Had you any intention when you fired to kill him?

A I did not.

Q Had you any desire or determination of killing him at that time?

A No, sir.

Q Did you ever contemplate in your life killing this man?

A I never did.

Q Had you ever formed in your life an intention to kill him?

A No, sir.

Q After he said, "I am shot," and went out, what then happened?

A In about a few minutes, five or seven, an officer came in and he went to arrest O'Keefe who was standing by the lowerside of the door and he told him to throw up his hands, and he asked him if it was he who done the shooting and he said no, and he asked Collins if he done the shooting and he said no, and he asked me if I done the shooting and I told him the shooting was done

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by me in self defense-- that I did the shooting in self defense.

Q What did the officer say then?

A He said, "I will have to put you under arrest."

Q Did he?

A Yes, sir.

Q Where were you taken?

A To the 27th Street Station House.

Q On your way to the Station House did you see Madden?

A Yes, sir.

Q Where was he?

A He was lying on the cellar door, between the side door and the corner.

Q Were there many people about?

A Quite a crowd of people.

Q Were there any other police officers present?

A There were no other officers.

Q What did O'Neill say to Madden when you were taken out of the saloon?

A He asked him was I the man that shot him.

Q What did Madden say?

A Madden said yes.

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Q Do you recollect going on your way to the Station House that you said anything to the police officer? Tm

A Yes, sir.

Q What did you say?

Objected to. Objection sustained.

Q To whom did that pistol belong, Mr. Donnelly?

A That pistol was in the store before I came there. I don't know who owned it.

Q You had been in that store how long before the shooting?

A It might have been there ten years.

Q No, I ask you how long you had been in the store before the shooting, that is, as a clerk or a bartender?

A I was there from July, 1891.

Q From July, 1891 to May 28th, 1893?

A Yes, sir.

Q And you found the pistol there when you came there?

A Yes, sir.

Q Now, where did you get the pistol from this Sunday afternoon when you fired the shot?

A It was in the drawer.

Q How many drawers are there back of that bar?

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A There are four. 428

Q The bar is on the north side of the saloon?

A Yes, sir.

BY THE COURT: Q Which drawer did you get the pistol out of?

A It was the drawer next to the ice box. There was one drawer between that and Eighth Avenue.

BY MR. HOUSE: Q (Exhibiting diagram of the saloon to the witness.) Here is the bar; there is the ice box; this is Eighth Avenue. There are three drawers. Which one of the drawers was it?

A There were three drawers. This is the drawer it was in.

BY THE COURT: Q You say it was this drawer here?

A There were two large drawers directly over the ice box.

Q There were only two drawers then?

A Yes, sir.

Q It was the second of those, the one next to the ice box?

A Yes, the drawer next to the ice box.

BY MR. HOUSE: Q You say there is only two drawers?

A There are three. 2429

THE COURT: I will mark the drawer that he points out as X, the one right next to the ice box.

Q Now, Mr. Donnelly, at the time you took that pistol out of the drawer and just before you fired, was the drawer closed or open?

A It was about half open. I was after taking my apron out of it.

Q When did you first open the drawer in which the pistol was that Sunday afternoon?

A I opened it for my apron after I came in.

Q And then you did not close it entirely after you took your apron out?

A I was tying the apron around me at the time Ruch and O'Keefe came in and I hadn't closed the drawer in consequence of waiting on them two.

Q What did you do with the pistol after you had fired the shot, directly after?

A I had the pistol in my hand when Madden was going out of the store.

Q And then what did you do with it?

A I put it back in the drawer.

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Q Now, did you attempt to fire more than one shot at ⁴³⁰ that time?

A No, sir. I didn't think that at the time the shot had entered his body. I thought it had only wounded his arm when I seen my life was in danger.

Q And you were under the impression at the time that he that went out ~~at~~ the only wound that was inflicted upon him was in the arm?

A Yes, sir.

Q And that you had no idea or knowledge or information that the ball had entered his body?

A No, sir.

Q Mr. Madden--I beg your pardon, Mr. Donnelly, at any time after you had had that episode with Madden in which he took up the iron cuspidor to throw at you, after which he did not enter into the store again until the Sunday afternoon of the shooting, did you see Madden any where on the Avenue or in the street?

A Yes. I have seen him on the corner coming and going. When I would meet him he would always turn to me and say-- in fact, he threatened me and at one time he told me, "I'll put you where the dogs wont bite you; I will not

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cut you the way I cut the coon." I used to meet him at 431 times on the Avenue.

Q You were afraid of him after that?

A I dreaded my life of him. I always made it my business to keep out of his way. He said to me, "You are the cause, you son of a bitch--" "He is the cause of having me kept out of the place." He says, "I will get hunk with him yet."

BY THE COURT: Q Was this all said at one time?

A No, on different occasions.

BY MR. HOUSE: Q Now, after the shooting, you were taken to the Station House, were you not, Mr. Donnelly?

A Yes, sir.

Q How long were you locked-up?

A I was locked-up until the next morning.

Q And then where were you taken?

A To Jefferson Market.

Q Were you locked-up there?

A Yes, sir.

Q In the court for how long?

A I was there--I was kept down stairs for an hour or two and then I was sent up stairs and I was locked up

for a week.

Q And at the end of the week you were liberated on bail?

MR. McINTYRE: Objected to.

A Yes, I was.

MR. McINTYRE: This was before the man died.

THE COURT: I don't think that is right. Strike that out and I tell the Jury to disregard it.

Q Do you recollect when you were last arrested and taken to the police station?

Objected to as absolutely immaterial.

THE COURT: Unless for the purpose of fixing some date in reference to some other matter which may have a bearing upon this, it is utterly immaterial. He is here on this indictment.

MR. HOUSE: Very well. Will you please give me the benefit of an exception?

CROSS EXAMINATION BY MR. McINTYRE: Q How long have you known Patrick Donnelly?

A I have known him since I was a boy.

Q How long have you known Patrick Collins?

A I have known him about three years.

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Q Collins went in and out of the store that you attended bar in off and on for a period of two years or more before you were incarcerated? 433

A Not quite two years.

Q From the time that you first went there?

A Yes, I got an opportunity to know him there.

Q You knew that Collins witnessed the shooting of

Madden?

A He was there.

Q He was standing at the end of the bar?

A Yes, sir.

Q What relation are you to Patrick Donnelly?

A I am a cousin of his.

Q Did you authorize Patrick Donnelly to offer Collins \$400 and ask him to go to Ireland?

A No, sir.

Q In order to get away from the trial of this case?

A No, sir.

Q You did not authorize that?

A No, sir.

Q Do you know of any such offer being made?

A I know the man wanted to get money to go away and I

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wouldn't accept of it. 434

Q He came to get money to go away?

A Yes, sir.

Q Where did he say he wanted to go?

A He came to me in the Tombs.

Q You sent for him?

A I didn't.

Q What did you say to him in the Tombs?

A He came to the Tombs and he started to cry and he said, "I am sorry that I ever swore so falsely against you at the time I made the statement in the police court. I was pretty drunk then and I did not know what I was saying."

Q You say that Collins came to you in the Tombs and said to you, Donnelly, "I am sorry that I swore falsely against you?"

A Yes, sir.

Q Did he say what he was going to do?

A He did not.

Q Did you ask him?

A He said he was willing to try to do anything to get me out of it.

Q What did you say?

A I said, "I don't see how you can get me out of it unless you get yourself in trouble."

Q You were unwilling then that he should come down here once more and give perjurious testimony because you feared that he would get into trouble?

A Because he was--

Q You did not want him to tell any different story because you were afraid he would get into trouble?

A He was willing to accept the money if he could get it.

Q What was said about the money?

A He said he would take \$400--that he had a wife to support and not a cent--he said, "I am willing to take \$400 and get out of the way. It is the only way I can be a friend to you because I have made a statement and I can not go back of it. The District Attorney will hold me to my statement."

Q When had he this conversation with you?

Q In the Tombs.

Q When?

A That was in November.

Q Last November?

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A Yes, sir.

Q Isn't it a fact that you sent your uncle or sent Patrick Donnelly to Collins authorizing Donnelly to offer him the sum of \$400 in order to induce him to leave the jurisdiction of this Court?

A I never did sir.

Q When he came down to the Tombs and ~~admitted~~ to you that he had given testimony against you that was false, did you ask him to write that statement down?

A Did I ask him to write it down?

Q Yes.

A No, sir.

Q You knew he was going to be a witness against you?

A No, sir.

Q You didn't ask him to write that statement down?

A No, sir.

Q Did you ask him to go and see your lawyer?

A No, sir.

Q You felt it was for your interest to get him to make some admission that would show that the testimony that he gave before the Coroner and the Police Court was untrue?

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A No, sir.

Q You knew you were going to be tried for your life?

A Yes, sir. His object was in swearing that way, he knew if I didn't have the money that my people would see that he--

Q You say that his object in swearing against you was to get what money there was in it?

A Yes, sir.

Q You don't want it to be understood that the representatives of the State of New York got him to come down here for money to swear against you?

A I don't know.

Q You know it is not the fact, don't you?

A He wanted to accept it of me.

Q You know that is not the fact, that there has been no money paid him by the representatives of the people?

A I am not saying so, sir.

Q Now, did you authorize Rafferty to go to Charles Davis on Friday last and say to him this: "There is such a thing as getting mixed up on the stand when you are called to testify. Let counsel for the defense mix you up in your examination." Did you authorize any

such statement to be made by Rafferty to Davis? 438

A No, sir. I only saw the man once in the Tombs.

Q You saw Rafferty once in the Tombs?

A Yes, sir.

Q What was Rafferty doing in the Tombs?

A He made a call on me.

Q He is a friend of yours?

A Well, I am slightly acquainted with him. I knew him.

I have known him the last three years.

Q How long have you known Davis?

A Davis?

Q Yes.

A About two years.

Q How long have you known Kiernan?

A Going on two years.

Q How long have you known Ruch?

A I have only known Ruch a short time.

Q Did you ever have any trouble with Ruch?

A Did I ever have any trouble with him?

Q Any difficulty with Ruch at all?

A No, sir.

Q You never had any difficulty with him?

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A No, sir.

Q And he never had any difficulty with you?

A No, sir.

Q Did you ever have any trouble with Kiernan?

A No, not much.

Q You never did anything to offend Kiernan?

A No.

Q And Kiernan never did anything to offend you?

A Only sometimes when he was drunk and quarrelsome when I told him to go out and keep quiet.

Q There was never any hard feeling between you?

A No.

Q There wasn't any hard feeling between you and Collins?

A Any hard feeling?

Q Was there any hard feeling between you?

A Only that I didn't want him to serve ice.

Q You told him that you didn't want him to serve ice in your place?

A Yes, sir.

Q When were they serving ice in your place?

A I don't remember now.

Q He wasn't interested in the business?

A He would supply the back bar with ice.

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Q That was the only difficulty you had with Collins?

A That is the only reason that he had any revenge for me.

Q Did you ever have any trouble with O'Keefe?

A No, sir.

Q Now, you are sure of that?

A Yes. I don't think I saw him a dozen times in the place. He came to see Charlie Davis.

Q Since you have never had any difficulty of a serious character with those persons and some of whom you have always been on friendly terms with, can you conceive of any reason that would prompt those people to come here and perjure themselves?

A They did it to get revenge.

Q To get revenge?

A Yes. They are perjuring themselves.

Q Tell me, if you can, why O'Keefe is perjuring himself?

A I don't know sir.

Q You say you never had any difficulty with him?

A No, sir.

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Q How never did anything to him?

A No, sir.

Q And he never did anything to you?

A No, sir.

Q Can you tell me why Davis came here--

A O'Keefe told the truth.

Q O'Keefe?

A Yes, sir.

Q A moment ago you said he was perjuring himself?

A Well, the others were perjuring themselves. O'Keefe and Rush told the truth. He admitted that Madden and I had words across the bar before the shot was fired.

Q Did you hear O'Keefe say that he did not hear any difficulty or any unpleasant language used at all by and between you and Madden on that occasion?

A He couldn't very well hear it. He said we were talking across the bar.

Q O'Keefe was standing by the storm door?

A Yes, sir.

Q And you were up at the other end of the bar?

A Yes, sir.

Q Now, you have come here and said you took Madden's

life in self defense? 442

A Yes, sir.

Q You have come here and you have said that you believed at that time that your life was in danger?

A Yes, sir.

Q Now, you are willing to say that although you believed that your life was in danger and that you were forced to take another life in self defense that the difficulty was of such a quiet and orderly character that these two people couldn't hear it?

A They heard it.

Q They say no.

A They could not distinguish what we were saying.

Q They say they heard nothing passing between you.

A Well, the time was so short they couldn't. It was all done in a minute.

Q The time was so short. How much time elapsed between the time that you first saw that man and the time you took his life?

A It was done in less than five or six minutes--it was in two minutes from the time he lit his cigar and--

MR. HOUSE: Wont you just answer the questions

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please.

Q You say you did it on the impulse of the moment?

A Yes, sir.

Q That is the truth, is it?

A I seen when the man--

Q Go back a minute. You stated in the presence of the Court and Jury that you did it on the impulse of the moment?

A Fearing my life was in danger.

Q Don't tell us the statutory words again. Answer the question.

BY THE COURT: Q You said you did it on the impulse of the moment, didn't you?

A Yes, fearing--

Q Did you say so?

A No, I didn't say so.

BY MR. McINTYRE: Q No? What did you say a moment ago?

A I said on the impulse of the monent as he put his hand to his pocket, on the impulse of the moment, I grabbed the pistol back of the bar fearing that my life was in danger.

Q Go on. Use the same words again.

A Fearing for my life and on the impulse of the moment ⁴⁴⁴

I grabbed the pistol back of the bar--
repeated

Q How frequently have you ~~read~~ this testimony over that
you have given on the stand to-day?

A I have only made it once to Mr. House.

Q You have committed it to memory, haven't you?

A Well, I don't know.

Q You have committed it to memory, haven't you?

A I am just telling it as it happened. q

Q You say fearing that your life was in danger and you
saw him put his hand back to his hip pocket and then you
took a deadly weapon and killed him?

A Yes, I ~~dreaded~~ my life.

Q You dreaded your life?

A Yes, of him. He had been threatening me from time to
time and maybe previous for a week I was told that he
was seen with a pistol--

MR. McINTYRE: Go on.

MR. HOUSE: Will you please to answer the questions
and then stop. I am not going to have it. If you will
be good enough to answer the questions that are put to
you and permit me to argue the ~~case~~ as I am paid to do

we will get along satisfactorily. 445

Q Go back to the time that Johnson was in the store on the night of the difficulty. Do you remember what day that was?

A That was the 2nd. of February.

Q On the 2nd of February?

A Yes, sir.

Q And he came into the store with the man who had the umbrella, didn't he?

A Who was that?

Q Johnson, the colored man?

A No, Johnson was in the store.

Q There was a man who came in there afterwards who had an umbrella?

A I couldn't say whether he had or not.

Q Did you hear any discussion about an umbrella?

A I did.

Q Did you hear Madden say to Johnson, "You must have taken it?"

A I did, yes.

Q And did you hear Madden, upon that occasion say to the man who was drinking with Johnson, the colored man

that he had been in your store before and that he had frequently lost a silk handkerchief out of his pocket?

A I didn't.

Q And then did you hear the colored man say, "I wont let any white son of a bitch call me down?"

A No, sir.

Q You didn't hear anything of that kind?

A I was at the lower end of the bar at that time.

Q Did you hear the Negro say anything to Madden?

A Yes, sir.

Q What did you hear the negro say to Madden?

A I heard him say to Madden to mind his own business, that he wasn't interfering with him.

Q Did you hear Madden say to him, "You must have taken the umbrella?"

A Yes, I heard some remark like that.

Q And then what did the negro do?

A The negro turned to Madden and he says, "What is it your business? Have I done anything to you?" And Madden says, "Shut up, you black son of a bitch. I wont let any black son of a bitch call a white friend of mine down," and taking hold of a beer lgass he struck him on the side

of the head, and then he fell. 447

Q Which way was the man from the bend in the bar?

A Standing at the turn of the bar.

Q How far did the negro fall?

A The negro fell way back against the lunch counter.

Q By the force of that blow that was inflicted on the side of his face the negro was thrown from the end of the bar?

A He was thrown so he couldn't strike back.

Q You saw that, did you?

A Yes, sir.

Q You saw the man cut?

A Yes, sir.

Q Why didn't you get a police officer then?

Objected to as being entirely irrelevant and immaterial.

Objection overruled. Exception by defendant.

A The man ran away.

Q Did you complain to any police officer on the block?

BY THE COURT: Q Did you complain to any police officer?

A Yes, I told the officer on the beat.

BY MR. McINTYRE: Q What officer?

A I forget his name?

A Don't you know his name?

A No.

Q Have you made any effort to bring him here?

A No, sir.

Q You have not made any effort to find him?

A No.

Q Before the assault upon the negro there was other trouble with Madden you stated?

A Before the assault?

Q Yes, before the assault upon the negro.

A Yes, oh, yes. Every time that he would drink we always had trouble.

Q You always had trouble?

A Yes. He would fight for nothing.

Q With whom?

A With me.

Q Did he ever strike you?

A Yes, sir.

Q Did you ever go to a police officer or to a police station to make a complaint against him?

A Yes, sir.

Q Who was the officer?

A I forget the officer's name.

Q You have forgotten that too? Have you made any effort to get that officer down here?

A No.

Qc What other times had he assaulted you?

A Well, whenever he was drinking.

Q Give me some specific instance.

A He insulted me every chance he had.

Q Give me some specific instance.

A I couldn't give you any special time.

Q Did he ever use a weapon on you?

A Yes.

Q When?

A He used a hook.

Q Did he stab you with it?

A No.

Q What sort of a hook?

A One of them bale hooks.

Q You didn't tell your counsel that when you were being examined in chief?

A No, I forgot that.

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Q Did you have that down on the statement?

A No, sir.

Q You didn't state that?

Objected to.

A No, I didn't think of it.

Q You didn't try to arrest him for that?

A No.

Q Did you go to a Police Court and complain that he had tried to commit an assault upon you?

A No, sir.

Q How many times did he assault you?

No answer.

BY THE COURT: Q When was that?

A He struck me the evening that we had the trouble.

That was about the 6th or 7th of April.

BY MR. McINTYRE: Q How many times?

A Once. He struck me across the bar.

Q What did he strike you with?

A With his fist. He couldn't get nearer because of the bar.

Q You say he could not get nearer at that time because the bar was between you?

A Unless he jumped over it.

Q Now, Donnelly, when he came into the store with that hook that you speak of and struck at you, you didn't pull a pistol on him then?

A No, sir.

Q Did you fear that your life was in danger then?

A Yes.

Q You did?

A His friends that were with him took him out.

Q Did you fear your life was in danger then?

A Well, yes.

Q Did you get the pistol then?

A No.

Q Why?

A Because his friends took him away at that time before any harm was done. He was so drunk.

Q When did you have the other difficulties with him about the cuspidor--do you remember that?

A Yes, sir.

Q Was there anybody in the store when you had that trouble with him when he attempted to throw the cuspidor?

A Yes, there was two people.

Q Who were they?

A I don't know.

Q Did you ever see them before?

A I saw one of them before.

Q What is his name?

A I don't know his name.

Q Have you made any effort to get him here?

A Yes, sir.

Q Have you brought him here in Court?

A No sir; I couldn't find him.

Q Haven't your friends made an effort to do so?

A I told them to try and find him.

Q Do you know the man's name?

A No, sir.

Q Do you know where he lives?

A I do not.

Q Can you give me any information about that man and I will get him?

A I can not; no sir.

Q Now, what was the trouble?

BY THE COURT: Q Do you know that man's name?

A No sir. I had seen him before.

Q How often?

A He used to stop in the store evenings about seven o'clock.

Q How often did he come there?

A Occasionally, maybe once a week.

Q And then you had seen him once a week for about how long?

A Well, I only imagine--

Q I don't want what you imagine.

A Well, it might be six weeks after I knew about his coming in there.

BY MR. McINTYRE: Q What was the trouble between you and Madden when he attempted to throw the cuspidor at you?

A ~~That was the time that I ordered him out.~~

Q What did he ask for?

A He wanted a drink.

Q You had an associate there, a relief man at the bar, McCabe?

A Yes, sir.

Q He used to go in there when McCabe was on duty?

A McCabe refused, too.

Q McCabe never had any trouble with him?

A Yes, sir.

Q McCabe said no.

A Yes.

Q Did you hear him testify?

A Yes.

Q McCabe didn't tell the truth according to your theory?

A No.

Q McCabe has been working there for a number of years?

A All I know is because he got a sop. He is seeking revenge on me. That is all I know is his object in doing that.

Q Where were you standing when he took up this cuspidor?

BY THE COURT: Q Behind the bar?

A Yes, sir.

BY MR. McINTYRE: Q What part of it?

A Near the ice box, between the ice box and the corner of the bar.

Q What did he say to you?

A What did he say to me?

Q Yes.

A He says, "I will kill you, you son of a bitch."

Q How near were you to the drawer where the pistol was?

A The pistol wasn't in the drawer.

Q If the pistol had been in the drawer, would you have used it?

A I don't know.

Q Where was the pistol on that occasion?

A It was under the counter.

Q You took it up?

A Yes, sir.

Q What did you do with it?

A I held it in my hand. I said to him, "If you throw that cuspidor at me or, strike me, you can not get out of the door before this pistol will overtake you."

Q You intended to shoot him?

A No sir; because I could have shot him.

Q Did you fear that your life was in danger when he seized that iron cuspidor?

A I feared it but I was still protecting myself.

Q Now, these are two instances, once with a hook that he attempted to strike you with and the next time with an iron cuspidor that he threatened to hurl at you and then you said that he threatened to kill you, neither of which times you fired a pistol shot at him--that is so?

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Q No.

Q It is not so?

A Yes.

Q You didn't fire a pistol at him either time?

A Oh, no.

Q And then when he came into the bar-room on this Sunday afternoon and simply made a movement toward his hip pocket you thought then that your life was in danger and that he intended to use a deadly weapon on you?

A That was the time that he made the threats.

Q You said before that that the threats had been made?

A Not before the cuspidor time--not that he would kill me.

Q Let me get your language once more. You said that threats were communicated to you--that is your language, is it not?

A Yes, sir.

Q Didn't you consider when a remark like this is made, "I'll kill you, you damned son of a bitch," didn't you consider that was a threat?

A He had used that on the sidewalk just as he did at

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the time of the cuspidor.

Q How long before the time that you killed him?

A It was two months.

Q Why didn't you make a complaint then that he threatened to take your life?

A I was going--

Q Why?

BY THE COURT: Q He asked you why you didn't go and make a complaint that this man had threatened your life on several occasions?

A I was going to make a complaint and I went to his office, to Mr. Bett's office to get him to guarantee to promise that he would see he didn't come there and he told me that he would see that he would not come back.

BY MR. McINTYRE: Q Who was this Betts?

A Dr. Betts.

Qx Have you got Betts here in Court?

A No, sir.

Q When he threatened to strike you with the cuspidor afterwards did you go and make a complaint to anybody?

A No, sir.

Q Now, is there a time that you can recall to mind when

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these alleged assaults were made and the threats uttered
that you ever made a complaint to a soul on earth?

A I told the policeman.

Q You have not got that policeman here?

A No.

Q You don't know his name?

A No.

Q You know all the policemen that patrol that block?

A No. The policeman I saw was in the 29th precinct.

Q Out of that precinct?

A He lives in the 20th precinct.

BY THE COURT: Q Don't you know his name.

A I can't think of his name now.

BY MR. McINTYRE: Q Now, Donnelly, you said that in
March, that Madden had two friends with him when he
entered the store and threatened to pull you from behind
the bar?

A Yes, sir.

Q Who were those two persons?

A I don't know.

Q You don't?

A No, sir.

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Q Have you made any effort to find them?

A No. they are down town where he was trucking.

Q Do you know them?

A No, I don't know them. They were trucking. They were driving Tom Betts's truck.

Q Have you made any effort to find out whose those people were?

A No, sir.

Q Did anybody ever communicate to you that he made threats against you--did anybody tell you that?

A No.

Q Nobody told you that?

A No.

Q Nobody ever told you to look out for him?

A Yes.

Q Who?

A One man--his name is Hay.

Q When did he tell you that?

A I think it was a week previous to the shooting--that same week--about three or four days previous.

Q Three or four days before the shooting?

A Yes.

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Q Now, did Hay frequently go into your store?

A Well, sir, not every night. He came in once or twice a week and some days he would not be in at all.

Q What did he say to you?

A He says, after they had got a drink, he says, "I have seen that party that you had the trouble with up the street." I says to him, "What party?" He says, "Madden." He says, "Him and another fellow were examining a pistol as I was coming down the street." He says, yourself. "You had better look out for him. I seen Madden put a pistol in his hip pocket." I says, "I don't think he will come back to tackle me any more."

Q You heard him say that he saw Madden examining a pistol?

A Yes, sir.

Q And you were told that he had a pistol?

A Yes, sir.

Q And that he put the pistol in his pocket?

A Yes, sir.
hear

Q Did you [^]Hay say this morning that he saw Madden down the street with a pop-gun?

A Yes, sir.

Q Which was it, a pistol or a pop-gun?

A I presume it was a pop-gun. I call it a pistol.

Q I asked you for Hay's language?

A I misunderstood you.

Q Now you want to change it?

A No, sir.

BY THE COURT: Q What did Hay say when he came in that evening and had his drink, as you say? Go on and tell the Jury.

A He says, "I seen that fellow that you had the trouble with up the street."

Q Go on.

A "And him and another fellow was standing in front of a stable as I was coming down the street and I saw the other fellow that was with him hand him the pistol and Madden put the pistol in his pocket." And he says to me, "You had better look out for yourself." I says, "I don't think he will come back," I says, "to tackle me again."

BY MR. McINTYRE: Q Now, you remember being examined by Captain Price in the station house, don't you?

A Yes, sir.

Q You remember making a statement to him?

A I made a kind of statement to him.

Q Did you make a statement to him?

A Yes, sir.

Q Did you sign it?

A Yes, sir.

Q Just look at that and see if that is in your handwriting? (Paper shown witness.)

A Yes, that is my handwriting.

Q Do you remember stating this to Captain Price?

MR. HOUSE: One moment, if your Honor please. I want to know whether the District Attorney proposes to read from that statement.

THE COURT: He has a right to call his attention to it.

MR. HOUSE: May I have the privilege of getting an objection on the record?

THE COURT: Certainly.

MR. HOUSE: I object to the District Attorney calling the defendant's attention to any statement that was made to Captain Price on the ground that at the time the defendant was under arrest and, consequently, in duress

and no statement made at that time would be binding against him.

THE COURT: That wont do. Any statement that he makes freely and voluntarily is admissible. It doesn't make any difference whether it is under duress or not. (To Mr. McIntyre.) You had better ask him whether he made the statement.

Q Do you remember saying this to Captain Price upon his examination of you?

BY THE COURT: Q When you were arrested and brought to the station house was Captain Price there?

A Was Captain Price there?

Q When was it you made that statement?

A After I went to the station house.

Q Immediately upon entering?

A Five or ten minutes after.

Q Did you make that statement to Captain Price?

A I made a statement--

Q Can't you answer?

A Yes, sir.

Q Was that statement reduced to writing?

A I presume it was.

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Q Did you see him write it?

A I saw him write it.

Q Did he read over the statement to you after he had taken it?

A Yes, sir.

Q You signed it?

A Yes, I signed it.

Q Did Captain Price make any threat against you?

A No, sir.

Q Did he make any promise to you in consideration of your making that statement?

A No, sir.

Q Did you make that statement freely and voluntarily?

A Well, he asked me--

Q Did you make that statement freely and voluntarily?

A Well, as near as I knew then.

Q As near as you knew then? Whatever statement you made you made it of your own free will?

A Yes, sir.

THE COURT: Go on.

BY MR. McINTYRE: Q Did you say to Captain Price

"Charles Madden came into the store and went into the

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water-closet. I was not in the store when he entered. He came out of the water-closet and approached the bar. There were three other persons in the store at the time, namely, George F. Ruch, Daniel O'Keefe and Pat Callahan."

Did you say that?

A I did not make that statement.

Q Look at the paper.

A That is all right. I admit that being in the paper but I did not say that he went into the closet. I said I didn't know. He came from the rear end of the store.

Q When Captain Price took your statement down in writing did he read it over to you--you swore to this statement, didn't you?

A Yes, I did. I was sitting there when it was wrote.

MR. HOUSE: He doesn't subscribe himself as an Notary.

THE COURT: A police captain has no authority to swear a man that I am aware of.

Q You say you admit the rest of it?

A Not that he went into the closet.

Q Did you state this: "And the other bartender was in the water-closet at the time the shooting occurred.

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Madden asked me to give him a drink. I refused and ordered him out of the store. He called me a son of a bitch and put his hand in his right pants pocket and said I will fix you?" Did you say that?

A Yes, sir.

Q You said that?

A Yes, sir.

Q You remember saying that?

A Yes, I think that was it.

Q Do you remember stating this: "As he did that, I opened the drawer and pulled out the revolver and fired at him?

A I didn't make that statement.

BY THE COURT: Q How much of that statement did you make?

A I said the drawer was open.

Q In other respects that is right?

A Yes, sir.

BY MR. McINTYRE: Q You said the drawer was open and this statement says you opened it. That, you say, is incorrect?

A That is not correct.

Q "He was standing close to the bar facing me. The pistol was in the drawer behind me. I was standing facing him. I turned around, got the pistol and shot him." Did you say that?

A I did not make that statement.

BY THE COURT: Q How much of that statement did you make?

A The statement that I made was that ^{he went to pull a gun on me and} on the impulse of the moment I grabbed the pistol back of the bar and fired without any aim.

BY MR McINTYRE: Q The statement that you made was that he put his hand on his pocket and on the impulse of the moment you turned and got a pistol and fired?

A I didn't have to turn, no sir.

Q "He said, I'll fix you and I opened the drawer and pulled out the revolver and fired at him." Did you say that?

A I was standing close to the--

Q "The pistol was in the drawer behind me. I was standing facing him. I turned around and got the pistol and shot him." Did you say that?

A No, I didn't make that statement.

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Q You didn't make that statement?

A No, sir.

Q "He never said a word." Did you say that?

A I didn't.

Q You didn't say that either?

A No.

Q "He turned around and walked out into the street."

Did you say that?

A I said he walked out into the street.

Q "He never said a word but turned around--"

A I did not say that.

Q Do you say this is all wrong? You signed it?

THE COURT: You have asked him if he signed it now,
go on.

Q Did you say this: "I knew Madden for two years past.

When he works, he is a truck driver for Dr. Betts of
West 28th Street. I have had trouble with him about
six or eight weeks ago owing to some trouble he had
with a negro in which case Madden cut the negro, the
assault having been committed in the store where the
shooting took place." Did you say that?

A Yes. Not all of it. I admit some of it.

BY THE COURT: Q What part do you admit?

A I admit that I told him about the trouble with the colored fellow.

BY MR. McINTYRE: Q But you don't remember anything else?

A No.

Q When the Captain was interrogating you as to your reason for shooting the deceased, why didn't you tell him that at one time he used a hook and another time he attempted to throw a cuspidor and at another time a man came into the store and told you that Madden was down in the street with a pistol?

A That didn't come into my head.

Q You didn't think of it?

A I didn't tell my own counsel.

Q Did you say this to Captain Price: "Madden was not drunk when I shot him?"

A He was not very drunk.

BY THE COURT: Q Did you say that to Captain Price?

A He asked me if he was drunk. I said he was not drunk but he had been drinking. He was able to walk.

BY MR. McINTYRE: Q "Shortly afterwards Officer O'Neill

entered and asked who done the shooting. I answered I did." Did you say that?

A No.

Q You didn't say that either?

A I said it in a different way.

Q What did you say?

A I said the shooting was done by me in self defense.

Q The response was as Captain Price has recorded it that you said that you did the shooting?

A That is not the way I said it.

Q Did you say "I was then placed under arrest and taken before Madden who was lying on the sidewalk in West 28th Street who identified me as the man who shot him. He then asked for the pistol and I told him that it was in the drawer where I placed it after the shooting." Did you say that?

A I said part of that.

Q "I returned to the store and took it from the drawer and gave it to the officer."

A I gave it to the officer.

Q That part of it is correct?

A That is right.

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Q Did Madden ever attempt to assault you with anything else but the two things you have mentioned, namely a cuspidor and a hook?

A Not as I remember.

Q You don't remember?

A No.

Q Sure?

A Sure.

Q Just take your memory back as best you can and see whether he ever attempted to assault you with anything else?

A Not outside of his fist.

Q Q Did you ever say he attempted to assault you with a glass?

A Did I?

Q Yes.

A That was long ahead of that.

Q I ask you whether you ever said that?

A Yes, sir.

Q Who did you say that to?

A Perhaps it is on that statement.

Q I am asking if you ever said it to anybody?

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A I don't know unless I made it in the statement to the Captain.

Q You said that he attempted to assault you with a glass?

A Yes, sir.

Q Now, when he was leaning against the bar--I am speaking of that Sunday afternoon when you shot him--was he talking in a loud tone of voice?

A Not loud, just the same as we are talking.

Q Talking as loud as I am? Then the others could have heard him over that bar?

A I presume they could have if they were paying attention.

Q There was nothing boisterous, his tone was not angry?

A Oh, yes.

Q Boisterous?

A Yes, sir.

Q Enough to attract the attention of the other people?

A He was--

Q Was it loud enough to attract the attention of the people in the store.

A There was only Collins. He was back in the corner.

Q Collins was standing at the end of the bar?

A About eight feet back.

Q How high is this bar from the floor?

A I presume it is higher than that. (Referring to the Bench.)

Q Was he leaning with his left side to the bar?

A No, sir.

Q Which side?

A He was standing in this form, (Indicating.) to the bar with the cigar in his mouth. He was standing there and I was down this way and he made a move with his hand when he seen he couldn't get any drink--when I said I didn't want any more trouble--then he says, "I'll fix you."

Q Was his right arm hanging down?

A His right arm was back.

Q Where was it?

A Down somewhat.

Q Hanging down?

A Yes,

Q And he said, "I will fix you" then?

A Yes. His arm was in front of him.

Q When he said "I will fix you" then you turned around and took the revolver out of the drawer?

A On the impulse of the moment.

BY THE COURT: Q Did you turn around?

A I didn't turn around.

BY MR. McINTYRE: Q How did you get the revolver?

A I reached for the revolver.

Q How did you know where to get the revolver?

A I knew where it was. It was in the drawer.

Q Did you see it there that morning?

A No, I didn't notice it that morning.

Q Did you know the revolver was there?

A I wasn't sure. I didn't look.

Q Is it not a fact that you turned full around?

A I didn't turn at all. The pistol was on my side in the back part of the drawer and I turned to reach for that pistol. The drawer was half open and I took it out with my right hand.

Q What did you do with it?

A Without taking any aim I snapped the trigger.

Q Did you wait to see whether Madden drew a revolver from his pocket?

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A Did I wait?

Q Did you wait to see?

A No, sir; I didn't wait. On the impulse of the moment-

Q When Madden said, "I will fix you," and then when you saw his hand going back to his hip pocket you put your hand in the drawer and took out the revolver and fired?

A On the impulse of the moment without taking any aim.

Q Now, as soon as he was shot, he went away?

A He turned and he held his arm in this form and he says, "I am shot," and he turned from the bar and walked deliberately over to the door.

Q He walked deliberately out?

A Yes, sir.

Q That was very natural for him to do?

A He turned at the storm door and walked as far as half way between the storm door and the Eighth Avenue.

BY THE COURT: Q Did you see him?

A No. That was where he was when I came out. He was lying on the cellar door.

BY MR. McINTYRE: Q When he started to go away did he put his hand down to his hip pocket again?

A No, sir.

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Q He didn't take out any revolver?

A I didn't see it.

Q He didn't take out any?

A I didn't see any.

Q Did he?

A No, he threw up his hand.

Q You had shot him but he was able to walk out to the side door?

A Yes, sir.

Q He did walk to the side door and did not take any revolver out of his pocket to return the fire that you had opened on him?

A No.

Q You then put the revolver back in the drawer?

A No, sir.

Q What did you do?

A I held the pistol in my hand.

Q Covered him with it?

A No, I had it in my hand.

Q What for?

A I was afraid in case he would turn and pull a pistol on me.

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Q You didn't see any pistol in his hand?

A No, he didn't make any attempt, a second attempt to put his hand in his hip pocket.

Q You don't know whether he had any pistol or not?

A I can't swear to it.

Q You kept him under the cover of the point of this revolver until he went out?

A I held it in my hand.

Q You held it to shoot?

A I held it in my hand.

Q Did you go afterwards to see what had happened?

A I did not.

Q You stayed right in the barroom?

A Yes, sir.

Q What for?

A There was no one in the bar at the time only those three men.

Q Where was the other bar-keeper?

A The other bar-keeper was in the closet.

Q Did you say to those men who were in the store after you fired the pistol shot, "I thought he was going to pull a revolver on me and I shot him in self defense?"

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A I don't remember whether I said that?

Q Did you say anything about self defense when you were behind the bar in the presence of those people in the store?

A I might have made use--

BY THE COURT: Q Did you say it?

A No.

BY MR. McINTYRE: Q Did you say to McCabe when he came out of the water-closet that you had just shot Madden?

A I did not.

Q You didn't say anything?

A I said, "I will have to be taken to the station house!"

Q You say you fired that shot because you thought your life was in danger--

A I dreaded of my life from the man that came into the store following me for that purpose.

BY THE COURT: Q Did you see him do that?

A I did not; no sir.

BY MR. McINTYRE: Q You did not go to see how badly you had hurt him?

A No, sir.

Q You did not know where you had shot him?

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A No.

Q You did not care?

A I was sorry that it ~~saw~~ that it turned out that it was the cause of his death.

Q You didn't go to do anything for him?

A I was willing to.

Q You did not?

A No, I did not.

Q You stayed right behind the bar?

A I had no chance to get out.

Q Why?

A There wasn't any one in the saloon.

Q And a human life was nothing compared with the loss of business for a few moments?

THE COURT: There isn't any use in your going into an argument.

Q McCabe was there?

A He was in the closet.

Q He came then out of the closet?

BY THE COURT: Q Did you go out for an officer--to find him?

A No sir; I couldn't do it as I had no time.

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BY MR. McINTYRE: Q Now, you said that you did not contemplate shooting this man in your examination-in-chief?

A What?

Q You stated to Mr. House that you did not contemplate shooting this man.

A No, I didn't mean to kill the man.

BY THE COURT: Q Did you mean to strike him.

Q No, I didn't mean to. I didn't mean to hit him.

BY MR. McINTYRE: What did you fire the pistol for?

A It went off on the impulse of the moment. I snapped the trigger quicker than I expected when I was threatened.

THE FOREMAN: Can I ask the witness what was the time when the pistol was loaded and who loaded it?

THE COURT: Yes, sir.

BY THE COURT: Q You said, as I understood you, that the pistol was in the store when you went there to work?

A Yes, sir.

Q And you were there about eighteen months?

A Yes, sir.

Q Where was it kept during the eighteen months?

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A It generally lay under the bar.

Q When it didn't lay under the bar where was it kept?

A It was put in the drawer.

Q Do you know who loaded that pistol?

A I do not know.

Q Did you know whether it was loaded at the time that you took it up?

A The first time? Yes, I think it was.

Q You did know it?

A Yes, I did.

Q The first time?

A I think it was. I am not sure. I did not examine it.

Q Did you ever examine it?

A No sir, I never examined it.

Q You say that you put your finger upon the trigger of that pistol without knowing it was loaded?

A No.

Q Didn't you know it was loaded?

A Well I didn't--

Q You did not?

A I didn't examine it the first time.

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Q Did you ever know that that pistol was loaded during the eighteen months?

A Well, I didn't examine it.

Q I didn't ask you that. Didn't you know it at any time?

A I didn't.

Q That is what this gentleman wants to know.

A I knew there was some--I didn't know they were all.

Q You knew there was some?

A I didn't examine all the cartridges.

Q You examined some?

A Yes, sir.

Q You recollected there were some?

A Yes, sir.

Q Is that what you wish to say?

A Yes.

BY MR. HOUSE: Q Now, Mr. Donnelly, you have been asked by the District Attorney why it was that after you fired the shot and Madden went out that you didn't go to see whether a human life had been taken or not. Now, is it not true, as a matter of fact, that as Madden disappeared through that door that Officer O'Neill appeared in

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the saloon?

A That is right.

Q Right there?

A Yes, sir.

THE COURT: Are there any Jurors who would like to ask this man any questions? (No response.)

Defendant rests.

THE COURT: I will let this case stand over until to-morrow. You will finish this case to-morrow?

MR. HOUSE: Yes, sir.

THE COURT: (To the Jury.) Gentlemen, the defendant has closed his case and the District Attorney informs me that he has three or four witnesses to call in rebuttal. We will resume here to-morrow morning and work until night if necessary to finish this case. In the meantime, you will not talk about the case and you will observe the statutory admonition heretofore given you

Adjourned to 11 A. M. FRIDAY, MARCH 2, 1894.

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