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CASE # 603

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

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THE PEOPLE OF THE STATE OF NEW YORK

#2049

-vv.-

GUISEPPI YACCOBACCI.

-----X
Before HON. JOHN W. GOFF, Recorder, and a jury.

Indictment filed July 6th, 1906.

Indicted for murder in the first degree.

New York, October 22nd, 1906.

-----oOo-----

A p p e a r a n c e s .

For the People, Assistant District Attorneys ARTHUR C.
TRAIN and AMOS PINCHOT.

For the Defendant, MESSRS. NATHANIEL LEVY and HYACINTH
RINGROSE.

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Peter P. McLoughlin,
Official Stenographer.

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MR. RINGROSE: If your Honor please, I respectfully move that the witnesses for the Prosecution and for the Defense be excluded, until their presence is necessary.

THE COURT: I will grant your motion.

Mr. Pinchot opened the case on behalf of the People as follows:

May it please the Court, Mr. Foreman and gentlemen of the jury:

On the 6th day of July, 1906, an indictment was filed by the Grand Jury, numbered 55,924, for murder in the first degree against this defendant, Guiseppi Yaccobacci, an Italian bricklayer. He was therein accused of the murder of a certain Abraham Kaselovitch, a young Jewish boy, seventeen years old, who was a cab driver and worked in Division street for a man named Greenberg.

This alleged killing took place at half past five in the afternoon, on Wednesday the 20th of June.

The defendant here and two other Italians, named Fellichi Desiata and Giovanni Giogrande, were walking along Grand Street in a westerly direction. Near the corner of Norfolk street, about ten yards from the corner of Norfolk street, west of Norfolk street, they were met by the deceased, Kaselovitch and his friend Ripstein, who was also a hack driver in the employ of Greenberg.

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The Italians were walking rapidly through the crowd and they jostled these two men and a dispute at once arose. During this dispute angry words were spoken on both sides, and Ripstein, who was standing immediately behind the deceased, saw in the hands of the defendant, a closed knife. He immediately said to the deceased, "Look out, that man has a knife" and the deceased turned and ran. He ran in an easterly direction, towards Norfolk street, and the defendant pursued him, and caught him just around the corner of Norfolk street, in front of a saloon, or opposite a saloon. He at once seized him and turned him partly around and stabbed him with this knife. The deceased at once fell to the ground and the defendant continued down Norfolk street in a southerly direction and ran into a store or a ticket office No. 18 Norfolk street. The crowd, when they saw this event, immediately followed him, and one of the crowd entered the store with him and locked the door. The proprietor of the store, a man named Himmelman, telephoned to Headquarters for the police, and in about fifteen minutes Officer Quinlan, of the Twelfth Precinct, arrived and put the defendant under arrest. The defendant also saw a policeman, called to him, or made gestures to him indicating fear, and requested him to defend him from the crowd. Meantime, the crowd was leaning upon the door and gave indications that they wanted to get at the

defendant. Quinlan then took the defendant back to the scene of the stabbing. In the meantime, the deceased had crossed the street, from the west side to the east side, and had fallen in front of No.40 Norfolk Street, a saloon. He was propped up by some of the bystanders and when the officers arrived with the defendant, the officer asked the deceased, "Is this the man that stabbed you?" The deceased moved his lips, but no words could be understood. He uttered words apparently, but no one could hear exactly what he said. He nodded his head indicating yes.

Shortly afterwards the ambulance arrived and took Kaselovitch to the Gouverneur Hospital, where he died almost immediately upon his arrival. He was attended there, I believe, by Dr. Bell, I am not sure of that, but he died of hemorrhage of the heart, caused by a stab wound.

As soon as the deceased had been taken to the Gouverneur Hospital, one of the bystanders, a man named Goodman Solomon, a total stranger to both the defendant and the deceased, who had seen the whole transaction, who was within fifteen feet of the defendant and the deceased when the stabbing took place, and who saw the first meeting of these men, went to Officer Quinlan at the Steamship

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Office, No.18 Norfolk Street, where the defendant had run in, and there they searched for a knife. The proprietor of the office found the knife, that is, Mr. Himmelman. The knife at that time was lying within five feet of the chair where the defendant had sat during the time they were waiting for the police. The knife was identified by Ripstein, who had seen it in the hands of the defendant. He identified it by its peculiar make and design. The knife, when it was found, was covered with blood.

That, gentlemen of the jury, is⁴ a very brief way the case which the District Attorney will attempt to present to you. In presenting this case to you it must not be understood that the District Attorney is hired to get a conviction. He has a duty to perform just as you have your duty to perform under your oaths. You are now, for the time being, officers of this court. We are for the time being officers of the court, and it is our duty to present to you fairly and squarely the evidence which we can find tending to show what the circumstances of the commission of this crime were. It is your duty to listen with attention to us, to weigh each part of the evidence and to decide upon the evidence what happened. In doing this you are fulfilling a serious and grave duty and responsibility, the duty of good citizenship.

Now, during the trial of this case, and I speak for Mr. Train as well as myself, I want you to feel that we are not only the servants of the people but that we are your servants; that we are here to explain all these matters to your satisfaction. If you want to ask any question, or want to make repeat any explanation, or if you don't hear what we say or hear what the witnesses say, just ask us and we will respond at once. If there is anything that we can do to help you that is what we are here for. We are here to work together to find out the truth of this matter.

TIMOTHY D. LEHANE, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q You are a regularly licensed and practicing physician and surgeon, are you not? A Yes, sir; I am.

Q You are one of the Coroner's physicians of the Borough of Manhattan? A I am.

Q Did you perform an autopsy on the body of the deceased mentioned in this indictment, Abraham Kaselovitch? A Let me see the papers, please.

Q The name of the deceased is Abraham Kaselovitch.

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A I did.

Q If so where and on what date?

THE COURT: Gentlemen of the Defense, is there any question on your side relative to the cause of the death of the deceased?

MR. RINGROSE: None at all, your Honor.

MR. LEVY: We know of none at this time.

THE COURT: Then do you concede that the deceased met his death in the way described in the post mortem examination?

MR. LEVY: I have not seen that post mortem examination.

THE COURT: There are just a few questions which might facilitate the giving of testimony and the saving of the time of the gentlemen in the jury box in hearing the testimony. The first is-- what is the name of the deceased?

MR. TRAIN: Abraham Kaselovitch.

THE COURT: The first is did Abraham Kaselovitch, or whatever his name is, die of wounds inflicted on a certain date?

MR. LEVY: There is no objection to that. There is no question about that. We want to know the direction of the wound, that is all.

THE COURT: You make no question about the fact

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that the deceased died of wounds inflicted upon a certain day. The question, of course, as to whom they were inflicted by must be proven.

MR. TRAIN: Is it admitted that the wound was inflicted by the defendant? Is there any question on that?

MR. LEVY: I wouldn't want to be asked at this date to make any confession of that character.

MR. TRAIN: There is no question that the body upon which the doctor performed the autopsy was the body of Abraham Kaselovitch?

MR. LEVY: No question about that.

BY MR. TRAIN:

Q Now, you performed the autopsy? A I did.

Q What did you find as the result of this autopsy?

A I found that Abraham Kaselovitch came to his death, from hemorrhage the result of a stab wound of the heart.

Q How many wounds did he have? A One.

Q Will you describe that wound? A The deceased had an incised wound.

MR. LEVY: I object to the witness testifying and reading from his report.

THE COURT: If he can testify from memory let him do so.

BY MR. TRAIN:

Q Can you testify from memory, doctor? A I will testi-

fy to the best of my knowledge and ability and belief.

Q From your recollection? A Yes, sir.

Q Just do so. A Yes, after reading these notes-- he had an incised wound in front of the median, axillary line, over the fifth rib, going right up to the fourth interspace and puncturing the pericardium and the heart.

Q In other words this wound penetrated the heart?

A Yes, sir.

Q That was the cause of death? A Yes, sir.

Q Can you state the width of the wound and its depth in inches? A About ~~an~~ in width, the wound, and possibly two to three inches in depth.

Q What was the breadth of the wound? A About an inch in width and the breadth was-- I did not exactly measure that.

Q Now, will you state in general the direction of the wound which you have described, not technically, but was it upwards? A Upwards and backwards.

Q About at an angle-- perhaps you can point it out by means of something? A At an angle (illustrating).

Q That is in this direction? A About this (illustrating). That is the point of entrance right over the fifth rib, the wound extended upwards into the fourth interspace, going through the pericardium and the heart.

Q He held this knife or whatever the instrument was about like that (illustrating)? A Yes, sir.

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Q What was the approximate weight of this man, the deceased?

A About 180 pounds.

MR. LEVY: I object to this question and ask that the answer be stricken out unless it is shown that this witness had the corpse weighed.

THE COURT: Motion denied.

Q You have examined a great many bodies? A Yes, sir.

Q And have many times estimated the weights of such bodies? A Yes, sir; hundreds of times.

Q You are able, are you not, to give an approximate estimate of the weight of a person in life from examining the dead body? A Yes, sir; I am.

Q What, in your opinion-- can you state with reasonable certainty what the approximate weight of Ahrabam Kaselovitch was in his lifetime? A About 180 pounds.

Q Healthy? A Yes.

Q How tall? A Well, I have that in my notes.

MR. TRAIN: Is there any objection to the doctor refreshing his recollection?

MR. LEVY: None whatever. Did he say 180 pounds?

MR. TRAIN: Yes.

THE WITNESS: Five foot nine.

Q Can you describe his muscular development? A He was muscular, well built, full faced, weighed about 180 pounds, five foot nine in height.

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MR. LEVY: No questions.

MORRIS R I P S T E I N , a witness called on behalf of the People, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Where do you live? A 141 and 143 Ludlow street.

Q What is your business. Speak so that all these gentlemen can hear you? A Hack driver.

Q Do you remember the 20th day of June, 1906, about 5.30 in the afternoon? A Yes, sir.

Q Where were you then? A I was walking along with Mr. Kaselovitch, the deceased, on Grand street .

Q What were you doing? A On Grand street with Mr. Kaselovitch, these three Italians came walking along and they threw us over; Mr. Kaselovitch asked them, "Can't you look out", and the Italian fellow called him a Sheenie.

BY THE COURT:

Q Which Italian? A This fellow here.

Q Which fellow here? A (Indicating the defendant.) The fellow sitting at the corner.

Q Do you mean the man sitting at the table? A Yes, sir.

THE COURT: Is there any question, gentlemen, that the man indicated is the defendant in this case?

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MR. LEVY: No question whatever, sir.

BY MR. TRAIN:

Q Go on? A He called him a Sheenie.

Q This defendant called who? A Called Mr. Kaselovitch
a Sheenie.

BY THE COURT:

Q Who was he? A The Jewish man.

Q Who was he. Where is he now? A He is dead.

Q Is that the dead man? A Yes, sir.

Q Kaselovitch? A Yes, sir.

Q Speak so that the jurors will understand you. A Yes, sir.

BY MR. PINCHOT:

Q What do you mean, "threw us over"? A We came throwing
into us.

Q They came throwing into us? A Yes, sir.

Q Tell what happened next? A He called him down, this
fellow pulled out a knife and stabbed the man and after he stab-
bed him--

Q Where was this when you first meet them? A Grand and
Norfolk street.

Q How far from the corner? A About twenty feet away
from the corner.

Q Which way did your friend run when he ran? A Towards
the east.

Q Towards the east? A Yes, sir.

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Q Where did he go then? A Into Norfolk street.

Q Where was it the defendant caught your friend? A On Norfolk street.

Q Exactly what did he do to your friend? A He stabbed him.

Q Now, tell us exactly how he stabbed him, did he catch hold of him first, turn him around or what did he do?

MR. LEVY: Don't lead the witness in that way.

Q Now, tell your story, tell exactly how it happened?

A This deceased ran around the corner of Norfolk street and this defendant ran after him and he caught him in the left side here, caught him at the corner and stabbed him on the left side.

Q Did you see the whole transaction? A Yes, sir.

Q Now, during this conversation which the deceased had with the defendant and the Italians, when you first met, were there any angry words spoken? A No, sir.

Q What did you say, did you say anything? A No, sir; I did not say anything.

Q Now, will you come down here, please, and illustrate before the jury exactly how that stabbing was done. You be the defendant and this is the deceased. The deceased is running away from you? A Yes, sir.

Q And you are running after him? A (Witness illustrates.) He caught him right here and stabbed him this way, in his left side.

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Q During the time that the deceased was running away from the defendant, how far away were you? A I was away about thirty feet or twenty-five.

Q Were you following? A Yes, sir.

Q Now, at the time, the exact moment of the stabbing, how far away were you? A Oh, about twenty-five feet away from him.

Q At what time did you first see the knife? A About one hour later.

Q You didn't see the knife during the stabbing? A Yes, sir; I did see it but they found the knife about an hour later.

Q What time did you first know that the defendant had a knife? A I had seen it.

Q When was it that you first saw it? A Before he stabbed him; I seen it and I told him that this man has a knife.

Q Where was that? A Corner of Grand and Norfolk street.

Q That was when you first met him? A Yes, sir.

Q Where did you see the knife? A He had it in his hand.

Q Which hand? A In his hand here (illustrating).

Q Was it open or shut? A Yes.

Q Which was it, open or shut? A It was unopened.

Q At the time? A Unopened.

Q Now, during the time that the defendant was pursuing the deceased, did he have the knife in his hand? A Yes, sir.

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Q Now, describe what he did while he was pursuing the deceased, while he was running after your friend what was he doing?

A He stabbed him.

Q Well, I know he stabbed him, but during the time that he was running after your friend was he doing anything? A No, sir.

Q He was just running after him? A Yes, sir.

Q Chasing him? A Yes, sir.

Q Now, when your friend was stopped, what happened next?

A Oh, this defendant ran down Norfolk street.

Q Did you see where he went? A Yes, sir; he started straight down Norfolk street and this deceased hollered, "This is the man stabbed me." He ran after him, "This is the Italian who stabbed me."

Stricken out.

THE COURT: I will strike that out, as to what the deceased said when running. The jury will disregard what the witness said in that respect, as it appears in evidence that the deceased was in flight and the defendant was in pursuit. It may have been that the defendant could not have heard what the deceased said, and therefore it is not competent.

MR. PINCHOT: I asked him when it happened and he said immediately following the blow.

THE COURT: You can only get in what the deceased said, if he said anything, as a dying declaration, and that must

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be proven by preliminary proof.

Q This was said just a moment after the blow was struck?

THE COURT: I don't think that it would form a part of the res gestae. It is a declaration of a past transaction.

MR. PINCHOT: I thought perhaps it was so closely connected that it would be considered part of the res gestae.

THE COURT: I don't think that it forms part of the res gestae. Motion granted.

Q Now, will you describe what you did after you saw the defendant turn and run away?

Objected to as immaterial. Objection overruled.

Exception.

A I ran after him and I got into Norfolk street, 18 Norfolk street,, a steamship office.

Q Begin at the beginning again? A I ran after him into No.18 Norfolk street, into a steamship office, he got in there, there was two people there, they ran out, I was all alone, I rang up for Headquarters and this man dropped the knife under a chair.

MR. LEVY: I move to strike that out.

BY THE COURT:

Q Did you see him drop the knife? A Yes, sir.

Motion denied. Exception.

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BY MR. PINCHOT:

Q How long were you there? A About fifteen minutes.

Q Then what happened? A Then some police came and they got him; they brought him over to the deceased and when they brought him over to the deceased they asked him if this was the man that stabbed him.

MR. LEVY: Objected to.

THE COURT: Don't state what was said.

MR. PINCHOT: This is also in the presence of the defendant.

THE COURT: I understand that.

THE WITNESS: He was brought over and they asked the deceased if this was the man that stabbed him.

Q Who asked the deceased? A The officer.

Q What did the deceased say? A He shook with his head that this is the man.

Q He didn't say any words? A No, sir.

Q Did he utter any words? A No, sir; he could not.

THE COURT: Strike out the witness' statement.

THE WITNESS: He closed his eyes and said this was--

Q He didn't say any words? A No, sir.

THE COURT: Just wait a moment. Do not let us be confused.

BY THE COURT:

Q You say that the officer asked the deceased, "Is this the

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man"? A Yes, sir.

Q He had the prisoner with him at that time? A Yes, sir.

Q The officer did? A Yes, sir.

Q What did the deceased do, not what he said? A He shook with his head and closed his eyes.

Q He shook his head? A Yes, sir.

Q How did he shake his head? A (Witness illustrates.)

Q There is a difference between a motion and a shake.

Show the jury how the deceased moved his head? A (Witness indicates up and down.)

Q What did he do then? A Closed his eyes.

Q He uttered no words? A No, sir.

BY MR. PINCHOT: -

Q He uttered no words? A No, sir.

Q Now, at the time that you got there with the officer and the defendant, where was the deceased, when you got to the scene?

A 38 Norfolk street.

Q Where was it, what was his position? A A hack driver.

Q No, I mean where was he lying? A On Norfolk street.

Q Was he lying on the sidewalk, was he inside the door or where was he? I want to know where he was? A He was outside.

Q You say he was lying down? A Yes, sir.

Q Who was around him? A The officers and some more witnesses that were there.

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Q Who were they? A I couldn't tell.

Q Do you know any of them? A All those that are outside.

Q Do you know the officer? A Yes, sir.

Q Now, at the time that you saw the deceased lying there were his eyes open or closed? A Open.

Q His eyes were open? A Yes, sir.

Q Positive of that? A Yes, sir.

Q How long were you there after that? A About five minutes.

Q What happened then? A Then they took him away with the ambulance.

Q Then what did you do? A I went down to the police station.

Q Who did you go with? A The officer.

Q Anybody else? A Yes, sir; with this defendant.

Q Now, just go back a little bit. You say that you saw a knife? A Yes, sir.

Q Could you identify the knife? A Yes, sir.

MR. PINCHOT: I want to present the knife in evidence.

MR. TRAIN: Is it conceded that that is the knife?

THE COURT: Is it conceded that that is the knife with which the wound was inflicted upon the body of the deceased?

MR. LEVY: The wound, yes, sir.

Q Is that the knife? A Yes, sir.

MR. TRAIN: It is conceded anyway.

(The knife referred to is admitted in evidence and marked People 's Exhibit 1.)

CROSS EXAMINATION BY MR. LEVY:

Q Now, Mr. Ripstein, what did you say your business was?

A Hack driver.

Q How long have you been a hack driver? A Two years.

Q How long have you known the deceased? A Oh, for about five years.

Q Five years? A Yes, sir.

Q Lived in the same neighborhood with him? A Yes, sir.

Q Where do you live? A I live in 63 Sheriff street.

Q Did you live there at the time of this occurrence?

A No, sir.

Q Where did you live at the time of this occurrence?

A 53 Norfolk street.

Q 53 Norfolk? A Yes, sir.

Q Where did the deceased live at that time? A 31 Norfolk street.

Q The same block with you? A Yes, sir.

Q You were very frequently in his company? A Yes, sir.

Q You were what is known as his pal, were you not?

A What is that?

Q You were his pal, were you not, you were his chum?

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A I don't understand that.

Q Were you with him very frequently? A Yes, sir.

Q You associated with him constantly, did you not?

A I can't understand that.

Q I don't hear what you say. A I can't understand.

Q You were very friendly with the deceased, were you not?

A Yes, sir.

Q You worked in the same establishment with him? A Yes, sir.

Q Now, do you remember the morning of that day? A Yes, sir.

Q Were you with the deceased on that morning? A No, sir.

Q When did you first meet Kaselovitch the deceased on that day? A At 12 o'clock.

Q Where was that? A At the place, 224 Division street.

Q Do you drink intoxicating liquors? A No, sir.

Q Do you know whether the deceased drank liquor or not?

A No, sir.

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

Q Now, Mr. Ripstein, you say you met the deceased at twelve o'clock? A Yes, sir.

Q Where did you meet him?

MR. PINCHOT: I don't think the witness understands your question as to the deceased drinking intoxicating liquors.

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MR. LEVY: Let him say whether he understood me or not. He is a New York boy and he understands English.

MR. PINCHOT: Let the question be repeated to him again.

MR. LEVY: I haven't any objection to his having questions repeated if he says he doesn't understand.

Q If you don't understand any question I put to you be kind enough to have it repeated to you. You say you met Mr. Kaselovitch at twelve o'clock that day? A Yes, sir.

Q Where did you meet him? A At the place, 224 Division street.

Q That is the stable, is it not? A yes, sir.

Q Where you both worked? A Yes, sir.

Q Do you still work there? A No, sir.

Q Where do you work now? A The Live Poultry Market.

Q What do you do there? A I drive there, a driver.

Q You drive a wagon that carries live poultry, crates of live poultry? A Yes, sir.

Q By whom are you employed? A By Mr. Hawke.

Q After meeting the deceased at twelve o'clock that day where did you go with him? A I went to the dentists.

Q What is the name of the dentist? A Davis.

Q Where is his place of business? A 327 Grand street.

Q Near what street? A Orchard street.

Q Near Orchard street? A Yes, sir.

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Q That is how many blocks away from the stable where you met him? A About seven or eight blocks away from the stable.

Q How long have you lived in the neighborhood? A (No answer.)

Q You say you lived in Norfolk street? A Yes, sir.

Q At the time of this occurrence? A Yes, sir.

Q How long did you live in Norfolk street prior to this occurrence? A I lived in Ludlow street at the time of this occurrence.

Q That is in the same neighborhood, is it not? A Yes, sir.

Q How long had you lived in that immediate neighborhood prior to this occurrence? A About two years.

Q You are familiar with all the streets in that neighborhood, are you not? A No, sir.

Q You ain't? Don't you know the names of all the streets? A Yes, sir.

Q You were a hack driver how many years? A Two years.

Q You wish to say now that you don't know the names of all the streets? A I could not understand you.

Q What is that? A I could not understand you.

Q Do you know the names of all the streets in that neighborhood? A Yes, sir.

Q Now, how many blocks is it from Norfolk to Orchard and Grand street? A Three blocks.

Q Didn't you just say it was seven or eight blocks? A You asked me from the stables.

Q Well, I repeat that question, from the stables? A Yes, sir.

Q Between what street is the stable? A Between Clinton.

Q What is that? A Between Clinton and Division street.

Q You evidently don't understand me. You say the stable is in Norfolk street? A No, sir; the stable is in Division street, corner of Norfolk.

Q It is between what streets? A Corner of Clinton.

Q You say that the dentist is eight blocks from there, is that so? A Yes, sir.

Q Now, what time did you arrive with the deceased at the dentist's establishment? A About five o'clock.

Q You got there at five o'clock? A Yes, sir.

Q What time did you leave the stable with the deceased?
A Four o'clock.

Q At four o'clock? A Yes, sir.

Q Did you and the deceased remain in the stable from twelve until four o'clock? A Yes, sir.

Q Had you done any work during that time? A No, sir.

Q What were the deceased and yourself doing in the stables up to that time until four o'clock? A Sitting there.

Q Just sitting there? A Yes, sir.

Q You say you arrived at the dentist's establishment at four o'clock? A Yes, sir.

Q How long did you remain there? A About fifteen or twenty minutes.

Q Did you have any work done there on your teeth?

A No, sir; the dentist was not in.

Q The dentist was not in? A No, sir.

Q You both left? A Yes, sir.

Q Now, what did you do immediately after leaving the dentist's place? A Going back to the place, to the stable.

Q Back to the stable? A Yes, sir.

Q You walked east on Grand street, did you not?

A Yes, sir.

Q Did you buy anything during that time? A No, sir.

Q Positive you did not stop into some place and buy something? A No, sir.

Q Did the deceased stop and buy anything? A No, sir.

Q Did you purchase or buy anything at any stand on Grand street? A No, sir.

Q Any corner stand? A No, sir.

Q Sure of that? A No, sir.

Q Did the deceased have any work done on his teeth on that occasion? A No, sir.

Q Did you go with him for the purpose of having work done on your teeth? A On my own and on his.

Q He was going to have some work done on his teeth?

A Yes, sir.

Q Now, before reaching Norfolk street, did the deceased and yourself walk together on the sidewalk? A Yes, sir.

Q At what hour of the afternoon was it? A About half past five.

Q Now, you say you left the dentist's place fifteen minutes after four o'clock, is that right? A (No answer.)

MR. LEVY: I have no objection to the jurors examining the knife, but--

THE COURT: It is in evidence.

MR. LEVY: I have no objection to their examining it but I have objection to its position here in the center of the table.

THE COURT: If the jurors wish to examine it, they may do so.

BY MR. LEVY:

Q Now, you say you left the dentist's establishment at fifteen minutes after four? A Yes, sir.

Q How long did it take you to walk from Eldridge-- was that the dentist's place, corner of Eldridge street? A Orchard street.

Q How long did it take you to walk from Orchard street to Norfolk street? A About five minutes.

Q Five minutes? A Yes, sir.

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Q That would have brought you to Norfolk and Grand street at twenty minutes after four o'clock, isn't that so? A Yes, sir.

Q Did you stop there and stand on the corner? A I stopped there and he spoke to somebody.

Q To whom did you speak? A Somebody.

Q What is the name, was it a man or woman? A A young girl.

Q A young girl? A Yes, sir.

Q What was her name? A I don't know her, he does.

Q What is that? A He knew her but I didn't know her.

Q You did not? A No, sir.

Q The deceased knew her? A Yes, sir.

Q Did you talk to the young lady? A No, sir.

Q How long were you standing there talking to the young lady? A I could not tell you exactly how long.

Q Was it five or ten minutes? A Oh, it was more than half an hour.

Q More than half an hour? A Yes, sir.

Q What other persons were there with whom either you or the deceased was acquainted that you stopped and talked with at that time? A None.

Q Only this young lady? A Yes, sir.

Q Is that young lady in court? A No, sir.

Q What day of the week did this occurrence take place?

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A What day?

Q yes, what day of the week was it? A It was Wednesday, I think.

Q On a Wednesday? A Yes, sir.

Q At that hour on Wednesday, at that time, the street was pretty well crowded with people, wasn't it? A I don't know whether it was or not.

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

Q At the time you were walking from the dentist's establishment was there a large number of people going to their homes from their work? A Yes, sir.

Q And the streets were pretty well crowded? A No, sir; it wasn't well crowded-- yes, sir.

Q It was? A Yes, sir; it was.

Q On the side of the street you were walking on there were a great many people walking to and fro? A yes, sir.

Q Were you compelled, frequently, to walk single file through the crowd or did you and Mr. Kaselovitch walk side by side all the way down the avenue? A No, sir; single.

Q You had to walk singly occasionally, isn't that so? A Yes, sir.

Q Now, you say you arrived at the corner of Norfolk street and Grand, that was in front of Schnappman's milinery establishment, wasn't it? A Yes, sir.

Q You know the place, had seen it many times? A Yes, sir.

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Q How long did you stand in front of Schnappman's?

A About two minutes.

Q Two minutes? A Yes, sir.

Q Are you quite sure of that Mr. Ripstein? A No, sir.

Q You are not sure of that? A No, sir.

Q Now, let us go a little slower then and see whether we can get a correct story from you. How long did you stand there with Mr. Kaselovitch in front of Schnappman's, corner of Norfolk and Grand street after you arrived there at 4.20 p. m.? A I could not tell you exactly.

Q You could not state exactly? A No, sir.

Q Now, you have stated that the stabbing took place about 5.30 p. m., did you not? A Yes, sir.

Q You say you arrived at that point at 4.20 p. m.?

A Yes, sir.

Q Can you state how long you stood on that corner?

A I was not on that corner.

Q What corner were you on? A Ludlow street.

Q Then how long did you stand on the corner of Ludlow street? A Well, he spoke there to somebody.

Q I don't hear you. A He spoke there to somebody half an hour, a young lady he spoke to.

Q The deceased spoke to a young lady on Ludlow street also?

A Yes, sir; on the corner.

Q The young lady that he spoke to on Norfolk street was a

different young lady? A No, sir; he didn't speak to her on Norfolk street.

Q He did not speak to another young lady on Norfolk street?

A No, sir.

Q After leaving the young lady at the corner of Ludlow street, you and the deceased proceeded easterly on the south side of Grand street towards Norfolk street? A Yes, sir.

Q Now, when you arrived on the corner of Norfolk street in front of Schnappman's millinery establishment, how long did you stay there? A As long as when he thre us over.

Q What is that? A We stayed there about three or five minutes.

MR. LEVY: I ask that the last answer of the witness be stricken out on the ground that it is not responsive to my question.

MR. TRAIN: By consent the answer may be stricken out.

BY MR. LEVY:

Q Now, Mr. Ripstein, how long did you say you stood on the corner of Ludlow street in conversation with this young lady?

A I could not tell you now.

Q Estimate the time, give us an idea, was it five minutes?

A Well, I told you before it was more than half an hour.

Q More than half an hour? A Yes, sir.

Q Now, Mr. Ripstein, did you stop half an hour and talk to

this young lady? A I don't know.

Q On the corner of Ludlow and Grand street? A Yes, sir; it might be half an hour or it might be fifteen minutes or ten minutes later.

Q It might have been five or ten minutes longer?

A Yes, sir.

Q Now, did the young lady leave the both of you at that point or did she go east with you? A Went on towards the west.

Q She went west? A Yes, sir.

Q You and Kaselovitch went east? A Yes.

Q Now, do you know what time you arrived at the corner of Norfolk and Grand Streets? A No, sir.

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

Q How long did you stand on that corner with the deceased?

A About five minutes.

Q About five minutes? A Yes, sir.

Q Were you standing up against the show window of the store?

A No, sir.

Q In what position were you standing? A Well, at the time we had an argument with him, at the time he threw him over.

MR. LEVY: I ask that that be stricken out as not responsive.

THE COURT: Strike it out.

BY MR. LEVY:

Q In what position were you and Kaselovitch standing at

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the time that you were standing at the corner of Norfolk street in front of Schnappman's-- were you up against the show window?

A We was not standing there; we came walking along on the street.

Q You came walking along on the street? A Yes, sir.

Q Now, before you left the defendant how long had you been on that corner? A We wasn't there on the corner.

Q What was that? A We wasn't there on the corner.

Q You were not on the corner? A No, sir.

Q How far from the corner were you? A We was not standing there; we came walking towards Norfolk street.

Q Were you walking alongside of the curb stone or on the inside? A Beside of the curbstone.

Q You were on the curbstone side? A Yes, sir.

Q And Kaselovitch was on the inside? A Yes, sir.

Q Kaselovitch was much taller than you? A Yes, sir.

Q As you walked easterly and met these three Italians, which one jostled you? A None of them.

Q None of them jostled you? A No, sir.

Q Did they jostle Kaselovitch? A Yes, sir.

Q Were they coming along on the inside of the sidewalk or the outside of the sidewalk? A On the inside.

Q Quite positive of that? A Yes, sir.

Q Now, who was in the center when the two parties met, the defendant or one of his friends? A The defendant.

Q Wasn't he walking on the outside of his friends or was he between his friends? A Between his friends.

Q Then, did you understand my last question? A Yes, sir.

Q You did? A Yes, sir.

Q Now, I will repeat it: Was the defendant on the outside and did he jostle Kaselovitch or was it one of his friends jostled him? A He did.

Q Who did? A The defendant.

Q Quite positive of that? A Yes, sir.

Q Now, will you say that Mr. Kaselovitch did not push the defendant or his friends? A No, sir.

Q Sure of that? A Yes, sir.

Q Can you describe in what manner they were walking?

A They were walking this way, towards the west.

Q How were they walking, just describe how they appeared to you when you first laid your eyes on them? A (No answer.)

Q Did you understand my question? A I did not understand you exactly.

Q Do you remember when you first saw the defendant and his friends as they came along Grand street in an easterly direction? A No, sir.

Q You don't remember them at all, do you? A No, sir.

Q That has escaped your memory? Say yes or no, the Stenographer can't take nods, which do you mean, yes or no-- coming from Suffolk street? A Yes, sir.

Q When did you first lay your eyes on them? Do you remember that? A They were in front of us when they threw us over.

Q Do you remember when you first saw them? A When I first saw them, yes, sir.

Q Were they immediately in front of Schnappman's store when you first saw them? A Yes, sir.

Q How far away from you were they when you first saw them? A Right in front of us.

Q Right in front of you? A Yes, sir.

Q How were they walking, in what position? A They were walking and they threw me and Kaselovitch over.

MR. LEVY: I move that that be stricken out.

THE COURT: Strike it out.

MR. LEVY: I will repeat the question to him.

Q (Question repeated.) A I could not tell you what position.

Q You could not. Will you come down and describe to the jurymen how they were walking by having two men stand alongside of you? A (Witness illustrates.)

Q Show us in what position the defendant was? A I could not tell you in what position; he walked down and threw us over.

MR. LEVY: I move to strike that out as not responsive.

THE COURT: Yes.

Q Was the defendant in the center of the other two, in the middle, between the two, isn't that so? A Yes, sir.

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Q Now, do you understand Italian? A No, sir.

Q Will you swear that the defendant spoke English on that occasion? A The defendant didn't speak no English.

Q Yes or no? A No, sir.

Q You did not hear him say anything in English, did you?

A No, sir; he said--

Q Now, wait a moment. Yes or no is all I want you to say. A Well, he--

Q Now, wait a moment. You have given your best recollection, have you not, as to what occurred on that occasion? A Yes, sir.

Q Now, will you swear whether you can state positively who spoke first? A (No answer.)

Q Can you tell us who spoke first? A This man here did.

Q Keep your voice up. Who spoke first? A The defendant.

Q In what language did he speak to you? A In English.

Q Didn't you just say that he didn't talk English?

A (No answer.)

Q Didn't you just say he didn't talk English? A He only said, "Sheenie" that is all, in English.

Q Is that all he said in English? A Yes, sir.

Q Just the one word "Sheenie"? A Yes, sir.

Q Is that true? A Yes, sir.

Q Now, was he the first one to make that utterance?

A Yes, sir.

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Q Nothing else was said prior to that time? A No, sir.

Q Positive of that? A Yes, sir.

Q Did you make any remark? A No, sir.

Q Did Kaselovitch make any remark? A Not that I know of.

Q Did you push into these Italians? A No, sir.

Q Did Mr. Kaselovitch push into them? A No, sir.

Q Or try to brush them aside? A No, sir.

Q Do you remember what you testified to at the Coroner's inquest? A Yes, sir.

MR. TRAIN: If he testified to anything else at the Coroner's inquest I will concede it and you can read it to the jury. I will concede anything that he has testified to in the Coroner's Court.

MR. LEVY: Will you make that concession on the record?

MR. TRAIN: Yes.

MR. LEVY: It is conceded upon the part of the Prosecution that--

MR. TRAIN: If you say he said something else at the Coroner's Court I will concede it is so.

BY MR. LEVY:

Q Didn't you say in the Coroner's court these words, in answer to the question, "Q Who is your friend? A The deceased. We came down to Grand and Norfolk street when three Italians came along and my friend, the deceased, says, 'Can't you look out where you are going?'"?

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MR. TRAIN: I will concede that.

MR. LEVY: (Reading) "They threw us over". Now, you just say that no one uttered a word at the time this occurrence took place except the defendant who called Mr. Kaselovitch a Sheenie, didn't you just say that?

THE WITNESS: Yes, sir.

Q Answer yes or no. A Yes, sir.

Q Did you just say that?

MR. TRAIN: I will concede that he just said that.

MR. LEVY: I want to point out the contradiction in his testimony.

MR. TRAIN: It is perfectly plain.

MR. LEVY: Of course it is perfectly plain. Do you concede on the record that his testimony is different?

MR. TRAIN: I don't concede that the boy lied, but I concede that he did say that the first word that was said was "Sheenie." And at the Coroner's inquest he said, "Can't you look out of the way".

Q You say that the defendant didn't utter any other word in English except the word "Sheenie", is that so? A Yes, sir.

Q Positive of that? A Yes, sir.

Q Now, didn't you answer this question in this manner, "He said, 'Get out you Sheenie'"? A Yes, sir.

Q Did he say all of that? A (No answer.)

Q Didn't you say that in the Coroner's Court?

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MR. TRAIN: I will concede that he said it.

Ask him if it was true and if he did say it.

BY MR. LEVY:

Q Now, is it true, that he only uttered one word "Sheenie",
answer yes or no. A You mean the defendant? Yes.

Q Sure of that? A Yes, sir.

Q Now, what did you do when he said the word "Sheenie";
what did you do? A I did not do anything.

Q You didn't do a solitary thing? A No, sir.

Q Did you walk away? A Yes, sir.

Q Or did you remain standing? A I was standing there and
I seen the way he pulled the knife.

Q Did you remain standing, yes or no. A Yes, sir.

Q What did the deceased do, did he remain standing?
A No, sir; he did not do anything.

Q Did he say anything to the Italians? A No, sir.

Q Quite positive he did not say a solitary word? A No,
sir.

Q Not one word? A No, sir.

Q You both just stood still, is that so? A Yes, sir.

Q Did you stand still right in front of them or on the
side? A On the side.

Q On the side? A Yes, sir.

Q You did not walk away? A Yes, sir.

Q You did not walk away, yes or no. A We wanted to

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walk away.

Q Did you walk away? A No, sir.

Q Now, did the Italians proceed to walk away? A No, sir.

Q Do you mean to say they remained still right there?

A Yes, sir.

Q Were they immediately in front of you? A Yes, sir.

Q Or a little to one side? A One side.

Q A little bit to one side? A Yes, sir.

Q So that five or you covered almost the entire sidewalk?

A No, sir.

Q Is that so? A No, sir.

Q How much of the sidewalk did five or you take up?

A I could not tell you exactly how much, I did not measure it.

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

Q You took up most of the sidewalk, did you not? A I think so.

Q Now, Mr. Ripstein, immediately after this word "Sheenie" was spoken, as you stated, was there further argument?

A No, sir.

Q There was nothing else said or argued? A No, sir.

Q Did the crowd move around the corner on the Norfolk street side of Schnappman's? A What crowd?

Q The crowd that gathered, there was a crowd of people, was there not? A No, sir.

Q There was no crowd? A No, sir.

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Q Do you mean to tell me that while this conversation took place, while you were standing there, after the word "Sheenie" was called, that no crowd congregated? A No, sir.

Q Sure of that? A Yes, sir.

Q What did Kaselovitch do immediately after the name or word "Sheenie" was mentioned? A He did not do anything.

Q Did absolutely nothing? A Yes, sir.

Q Did you move away towards Norfolk street? A Yes, sir.

Q Did Kaselovitch follow you? A Yes, sir; I told him that this man is pulling a knife, and so he ran down towards Norfolk street.

MR. LEVY: I ask that it be stricken out as not responsive to my question.

THE COURT: Strike it out.

Q How far around Norfolk street had you moved after the word Sheenie was mentioned? A Walked on the corner.

Q What is that? A Walked on the corner.

Q Well, from the position where all of you were standing, could you look north or south on Norfolk street? A South.

Q You could look south? A Yes, sir.

Q That is towards Hester street? A Yes, sir.

Q Now, Mr. Ripstein, will you tell this jury whether the two Italians who were with the defendant did anything after the word Sheenie was spoken? A No, sir.

Q Didn't do anything at all? A No, sir.

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Q Now, will you state whether the defendant spoke that word "Sheenie" or whether one of the two friends of his spoke it?

A The defendant.

Q The defendant did it? A Yes, sir.

Q Sure he spoke that word? A Yes, sir.

Q You will swear that it was not his friends that said the word? A I will swear, yes, sir.

Q You will swear to that? A Yes, sir.

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

Q Didn't you testify in the Coroner's court that the two friends of the defendant chased the deceased? A No, sir; this is the man chased him.

Q Didn't you testify in the Coroner's court to that?

A No, sir.

Q Didn't you say this in answer to a question in the Coroner's court: "And the two friends of the defendant, there were the two friends of the defendant and they started to run after him". Didn't you say that? A I said the three of them ran after us.

Q Now, did the defendant start to run away from the deceased ~~after~~ after he stabbed him.

Q Quite sure he didn't start to run away before the stabbing took place? A No, sir.

Q The stabbing took place in front of Schnappman's, did it, out on the Norfolk street side, isn't that so? A It was

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in Norfolk street.

Q Schnappman's millinery store has a window facing the Grand street and also one facing Norfolk street, hasn't it?

A Yes, sir.

Q Now, then, you claim that the stabbing took place in front of the Norfolk street show window of Schnappman's, isn't that true? A yes, sir.

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

Q Now, you cannot make any mistake about that? A No, sir.

Q Now, what time was that when the stabbing took place?

A About half past five.

Q About half past five? A Yes, sir.

Q Was it any later than half past five? A No, sir.

Q Quite sure of that? A Yes, sir.

Q Now, do you know the Norfolk street number of Schnappman's place? A No, sir.

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

Q Do you know the number of the house on the opposite side of Norfolk street, opposite Schnappman's? A Yes, sir.

Q What is the number? A Forty-two.

Q Forty-two? A Yes, sir.

Q That is a corner house, is it not? A Yes, sir.

Q Now, isn't it No.40? A It is forty or forty-two.

Q It was on the stoop of that house that the deceased fell, isn't that so? A yes, sir.

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Q You are sure of that? A The deceased fell at 40
Norfolk street.

Q Sure he fell on that stoop? A On 40 Norfolk street.

Q Now, Mr. Ripstein, didn't you say in the Coroner's court
that the defendant ran into the deceased, or that the deceased
ran into the defendant? A The defendant ran into the deceased.

Q I will repeat this question: "How did he stab him" and
you answered, "This way, he ran after him and he turned and he
ran into him". You mean the deceased turned into him?

A The deceased turned and the defendant ran into him.

Q And ran into him? A Yes, sir; and he stabbed him.

Q Have you ever been arrested?

Objected to.

A No, sir.

Q Have you? A No, sir.

MR. TRAIN: The witness says no, he has never been
arrested.

M A X S C H W A R T Z , a witness called on behalf of the
People, being duly sworn and examined through Official
Interpreter Philip Dollin, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Now, Mr. Schwartz, can you speak English? A No, sir.

Q Can you speak enough to tell what you saw that night?

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A I don't understand English. I speak German.

Q You understand a little? A Yes, sir.

Q You speak a little? A Yes, sir.

Q What is your business, what do you do for a living?

Don't you know what business is? A Yes, sir; I am a presser?

Q Presser? A Yes, sir.

Q Who do you work for? A I work for--

Q What man do you work for? A Heller & Company, 679

Spring street.

Q They make what? A I am a presser, a tailor store, I am a presser.

Q They make clothing, don't they? A Yes, sir.

Q You press pants? A Yes, sir; children's clothing.

Q He is a pants presser? A Yes, sir; a pants presser.

Q Now, did you know this man that was killed? A No, sir.

Q Do you know the defendant? A The Italian? I did not know him before.

Q You don't know anybody? A But I know him since they arrested him.

Q You don't know anybody in the case? A No, sir.

Q Never saw them before? A They are strangers to me.

Q On the afternoon of June 20th, where were you about half past five o'clock? A I live in Norfolk street and I went around Norfolk street and I was on my way to a cousin of mine in No. 11 Essex street, where she lived.

Q go on? A And when I came to the corner of Norfolk and Essex Street I heard a noise by a crowd, a crowd calling out, "Catch the murderer", they were calling. I looked on the side and I saw, -- I looked backwards and I saw this man running; he had no hat on; he had a stiletto in his right hand and he was swinging his stiletto that way, whenever any one wanted to approach him he struck with that stiletto or that knife, from the right to the left and at the same time he was running.

MR. LEVY: I move to strike out the word "stiletto".

MR. TRAIN: It is the witness' testimony. The witness has testified that the defendant had a stiletto in his hand.

MR. LEVY: I respectfully contend that the witness cannot characterize a weapon in that way.

MR. TRAIN: He can say that he had a broadsword in his hand if he thought he saw one. He can characterize it and describe it.

THE COURT: Ask him to describe what he saw. Ask the witness to describe the instrument that he calls a stiletto which he says was in the hands of the defendant.

THE WITNESS: It was a knife; I did not see the whole instrument, I saw part of it, the point of it, the point sticking out.

THE COURT: His explanation explains. The mere insertion of a word does not make any difference. His

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description of the weapon is the thing no doubt that the jury will consider.

Q Now, ask the witness what happened after he saw this man running with the knife? A I thought that no one could catch him and then I ran up to him and he would not let me get hold of him and then I caught him by the throat.

MR. LEVY: I object to that interpretation of the witness' answer. This witness stated something entirely different.

THE COURT: I cannot accept your interpretation, counsel, unless there is proof before me that the official interpreter's rendering of the language is incorrect. You can only raise that question by proper proof.

THE WITNESS: caught him by the throat and then he resisted and ran away from me and I caught him again, and when I caught him the second time he saw he can't get away and then he ran into a store, I think it is 18 Norfolk street, a store, then people came around and they asked me what is the matter.

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

THE WITNESS: Then I pressed against the door, to shut the door.

MR. LEVY: I move to strike that out, if your Honor please.

THE COURT: Yes.

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THE WITNESS: To lock the door.

MR. LEVY: Will you give me an opportunity to object?

THE COURT: Before you go any further, does the witness talk Yiddish?

THE INTERPRETER: No, sir, he speaks pretty good German.

THE COURT: Keep him to the German and don't let him get into Yiddish.

THE WITNESS: So in order that the crowd should not get in and that there should not be a fight, I called somebody to lock the door.

MR. LEVY: I ask that that be stricken out.

THE COURT: Motion granted.

Q What did you do, ask him that question? A Then I saw there was a telephone and I begged some one to telephone to the police station.

Objected to. Stricken out.

Q You went into 18 Norfolk street? A Yes, sir; in the store.

Q Did you go in after him? A Yes, sir; I was all the time inside.

Q Did you follow the defendant into 18 Norfolk street?
A Yes, sir.

Q Did anybody go in with you? A Immediately as he entered I entered the store.

Q Did anyone else go in? A I did not permit anyone to

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enter because I called out that the door should be locked. He commenced to run to and fro in the store and I told him to sit down. I stood watching at the door until the policeman came, and I did not let any one in, I told them to remain outside.

Q Did you lock the door? A No, sir; a boy belonging to the store locked the door.

Q Did the crowd remain outside? A Yes, sir.

Q Now, when you followed the defendant into the store, did the defendant still have the knife in his hand? A Yes, sir.

Q Did you see what became of it? A Yes, sir; he had the knife in his hand yet.

Q Did you see what became of the knife? A No, sir.

MR. LEVY: It is already conceded that this is the knife and this testimony with regard to what became of the knife is immaterial. It is only taking up time.

THE COURT: It is a difficult matter to segregate one part of the witness' testimony from the other. The District Attorney has a right to introduce all the testimony.

Q Did you remain there until the officers came and arrested the defendant? A Yes, sir.

Q Did you go with them to the place where the deceased was? A Yes, sir.

Q Where was the deceased? A In Norfolk corner of Grand Street; he was on the corner of Norfolk and Grand street,

he was lying on the sidewalk, on the left side.

THE COURT: Gentlemen of the jury remember my caution to you to-day, not to talk about the case and not to express any opinion concerning the guilt or innocence of the defendant until the case be finally submitted to you.

The Court then adjourned the further trial of this case until tomorrow, Tuesday morning, October 23rd, 1906, at 10.30 o'clock.

PEOPLE v. GUISEPPI YACCOBACCI.

New York, October 23d, 1906.

TRIAL RESUMED.

MAX SCHWARTZ, a witness for the People, resumes the stand:

DIRECT EXAMINATION CONTINUED BY MR. TRAIN:

Q Now, Mr Schwartz, where were you walking, on what street, when you first saw the defendant running? A I was at that time already Norfolk corner of Hester street.

MR. LEVY: Will you ask the witness to please raise his voice so that I can hear him.

THE INTERPRETER: Yes.

BY MR. TRAIN:

Q Which direction were you walking in? A I was walking from Grand towards Hester street.

Q Towards Hester street? A Yes, sir.

Q Now, in which direction was the defendant running?

A He was behind me and was walking in the same direction as I?

Q Now, did he say walking or running? A Well, now he says running.

Q What caused you to observe the defendant? A Because

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I heard the crowd which was after him hollering, "Catch the murderer, catch the murderer"; and then I turned my head and I saw that man as he ran, and he had a knife in his hand and was flourishing it, as if to hold back the people.

Q Now, at the time you first saw him how far was he from you? A As I turned my head and noticed him it was a little distance, some seven or eight steps.

Q Was it then that you twice attempted to grab him by the throat?

MR. LEVY: I object to that.

MR. TRAIN: I withdraw the question. He has already testified to that.

MR. LEVY: I don't object to it as repetition. I object to it on the ground that this witness has not testified that the defendant tried to grab him by the throat at all.

MR. TRAIN: I did not say that.

BY MR. TRAIN:

Q Was it at that time, at that place, was it on that occasion that you grabbed the defendant, or tried to grab him twice by the throat? A Yes; because I saw his dangerous attitude and I thought that I had best try to--

MR. LEVY: I ask that that be stricken out.

THE COURT: Yes.

THE WITNESS: I tried to grab him.

MR. TRAIN: Part of it may be relevant; I don't know. What is it that is to be stricken out?

THE COURT: His thought.

Q Why didn't you grab him by the throat?

Objected to. Objection sustained.

Q Did the defendant do anything when you attempted to grab him by the throat? A No, sir; he simply tried to free himself from me.

Q Well, he did free himself, didn't he? A Once he tore away and I caught him a second time, and after I had grabbed him the second time, seeing the crowd that was near him and that he was about to be apprehended so he again freed himself and ran into a store.

Q Now, did you accompany the defendant and the officers to where the deceased was--I believe you testified to that?

MR. LEVY: Yes.

Q What occurred when you and the officer and the defendant where the deceased was lying? A Well, he was already stretched on the ground and the ambulance came.

Q But before the ambulance came? A He was taken by the ambulance, but he was already unconscious and he did not give any answer.

Q Now, before the ambulance came, did you see an officer,

or did you see anybody speak to the man who was lying upon the ground, before the ambulance came? A No, sir; the ambulance had already arrived in the same instant as I approached the deceased with the officer.

Q Did you see the deceased sitting on the step? A No, sir; he was just lying (illustrating).

Q Did you go back to the steamship office? A No, sir; the detective took me to the Eldridge street station together with the defendant, and then in the patrol wagon to the Tombs.

Q Whereabouts in the steamship office was the chair on which the defendant sat? A In the back.

Q How many chairs were there, do you remember? A I only saw one chair, I think so, I can't tell, because it was a small office.

CROSS EXAMINATION BY MR. LEVY:

Q Mr Schwartz, you don't know the defendant, do you?

A Yes, sir; I know him; not before, however, I did not know him. I recognize him now.

Q Yes? A I know him since the time of the occurrence.

Q Did you know the deceased? A Never before; it was the first time I saw him.

Q Now, Mr Schwartz, you have told us that you were the only one that followed the defendant into the steamship office, that is the store at No. 18 Norfolk street? A Yes, sir; no-

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body else.

Q And somebody who was in the store locked the door after you got in? A Yes, sir; I requested him for that.

MR. LEVY: Pardon me, Mr Interpreter, please tell the witness that I want categorical answers. I want him to say yes or no to my questions.

THE INTERPRETER: Yes, sir.

BY MR. LEVY:

Q Now, Mr Schwartz, do you know the man who owns or conducts the business in 18 Norfolk street, the steamship business, the ticket office? A No, sir.

Q Did you see him there on that occasion? A Yes, sir.

Q The owner of the business? A Yes, sir.

Q Who else beside the owner of the business and himself and the defendant were in that store--and the boy who closed the door? A There were two persons, I think.

Q Two persons? A Yes, sir.

Q Who owned the business? A Yes, sir.

Q Those parties who were already in the store, when you arrived there,--they did not enter the store, but were already in the store? A They were already there.

Q Ask him if he is sure of that? A Yes, sir.

Q Now, please tell the Court and jury what the defendant did when he got into the store and after the door was locked?

A He went first straight to the back and then to the door, and I said to him, "Sit down."

Q Did he sit down? A Yes, sir.

Q Now, did he attempt to do any violence in the store, or raise any disturbance in the store? A No, sir; he was bewildered, surprised.

Q Did he appear to be very much excited and wrought up? A Yes, sir, greatly, his eyes wide open .

Q Did he appear to be very much frightened? A Yes, sir; he was scared and pale.

Q When this witness first saw the defendant, on Norfolk street, did he manifest the same appearance of fright and excitement? A Just the same.

Q Do you know the boy who locked the door after you had entered with the defendant? A No, sir; I request the people there to have the door closed.

Q Was it a boy employed in the store? A No, sir; I think he was a strange boy.

Q Was it a small boy? A A small boy about twelve or thirteen years of age.

JAMES QUINLAN, Jr., a witness for the People,
having been duly sworn, testified as follows:

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DIRECT EXAMINATION BY MR. TRAIN:

Q You are attached to the 12th Precinct? A Yes, sir.

Q And you were attached to that precinct on the 20th of last June? A Yes, sir.

Q On that day you were on post corner Grand and Essex street? A Yes, sir.

Q Did something attract your attention? A Yes, sir; my attention was attracted at the corner of Grand and Essex street.

Q You were on Grand and Essex street? A Yes, sir.

Q What did you see? A About 5:50 P.M. while standing on the southeast corner of Grand and Essex street there was a crowd collected corner of Grand and Norfolk street. I went down to see what the crowd was, and a citizen told me that an Italian--

Q Never mind what the citizen told you, but what was the crowd doing? A They were all running around there, and they told me there had been trouble.

Q How many people were in the street? A I should judge at that time there was near a thousand people, the place was filled.

Q Were they moving in any particular direction or were congested some way? A They were congested, some part of them was going down towards Hester street on Norfolk street.

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Q Well, what did you do? A When I got to the corner of Norfolk street a citizen told me--

Q Never mind what the citizen told you. It is of interest to you but not to us. After you had a little talk with the citizen where did you go? A I went down Norfolk street to No. 18 Norfolk street.

Q When you got to No. 18 what did you see? A There was a crowd of people there.

Q How many people in front of 18 Norfolk street?
A Over a thousand people I should judge; it was filled from Grand street down.

Q Pretty hard work to get through? A Yes, sir.

Q Were they doing anything? A Shouting that there was somebody in 18 Norfolk street that had stabbed a man.

Q What did you do? A I forced an entrance into the store.

Q Now, tell us what you saw when you first stepped into the store? A When I first stepped in the store I saw the defendant in the northeast corner of the store.

Q What was he doing? A He was standing there.

Q Standing there? A Yes, sir.

Q Was anybody else in the store that you recall?

A Well, there was-- there was some people in there, I could not tell you how many.

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Q Are you able to say, with any degree of certainty, how many people there were in the store? A I am not positive, no, sir, perhaps there was four or five.

Q Were there any people in the store at that time, whom you can now identify? A There was only one of them I can identify.

Q What was his name? A That was this Goodman Solomon.

Q A man named Goodman Solomon? A Yes, sir.

Q He was in the store? A Well, at that time when I got there to the east corner of the store where the defendant was there this Goodman Solomon came with me.

Q He came in with you? A Yes, sir; I could not say whether he came in with me or not.

Q He was in the store; he was present at the arrest of the defendant? A Yes, sir.

Q You did arrest the defendant at that time? A Yes, sir; I did.

Q When you arrested him, did he have any weapon in his hand? A No, sir.

Q What did you do next? A Well, when I went in I turned around and tried to get him out of the store, and I could not as the crowd--

Q What is that? A I tried to get him out of the store, and I could not; the crowd surged around me and wanted

to take him.

Q To take him? A Yes, sir; they wanted him, they hollered that they wanted to attack him or kill him.

THE COURT: Strike that out.

Q What was he doing, if anything, as he stood in the corner of the store, what was he doing? A He was doing nothing then.

Q Was he saying anything? A When I went to him he made gestures; I turned around to face the crowd, and had my back to him, and he seemed to grab me around the waist.

Q And cling to you? A Yes, sir; cling to me for protection.

Q Did he say anything? A He spoke something which I thought was pleading for mercy, to save him from the crowd.

Stricken out.

Q Can you remember the supplicating tone? A Yes, sir.

Q You don't remember what the Italian was? A No, sir; I do not.

Q You must know some Italian in that section corner of Grand street-- A Very few Italians there.

Q You waved the crowd out of the steamship office?

A Yes, sir.

Q And took the defendant through the crowd, did you?

A Yes, sir.

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Q Did you have any assistance? A Yes, sir.

Q Who was with you? A Officer Storbich of the 12th Precinct.

Q Where did you take the defendant? A Took him to in front of No. 40 Norfolk street.

Q I suppose you were accompanied by a large gathering?
A Yes, sir.

Q When you got down there did you find a man lying or sitting on the steps? A Yes, sir.

Q What was he doing, lying or sitting? A Lying.

Q What did you do? A I took the complainant before the deceased that was lying--

Q You took the defendant, you mean? A Yes, sir. I took this defendant here, before the deceased, lying on the stoop, and I put the question to him, to the deceased, I asked him if this was the man that had stabbed him.

Q What did the man who was lying on the steps do?
A There was some people around--

MR. RINGROSE: Mr Train I object to the question.

THE COURT: Well, probably no harm has come to you as yet.

MR. RINGROSE: I withdraw the objection then.

THE COURT: I simply restrained the officer from further testifying, because I think that there is suffi-

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cient evidence here to warrant the conclusion that the defendant did not understand the English language, and that being so, we cannot permit anything that may have been said in his presence to be testified to unless it be shown that he understood what was said.

MR. TRAIN: In that case, your Honor, I think your Honor's ruling should revert to the testimony of the first witness as well, the witness Ripstein.

THE COURT: The testimony of the witness Ripstein as to any conversation that may have taken place, or statement made by the deceased, in the presence of the defendant, will be stricken out, inasmuch as it now appears that the defendant did not understand the English language. The jury are directed by me to disregard any testimony relating to statements being made by the deceased person in the presence of the defendant, and consider that no such testimony has ever been given.

Q Now, what did you do next, take this defendant to the Police Station? A Yes, sir.

Q Did you go back to the steamship office? A Not then, no, sir.

Q Your duties personally, concluded at that point?
A Yes, sir.

CROSS EXAMINATION BY MR. LEVY:

Q Officer, how long have you been attached to the 12th Precinct? A Since, I think, the 12th of May.

Q Last May? A The 12th of May, 1906.

Q Are you familiar with that neighborhood? A Yes, sir.

Q Where is the 12th Precinct located? A Eldridge between Grand and Broome streets.

Q This occurrence happened in that precinct? A Sir?

Q This occurrence happened in that precinct? A The stabbing was done in the precinct, but the arrest was made in the adjacent precinct.

THE COURT: Strike that out.

Q This occurrence happened in that precinct? A Yes, sir.

Q Do you know the character of the people that habitate that neighborhood?

Objected to. Objection sustained. Exception.

Q Do you know whether the neighborhood is a distinctly Jewish neighborhood?

Objected to. Objection sustained. Exception.

Q Do you know whether the neighborhood is largely frequented by Italians and by Jews?

Objected to. Objection sustained. Exception.

Q Did you notice the condition of the defendant at the

time you first saw him, was he in a state of great excitement, did he appear to be frightened? A Yes, sir.

Q Now the next question is: Did he offer any resistance when you attempted to arrest him? A No, sir.

MR. TRAIN: There is no question about that, that he offered any resistance.

MR. LEVY: I think that is all.

J O S E P H M A N N, a witness for the people, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q What is your business? A Tailor.

Q Now, try and speak so that the last juryman can hear you? A Tailor.

Q Where do you work? A No. 80 Division street.

Q I could not hear you? A 80 Division street.

Q 80? A Yes, sir.

Q Whose shop is that? A Winckler & Schultze.

Q You are a salesman there? A No, sir; a tailor.

Q You are a cutter? A No, sir, a tailor.

Q How long have you been in that business? A Where?

How long I was working there?

Q How long are you a tailor? A How long I am a tailor? Ten years.

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Q Ten years? A Yes, sir.

Q Were you born in New York? A No, sir.

Q You must speak louder? A Russia.

Q Born in Russia? A Yes, sir.

Q How long have you been in this country? A Four years.

Q What part of Russia did you come from? A I was coming for work.

Q Did you know the deceased in this case? A Yes, sir.

Q What was his name? A Who.

Q What was his name, the deceased, the man who was killed? A Yes, sir; I was seeing him, I was walking in Grand street.

Q Did you know him? A No, sir.

Q Did you know what his name was? A No, sir.

Q Did you ever see him? A No, sir.

Q What I want to know is this, before this unfortunate occurrence took place, before that afternoon, were you acquainted with the man who got killed? A I know him--I did not know him.

Q What is that? A I did not know him. I was walking from the East Side to the West Side.

Q You don't understand me, Did you ever speak to the man who was killed before that afternoon? A No, sir.

Q Now, what were you doing on Grand street? A I was

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walking; I wanted to go to my boss in No. 80 Division street.

Q You were going to 80 Division street? A Yes, sir.

Q What time was it? A About a quarter of six.

THE COURT: We will call in the services of the Interpreter, because the witness is unintelligible, in not being acquainted with the English language. We will now proceed with his examination through the Interpreter.

BY MR. TRAIN:

Q Kindly tell us what you observed on Grand street on the afternoon of June 20th. Tell us anything you saw in detail?

MR. LEVY: May I request the privilege of going around there and listening to the witness.

THE COURT: Yes.

A I was walking in Grand street in the afternoon at a quarter before six o'clock in the evening, and I came to the corner of Norfolk street, and I noticed two Italians and two Hebrews. One Italian approached one of the Hebrews and stepped on his foot. And Kaselovitch said to the Italian, "Can you not see where you are walking;" and the Italian replied, "Shut up, you Sheenie". And then the Italian, after he had made this remark pushed him.

Q Pushed who? A Pushed the Hebrew.

Q Now, just ask the witness at this point if he sees that

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Italian in this room? A Sure, I saw that.

Q Now, is the Italian here. Where is he now? A He is sitting there. That is the fellow, don't you see him (pointing to the defendant.)

Q Go on? A Then the Italian took his knife out from his hip pocket, and in about two seconds had it open, and when Kaselovitch saw that the Italian opened the knife he ran away, and then the Italian ran after him and stabbed him.

MR. LEVY: I ask that that part of the answer be stricken out.

THE COURT: Tell the witness to just state what he saw the Italian do, not to say that he stabbed him, but to tell what he saw the Italian do with the knife on the body of the deceased.

THE WITNESS: I just said everything that I saw correctly.

MR. TRAIN: Now go on.

A Then when I saw that the Italian had stabbed the Hebrew I also ran after him and I hollered, "Murder", and then Solomon Goodman, another Hebrew came also, and along he ran also with me behind the defendant.

THE COURT: It is immaterial what took place afterwards.

BY THE COURT:

Q Ask the witness to tell if when the Italian raised his

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arm he saw a knife in the Italian's hand? A The Italian, the defendant, did not raise his arm, he made this side motion with his arm and then I had seen, and I saw the knife in the hand of the defendant.

Q Well, what part of the body of Kaselovitch, what part of Kaselovitch's body did the defendant strike with the knife?

A I think it was in the side.

Q Which side? A I think, but I did not see that.

Q Did you see him strike the body of Kaselovitch at all?

A Yes, sir; that I saw, but I could not say on what side because he made this motion (a side motion with the arm).

Q When the defendant struck Kaselovitch what did Kaselovitch do? A That I do not know, because I was busy running after the defendant.

THE COURT: At this point strike out what the witness cried out when he was running after the defendant. He said he cried out, "Murder". Strike that out, as it is not competent. The jury will disregard it.

BY MR. TRAIN:

Q Where was the defendant standing when he first drew the knife from his pocket? A He stood at the corner of Norfolk street and Grand street.

Q Was he on Grand street or Norfolk? A On Grand street.

Q On Grand street? A Yes, sir.

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Q How far from the corner of Schnappman's store?

A About five steps.

Q Are you able to state from which direction the Italians were coming and from which direction the Hebrews were coming when they met at that point? A The Italians came from the same side where I came from. I went to Division street, I was on my way going to Division street to my boss.

Q Were the Italians going east or west, were they going towards Brooklyn or towards the Bowery? A West.

Q They were going west? A Yes, sir.

Q Now, were the Hebrews coming from the opposite direction? (No answer.)

Question withdrawn.

Q Was the knife which the defendant drew from his hip pocket open or closed when he drew it out? A It was not open when the knife was pulled out.

Q Did you see the defendant open the knife? A I did not see him when he opened it, but I saw it afterwards when the knife was open.

Q Now, was the knife open before the deceased started to run away? A Yes, sir.

Q Did the deceased, Kaselovitch, have any weapon?

A No, sir, nothing whatever, he ran off at once.

Q Did Kaselovitch strike or make any motion to strike the

defendant? A No, sir. As soon as Kaselovitch saw that the knife was open he ran.

Q How far behind Kaselovitch was the defendant, as they ran? A He was as near to the Hebrew, Kaselovitch, as I am to the Interpreter.

Q Right behind him? A Yes, sir.

Q Where did the stabbing or blow take place? A In the middle of the block, in Norfolk street, for instance, this is Grand street and this is Norfolk street, just in the middle, between Grand and Norfolk.

Q There is not any block between Grand and Norfolk street--where was he stabbed? A Norfolk and Grand street. That Kaselovitch wanted to run into Norfolk street, and in Norfolk street, in the middle of the block, of this street, off from Grand street he was stabbed.

Q How many feet from the corner of Grand street was the place where the stabbing took place? A Just in the middle of the block.

Q Do you know where Schnappman's store is? A No, sir; I don't know.

CROSS EXAMINATION BY MR. LEVY:

Q Mr Mann, do you speak Italian? A No, sir.

Q Do you understand the Italian language? A No, sir;

I cannot know Italian.

Q Do you understand one word of Italian? A I never learned that language.

Q Tell the witness I want yes or no for an answer?

A No, sir.

Q Now, ask him if his memory is better or fresher to-day than it was at the Coroner's inquest, when he testified as a witness?

MR. TRAIN: I will concede that his memory was probably better then.

THE WITNESS: It is the same.

Q It is the same? A Yes, sir.

Q Ask him does he remember what he testified to at the Coroner's inquest? A Yes, sir; I said the same thing what I said to-day.

MR. LEVY: I ask that that be stricken out.

THE COURT: Yes; strike out the latter part of the answer, after the word "Yes".

Q Does he remember that he was under oath at the Coroner's inquest when he testified?

MR. TRAIN: I concede that he was under oath.

THE COURT: That is conceded.

BY MR. LEVY:

Q Now, Mr Mann, did you say this in answer to a ques-

tion at the Coroner's inquest: "The man that is dead said to the Italian, 'Can't you see where you are going,' and the Italian said, 'Can't you see where you are going'". Do you remember making that answer? A No, sir; I said the same thing; I said, "Shut up, you Sheenie".

MR. LEVY: I ask that all after the word "No" be stricken out.

THE COURT: The motion is granted.

Q Do you mean to say that you don't remember having made that answer at the Coroner's inquest?

THE COURT: He said "No", he did not say it.

MR. LEVY: He said he did not say that.

THE COURT: That is his answer now.

MR. LEVY: Mr Train, it is on page 26 that that answer appears. Do you concede that he gave that answer?

MR. TRAIN: I would not concede that now, in the face of the witness' answer.

BY MR. LEVY:

Q Did you say this in answer to a question at the Coroner's inquest, on pages 26 and 27: "Then a friend of the dead man started an argument with the defendant". Do you remember having said that while you were under oath in the Coroner's Court? A Yes, sir; they commenced to speak.

Q What language was the argument in? A In the English

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language.

Q In the English language? A Yes, sir.

Q Ask him is he positive of that, yes or no? A Yes, sir.

Q Ask him if he is positive that the defendant spoke in English. Did you hear the defendant speak in English?

A Yes, sir; I am sure that he said "Shut u , you Sheenie," in English.

Q Ask him did the defendant or one of his friends use that expression? A That I cannot state, one of the three Italians said that.

THE COURT: Let us be certain about this point. The witness has already testified that the defendant said that. Does he say now that one of the three Italians said it. Ask him which of the three Italians used those words, "Shut up, you Sheenie".

MR. LEVY: Pardon me, your Honor, does he know which one of the three Italians made that statement.

THE WITNESS: The defendant did, that is the man (pointing at the defendant).

BY MR. LEVY:

Q Did he hear either of the other Italians say anything, yes or no? A They carried on a conversation between themselves in Italian, the other two.

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Q Did he hear either of the other Italians say anything in English, yes or no? A No, sir.

Q Now, he has testified that that was a quarrel, ask him did the quarrel take place in front of the store on the southwest corner of Grand and Norfolk streets? A That quarrel, or this exchange of words took place on the corner of Grand and Norfolk streets, but more in Grand street.

Q In front of the Grand street side of that store?

A It was just in front of the store there, the first store on the corner.

Q Are you sure that you have told this Court and jury all of the words that the defendant uttered on the occasion of that quarrel or argument? A Yes, sir.

Q Ask him is he quite positive of that? A Yes, sir.

Q Ask him did he make this answer to the question put to him in the Coroner's Court: "From the time he said 'Get out, you Sheenie' I remained straight behind". Did you say that in the Coroner's Court? A Yes, sir; I stood just on the corner of Norfolk street, at that time, when that was said.

Q Now, did the defendant say, "Shut up" or "Get out, you Sheenie" or one of his friends? A No, sir; it was said by the defendant.

Q Now, ask him did he hear him say it in English or in Italian?

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MR. TRAIN: I object to that question.

A I heard him say in English, "Shut up, you Sheenie".

Q Now, were you on a Grand street car at the time of this occurrence? A Yes, sir; I went along with the officer when the defendant was taken to the station house in Eldridge street.

MR LEVY: I move that that answer be stricken out as not responsive.

THE COURT: Strike it out.

Q Were you on a car at the time of this occurrence?

A No, sir; I was walking at that time; I just came into Grand street and afterwards I was on a car.

Q Were you on a car previous to, or immediately prior to the occurrence? A No, sir; I came on the street.

Q Where did he come from? A I came from Stanton street, walked through Norfolk street, from Suffolk into Norfolk.

Q Before he arrived there was there a large crowd of people gathered around, the Italians and the Hebrews? A No, sir; no one.

Q Nobody at all? A No one.

Q Now, ask him was the street crowded with pedestrians immediately before the occurrence?

MR. TRAIN: I will concede that there were crowds of people there. If that is the purpose of your question.

MR. LEVY: I ask him that question.

THE WITNESS: There were walking people there as usual in Grand street.

MR. LEVY: Pardon me. I want a yes or no answer.

MR. TRAIN: It seems to me the witness has answered it as best he could. He states that people were walking as usual in Grand street at that hour.

THE COURT: I will allow the answer to stand.

Exception.

Q Now, Mr Mann, can you state how many people, how many pedestrians were walking along that sidewalk, at that time, immediately prior to this occurrence?

MR. TRAIN: I object to that. How is this material. There must have been many thousands of people on Grand street at that hour.

THE COURT: I will permit the question if the witness can answer it.

A I did not count them.

Q You go through that street nearly every day, don't you; Mr Mann? A Yes, sir; sure.

Q And did prior to this occurrence? A Yes, sir; in the morning I passed through Grand street.

Q Now, Mr Mann, did you see the defendant and his two friends immediately prior to the occurrence? A No, sir.

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Q You did not? A No, sir.

Q Then, the first time that you saw them was immediately upon the occasion of the argument? A Yes, sir; that was the first time I saw them.

Q When did you first perceive the deceased and his friends? A I found the Hebrew men standing there on the corner of Norfolk and Grand streets.

Q And the Italians were walking towards them? (No answer.)

Q Ask him if the Italians were walking towards the Hebrews? A Also the Italians were standing.

Q Now, did you see anybody strike any blows or do any pishing? A I did not see any of that; I did not see any blows or any pushing.

Q You did not see either of the parties before the argument took place--

MR. LEVY: I withdraw that question.

Q Ask him this question, has he spoken to anybody with regard to this trial, before to-day? A No, sir.

Q Hasn't he spoken to the District Attorney in regard to his evidence? A Oh, yes, I spoke to the District Attorney.

Q How many times did he speak to him? A Once.

Q Now, has he, since this occurrence, become acquainted with any of the witnesses or parties interested in this trial?

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A No, sir; I don't know them at all.

Q Has he spoken to any of them in the corridor of the Court House? A No, sir; I don't know any one of them.

BY MR. TRAIN:

Q Isn't it a fact that this is the first time he ever has been down in this building at all?

MR. LEVY: I will take your word for that.

SAMUEL ROSENBERG, a witness for the People,
being duly sworn, testified through the Official Interpreter as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Are you the proprietor of the steamship ticket office at 18 Norfolk street? A Yes, sir; I am.

Q Now, Mr Rosenberg, were you in your store on the afternoon of June 20th last? A Yes, sir.

Q In the neighborhood of six o'clock? A I believe so.

Q Who was in your store with you? A There was a Mr Himmelman, and a boy from the street, I don't know him, and I don't know his name.

Q When did the street boy come in? A He ran from the street into the store.

Q Was this running that you speak of prior to the time

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that you saw this defendant? A Sure.

Q Now, did you see the defendant? A The Italian came running into the store and he had something in his hand.

Q In his hand? A What it was I can't say, and he made this motion (indicating a horizontal motion of the right hand).

Q Ask the gentleman to proceed? A The man was in a great excitement and he ran back into the store and fell down on the floor, and then Mr Schwartz came into the store and said that a man had been murdered.

Q Don't state what Mr Schwartz said.

THE COURT: Strike that out.

Q Did the defendant do anything as he fell or just before he fell, or just after he fell? A There was a box near the place where the Italian fell down, and the Italian did not do anything only he fell, and then he shoved something, I don't know what it was, under this box.

Q Under a box? A Yes, sir; that was in the corner where he was lying, and that box was right in the corner near him; I can't remember--somebody locked the door of the store and the message was sent for the police and the policeman made the arrest and the knife was found just underneath of this box where the defendant had been lying, in the same place where the defendant had been lying that knife had been taken out.

Q Ask Mr Rosenberg was that the knife that was taken

put (referring to People's Exhibit 1)? A Yes, sir; I can't think if this is the proper knife or not, but I have seen when the detective has taken this knife out from under that box.

Q Did you see the detective take this knife, People's Exhibit 1, which I now show you, from under or near the box?

A The detective pulled out one knife.

Q You don't know the knife? A But I can't tell if the knife that the detective got was this knife or not.

Q Was the knife which the detective got--was there anything on the knife which the detective pulled out from under the box?

THE COURT: Why is there any necessity of pressing that question, when it is conceded that that is the knife which was used.

MR. TRAIN: I am not quite clear about that. I am not sure that it is conceded on the record that this knife which we have offered in evidence is the knife with which the defendant struck the deceased. There have been various concessions, I don't know that that is one.

MR. LEVY: We concede that, if your Honor please, but we do not concede that the knife was open at the time it was found.

MR. TRAIN: Well, it was open when the blow was struck, I assume.

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MR. LEVY: There is no question about that, Mr Train, and there is no use wasting any more time on the subject.

BY MR. TRAIN:

Q When the defendant ran into the steamship office, how many persons were present in the office? A There was myself, Mr Schwartz, Mr Himmelman and the boy.

Q The boy? A Yes, sir; the small boy.

Q Three men and a boy? A Yes, sir.

MR. LEVY: No questions.

MR. TRAIN: Probably the most important witness in this case is a man named Goodman Solomon, who although apparently in the city and at his work, has not been found by our County Detectives nor the police when they have been at his house. His father agreed last night to have the son here this morning, and the father is now absent. I have sent an officer for the father. He is a very important witness. Apart from that witness the People would rest their case. If there be no objection on the part of defendant's counsel to allowing the People to call that witness either in rebuttal or whenever he turns up, counsel can proceed with his case. He is a very important witness.

THE COURT: Did he testify at the Coroner's inquest?

MR. TRAIN: Yes, sir; he testified at the Coroner's inquest. He was served here two or three days ago, but

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has not appeared.

THE COURT: Mr Levy, have you the examination of the witness before the Coroner?

MR. LEVY: Well, ordinarily I would not have any objection--

THE COURT: Have you the examination there before of all the witnesses before the Coroner?

MR. LEVY: Yes, sir.

THE COURT: Well, have you the examination of this particular witness, Goodman Solomon, who Mr Train says is absent.

MR. LEVY: Yes, sir, I have his evidence which was adduced at the Coroner's Court.

THE COURT: Is there any objection to this witness being called when he appears in Court, either as part of the direct case or in rebuttal?

MR. LEVY: I think my duty to the defendant requires me to answer yes, but there would be some objection, unless it is produced in the regular and orderly progress of this trial. If it were a civil suit I would not interpose any such objection.

MR. TRAIN: It is not a case where there is any laches on the part of the People. Here is a man who has been subpoenaed, who gave no evidence of his desire to

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get out of testifying, but who on the day of the trial disappeared. Now, every effort is being made to locate him. We have attempted to serve him and we have secured the promise of the father to have him here. The father is under subpoena, but the father is not here. Both father and son are away. Our men are looking for them now.

MR. PINCHOT: I wrote to Capt. Murphy of the 12th Precinct last night, and he detailed three men to look for this witness. His house was watched last night. We cannot learn where he works. I think, however, we can get him this afternoon or to-morrow morning.

MR. TRAIN: I would be perfectly willing to read his testimony at the Coroner's Court if counsel will permit.

MR. LEVY: If your Honor please, ordinarily I would not object to that, but I have seen to-day witnesses testify one way when they testified differently in the Coroner's Court. I cannot, consistently with my duty to this defendant, make any such agreement with the District Attorney.

THE COURT: The only question is as to the time of introducing this witness' testimony.

MR. TRAIN: It seems to me, your Honor, that it would be admissible in any event in rebuttal.

THE COURT: I think, under the circumstances, the

prosecution having shown due diligence in trying to secure this witness, and owing to some conduct on the part of the witness the prosecution has been defeated in its purpose, in the interests of justice, therefore, I regard it as within the discretion of the Judge to permit the prosecution to call that witness when his presence may be secured in Court. With the exception of that witness the prosecution rests, and the case lies with you, gentlemen. If that witness be secured at any time, the Court's attention must be called to it, and I will decide then whether he may be examined or not. I will pass upon that question then.

MR. LEVY: Well, under those circumstances, if your Honor please, I think it would be proper for me to withhold any motion which I might make at this stage of the trial and reserve the privilege of making that motion at the close of the case, without prejudice.

THE COURT: I will give you that privilege, atof making all motions at the close of the case on both sides --all those which you might or should have made now.

MR. LEVY: I thank you.

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Mr. Levy opened the case on behalf of the defendant as follows:

May it please the Court and gentlemen of the jury:

We shall try to be honest and frank with you in presenting the defence in this case.

Our defence will be justification.

This defendant was compelled to strike this blow in defence of himself, and we will show you that he had actual and complete provocation for defending himself on that occasion.

We will show you, by competent witnesses, by reputable witnesses, just how this whole affair occurred, what led up to it, what caused it, and all of the surrounding circumstances until the apprehension of this defendant.

We will endeavor to prove, to your complete satisfaction, if you have not already formed any impressions, on that subject, that this defendant is not a murderer; that this defendant, a married man, with three daughters, a bricklayer by trade, is not a murderer. We will show that conclusively. We will show you that at the time he was walking, with his friends, through Grand street. He was returning from Brooklyn, where he had gone in order to secure a letter of recommendation from a person in Brooklyn, in order to secure employment for one of the

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friends with whom he was then walking.

We will show you conclusively that as they reached the corner, the southwest corner of Grand and Norfolk streets, where the millinery establishment of Schnappman's is located, the deceased and some of his friends were standing there, evidently hanging out there, as is very frequently the case in that neighborhood; that the deceased and his friends were chewing, munching or handling pineapples; that the deceased took a big chunk from the pineapple which he was then eating and threw it at the defendant and struck him in the head, threw his hat off, and as the defendant was reaching down for his hat punched him and shoved him into the street, threw him down, called him a Dago and Ginny and other vile names, which you gentlemen can imagine. That started a discussion between the deceased and his friends and the friends of the defendant. The defendant could not speak a word of English. We will show you that the defendant has only been in the country, or was only in this country for a period of four months prior to this occurrence; that prior to that time he had gone back, he had been in America for a short time, but had gone back to Italy to make arrangements to bring his wife and children to America, and that he was only then four months in the country; that he had been a

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bricklayer by trade all of his life, at least from the time that he was able to work down to the time of his arrest. That he is a hard working, respectable, law-abiding and decent Italian; that he has no vicious proclivities, that he is, in fact, a religious man.

We will show you that when they approached that corner, the gang, of which the deceased was one, first gave the provocation, that they pushed these Italians off the sidewalk, attempted to shove them into the street.

We will show you that blows were struck by the deceased and his friend and by this very witness, Ripstein, who was on the stand here.

We will prove to your complete satisfaction that this defendant was struck violently numerous times by the deceased--the deceased being a tall, muscular man, as you heard the doctor state, he being five feet nine inches tall, and weighing over 130 pounds, being much larger and more muscular than the defendant.

We will prove to your complete satisfaction that the fracas or argument started in front of the Schnappman's, immediately on the corner, at the intersection of the corner, and no more removed on Grand street than on Norfolk street; that ^{it was} immediately at the intersection of these two streets where you could look up and down Grand street

and also look north and south on Norfolk street, so that the fracas really occurred on both streets. The defendant was thrown down and violently assaulted by the deceased and his friends, he was kicked in the testicles by the deceased, and he was also kicked in the spine and thrown into the gutter.

We will show that the defendant started to arise and in so doing he toppled over on somebody, either the deceased or one of his friends, and that the crowd surged around on the Norfolk street side of the Schnappmans' store. Schnappmans' store is a building of about thirty feet on Grand by about fifty on Norfolk street, possibly somewhat less. There is a show window on the Grand street side, and a show window on the Norfolk street side, making a sort of an L.

We will show you that the crowd surged around into Norfolk street; these Jewish boys evidently bent on mischief were assaulting this defendant and his friends and they threw the defendant down in Norfolk street, on the Norfolk street side, and again violently assaulted him, and for a second time, if not more than twice, kicked him in the testicles, which is, if you don't know it,--which is a frequent trick of the young boys on the East Side when they assault a person. They assaulted this

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defendant by kicking him in the testicles, and while in a prostrate position, suffering intense agony from this kick and from these blows, and feeling everything grow black before his eyes, and believing that he was about to be killed, every one around him shouting "Kill the Dago, Kill the Ginny", he says he does not know what was said, but there were loud cries and he heard "Dago" and "Ginny", and that is about all he did understand,--and believing that he was about to be killed he pulled out his knife, and while in a prostrate position, on one knee or on two knees, he opened his knife and blindly thrust about in order to do something in his own defence, and while that motion was being made he evidently struck some one, but he did not know that he had struck anybody, nor did he know that he had struck or stabbed the deceased. When the pain in his testicles and in his spine ceased somewhat he was able to rise and he staggered and partly ran down Norfolk street away from this mob that was following him, brandishing the knife but striking nobody. He ran into this store for self-protection. He did not know, he did not know until then that he had in his excitement and in his terror stricken anybody with his knife, and it was only at the time, we will show you this by competent evidence, it was only after the officer had taken him into

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custody in that store, where he went looking for protection from this howling mob which was outside,--when the officer came he clung to the officer for protection. Then the officer took him to the place where the party was lying prostrate, and then he saw that some one had been cut, and he learned for the first time that it was probable that he had cut the prostrate body. Then he was overcome and taken to the station house.

Now, gentlemen, if we can show this to you clearly and to your complete satisfaction, if we can prove to you, what we will attempt to do, that the witnesses for the prosecution have deliberately, I say either deliberately or mistakenly, made false statements in their evidence upon the trial, and that they made statements to-day and yesterday which are seriously at variance with the testimony which they gave before the Coroner--we shall ask that you take that into consideration when you consider this case.

Now, as my friend Mr Pinchât told you, when he opened to the jury, he said that the District Attorney's office is not hired for the purpose of securing a conviction, but that it is their duty to elicit the truth and bring it out clearly to the satisfaction of the Court and the jury. I must say that we are to be congratulated

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that he has verified and proved that statement. He has done his best fairly to convince you, gentlemen, of the facts so far as they have been developed by the prosecution. He has told you that he had a solemn duty, as District Attorney, to perform, and that you, gentlemen of the jury, likewise had your duty to perform, that you were but officers of the Court during this trial, and that you had a conscientious duty to perform as good citizens, and I say to you, gentlemen, in conclusion, that Mr Ringrose and myself were assigned by the Court to the defence of this defendant, he being a poor man, we were assigned by the Court to defend this man, and we, likewise, are officers of the Court, and it is just as much our duty, as it is the duty of the District Attorney, to produce the truth before you and to convince you, gentlemen in this jury box, of the actual facts as they actually occurred, so that justice may be done, not only to the State, but likewise to the defendant; to see that there shall be no miscarriage of justice, and I feel satisfied that so far as Mr Ringrose, my associate, and myself are concerned, we have done our conscientious duty, and will continue to perform our duty as conscientiously as we can in presenting all of the facts that we can possibly obtain.

In this connection let me state that only a short time

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has intervened since our appointment by the Court and the date of this trial. Without means at our command it was practically impossible for us to secure other witnesses than those which we shall present to you to-day, but under the circumstances we have tried to do our duty conscientiously, to do the very best we could with the material at hand, to seek no delay, to do nothing that will retard the progress of this trial or the justice of this case, and, therefore, bearing in mind the duty which we all have to the State as well as to the Court and likewise the duty which we owe to this defendant, we will proceed to produce the evidence which I have attempted to outline in this opening, and I trust that you will give the same careful conscientious painstaking attention to the evidence for the defence as you have manifested while the testimony of the prosecution's witnesses was being taken.

THE DEFENSE.

GUISEPPI SOLURI, a witness for the Defendant,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RINGROSE:

Q Now, what is your business, Mr. Soluri? A I am a
tailor.

Q You speak English? A Yes, sir.

Q Where do you live? A On Mulberry street.

Q What number? A 117 Mulberry street.

Q Where do you work? A Broadway and Houston street
in a large store.

Q Before the 20th of last June did you ever see or know
the defendant here, Joseph Yaccobacci? A No, sir.

Q Do you remember the 20th of last June? A Yes, sir.

Q Now, at about five or six o'clock in the afternoon of
that day where were you? A I was not well that day and I had
a pain in my stomach and I took some fresh air, and when I
returned from my walk I passed Grand street.

Q Near what other street? A From Hester street into
Grand. In the evening when I returned then I passed through
Grand street.

Q Did you passthe corner of Grand and Norfolk street?
A Yes, sir.

Q About what time did you reach that corner? A About
half past five or a quarter to six.

Q Now, did you see this defendant there at that time?

A I did not see him there.

Q Now, what did you see at half past five o'clock when you were on the corner of Grand and Norfolk street? A When I passed near the corner of Grand street and Norfolk street I saw a great crowd assembled there, and as it is usual to satisfy your curiosity, I approached that crowd to see what it was, and I saw that there was a turmoil and that some person was down in the gutter.

Q What person did you see down in the gutter? A No, sir; I could not recognize the person that was laying there.

Q What did you see done to the person who was in the gutter? A I saw that the individual made a great many efforts to rise and that whenever he tried to arise he was knocked down again and again.

Q Ask him to look at the defendant at this table and say whether or not he recognizes one of these men as the individual who was being knocked down again and again.

MR. TRAIN: I think, if your Honor please, that the witness has stated that he could not identify anybody.

THE COURT: I will allow him to answer the question.

A No, sir; I cannot know any one of these gentlemen present sitting here at the table.

Q The man who was in the gutter did he have a beard or was he clean shaven or did he have a mustache? A No, sir; I could

not say, I was not near enough that I could distinguish how he looked.

Q What else did you see after what you have told us?

A I did not see anything more because I got out from this crowd and went away.

Q Did you see the man who was being knocked down again and again do anything to any person? A No, sir; I did not see anything more.

Q Well, have you told us all that you saw at that time?

A I have said all I know.

Q Did you see anybody kicked on that corner?

MR. TRAIN: I think that is rather leading, if your Honor please.

THE COURT: Yes. I sustain the objection.

BY MR. RINGROSE:

Q Did you see anything else done to the man who was in the gutter other than what you have already told us? A No, sir.

Q How many blows did you see struck? A I did not count them.

Q How many persons-- A There were more than fifteen or twenty people around there.

Q How many of those persons were striking the man who was in the gutter? A A great number but I did not come near enough and I could not see.

Q Did you hear the person who was lying in the gutter say

anything in any language? A He was hollering.

Q Well, in what language? A But I didn 't get near.

Q In what language was he hollering? A I went away.
as soon as I saw the person on the ground.

Q Do you know the nationality of the man who was in the
gutter and being kicked and being struck and hollering?

MR. TRAIN: Objected to. It appears from what the gentleman
has said that he could not know his nationality or could
not determine what language he spoke.

THE COURT: I will let him answer the question.

A This man that was lying there was beaten in every man-
ner and kicked and immediately struck with the fist again all
the time and then I was not near enough to see better as I have
explained, I went right away.

Q Did you hear the people that were kicking or striking
this man say anything in the English language or in any other
language? A I understood that a great many Hebrews were there
and that they used their language.

THE COURT: He says he understood. Strike that out.

MR. RINGROSE: I did not ask for that, if your Honor
please.

BY MR. RINGROSE:

Q Did you hear any outcries in English or Italian?

THE COURT: I think you have gone far enough on that
line.

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MR. RINGROSE: That is all.

CROSS EXAMINATION BY MR. TRAIN:

Q What is your business--

THE COURT: You may cross examine after recess.

Gentlemen of the jury, you will remember my caution to you not to talk about this case or form or express any opinion concerning the guilt or innocence of the defendant until the case be finally submitted to you.

(The Court then took a recess until 2 o'clock.)

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AFTER RECESS.

GUISEPPI SOLURI, a witness for the Defendant,
recalled.

CROSSEXAMINATION CONTINUED BY MR. TRAIN:

Q Where do you live? A 117 Mulberry street.

Q What sort of a day was this, the 20th of June?

A I can't remember.

Q Don't you remember anything about it, whether it was raining or whether it was a hot day? A It was not raining.

Q Don't you remember whether it was cludy or not?

A No, sir; it was a rather open day, I mean clear.

Q Now, what is your particular work? A I am a bushelman-- I am making suits.

Q What particularly do you do at the work? A I am a bushelman. If a suit is not exactly fitting and we take that suit and we fit our models.

Q Are you afflicted with stomach trouble? A (No answer.)

Q Are you afflicted with stomach trouble? A Yes, sir; I suffer from stomach trouble.

Q You were suffering from it on the 20th of June?

A Yes, sir; on this day I felt that I had a pain in my stomach.

Q Was this so severe that you were unable to go to work?

A It was rather a dead season at the time and I took two or three days off.

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Q Did you take the time off on account of this stomach trouble? A On account of there being not enough work to give me occupation and on account of my ill health.

Q When did you go back to work? A I went back there on Monday, five or six or seven days after.

Q How long before you saw this affair on Grand street did you leave off working? A A couple of days.

Q Did you take a walk every day that you was off from work? A Yes, sir.

Q Did you always walk in the same direction? A Oh, no, I changed one day this way and the other day I walked another way.

Q What time did you start out on that afternoon to take your walk? A About half past three or four o'clock.

Q Where did you go? A There is a new building there and I passed there.

Q How far did you go on your walk? A From Mulberry street it would be six or seven blocks.

Q Did you merely walk after you started out-- how far did you get along before you saw this disturbance on Grand street? A Well, coming on my way back, going home, I passed through Grand street and then I saw something.

Q How far did you go before you turned to come home? A I was walking from four o'clock until half past four.

Q How far did you go, where did you go to, what point?

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A I was passing, or walking on the Bowery and I was continuing this walk for about five blocks.

Q What time was it that you saw this occurrence on Grand street? A It was about half past five or a quarter to six o'clock.

Q Where had you been all that time, that is what I want to find out? A I went to that park near Hester street.

Q What park is it? A That is a park there and there is a big house there, Hester and Canal street, built by the Hebrews.

Q What is the name of the park, do you know? A I don't know; I don't take notice of the names of the places.

Q How long were you sitting there at this park? A About a half an hour.

Q Then where did you go? A Then I went near Cooper Institute and from there to Grand street.

Q How did you get from the park to Cooper Institute? A It is near Mulberry street and from there I don't like very much to stay home, I like to walk.

Q Did you go from Mulberry street to Canal street and from Canal street to this park and then from Canal street back to Cooper Street or Cooper Square and from there to Grand street?

A Yes, sir; I generally go there every day.

Q Now, why did you go at a quarter of six after you had been to these other places as far as Essex street, for what purpose did you go there? A Because I take the same route