

MR. HOCHSTADTER: But my friend overlooks the fact that we are defending this case upon the issue that this man was arrested upon the charge of blackmail, and that this assault was a secondary consideration, and was, in plain English, a job, a framed up job to send him away.

THE COURT: Counsel, you have, if my recollection is correct, now upon the record the fact that the charge in the Police Court as first made, was a charge of blackmail.

MR. APPLETON: If your Honor please, that is not quite correct.

THE COURT: Well, whether it is correct or not--

MR. APPLETON: The complaint sets forth the charge in the Police Court.

THE COURT: I know, but there is testimony to that effect.

MR. APPLETON: At the Police Station.

THE COURT: At the Police Station I would say, not the Police Court. I correct my statement. I refer to the Police Station and not the Police Court.

I rule that the objection of the District Attorney is a proper one, and that we will not go into this collateral matter.

CASE # 623

MR. HOCHSTADTER: But your Honor probably overlooks, in the amount of testimony here, that Page swore that this lady, the sister, was at the Station House when he was brought there, and that it was she that said, "This man has blackmailed my sister", and the Sergeant then stated, "We will not entertain any such charge here, because there is no proof", and then she said to her sister, "Prefer a charge of assault against him". That is the testimony.

MR. APPLETON: I have no objection to any cross-examination of this witness along that line. That is competent.

THE COURT: On that line, I will allow it.

BY MR. HOCHSTADTER:

Q Now, after you had left -- we will waive all conversation at your sister's house on the 18th. You did go to the Station House with your sister and your husband, I believe? A Yes, sir.

Q And who else was present at that time? A How do you mean, present? In the family, you mean?

Q Yes? A Nobody. You mentioned the three; that was the three that were there.

Q And the prisoner? A The prisoner, yes.

CASE # 623

know anything.

MR. APPLETON: Just one question.

RE DIRECT EXAMINATION BY MR. APPLETON:

Q Are these pictures, the pictures that were bought that time, are these the ones (indicating People's Exhibits 1 and 2)? A Yes.

Q When you came down from Dobbs Ferry with this defendant in the automobile to the Oneonta apartment house, did you go in the Oneonta? A Yes, sir.

Q Did you ask this defendant to do anything for you? A Yes, I told him in the meantime that he could mail a letter, the foreign letter for me.

Q Whom was that letter addressed to? A To my sister in England.

Q And did he go out? A I went upstairs.

Q Just answer the question. Did he go out then? A I went in the apartment.

Q And you left him? A I left him with the automobile. He had not gotten in the automobile yet.

Q Did you see him go away in the automobile? A No, I didn't see him go away.

Q Now, how long afterwards was it that you went out and got in the automobile? A I looked through the window

CASE # 623

to see if the automobile was there, and the automobile was not there. I was watching with my niece; she looked from the window, and I looked from the window, and we thought it was very funny that the automobile --

MR. HOCHSTADTER: Objected to.

MR. APPLETON: I consent to strike out that she thought it was very funny and so forth.

THE COURT: Strike it out.

Q Just answer questions, please. How long were you waiting for this defendant, Joseph Page, to return with the automobile to the Oneonta apartment house? A About twenty-five minutes.

Q Now, when this defendant was arrested, did you see the letter that you had given him to mail? A Yes, sir.

Q Where was the letter? A When they took the things from his pocket, they pulled this out, and I picked it up.

Q When they searched this defendant, or took the things out of his pocket, they took out the letter that you had given him to mail? A Yes.

Q They took this letter out, did they? A Yes.

Q And you took it back? A Yes.

Q So he did not mail it? A No, sir.

BY THE COURT:

Q That was in the Police Station? A Yes, sir.

CASE # 623

RE CROSS EXAMINATION BY MR. HOCHSTADTER:

Q Your sister, I understand, left Dobbs Ferry in October? A I couldn't tell you when.

Q Well, some weeks before you sent this money with her children's pictures? A I couldn't tell you. I wasn't on speaking terms with my sister.

Q Prior to the time that she left Dobbs Ferry and you were not on speaking terms with her, did you send Joe on any business of yours to your sister's house? A I don't remember really.

Q Did you send any mail? A I have no reason to remember those things.

MR. APPLETON: Is this on the day she came from Dobbs Ferry?

MR. HOCHSTADTER: On any day from the time her sister went down from Dobbs Ferry.

THE WITNESS: Oh, I sent the pictures, and I sent the mail.

Q And you never sent Joe, that you can recollect, with any messages from your or your husband? A I told you he had gone with the mail and pictures.

Q So, when Joe helped her to move from her apartment --

MR. APPLETON: Helped her to move from where?

Q (Continuing) From Dobbs Ferry to New York, he did

CASE # 623

not do it at your request? A I couldn't tell you.

Q Well, wouldn't you know? A No.

BY THE COURT:

Q Did he do it because you asked him to do it? A No, sir.

BY MR. HOCHSTADTER:

Q He was working for you, wasn't he? A I don't know; I didn't get the question right yet.

Q Was this man employed by you or your husband? A He was employed by my husband.

Q Do you know that, whether you asked him to help your sister moving from Dobbs Ferry to New York? A I told you I had not seen my sister.

Q So that, you did not ask him, did you? A I didn't see my sister. I didn't know she was moving.

BY MR. APPLETON:

Q Now, how far is it from your house down to Rockwood's studio? A In the automobile, it takes about a quarter of an hour.

Q And coming down from Dobbs Ferry to New York, do you go right down by Rockwood's place? A Yes.

CASE # 623

M I C H A E L W A L S H, being called and duly sworn as
a witness on behalf of the People in rebuttal, testified
as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q You are an officer of the Police Department of the
City of New York? A Yes.

Q And you were such on the 18th of December, 1906?
A Yes, sir.

Q On that day, did you place this defendant under ar-
rest? A Yes, sir.

Q Where was he when you first placed him under arrest?
A On St. Nicholas avenue and 125th street.

Q Beside the Oneonta Apartment House? A Yes.

Q Will you state to the Court and jury what you said to
the defendant, and what the defendant said to you, when you
placed him under arrest? A Well, I asked him his name; he
said his name was Joseph Page. I asked him did he have
charge of the automobile, and he said, yes. I says, "You
are under arrest". He says, "Have you got a warrant?"
I said, "No." Well, he said, "I won't go without a warrant."
I says, "You will go", and I grabbed him by the arm, and he
pulled away from me, and I pulled him along with me. Then
he says, after going about ten feet, "I want to see my boss

CASE # 623

before I go". I says, "You come with me and I will show you your boss". So I took him down across 125th street, and on the south side of 125th street, we met his boss there, and he didn't say any more. On the way to the Station House I asked him did he write these letters, and he said, no. That is all the conversation I had with him.

Q Did the defendant say to you, "Well, you got to show me the color of your paper?" A No, sir, he asked me did I have a warrant, that's all.

CROSS EXAMINATION BY MR. HOCHSTADTER:

Q Now, he did ask you something about these letters?

A No.

Q Well, you just said something about them? A I asked him.

Q Oh, you asked him who wrote these letters? A Yes.

Q But you did not ask him who pointed the pistol at the woman, did you? A No.

Q Why didn't you ask him that? A Because he didn't ask me what he was arrested for.

Q But you did ask him who wrote these letters? A I did.

Q It was the letters that you got this fellow for, wasn't it? A No, because I got the woman in the Station House,

CASE # 623

Mrs. Martinto, and asked her what charge she was going to make against him, and she told me that he pointed a revolver at her in her own home.

Q What did you need the letters for? A Because I seen her hand the letters to the Sergeant, and said they were blackmailing letters. I didn't read the letters.

Q Did you hear the complainant testify here yesterday? A I did not.

Q Then, if she testified that she never would have brought this charge of assault against this man, if it had not been for receiving this letter, she is mistaken, isn't she?

MR. APPLETON: Objected to.

THE COURT: He cannot state that. That calls for a conclusion.

MR. HOCHSTADTER: Question withdrawn.

Q When you went to arrest him, he said he wanted to see his boss first, didn't he; is that what you testified? A No, I testified that he wanted, that he asked me did I have a warrant, and I said no.

Q I know you said that, but didn't you just testify that he said he wanted to see his boss? A After carrying him about ten feet away from where he was, he said, "I want

CASE # 623

to see my boss before I go."

Q was that before he knew what he was arrested for?

Objected to.

BY THE COURT:

Q Did you tell him at that time what he was arrested for?
when he said that? A No, I didn't tell him.

BY MR. HOCHSTADTER:

Q You had not; the man did not know what you wanted
him for, did he?

MR. APPLETON: Objected to.

THE COURT: Objection sustained. That calls for a
conclusion.

MR. HOCHSTADTER: Well, that is all.

T E R E S A M A R T I N T O, a witness recalled on behalf
of the People in rebuttal, testified as follows:

BY MR. APPLETON:

Q Mrs. Martinto, I apologize to you for asking these
questions, but I have got to. On the 10th of November, 1906,
did you see this defendant? A No, sir.

Q On the 10th of November, 1906, did you meet this de-
fendant at the corner of 113th street and Manhattan avenue,
in the City and County of New York? A No, sir.

CASE # 623

Q At twenty minutes to twelve at night? A No, sir.

Q On the 10th of November, 1906, did you go with this defendant from 113th street and Manhattan avenue, between twenty minutes of twelve and twelve o'clock, to a little fruit stand and meat shop on Eighth avenue, two doors north of 112th street? A No, sir.

Q Did you, on the 10th day of November, 1906, accompany this defendant to your apartment, at about twelve o'clock at night? A No, sir.

Q Did this defendant, on the night of the 10th day of November, and the morning of the 11th day of November, 1906, pass that time at your apartment? A No, sir.

Q Did you ask this defendant to get a doctor for you on the morning of the 11th day of November, 1906? A No, sir.

Q On the day of the 11th, at any time between the 10th day of November, 1906, and the 12th day of November, 1906, did you go to the office of Dr. York Russell, at No. 317 West 36th street, in the City and County of New York? A No, sir.

Q When do you do your marketing? A Every Saturday morning.

Q In the morning? A Yes, sir.

Q During the month of November, 1906, after the 7th day of November, did you leave your house to go anywhere on any evening? Answer yes or no? A No. After the 7th?

Q Yes, didn't you go --

MR. HOCHSTADTER: I think, Mr. Appleton, you should not lead her.

THE COURT: Well, we will repeat the question and give the witness an opportunity to think it over. Do you mean between the 7th and 10th?

MR. APPLETON: No, sir, I mean did she leave her house to go anywhere between the 7th of November, and the first day of December?

A On the 24th.

Q Well, your answer is to be yes or no; did you? A Yes.

Q When did you go; how many times? A Once.

Q Do you remember the day that you went? A Yes, sir.

Q What day was it? A The 24th.

Q Whom did you go with on that occasion? A Miss Ida Bennett.

Q Where did you go? A To the theatre.

Q Now, with the exception of the 24th day of November, 1906, did you go anywhere away from your apartment, after six o'clock at night, between the 7th of November and the 1st day of December? A No, sir.

CASE # 623

CROSS EXAMINATION BY MR. HOCHSTADTER:

Q Were you ill at anytime between the 7th of November and the 1st of December? A Was I ill? No, sir.

Q Was there any rash breaking out on your lips at any time between the 7th of November and the 1st of December?

A No, sir.

Q Your lips were not -- A No, not in any way.

Q You were not sick at all? A No, no, sir.

Q You did not have any medical attendance between the 7th of November, you say, and the 1st of December? A No, sir.

Q When was the first time that you corresponded in any way with your sister --

THE COURT: After what time?

Q (Continuing): After the 7th of November? A Corresponded?

Q Spoke to your sister after leaving Dobbs Ferry?

A On the day that I had this defendant arrested.

Q What was the occasion of that arrest --

MR. APPLETON: I object to that. It has been all gone into.

THE COURT: Objection sustained. There is no use going over it again, counsel.

CASE # 623

MR. HOCHSTADTER: No, sir.

BY MR. HOCHSTADTER:

Q Do you remember what day of the week the 24th of November fell on? A What day of the week? Saturday.

Q Saturday? A Yes, sir.

Q Did you bring the bill for these pictures we asked for? A Did I bring the bill? You did not ask me to.

Q You did not think of bringing it, did you? A No, sir.

MR. APPLETON: You did not ask for it.

MR. HOCHSTADTER: I did not ask her to bring it, but I thought perhaps she might have it.

LOUISE SMITH, a witness recalled on behalf of the People in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Louise, after the 7th of November, and before the 1st of December, did Mrs. Martinto go out of the house any evening? A Give that again?

Q Between the 7th of November and the 1st of December, did Mrs. Martinto go out in the evening? A No, sir, Not that I know of.

Q Did you understand the question? Between the 7th of November and the 1st of December, did Mrs. Martinto go out

CASE # 623

anywhere in the evening? A No, not to my knowing.

Q Did she go to the theatre at any time?

MR. HOCHSTADTER: Objected to.

THE COURT: Objection sustained.

THE WITNESS: Just give that again.

(The stenographer repeats the question as follows:

"Did you understand the question? Between the 7th of November and the 1st of December, did Mrs. Martinto go out anywhere in the evening"?)

A She went to the theatre, herself and Miss Bennett.

BY THE COURT:

Q Won't you talk louder. A She went to the theatre, herself and Mrs. Bennett.

BY MR. APPLETON:

Q When? A On the 24th.

Q What night of the week was that? A November 24th.

Q Now, on the 10th day of November, 1906, did Mrs. Martinto go out anywhere in the evening? A No, sir, she did not.

Q You are sure of that? A Yes, I am perfectly sure she did not.

Q Did you and Mrs. Martinto do all the work there in the flat, and take care of those children? A Yes, sir.

CASE 77 623

Q On the morning of the 11th of November, which was Sunday, did you find any fruit, and meat in the ice box, or outside the ice box, or anywhere there, that you had not seen there and purchased with Mrs. Martinto the day before?

A No, sir. I did not see any fruit or any meat at all.

Q What time do you usually get up in the morning?

A I am the only servant there. She had no cook., and I have to be up at six o'clock in the morning.

Q And do you get up every morning at six o'clock?

A Yes, she had no cook.

Q Now, in the morning, during the month of November, 1906, did you see this defendant in Mrs. Martinto's, between six and a quarter of seven in the morning? A No, sir, I certainly did not.

Q And if he had been there, you would have seen him?

A Why, certainly. There is no other servant there but me. I have to do the cooking and sweeping up, and everything, and I certainly would have seen him if he was there.

Q Did you go into Mrs. Martinto's bed room during the night time? A Yes, sir, I do.

Q Do you get up many times in the night to attend to the children? A Sometimes I am up two or three times in the night.

Q Did you ever see this defendant in Mrs. Martinto's

CASE # 623

bed room? A Why, certainly not, I have not at any time.
The idea. Oh, I think that is fierce, I do.

MR. HOCHSTADTER: I ask to strike that out.

THE COURT: Strike out the remark of the witness.

Q Was Mrs. Martinto sick at any time during November?

A No, sir.

Q Did she have fever sores on her lips around Thanksgiving time? A No, sir, not from my knowing.

Q Well, you mean you knew she did not? A I know she was not sick.

BY THE COURT:

Q You sit up in the chair and talk loudly, because you can do it, and you must? A Yes, sir.

CROSS EXAMINATION BY MR. HOCHSTADTER:

Q You say that your mistress went out to the theatre with Mrs. Bennett on November 24th, Saturday, November 24th?

A She did.

Q Yes. Now, what day of the week was Tuesday of that week?

MR. APPLETON: Objected to.

THE COURT: You mean, what day of the month.

Q Well, what date was Tuesday, of that week? A I can't answer that question, because I was not particular searching

CASE # 623

for dates.

Q Now, you swore that Mrs. Martinto went out on Saturday, the 24th of November? A Yes, sir, she did, and I can prove it.

Q What was the date of the month on Tuesday of that week? A I don't know.

Q You don't know? A I kept no record of that.

Q What was the date of the month on Wednesday of that week? A I don't know.

Q What did you say? A I said I don't know. I didn't keep a record of that time.

Q How do you know it was the 24th, on Saturday, that your madam went to the theatre? A May I explain that?

Q I want you to? A Yes, sir.

BY THE COURT:

Q Will you say why you know? A Yes, sir.

Q Answer, then? A I am sorry that I have to, but I will have to ask the gentleman to excuse me. At that time, on the 22nd, that Night, of November, I have been unwell.

BY MR. HOCHSTADTER:

Q A little louder. A On the 22nd of November, it is my time of being unwell, which you all know, my monthly tendencies, and Mrs. Martinto expected Mrs. Bennett to spend the time with her, at that time, and I asked her, she had no cook

CASE # 623

in, to allow Mrs. Bennett to come, until I had passed a day or two, and that was the 22nd, on Thursday, and she came, and she gave me two days, and Mrs. Bennett came on Saturday. I am sorry I have to explain that way.

Q Now, what was the other night you went to the theatre; what other night was Miss Bennett there that you went to the theatre? A No other night.

Q Were you there when Joe helped to move down from Dobbs Ferry? A I don't remember about that.

Q Were you there or weren't you there when Joe helped move down the stuff from Dobbs Ferry? Do you mean to say you don't remember that? A (No answer).

BY THE COURT:

Q If you do not remember, say so? A I don't remember.

BY MR. HOCHSTADTER:

Q Do you remember what time Joe came from Dobbs Ferry to the Balmoral Hotel, on the day you moved down from Dobbs Ferry?

MR. APPLETON: Objected to as incompetent, immaterial and irrelevant.

THE COURT: It is testing her memory; that is all. It is only competent for that purpose.

MR. HOCHSTADTER: Yes, I want to test her memory.

CASE # 623

A Ask the question again, will you?

Q Do you remember what time, the day that Joe helped your mistress move down from Dobbs Ferry to New York? A I do not.

Q Do you remember his helping your mistress in moving from Dobbs Ferry to New York at all? A No.

Q What do you mean by that, he did not move her? A No, he did not move her from Dobbs Ferry.

Q Did he assist in moving from Dobbs Ferry to New York? A Mrs. Martinto had some very nice cut glass, and she --

Q No.

THE COURT: Let her finish her answer.

BY THE COURT:

Q Go on? A I was the girl that put up the cut glass. Now, she said, "Louise, put that cut glass away." She said, you "I am going to send out to Mrs. Di Verastegui and ask her when she comes down to the city, to let Joseph put this cut glass and bring it down to the Balmoral for me, as I would not like to have it go with the other things." I said, "All right, ma'am," and he did bring it down, two different times.

BY MR. HOCHSTADTER:

Q Did you tell Joe to move the cut glass down to the

CASE # 623

Balmoral? A I didn't ask him. It was not mine.

Q Did you ask him to do it or not? Did you ask him to carry the cut glass down from Dobbs Ferry to New York?

A Mrs. Martinto told me that she would ask her sister, and if her sister said yes, it would be all right, and Joseph did come for the cut glass and took it.

Q When did Joseph come for the cut glass? A That was when we were moving that day in Dobbs Ferry.

Q Did he come to New York that day? A No, he did not.

Q Where did he move the cut glass from? A Where we lived.

Q Where was that? A Up in the country, Dobbs Ferry.

Q And where did you move to? A To the Balmoral.

Q Did Joe help to bring that cut glass down to the Balmoral? A Yes, he brought it down there.

Q, What time did Joe bring the cut glass to the Balmoral?

A Well, he brought it there two different evenings, but I was not particular to keep any dates on it.

Q No, the only dates you remember are the night of the assault and the night of the theatre? A Because I know it.

Q But you do not remember the dates of the night that Joe was at your apartments, do you, at the Balmoral? A No.

Q You do not know how many times he was at the Balmoral?

CASE # 623

A Only those two times that he brought the cut glass.

Q Twice, when he brought cut glass? A Yes, that's all I remember.

Q That is the only time he ever visited at the Balmoral to your knowledge? A Yes.

Q And he never visited the Oneonta apartment except at the time that he brought the photographs, or twice?

MR. APPLETON: You are in error there. You mean 140th street.

Q Yes, only twice? A Only twice; it was when he brought the pictures and when he came there to beg for the letter.

Q Did you ever have a cook up there in 140th street?
A Not at that time.

Q December 1st? A Not at that time.

Q At what time? A We never had a cook until away around Christmas.

Q Didn't you just swear a little while ago that you are the only maid? A Well, that was away around Christmas time. Away around there. We had no cook, and Mrs. Martinto said she would like to have a cook, to have a nice Christmas dinner.

Q Wasn't it about the 1st of December when you had this cook? A No, not at all; no, no, no.

Q How long did the cook stay there? A What?

CASE # 623

Q How long did the cook stay there? A What do you mean, how long?

Q How long was the cook employed; she did not come there to cook a dinner and go away again? A Why, she remained from that time until now.

Q She is still there, is she? A Yes.

Q So that Mrs. Martinto has other help besides yourself? A Well, she did not have it until after --

Q Well, she had it from December until the present time? A She had the cook there to cook her Christmas dinner, and she liked the dinner that the cook cooked, and she kept her on. She did not have her around the first of December at all.

Q Will you swear that the cook did not go there before Christmas? A No, she did not.

Q Then you won't swear that she was employed simply to cook the Christmas dinner, and remained up to the present time? A She was sent there by an employment bureau, and Mrs. Martinto said she would try her, and she did. She came on Sunday evening, and Mrs. Martinto talked to her, and Mrs. Martinto told her to come on Monday morning, and so she did.

Q Was that the same employment bureau that sent you there? A Yes.

Q And the cook is still there? A Yes.

CASE # 623

Q And has been there since December, sometime in December? A Yes.

Q Then, you are not the only maid that Mrs. Martinto has, or had, are you?

MR. APPLETON: Objected to.

THE COURT: I think that is fully gone into. It is a mere repetition.

MR. HOCHSTADTER: Yes, your Honor.

MR. APPLETON: The People rest.

(Testimony closed.)

The Court admonished the Jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until 2:15 o'clock P.M.

CASE # 623

AFTER RECESS.TRIAL RESUMED.- C H A R G E B Y T H E C O U R T -

THE COURT: What is your duty, gentlemen of the jury, in the case of the People of the State of New York against Joseph E. Page?

Your duty is to determine the question of the innocence or guilt of the defendant.

His innocence or guilt of what? His innocence or his guilt of the crimes charged in the indictment. His innocence or guilt, under certain circumstances which I will define to you, in the charge, of the lesser degrees of those various crimes; and those you are to determine from the evidence.

The evidence means the spoken word of witnesses under oath. The evidence means such documentary proof, if any, as there may be in the case, in addition to such spoken words, and my recollection is that the only documentary evidence in the case are the two photographs.

The evidence as you recall it. The evidence, not necessarily as it may have been stated by the counsel

CASE # 623

for the defendant, if he has stated it otherwise than as you recall it.

The evidence, not necessarily as stated to you by the District Attorney, if his statement differs from your recollection of the evidence.

The evidence, as you recall it, and not as it may be stated in substance by the Court, if your recollection of the evidence differs from any statement respecting it made by the Court.

This is so, gentlemen of the jury, for the reason that the law says that you are the exclusive judges of the facts.

To aid you in reaching a proper verdict in this case, I will first direct your attention to what the law says must be the proof made by the Prosecution in order to establish to the satisfaction of a jury the commission of the crimes alleged in the indictment, and then I may have occasion to briefly allude to the testimony, in its bearing upon the proof required to be made.

The first crime charged in the indictment is that known to the law as an attempt to commit the crime of robbery in the first degree.

CASE # 623

I will read you what the law says is necessary to be proved, in order to establish the commission of the crime of robbery in the first degree, and then what the law says respecting an attempt to commit that crime, or any other crime.

Robbery is the unlawful taking of personal property from the person or in the presence of another, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a relative or member of his family, or of any one in his company at the time of the robbery.

It is the unlawful taking of personal property. It is the unlawful taking of personal property from the person or in the presence of another, against his will; and if that unlawful taking is accomplished by fear of injury, immediate or future, the crime is as fully established as though the robbery had been committed by force or violence.

The law makes fear the equivalent of either force or violence, provided that fear is of injury to the person or property of the person who is made afraid, or of a relative or member of his family, or of any one

CASE # 623

in his company at the time of the robbery.

An attempt to commit the crime of robbery, is an act done with intent to commit that crime, and tending but failing to effect its commission:

The indictment charges an attempt on the part of the defendant to commit the crime of robbery in the first degree.

The crime of robbery in the first degree is the unlawful taking or compulsion, if accompanied by force or fear in the case specified in the foregoing sections of this chapter, being the chapter in which is contained that section relating to the crime of robbery, the substance of which I have read to you, when committed by a person being armed with a dangerous weapon.

The other sub-divisions of the section defining robbery in the first degree are under no conceivable circumstances applicable to the evidence in this case; so I say nothing about them.

The next crime that is charged in the indictment, is the crime of an attempt to commit the crime of grand larceny in the second degree.

The crime of grand larceny is defined by Section 528 of the Penal Code: "A person who, with the in-

tent to deprive the true owner of his property, appropriates the same to the use of the taker, and takes from the possession of the true owner such property, steals such property, and is guilty of larceny;" and again, in this connection, I have only read to you that portion of Section 528, which under any conceivable view of the evidence, would be applicable to this case.

The crime is grand larceny in the second degree, where the circumstances do not amount to grand larceny in the first degree, as specified in the Penal Code, and where the property stolen is of the value of more than \$25, but not exceeding \$500., in any manner whatever, or where property of any value is taken from the person of another; and again, an attempt to commit this crime is where an act is done with the intention to commit it, which tends to commit it, but which fails in its accomplishment.

The defendant is further indicted, charged with the crime of assault in the first degree.

The crime of assault in the first degree is defined by Section 217 of the Penal Code. That section provides that a person who, with an intent to kill a human being or to commit a felony upon the person or property

CASE # 623

of the one assaulted, or of another, assaults another with a loaded fire arm or any other deadly weapon, or by any other means or force likely to produce death, is guilty of assault in the first degree.

And again, I have read to you only those portions of the section defining assault in the first degree, which under any conceivable view of the testimony, are applicable in this case.

The law says, that under certain circumstances, a man who is indicted for a crime of which there are varying degrees, may be convicted in a lesser degree than in the degree in which he is charged in the indictment.

That is to say, if a jury is satisfied beyond a reasonable doubt that a crime has been committed, but entertains upon the whole evidence a reasonable doubt as to whether some one or more elements necessary to be established in order to prove the crime in the higher degree had been proved, the jury is at liberty to find the defendant guilty in the lesser degree, provided that upon the whole evidence, the jury entertains no reasonable doubt of his guilt in the lesser degree.

The distinctive feature about assault in the

CASE # 623

first degree is, that there is an intent to kill, or an intent to commit a felony upon the person or property of the one assaulted; but where an assault is committed, and there is no intent to kill, there can be no conviction of assault in the first degree.

Where, upon the whole evidence, a jury entertains a reasonable doubt as to whether there was or was not an intent to kill, that being an essential element in the crime known as assault in the first degree, the defendant must be given the benefit of that doubt, and cannot be convicted of the crime of assault in the first degree.

Assault in the second degree is committed where a person who, under circumstances not amounting to the crime of assault in the first degree, wilfully and wrongfully wounds, or inflicts grievous bodily harm upon another, either with or without a weapon, or maliciously and wrongfully assaults another by the use of a weapon or other instrument or thing likely to produce grievous bodily harm -- and here again, an attempt to commit the crime of assault in the second degree is an act done with a view to the commission of that crime, which, however, does not in point of fact, accomplish its commission.

CASE # 623

There is a third degree in assault, known as assault in the third degree.

The language of the Code respecting assault in the third degree is: "A person who commits an assault, or an assault and battery, not such as is specified in the foregoing sections of this chapter, is guilty of assault in the third degree.

You will take into consideration the various crimes mentioned in the indictment.

You will take into consideration the different sub-divisions of these crimes or degrees, so far as they are lesser degrees than those charged in the indictment.

You will bear in mind what the law says are the constituent elements in those various crimes.

You will bear in mind that the provision regarding attempted crime, is a general provision applicable to the crime of robbery; applicable to the crime of larceny.

You will note that the indictment does not charge an attempted assault, but charges the crime of assault in the first degree.

I may say, in regard to that, that the law does allow, where the evidence necessitates such a ver-

CASE # 623

dict, the verdict of attempted assault, although the charge in the indictment may be a charge of assault. In other words, the law permits a jury under proper conditions to find a verdict of guilty in a lesser degree than the degree charged in the indictment, and also a verdict of an attempt to commit the crime charged, or of a lesser degree of that crime, under proper circumstances.

The defendant comes to the bar, as all defendants do, with the presumption of innocence.

He is presumed to be innocent.

He is to be given the benefit of every reasonable doubt. Not of every doubt, because doubts are sometimes entertained which are not reasonable, but of every reasonable doubt, if such doubts exist in the minds of the jury respecting any essential element to be proved by the Prosecution.

We have now considered the crimes charged in the indictment, and the conditions under which it might be possible for a jury to bring in a verdict of guilty in a lesser degree than as charged in the indictment.

Your duty is to view the evidence in the light of the requirements of the law.

CASE # 623

In other words, you have the evidence in the case on one side; you have the requirements of the law on the other side, and the question is, respecting each of those crimes, whether upon the whole evidence, the Prosecution has established to your satisfaction, beyond a reasonable doubt, the commission by the accused of the crime.

You gentlemen of the jury, as I said to you, are the exclusive judges of the facts.

There are two classes of testimony in this case. There is the evidence which is direct and relevant to the commission of the crimes charged in the indictment, and there is the evidence which finds itself in the case, which is not directly in point, regarding the commission of the crimes themselves, but which is in the case for the purpose of aiding you gentlemen of the jury in reaching a conclusion as to the credibility of the different witnesses, in order that you might have before you, in some amplitude, the whole story, so that, as experienced men, so that, as men of judgment and discernment, you could reach a conclusion as to where the truth lies.

You have seen the witnesses, and you have observed their manner of testifying. You have heard the

1927

CASE # 623

testimony of the complaining witness, that between seven and eight o'clock on the evening of November 7th, while she was alone in her flat, with her little child, in the dining room, the door bell rang, being the dining room door going into the hall; how she arose, responsive to that bell, and opened the door; how, outside the door, stood the defendant; how, he had in his hand seven letters; how he threw those letters at her, and what she said to him; how he then came into the room; that she was seated then with her child in her lap; that he put his hand under his coat, on the side, and took out a revolver; that he broke the revolver; that he put his hand in his pocket and took out certain cartridges; that he put those cartridges in the revolver; that he held the revolver at her head, and that he asked her there, when she was alone with her little child, for the sum of \$300.

You have heard her testimony, and the testimony of her maid, that the maid came back at that moment; that the maid opened the dining room door going into the hall; that she came into the dining room and saw the complaining witness, her mistress, sitting in the chair with her little child in her arms, and the defendant

CASE # 623

standing by her with the revolver in his hand. How the complaining witness called out, "Louise, Louise, Louise", and fainted, and how she, Louise, the maid, then picked up her mistress and carried her into the bed room, and placed her upon the bed. That the mistress was revived, and that the defendant left.

Your recollection of that testimony may differ from mine. If it does, it controls, and not what I have said.

The defendant, on his part, claims that he was not there. That he can fix November 7th in his mind, because of certain occurrences on that day, and that he knows that he was not at the place where the alleged crimes are said to have been committed, at the time when it is charged that he committed them.

He has testified in his own behalf in denial, and you have seen him upon the stand, observed his manner and his way of giving testimony; and it is not merely from the spoken word that a jury are to determine where the truth lies.

That is one of the advantages of our jury system.

Twelve men sit face to face with those who tes-

CASE # 623

tify, and they judge of the credibility of the witness, and not merely by the narrative that flows from the lips of the witness, but by the manner in which he gives his testimony; and by the train of surrounding circumstances, which indicate whether the story is or is not probable.

Now, the defendant has not confined himself to a denial categorically to responsive questions directed to him to bring out the fact from his lips that he was not there. He has offered certain testimony here for the purpose of establishing that he was elsewhere. He claims that he was at the house of his sister, a Mrs. Frederick, which house he reached at about 8:45 on the evening of November 7th, 1906. That there were others there; that it was a card party, and that he stayed there late; that he spent, I think, the night there, and left early the next morning. His testimony, in substance is, as I recall it, that he took from Dobbs Ferry the 7:24 train.

MR. APPLETON: 7:44, if your Honor please.

THE COURT: The 7:44 train, which was due about 8:24 in New York, and that he then proceeded directly by car or conveyance from the station to the home of

1930

CASE # 623

his sister.

It is for you to say, gentlemen of the jury, not merely whether that evidence as to the presence of the defendant at the house of his sister is or is not true; it is likewise for you to say whether, assuming it to be true, it is inconsistent with the position taken by the Prosecution, that the defendant, between seven and eight o'clock, was in the flat occupied by the complaining witness.

In other words, it is for you to say whether the defendant has established to your satisfaction that he was elsewhere than at the place where the crime was committed at the time that it is alleged to have been committed; and here I do not throw upon the defendant the burden of establishing that to your satisfaction, because the burden still remains upon the People.

Let me make that plain to you, even at the risk of some repetition. Suppose you go into the jury room, and you entertain a reasonable doubt as to whether that defense has been established or has not been. You have got to give to this defendant the benefit of the same doubt in reference to his own defense and the fact of its establishment, that you have got to give him respecting every

CASE # 623

element of proof necessary to establish the case for the Prosecution. But it is for you to consider whether he could not have been at the flat of the complaining witness between seven and eight o'clock, and that his sister's house at a quarter of nine.

There is other testimony in the case to which I desire to make no allusion. It is there, as I say, for the general purpose of enabling you, as reasonable men, to determine where the probabilities lie, and to render your verdict accordingly.

Again, I caution you, that my recollection of the evidence is not to control, but yours. Again I caution you that no consideration is to influence you in connection with this verdict, other than considerations that bear upon the weight of the evidence respecting the alleged crimes charged in the indictment against this defendant.

You and I are not concerned with the possible effect of this matter. We are simply concerned here with the due administration of the law, upon the evidence as adduced.

Are there any requests to charge?

MR. HOCHSTADTER: I want to say, that I bow, if your Honor please, with great respect to your Honor's

CASE # 623

charge. I think your intention was to give every conceivable safeguard to the defendant, but I will humbly ask your Honor to take and look this over, or shall I read it?

THE COURT: Whichever course you prefer.

MR. HOCHSTADTER: I ask your Honor to charge these requests, if you think it consistent with your duty.

THE COURT: I will charge these requests, gentlemen.

I am asked to charge you to disregard the remarks of the District Attorney regarding assaults by colored men in Pennsylvania and elsewhere, as prejudicing, in that regard, to the color question.

All remarks of that kind, gentlemen, you will disregard.

I am asked to charge you that the defendant is not charged with attempted blackmail, but simply for assault committed on November 7th.

That I refuse to charge as stated. The defendant is not charged with blackmail, but he is charged with attempted robbery, and attempted larceny, as well as with the crime of assault in the first degree.

CASE # 623

MR. HOCHSTADTER: Yes, I agree with your Honor.

THE COURT: As modified by my statement, I charge the second request.

I am asked to charge that neither sympathy for the complainant nor feeling against the defendant by reason of his being a colored man, is to affect the jury in their deliberation.

Gentlemen, I so charge you. Your oath requires that your verdict shall be without the effect of sympathy upon your minds, one way or the other, but solely upon the evidence.

Fourth, I am asked to charge that the number of witnesses called on either side does not indicate the weight of evidence.

I charge that. It is not numbers; it is quality.

MR. APPLETON: If your Honor please, I ask your Honor to charge the jury that it is not necessary for the jury to find that the defendant intended to kill Mrs. Martinto in order to establish the crime of attempted robbery in the first degree, but if they find that he used a weapon, a dangerous weapon, that might have induced fear in her, and she did thereby become afraid,

CASE # 623

and he made the demand under those circumstances, that then the crime is established.

THE COURT: I so charge you, gentlemen.

Any other requests?

MR. APPLETON: No other requests, your Honor.

MR. HOCHSTADTER: No, your Honor.

THE COURT: Gentlemen, you may retire.

(The jury retired at 2:55 P.M.)

(The jury returned to the court room at 3:35 P.M.)

THE COURT: Gentlemen of the Jury, you have asked this question: Do we find a verdict on all the charges as stated in the indictment by simply giving a verdict of guilty? I charge you that if you bring in a verdict simply of guilty, your verdict would be recorded as guilty of the crime of an attempt to commit the crime of robbery in the first degree, that being the first crime charged in the indictment.

The jury may retire.

The jury again returned to the court room at 3:47 P.M.

The jury returned the following verdict: We

CASE # 623

find the defendant guilty as charged in the indictment;
guilty of an attempt to commit the crime of robbery in
the first degree.

MR. HOCHSTADTER: I ask your Honor to remand
the defendant until Monday next.

THE COURT: Monday, January 28, 1907.

-----:oOo:-----

CASE # 623

New York, January 28th, 1907.

THE PEOPLE, etc. vs. JOSEPH E. PAGE.

The defendant is arraigned for sentence,

Before Hon. Thomas C. T. Train, J.

COUNSELLOR HUGH COLEMAN (Addressing the Court):

If your Honor please, in the case of Joseph Page, at the bar, the defendant sent after me last Friday, and asked me to take charge of this case. I told him I did not want to interfere with another lawyer, and he said his services with the other one were ended. Now, he wanted to appeal the case, and I am in this position: I don't know anything about it, not enough to form an opinion. He said he will raise the money so that he can pay the stenographer and get a copy of the minutes, and it will take me in all, about two weeks time, and I would respectfully ask your Honor to give me two weeks' time for adjournment. I will state this: if he fails to raise the money so that I can pay the stenographer, then I will come and inform you of it, but he says he can raise the money, and I make that proposition to be perfectly fair.

CASE # 623

MR. APPLETON: If your Honor please, I respectfully oppose any adjournment in the time at which the imposition of sentence on this defendant is to be made, for this reason: There is no necessity for any delay; Counsel can take his exceptions and make his motions that are proper at this time. He is an old practitioner at this bar, and he knows everything that is necessary to be done to protect his client's rights, and that can be done in a very few moments.

Now, on the other hand, the defendant ought not to be kept here for two weeks longer, because that time ought to be counted on his time that he is serving his sentence, and if he wants to apply for a certificate of reasonable doubt, he can do that.

THE COURT: Yes, that is your method. If you think that errors were committed upon the trial, your application would be for a certificate of reasonable doubt.

MR. COLEMAN: Now, the District Attorney says that I am an old practitioner---.

THE COURT: He means an experienced practitioner.

MR. APPLETON: Of course.

MR. COLEMAN: My experience is this: the older you become, the more you learn how little you do know.

CASE # 623

Now, your Honor can recognize the fact that no matter how well experienced a lawyer may be, when he is brought into a case, he does not know anything about it, to handle the case in a proper manner.

THE COURT: The minutes will be furnished to you upon proper payment to the stenographer, either to-day or to-morrow, at the latest, and I will remand the defendant for sentence until Wednesday next.

MR. COLEMAN: Will your Honor make it Monday?

THE COURT: No; I shall be sitting in Part I on Monday.

MR. COLEMAN: Well, your Honor can dispose of it there?

THE COURT: I know, but I shall have other matters to attend to there. It is the beginning of the new term in Part I, and the charging of the Grand Jury, and other matters.

MR. COLEMAN: How long will your Honor sit this term?

THE COURT: I will sit until Thursday.

MR. COLEMAN: Will your Honor make it Thursday, then?

THE COURT: Well, I will make it until Thursday, January 31st, 1907.

CASE # 623

New York, January 31st, 1907.

The People, etc. vs. Joseph E. Page.

The defendant is arraigned for sentence,

Before Hon. Thomas C. T. Crain, J.

in Part II, Court of General Sessions of the
Peace, City and County of New York.

Appearances:

For the People: Assistant District Attorneys O'Connor
and Appleton;

For the Defendant: Hugh Coleman Esq., and John
Schwarzkopf, Esq..

MR. COLEMAN: If your Honor please, the other
day when I applied for an adjournment, which you
kindly granted me, I intended at the time to go on.
Subsequent to that time, I have changed my mind, andd
I ask permission to withdraw. I will not state
my reasons, but I understand another counsel will
take my place.

THE COURT: I think, Counsel, that you had bet-
ter remain in the case until sentence is pronounced,

CASE 623

so that the defendant may not be without representation.

MR. SCHWARZKOPF: If your Honor please, I appear for the defendant at this time. I was called into the case yesterday, and yesterday afternoon got a copy of the minutes.

I observe that no motions of any sort were made at the end of the trial, and I desire to make the motions now, but I am not quite ready for sentence.

THE COURT: The Court, however, is.

MR. SCHWARZKOPF: Possibly, your Honor.

I observe from the minutes -- this is not a merely formal motion, and I hope you will reserve decision upon it. I move for a new trial and that the verdict be set aside, and I also move in arrest of judgment, upon the grounds, first, that the verdict is against the evidence; second, against the weight of evidence, and third, against the law, and upon all the grounds stated in section 999 of the Code of Civil Procedure; that provides for the grounds stated in the Code of Criminal Procedure.

I observe, from a mere cursory examination of the minutes, that the only testimony as to robbery is on pages 11 and 12, and I do not think there is

CASE 77 623

sufficient evidence there.

That is one ground for asking your Honor for an adjournment, and another is, that certain witnesses on behalf of the defendant have not arrived yet. If your Honor takes this case into another part---

THE COURT: I propose to dispose of it now, Counsel. I will hear you on any proposition looking to the extent of the sentence.

MR. SCHWARZKOPF: Will your Honor pass upon my motions?

THE COURT: I will deny your motions.

MR. SCHWARZKOPF: Exception upon each of the grounds stated.

Now, if your Honor please, so far as the sentence is concerned, Mr. Betz, who is president of the Betz Brewing Company of Philadelphia, will be here to-day, as I understand, and he has something to say to your Honor, which may affect your Honor's judgment, and I think your Honor should defer sentence.

It is an unfortunate case, and I think the defendant possibly suffered from unfortunate associations and unfortunate advice. I cannot see how the People will be hurt in any way by your Honor's

CASE # 623

reserving decision or your Honor's remanding this man for a day or two.

So far as the facts are concerned which may be urged in mitigation of sentence, I do not myself quite know them yet, but I do know that a witness will be here, if your Honor will defer sentence, who will materially affect your Honor's judgment.

THE COURT: Well, I was personally very desirous of closing the business of this Part to-day.

MR. SCHWARZKOPF: This is one of the things I want to urge to your Honor, that the defendant having suffered from this unfortunate advice, desires to clear the record of certain statements that have been made. As I have said, I have had but a mere chance to go through the minutes last night, and I desire to go through them carefully, so that we may place on the record statements of the defendant concerning those portions of the minutes.

THE COURT: Well, in view of that statement, and my appreciation of the importance of that statement, I will defer sentence, and sentence the defendant when I am in Part One, and I will defer sentence until Tuesday next, February 5th, 1907.

CASE # 623

215
Court of General Sessions of the Peace,
City and County of New York,

Part I.

THE PEOPLE OF THE STATE OF
NEW YORK

vs.

JOSEPH E. PAGE.

New York, February 8th, 1907.

The defendant is arraigned for sentence,

Before Hon? Thomas C. T. Crain, J.

Indicted for Attempted Robbery in the first degree; attempt
grand larceny in the ~~second~~ degree; assault in
the first degree.

Indictment filed January 14th, 1907.

Appearances:

For the People: Assistant District Attorney Charles W.
Appleton.

For the Defendant: John Schwarzkopf, Esq.

James E. Lynch,
Official Stenographer.

CASE # 623

MR. SCHWARZKOPF: May it please the Court, your Honor will recall that on the occasion when I first came into this case, after the verdict had been pronounced by the jury, I told your Honor that I desired an opportunity for adjournment in order that I might investigate.

Now, I have pursued that investigation, as your Honor well knows, with about all the zeal that an attorney ordinarily pursues in investigation even when a great deal is at stake for him personally. I procured some testimony, not as to the main facts, but as to outside matters, which to my mind at the time aroused within me a reasonable doubt as to whether or not this defendant ought to have been convicted. Since that time, other matters have come to my attention, and it has become clear to me that those matters concerning which I made discoveries could, by no possibility, have had any bearing upon the main facts. Therefore, at the present time, I am not in a position to file the affidavits which I submitted to your Honor the other day, nor can I at this time state that I ever expect to obtain affidavits which will influence your Honor's judgment towards the granting of a new trial. For that reason, I state

CASE # 623

8
27

to your Honor that that matter is not before you.

I procured the minutes and went through them very carefully, and I observe from the minutes that a great many reflections have been made upon the character of the complaining witness. The testimony concerning the character of the complaining witness, and the evidence concerning certain transactions to which this defendant testified and concerning which this defendant refused to testify on certain grounds, have no place in this record, and while I know that in a criminal case a motion to expunge from the minutes is not proper, I make before your Honor at this time the only motion that I can with respect to those allegations in the minutes, and I ask your Honor to accept my apology and the apology of the defendant for the testimony --if Mr. Appleton will follow it-- for the testimony at pages 25, 26, 27 and 28, concerning the presence of this defendant at Mrs. Cochran's on a date subsequent to the 1st of November -- I think it was on Election night.

It was not intended during the trial, nor is it intended now that there was anything wrongful in the presence of Mrs. Martinto at that place at that time.

Then there is some further testimony to that effect

CASE # 623

218

at page 82, for which I now apologize to the Court; also at page 86, concerning the testimony of this defendant as to certain alleged transactions that he at that time claimed to have with respect to a market at 112th Street. At page 89, there is a very serious reflection upon the character of the complaining witness, which not only do I apologize for but which I state to your Honor in open court I do not believe. At pages 105, 106, 107, and 108, there is a further reference to that market episode; at page 108, at the bottom, and 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118 and 119 there is an account of an absolutely incredible occurrence, and, having seen the complaining witness myself this morning, I state to your Honor that not only do I not believe it, but I cannot conceive of such a thing being possible.

There is another reference at page 120 and 121 concerning the market occurrence, and then at pages 123, 124, 125, 128 and 130, there is a reference to a Doctor Russell which has no place in this record, and which, on investigation, if your Honor please, I have ascertained to be false.

At pages 130 --and I so stated to Mr. Appleton--

CASE # 623

219

130 and 131, there is an additional reference to the market occurrence; at pages 132 and 133 Doctor Russell figures again, and finally, at pages 147 and 148 the transcript of the testimony of the defendant in the Police Court was used, covering these transactions on the 10th of November, for which I have just apologized to the Court, and which I believe to be incredible.

I think that was about all the testimony in the case which requires, or which reflects in any way upon the character of the complaining witness, and I state to your Honor that my apology and the apology of the defendant is due not only to the Court and to the District Attorney, but to the complaining witness in this case for any such testimony.

I do not know how materially this retraction at this late day may affect your Honor's judgment in this matter. I have tried to procure witnesses as to this defendant's character. I have put the matter in the hands of his sister and of a Mr. Green, who has interested himself in the case. I was led to understand last week that Mr. Betz, president of the Betz Brewing Company of Philadelphia, would be here.

CASE # 623

W

I have telephoned to Philadelphia; I have written to Philadelphia and I have telegraphed to Philadelphia, and I cannot procure any answer, much less the attendance of Mr. Betz. What the reason for that is, I do not know.

Your Honor has before you all the facts that I can present fairly in behalf of this defendant. I do know, and I so stated to Mr. Appleton the day before yesterday, that the complaining witness some time after the alleged occurrence and before she made complaint in the Police Court, did complain of the defendant's actions. I think your Honor ought to know that, because, if there could be any possible doubt in your Honor's mind, it might shed some light on the subject.

So far as the character of this defendant is concerned, I have heard nothing against it. On the other hand, I have been unable to produce any witnesses here on whom your Honor could rely to prove his good character. I have no reason to doubt his character has been good, and Mr. Appleton I believe is in a position to give additional information concerning that. I do not know whether he has procured it or not, and I merely urge upon your Honor, with

reference to the defendant-----.

THE COURT: (Interposing) I will ask Mrs. Martinto to step up here for a moment.

(The Court confers with Mrs. Teresa Martinto, the complaining witness.)

MR. APPLETON: If your Honor please, in reply to the motion made by the attorney for this defendant-----.

MR. SCHWARZKOPF: (Interrupting) I beg pardon; I do make the motion formally to expunge from the record.

MR. APPLETON: I of course object to that; it is improper.

THE COURT: I may say, Mr. Appleton, that I will not expunge it.

MR. APPLETON: Now, in regard to the retraction, if your Honor please, the horrible part of this case has been these accusations against this woman, the mother of three most beautiful little children, and in preparing this case for trial, as your Honor knows, I went over most carefully the matter to see that by no chance should I be deceived by anything in this matter, and when I finally brought the case to trial

CASE # 623

E
vrv

and presented it to the Court and jury, I was absolutely convinced in my own mind of the entire falsity of the accusations made by this defendant, and the demeanor of the jurors, when they desired to convict this defendant of every count in the indictment in order that the sentence might be cumulative and that he be thereby sent to prison for a very long term of years, is most conclusive to your Honor's mind that the jury were absolutely disgusted with such an exhibition as the defendant made.

Now, if your Honor please, when it comes to your attention beyond any peradventure of doubt that those accusations were untrue, it only makes this case the more horrible, and I am sure that your Honor will take this all into consideration in sentencing this man, who certainly has shown himself to be a most dangerous man to any community in which he may live.

THE COURT: Joseph E. Page, you have had a fair trial. You were represented by an able and conscientious lawyer, who did everything in your behalf that a lawyer of his ability could do, and I refer now to Mr. Hochstadter, who represented you upon the trial.

After hearing all the testimony and after prolonged and painstaking deliberation, the jury --of

CASE # 623

223

exceptionally intelligent and conscientious men--
brought in a verdict against you of guilty of the
crime of Attempted Robbery in the First Degree.
That verdict was after a charge by the Court to which
no exception was taken, and which satisfied your at-
torney. Your attorney made a very proper motion that
you be remanded for sentence, in order that invest-
igation might be made respecting your record, in
order that the Court might learn if there were any
circumstances which should mitigate the sentence other-
wise to be imposed. The attorney who represented
you upon the trial was succeeded in your behalf by
Captain Coleman, one of the most experienced attorneys
practicing at the criminal bar, who renewed the ap-
plication for a further remand in order that he might
investigate the circumstances of the case and deter-
mine whether there was anything that could be brought
to the attention of the Court which should mitigate
the sentence to be imposed upon you. Captain
Coleman in turn was succeeded by your present Counsel,
Mr. Schwarzkopf, who has displayed commendable energy
in endeavoring to investigate, not merely the main
issue raised upon the trial, but some of the outside,
extraneous circumstances which to the great regret

1052

CASE # 623

20
my
of the Court crept into the testimony.

Mr. Schwarzkopf has brought to my attention, at different times, various facts or alleged facts bearing upon these extraneous circumstances, and now, after a full investigation, comes, as befits his professional standing and the dignity of the Court, and at the bar of the court, standing at your side, publicly apologizes for all these extraneous matters which crept into the testimony and find their place unfortunately upon the record.

The longest sentence which the law would allow me to impose, is the term of ten years in the state prison at hard labor. There is but one circumstance that is brought to the attention of the Court which should lead in any respect to a mitigation of that, the longest possible sentence for the crime of which the jury have found you guilty, which was at one and the same time one of the most cowardly and one of the most brutal ---cowardly, because it was attempted to be perpetrated upon a defenceless woman, rendered doubly defenceless because she had her child in her arms; brutal, because of its cold-blooded deliberateness, as you uncocked, as the jury found, and "broke" the revolver in her presence and put the cartridges

RECEIVED
1951
CASE # 623

in while you threatened her.

It is the jury who have determined the fact of your guilt. It only remains for the Court to impose the sentence. The mitigating circumstance is the fact that, so far as is known to the Court, you have never been convicted before; that, so far as is known to the Court, while no testimony has been adduced as to your previous good character, there is nothing to indicate that you have been in prison before upon a criminal charge.

I sentence you now, Joseph E. Page, to imprisonment in the state prison at hard labor for the term of six years and nine months; and, in addition to the imposition of that sentence, I consider the circumstances of this case warrant the public expression by the Court of the conclusion reached after mature and careful consideration, that not a single reflection in the case bearing upon the purity of character of Mrs. Martinto, the complaining witness, is in any sense warranted, and that, in the judgment of the Court, her record is that of an unsullied and pure woman.

You may leave the room.

CASE # 623