

0282

**BOX:**

527

**FOLDER:**

4800

**DESCRIPTION:**

DeSoycey, James

**DATE:**

07/10/93



4800

Witnesses:

Terence Mc Mahon

Joe Mc Mahon

Counsel,

Filed

day of

189

Pleads,

THE PEOPLE

vs.

P

James Mc Sweeney

Assault in the Second Degree.  
(Section 218, Penal Code.)

DE LANCEY NICOLL,

District Attorney.

A TRUE BILL.

De Lancey Nicoll  
July 20/93

Foreman.

Fred & Fitzgerald

Police Court— 5 District.

City and County } ss.:  
of New York, }

of No. 1613 Second Avenue Terrence W. Mahon Street, aged 23 years,  
occupation Driver being duly sworn  
deposes and says, that on the 24 day of June 1893 at the City of New  
York, in the County of New York,

he was violently and feloniously ASSAULTED and ~~BEATEN~~ by

James H. E. Doncey, who willfully  
and maliciously stabbed deponent  
in the face; with the blade  
of a Pocket-knife. Deponent  
further says; this assault was  
committed

with the felonious intent ~~to take the life of deponent, or to~~ do him grievous bodily harm; and without  
any justification on the part of the said assailant

Wherefore this deponent prays that the said assailant may be apprehended and bound to answer  
for the above assault, etc., and be dealt with according to law.

Sworn to before me, this 26 day  
of June 1893

his  
Terrence W. Mahon  
mark

John C. Burke Police Justice.

Sec. 198-200.

1882  
District Police Court.

City and County of New York, ss:

*James Mc Doucy* being duly examined before the undersigned according to law, on the annexed charge; and being informed that it is *h*<sup>1</sup> right to make a statement in relation to a charge against *h*<sup>2</sup>; that the statement is designed to enable *h*—, if he see fit, to answer the charge and explain the facts alleged against *h*—; that he is at liberty to waive making a statement, and that *h* waiver cannot be used against *h*— on the trial.

Question. What is your name?

Answer.

Question. How old are you?

Answer.

Question. Where were you born?

Answer.

Question. Where do you live, and how long have you resided there?

Answer.

Question. What is your business or profession?

Answer.

Question. Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation.

Answer.

*I am not Guilty.*

*James McDoucy*

Taken before me this

day of *April* 1889

Police Justice.



Sec. 151.

Police Court.....District.

CITY AND COUNTY }  
OF NEW YORK, } ss.

In the name of the People of the State of New York; To the Sheriff of the County of New York, or any Marshal or Policeman of the City of New York, GREETING:

Whereas, Complaint in writing, and upon oath has been made before the undersigned, one of the Police Justices in and for the City of New York, by Francis M. Mahon of No. 1613-2 - Avenue Street, that on the 24 day of June 1893 at the City of New York, in the County of New York, he was feloniously ~~violently~~ **Assaulted and Beaten** by James McSorley

Wherefore, the said Complainant has prayed that the said Defendant may be apprehended and bound to answer the said complaint.

These are, therefore, in the name of the PEOPLE of the State of New York, to command you the said Sheriff, Marshals and Policemen, and every of you, to apprehend the said Defendant and forthwith bring him before me, at the 5<sup>th</sup> DISTRICT POLICE COURT, in the said City, or in case of my absence or inability to act, before the nearest and most accessible Police Justice in this City, to answer the said charge and be dealt with according to law.

Dated at the City of New York, this 26 day of June 1893.

Charles L. Burke Police Justice.

Police Court.....District.

THE PEOPLE, &c.,  
ON THE COMPLAINT OF

28.

WARRANT.—A. & B.

Dated,.....189

Magistrate.

Officer.

The Defendant.....

taken, and brought before the Magistrate, to answer  
the within charge, pursuant to the command con-  
tained in this Warrant.

Officer.

Dated June 26<sup>th</sup> 1893

This Warrant may be executed on Sunday or at  
night.

Police Justice.

James DeSnoy 28. U. S. 1884. 2<sup>nd</sup> Dec

The within named

having been brought before me under this Warrant, is committed for examination to the  
WARDEN and KEEPER of the City Prison of the City of New York.

Dated,.....189

Police Justice.

BAILED,

No. 1, by

Residence

No. 2, by

Residence

No. 3, by

Residence

No. 4, by

Residence

Police Court, District

THE PEOPLE, &c.,  
ON THE COMPLAINT OF

*James M. McManus*  
*1613 2d Ave*

*James M. McManus*

Offense

*Delinquent Assault*

Dated

*June 26 1893*

Magistrate

Officer

Precinct

Witnesses

No

Street

No

Street

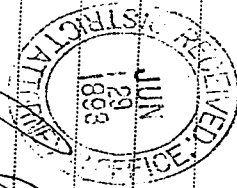
No

Street

*\$2000 to answer*

*Com*

*#2000 June 27 9 A.M.*



It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named

*DeLudav*

guilty thereof, I order that he be held to answer the same, and he be admitted to bail in the sum of *2000* Hundred Dollars, and be committed to the Warden and Keeper of the City Prison of the City of New York, until he give such bail.

Dated *June 27* 189 *3*

*James M. McManus*

Police Justice.

I have have admitted the above-named to bail to answer by the undertaking hereto annexed.

Dated, 189

Police Justice.

There being no sufficient cause to believe the within named guilty of the offense within mentioned, I order h to be discharged.

Dated, 189

Police Justice.

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,  
against

*James Mc Soucey*

The Grand Jury of the City and County of New York, by this indictment, accuse

*James Mc Soucey*

of the CRIME OF ASSAULT IN THE SECOND DEGREE, committed as follows:

The said

*James Mc Soucey*

late of the City and County of New York, on the *twenty-fourth* day of  
*June* in the year of our Lord one thousand eight hundred and  
ninety-*three*, at the City and County aforesaid, in and upon one

*Terence Mc Mahon*

in the peace of the said People then and there being, feloniously did wilfully and wrongfully  
did make an assault; and the said

*James Mc Soucey*

with a certain

*knife*

which

*he*

the said

in *his* right hand *James Mc Soucey* then and there had and held, the same being then and there  
a weapon and an instrument likely to produce grievous bodily harm, *him*, the said  
*Terence Mc Mahon* then and there feloniously did wilfully and  
wrongfully strike, beat, *cut, stab,* ~~bruise~~ and wound, against the form of the statute  
in such case made and provided, and against the peace of the People of the State of New York  
and their dignity.

SECOND COUNT—

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said

*James Mc Soucey*  
of the CRIME OF ASSAULT IN THE SECOND DEGREE, committed as follows:

The said

*James Mc Soucey*

late of the City and County aforesaid, afterwards, to wit: On the day and in the year aforesaid,  
at the City and County aforesaid, in and upon the said

*Terence Mc Mahon*

in the peace of the said People then and there being, feloniously  
did wilfully and wrongfully make another assault; and the said *James Mc Soucey*  
the said *Terence Mc Mahon*  
with a certain *knife*

which

*he*

the said

*James Mc Soucey*

in

*his*  
*face*

right hand then and there had and held, in and upon the

of

*him*

the said

*Terence Mc Mahon*

then and there feloniously did wilfully and wrongfully strike, beat, cut, stab  
bruise and wound, and did then and there and by the means aforesaid, feloniously, wilfully  
and wrongfully inflict grievous bodily harm upon the said

*Terence Mc Mahon*

to the great damage of the said *Terence Mc Mahon*  
against the form of the statute in such case made and provided, and against the peace of the  
People of the State of New York and their dignity.

DE LANCEY NICOLL, District Attorney.

0291

**BOX:**

527

**FOLDER:**

4800

**DESCRIPTION:**

Donnelly, James

**DATE:**

07/13/93



4800

Witnesses:

Patrick J. Collins  
Patrick Korman  
Edward O'Neill

Counsel,

Filed

13 day of July 189

Pleads

July 14

THE PEOPLE

Murder in the First Degree.  
(Section 183, Penal Code.)

32 vs.  
313 of Avenue T  
New York.

James Donnelly

DE LANCEY NICOLL,

District Attorney.

1040 5/9  
A TRUE BILL.

James McKeever

Part 2 - March 2, 1894 Foreman.

Rich and Corineth of  
Granddaughter 1st Degree  
with other recommendations  
to know.

Indate

Witnesses:

Patrick J. Collins  
Patrick Keenan  
Seamus O'Neill

Counsel,

Filed

Pleas

109  
13  
189

THE PEOPLE

32  
313  
US.  
James Donnelly

Murder in the First Degree.  
(Section 183, Penal Code.)

Dr LANCEY NICOLL,

District Attorney.

10410  
A TRUE BILL.

James Donnelly

Foreman.

Paul and Corinthe of  
Granddaughter 1st Degree  
with strong recommendation  
to mercy.

Indict



B. 137, 2, c.

Coroners Office New York County.

-----  
INQUEST INTO THE DEATH

- of -

CHARLES MADDEN.

I  
I  
I Before,  
I HON. WILLIAM J. MCKENNA  
I and a Jury.  
I

New York, June 21st 1893.

APPEARANCES: Mr. O'Hare, representing the District Attorney  
appears for the People; Frederick B. House, Esquire  
for the prisoner.

-----000-----

OFFICER EDWARD O'NEILL, duly sworn:-

BY MR. O'HARE:

Q You are a police officer? A Yes, sir.

Q You do duty in what precinct? A 20th.

Q Were you there May 28th last? A Yes, sir.

Q Do you know the saloon corner of 8th Avenue and 28th  
Street? A Yes, sir.

Q What corner? A Northeast corner.

Q Do you know Donnelly the defendant? A Yes, sir.

Q Did you know Charles Madden the deceased? A Yes, sir.

Q Did you see Madden the night of the 28th of May or the  
afternoon? A Yes, sir; four o'clock.

Q State what you saw? A I saw him come out of the saloon, reel out of the door and fall on the sidewalk with his hand in a position like that (indicating) I heard a shot--

Q Did you hear the shot before you saw him come out of the saloon? A Yes, sir.

Q He fell to the sidewalk? A Yes, sir; I sent two men for an ambulance and I heard -- I knew there was something wrong, and I went in and there were three men at the bar. I asked, who did the shooting, and James Donnelly said "I did." I brought him out in front of Madden, and I says "Who shot you?" "Jimmie" Donnelly", he said; I asked him "What did he shoot you for?" He said "I didn't say a God damned word to him." So I took Donnelly to the station house.

Q Did Madden say anything else to you? A No.

Q What did Donnelly say? A Nothing further.

Q Didn't say a word more? A No.

Q What did you do after that? A I locked Donnelly up.

Q Did he make any statement at the station house?

A He made a statement that the man put his hand to his hip pocket and pulled a gun out. I didn't search the man to see whether he had a gun.

Q Did you see Madden after that at the Hospital?

A I saw him ~~and~~ dead.

Q You know he is dead? A Yes, sir.

Q You know he is the same man? A Yes, sir.

BY MR. HOUSE:

Q How long have you been attached to the 20th prec inct?

- A Over two years.
- Q And for what length of time has your post been in the neighborhood of where this shooting took place?
- A About none months.
- Q Had you frequently seen Donnelly? A Yes, sir.
- Q While you were on duty? A Yes, sir.
- Q He was employed as bartender in this saloon? A Yes, sir.
- Q Who is the proprietor of that saloon if you know?
- A Felix Donnelly.
- Q Is that a relative of the defendant? A From what I hear.
- Q You had seen this defendant in the daytime and night time
- A I am on post only during the day.
- Q Did you ever see the defendant Donnelly when you were not on patrol duty? A Very seldom.
- Q Were you on speaking terms with him? A Yes, sir.
- Q Do you know what the defendant's reputation in the neighborhood is? A Good reputation.
- Q You never had any occasion to arrest him till this time?
- A No, sir.
- Q And before this time have you ever had any complaint made by any citizen against him? A No, sir.
- Q And you never heard of his doing an act of violence on the person of any person whatever? A No, sir.
- Q Where were you when you heard the shot? A Right on the same corner.
- Q Was that within a few feet of the saloon? A Yes, sir.

Q Was there anybody standing about the saloon at the time you heard the shot? A Yes, sir; I was talking to another man.

Q Were you the only persons in front or about the saloon?

A There might be some people across on the corner and on the other ~~xxxx~~ corner.

Q Immediately after you heard the shot did you see the deceased walk out of the saloon? A Yes, sir.

Q And you say he was holding his arm in that position?

A Yes, sir.

Q And he fell on the sidewalk? A Yes, sir.

Q You sent two men for an ambulance? A Yes, sir.

Q Do you recollect who they were? A No, sir.

Q They were strangers? A Strangers.

Q And you immediately went into the saloon? A Yes, sir.

Q And there saw three other men standing in the saloon?

A Yes, sir.

Q What did you say when you went in? A There was one man named Charles Kuch, he had his hat off, and I thought he might have done the shooting, and I made him through up his hands and searched him, he didn't have any pistol and I asked him "Who did the shooting?" And the defendant said "I did."

Q The defendant didn't try to conceal the fact from you?

A No, sir.

Q The minute you put the question he said "I did."

A Yes, sir.

Q Did he show you the pistol? A I asked him for it and he gave it to me.

Q Have you got it here? A It is at the station house<sup>now</sup>~~xxx~~

Q Before you went into the saloon you didn't search the wounded man, did you? A No, sir.

Q When you came out you brought Donnelly with you?

A Yes, sir.

Q Were there a number of people around the wounded man at that time? A Yes, sir.

Q Were they standing quite close to him? A Yes, sir.

Q He was able to speak? A Yes, sir.

Q And you asked him who shot him? A Yes, sir.

Q And he said "Jimmy" Donnelly? A Yes, sir.

Q And you asked him what for and he said, I didn't say a God damned word to him? A Those are the words. Then I started up and I met the ambulance between 33rd and 34th Streets coming down, and I took the prisoner up.

Q Did you search the wounded man when he was taken to the station house? A No, sir; he was not taken to the ~~station~~ station house.

Q So far as your knowledge goes you can't say whether at the time of the shootigg he had a pistol? A No, sir; I could not.

Q But the defendant did say that before he fired the shot the wounded man put his hand in his hip pocket to draw a gun? A That is what he told me.

BY MR. O'HARE:

Q Did he make any sign about putting his hand to his ~~xxx~~ pocket or merely made a statement when he made that statement

to you? A That is his statement.

Q He didn't make any signs as to the manner in which he said he was about to draw a revolver? A Yes, sir; he put his hand that way. (indicating)

Q This case ~~has~~ has been inquired into in the police court?

A Yes, sir.

Q And the defendant is held? A Not yet; the examination is day after to-morrow.

-----000-----

PATRICK F. COLLINS, duly sworn:-

BY THE CORONER:

Q Where do you ~~live~~ live? A 218 West 27th Street.

BY MR. O'HARE:

Q Were you in the saloon of Felix Donnelly on the afternoon of May 28th last? A Yes, sir.

Q About four o'clock? A Between five minutes of four and four.

Q Do you know the defendant James Donnelly? A Yes, sir.

Q Did you know the deceased in his ~~life~~ lifetime?

A Yes, sir.

Q Did you see him in the saloon on the afternoon of May 28?

A Yes, sir.

Q Who were present? A Ruch and O'Keefe.

Q Will you state what you saw and heard? A I came in about half past three, and I stood there till Mr. Donnelly came on to ~~relieve~~ relieve the other bartender, and Madden came in and stepped up to the cigar lighter and lit his cigar

--

Q At half past three? A No; five minutes of four;  
and he asked Donnelly to give him a glass of beer; James  
Donnelly said, "no, get out, I told you to keep out before."  
He turns to the <sup>drawer</sup> ~~box~~ and took out a revolver and shot him.  
He put his hands here --

Q Did you hear the report? A Yes, sir.

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

Q What did Madden do? A He staggered out just after the  
shot was fired.

Q You saw the revolver in Donnelly's hands? A I did.

Q Afterwards when the officer came in did you hear  
Donnelly make the admission that he fired the shot?

A Yes, sir.

Q A statement has been made that Donnelly on the way to  
the station house informed the officer that he fired the shot  
at Madden because he made a motion to put his hand to his hip  
pocket? A I didn't see him.

Q Were you in a position to see him? A Yes, sir.

Q If he had done so? A Yes, sir.

BY MR. HOUSE:

Q Do I understand he didn't do anything of the kind or that  
you didn't see him? A I didn't see him.

Q He might have done it and you didn't see him? A I  
wasn't there to look at it.

Q Answer the question. Is it possible that Madden might  
have made a movement of that kind and you didn't notice it?

A I didn't see him.

Q What is your occupation? A Iceman.

Q Where do you live? A 218 West 27th Street.

- Q How long have you lived there? A Since last Novemebr.
- Q Are you a married man? A Yes, sir.
- Q Have you a family? A Well, I did have but buried them  
I have a wife.
- Q Are you in business for yourself or employed? A I  
was working for Mrs. Glasgow, I gave up my employment.
- Q When? A Monday.
- Q How long had you known the defendant Donnelly? A \*
- A About <sup>two</sup> ~~three~~ years.
- Q Were you in the habit of going in the saloon? A Uer-  
tainly, I served the place with ice.
- Q And you had seen Donnelly nearly every day for two years?
- A Yes, sir.
- Q They took a s ufficient quantity of ice that occasioned  
you to go there almost every day? A Yes, sir.
- Q Was he usually there when you went to put the ice in the  
ice box? A Sometimes he was and sometimes he was not.
- Q Of an evening after your work was over you would drop  
into the saloon? A Yes, sir.
- Q And you would see him there behind the bar? A Yes,  
sir.
- Q You have had occasion to witness his conduct for the  
past two years? A Yes, sir.
- Q You go among men all the time, don't you? A I do sir.
- Q What has been Donnelly's character for peace and quiet-  
ness as you have noticed it? A I never seen him do any-  
thing out of the way whatever before.



- Q Always been a peaceable quiet man so far as you could see? A Yes, sir.
- Q Before this you never saw him in any fight or trouble of any kind? A No, sir.
- Q How long have you known Madden? A About two years.
- Q Did he live in the ~~eighteenth~~ neighborhood? A I don't know exactly where he did live till after the affray.
- Q Then did you find out he lived about that neighborhood?
- A I found he lived in 29th Street.
- Q You say you went in there about half past three in the afternoon? A Yes, sir.
- Q Were those other two men that you have spoken of in the saloon at the time you went in or did they come in afterwards? A They came in afterwards.
- Q Were you acquainted with them at the time they came in?
- A No, sir; they were strangers.
- Q I suppose that other than their being present there you are not acquainted with them now? A Yes, sir; I got acquainted with them at the House of Detention.
- Q Before ~~Madden~~ <sup>Madden</sup> came in did you at any time while you were in there talk with Donnelly? A No, sir.
- Q He was behind the bar? A Yes, sir; I came in and said, "Hello Jimmie, and he said hello Fat."
- Q He didn't appear to be angry? A No, sir; just the same as he always was.
- Q You had been in there 25 or 30 minutes when Madden came in? A Yes, sir.

Q How many entrances are there to the saloon, one or two?  
Is there the usual front door and side door? A There is  
a side door, a back door and front door.

Q There are three? A Yes, sir.

Q Do you recollect through which one of these three entrance doors Madden came in? A Yes, sir; the side entrance.

Q How far is that side entrance from the end of the bar where he went to light the segar? A 14 or 15 feet, I should judge.

Q Was his ~~xxx~~ segar lighted or did he go there and light it? A He did.

Q Was it a fresh segar? A That I didn't notice.

Q So you can't tell us whether the segar had been lighted and went out or whether it was a fresh segar? A I cannot say.

Q Where was Donnelly at the time Madden went to light the segar? A Behind the bar, near the north east corner.

Q Was that near where the segar lighter is? A Yes, sir.

Q And Madden went up and lighted his segar first?  
A Yes, sir.

Q And then you say he called for a drink of beer?  
A Yes, sir.

Q And Donnelly said "Get out of here, I told you to keep out and not to come in again"? A Yes, sir.

Q Did you see where Donnelly got the pistol from?  
A Yes, sir.

Q Where? A Out of the drawer.

Q Was the drawer open or closed? A Closed.

Q And he opened it quick? A Yes, sir.

Q And presented it and fired? A Yes, sir.

Q Whereabouts do you recollect that the shot struck Madden, indicate on your own body? A It was on the left side, here. (indicating)

Q Down about here some where? (indicating) A It struck through here, and here is the way he held his hand on the railing of the bar.

Q Which hand? A The left hand.

Q On the railing of the bar? A Yes, sir.

Q Did the ball strike the left hand? A It struck the wrist up there some where, I didn't see where it did go through.

Q And then Madden said, "I am shot"? A Yes, sir.

Q And then he reeled into the street? A Yes, sir.

Q Through the front door? A The side door.

Q Did you go out or stay till the officer came in?

A I staid till he came in.

Q And you heard him ask, "Who fired that shot?"

A Yes, sir.

Q And Dennelly said, "I did"? A He said, "I did."

Q He didn't hesitate to say that? A No, he did not.

Q He didn't try to get the pistol out of the way?

A No, he did not.

Q After the shot was fired do you recollect where he put the revolver? A In the same drawer.

Q Did he shut the drawer? A Yes, sir.

Q Did you see him open the drawer when the officer came in? A Yes, sir.

Q Did the officer ask him for the pistol? A Yes, sir.

Q And he gave it to him? A Yes, sir.

Q When the officer took Donnelly out on the street did you go out with him? A Yes, sir.

Q How many people were around there? A As much as one hundred.

Q Were they right up close to the deceased? A When you do anything like that you know what a crowd of people crowd around.

Q Did you see any one in the crowd that you knew?

A No, I knew Officer O'Neil and Donnelly.

Q But the people who were crowded around the wounded man - you don't recollect them? A No.

Q There might have been somebody there you knew?

A Yes, sir; but through the excitement I didn't take notice.

Q The two years you have known Donnelly you have never saw him in a fight? A I did not. I always saw him peaceable and quiet.

BY MR. O'HARE:-

Q Did Donnelly after firing the bullet make any attempt to assist Madden at all, did he make any effort to assist him? A No, he just went out of the side door.

Q He put the revolver back in the drawer? A Yes, sir.

Q And did nothing till the officer came in? A No, sir.

BY MR. HOUSE:-

Q Is it not true that immediately after the shot was fired and Madden went out the officer came in? A Yes, sir.

Q So there was really no chance for Donnelly to go out without meeting the officer? A No, sir; the officer came in at the moment.

Q The shot was fired, Madden went out and the officer came right in? A Yes, sir.

Q Donnelly didn't make any attempt to run away? A No, sir.

Q No attempt to escape at all? A No, sir.

BY THE CORONER:-

Q Was this drawer in the back bar? A Yes, sir; back behind the bar.

Q When you were in front of the bar you could see the drawer opened? A Yes, sir.

-----000-----

DR. WESTON, duly sworn.-

BY MR. O'HARE:

Q You are one of the Coroners physicans of this city

A Yes, sir.

Q As such did you make an autopsy on the body of Charles Madden? A Yes, sir.

Q Where? A Roosevelt Hospital, on the morning of the 10th. of June.

Q State the result? A There was an almost completely healed pistol shot wound in the front of the body just at the lower part of the ribs, just at the point of the sternum it was slightly to the left of the middle line of the body. The direction of the bullet was backward, and slightly to the right, and it psassed t rough the liver and ~~diaphragm~~ <sup>diaphragm</sup> and into the right lung, lower lobe of the right lung, where the bullet was found. There was an abscess of the liver along the track of the bullet, which entered through the right plural cavity, which contained a large quantity of ~~plastic~~ <sup>plastic</sup> ~~plastic~~ exudation, the result of inflammatory process. The cause of death was a result of the pistol shot wound of the abdomen and thorax.

Q The ~~bullet~~ <sup>bullet</sup> penetrated the lung? A Yes, sir.

Q At what point? A The lower lobe of the right lung.

BY MR. HOUSE:

Q Was that the only injury? A There were two small wounds in the fleshy portion of the left forearm of similar character as the wound in the ~~abdomen~~ <sup>abdomen</sup>, which would indicate that the bullet passed throguh the fleshy part of the forearm.

BY MR. O'HARE:

Q Did you find the bullet? A Yes, sir, 38 calibre.

Q Have you got it? A Yes, sir.

BY MR. HOUSE:

Q What was the condition of the other organs of the body?

A They were practically normal.

Q How about the heart? A The heart was practical normal.

Q About how tall was the deceased in his lifetime, would you judge? A I should think he was above the average, probably 5 feet 8.

Q He was pretty well ~~nourished?~~ <sup>nourished?</sup> A A well nourished muscular man.

Q What did you judge his weight to be? A I should think he weighed about 155 lbs.

Q ~~Apparently~~ <sup>Apparently</sup> a strong healthy man in life? A Yes, sir.

Q When was your autopsy performed, if you recollect?

A It was the morning following his death; he died at 12.30 P. M. on the 9th, and the autopsy was on the 10th.

Q That was some ten or 12 days after the shooting?

A I don't know, the record will show that.

Q You say that the ~~wound~~ <sup>wound</sup> for a certain length of it had the appearance of ~~being~~ <sup>being</sup> partly healed? A The external wound was partly healed.

Q Will you kindly state for my benefit about where the bullet penetrated the ~~abdomen?~~ <sup>abdomen?</sup> A Right about that point.

(INDICATING)

Q 15

Here is the point, the sternum is there, and this was slightly below and a little to the left, and \* its track was slightly towards the right.

BY MR. O'HARE:-

Q You saw the body was Madden? A Yes, sir.

Q Making a comparison with the defendant, which was the heavier of the two? A I could express an opinion that the men were about the same size. There were no marked difference

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DANIEL O'KEEFE, duly sworn:-

BY THE CORONER:

Q Where do you live? A 242 W. 19th Street.

Q You were present at the time of the shooting? A Yes, sir.

Mr. O'Hare states that he is of the opinion that the evidence already adduced is sufficient for the jury to find a verdict upon, and asks that no further witnesses are called.

Mr. House insists upon all the witnesses who have been subpoenaed being called.

MR. O'HARE: The defendant call the witnesses and be bound by their testimony.

THE CORONER: Mr. O'Hare, as the representative of the District Attorney's office are you willing the case should go now to the jury?



MR. O'HARE: Certainly; there is understood evidence as to who fired the shot.

THE CORONER: Has Mr. House any witnesses to put on the stand?

MR. HOUSE: I have no witnesses except those who have been subpoenaed, and I demand the right to call them and bring them my witnesses. I desire to call ~~my~~ to call the witnesses as my witnesses.

NY MR. HOUSE:

Q What is your name, young man? A Daniel O'Keefe.

Q Whereabouts do you live? A 242 W. 19th street.  
lived

Q How long have you lived there? A 12 years.

Q Do you know Mr. Donnelly? A No, sir.

Q Did you know Mr. Madden? A No, sir.

Q Were you present on the afternoon of the 28th of May  
Madden  
when ~~Madden~~ was shot? A I was. I was standing in the barroom close to the side door leading to the street.

Q At what time did you enter the saloon? A Somewhere along four o'clock.

Q Did anyone go in with you? A Yes, sir.

Q Who? A Mr. Ruch.  
Have

Q Are you any acquaintance with him? A Yes, sir.

Q How long have you been acquainted with him?

A Five or six years.

Q Did you have anything to drink when you went in?

A Yes, sir.

Q What? A Beer.

Q Did Mr. Ruch have a drink also? A He had the same.

Q Which entrance did you go in at? A The 28th Street entrance.

- Q That is the side door? A Yes, sir.
- Q Did you go to the front or rear end of the bar?
- A At the centre of the bar.
- Q Was there anyone in the barroom besides Mr. Donnelly at the time you and Ruch went in? A Yes, sir; Mr. Collins.
- Q You didn't know him at that time? A No, sir.
- Q He has been on the stand? A Yes, sir.
- Q Did you see Madden when he came in? I did not.
- Q Tell us in your own way just exactly what you know about the shooting? A The way I saw the thing done, I was standing at the side door, Ruch and myself, measuring to see which was the tallest; I was standing not facing Donnelly, I had a side view, when the shot was fired, I turned my head away, I heard it, and then saw him return the pistol to the drawer.
- Q You didn't see him take it out of the drawer? A no, sir.
- Q The first thing you noticed was the report of the pistol?
- A Yes, sir.
- Q And then you turned and saw the defendant putting the pistol back in the drawer? A I did.
- Q How long had you and Ruch been in the ~~hall~~ saloon before the pistol was fired? A I should judge about ten minutes.
- Q While you were there Donnelly didn't appear to be angry?
- A Not that I saw.
- Q He treated you in a gentlemanly way? A Yes, sir.
- Q And served you? A Yes, sir.
- Q And you paid for it? A Yes, sir.

Q Did you hear any conversation between them before the shot was fired? A I couldn't distinguish the word, I heard the conversation very slight.

Q Your attention was not particularly drawn to Donnelly and Madden? A No, it was not.

Q Your attention was given to the fact that you were measuring heights? A Yes, sir.

Q On the wall or on the machine? A There was a machine and a race card on the back of the side door, on the partition.

Q Were you present when the officer came in? A I was.

Q Did you hear him ask who fired the shots? A I did.

Q And Donnelly said what? A That he did.

Q He didn't hesitate to say so? A I didn't see that he did.

Q Did he attempt to escape or run away? A Not that I saw.

Q Did you follow the officer and Donnelly in the street?

A No, sir.

Q Were you out in the street before the ambulance took Madden away?

A Yes, sir.

Q Was there quite a crowd of people around there?

A Yes, sir.

Q Is that all you know of this case? A Yes, sir.

-----000-----

PATRICK KIERNAN, duly sworn:-

BY THE CORONER:

Q Where do you reside? A 226 W. 27th Street.

The testimony of the witness is taken subject to objection by Mr. O'Hare, and with the understanding that Mr. House makes the witness his own witness.

BY MR. HOUSE:

Q What is your business? A I run a freight elevator.

Q For whom? A The Gunther Estate.

Q Whereabouts? A 469 Broome Street is the house I run in.

Q How long have you been working for them? A About a year.

Q Where do you live? A 226 W. 27th Street.

Q Is that in the vicinity of the saloon at 28th Street and 8th Avenue? A No, sir, it is around a block from there.

Q Are you nearer 7th or 8th Avenue? A About the middle of the block.

Q And the saloon is the corner of 28th Street? A Yes, sir.

Q And that is half a block? A Half a block and a block from the avenue.

Q Were you in the vicinity of the saloon on the afternoon of the shooting? A No, sir.

Q You didn't see anything of the shooting at all?

A No, sir.

Q Were you acquainted with Madden in his lifetime?

A Yes, sir.

Q How long had you known him? A About 17 years.

Q Did you know Donnelly? A Yes, sir, from the time he worked at 28th Street, going in and getting a glass of beer.

Q How long had he been there? A I couldn't say.

Q Were you ever in the aloon at 28th Street woth Madden at any time? A Yes, sir.

Q Was Donnelly there? A Yes, sir.  
subpoena

Q Were you served wih a ~~subpoena~~ to come here? A Last night at the upper table.

Q Who brought it up to you? A My sister gave it to; some officer came to the door.

Q Can't you fix the time when you became first acquainted with Donnelly? A Well I couldn't say, only about 2 years.

Q You know n thing about this killing? A I don't know anything, and I seen one time, Charles Davis and I was coming down 8th Avenue about 5 weeks ago, before the shooting, and we went to go into the front door in the night time when James Donnelly had a pistol in his hand and he was going to shoot this Madden.

Q Where was Madden? A After going in under the screen door.

Q What door? A The screen door, and when he saw the pistol he run into the street. We went to the side door, and Donnelly still had the pistol in his hand, and said, "I will kill him on sight."

Q What were your associations with Madden? <sup>go</sup> did you out with him? A No, sir; I worked with him and lived in the house with him.

Q And you and Madden and Davis talked this all over?

A No, sir.

Q Did you go with Madden to the police station to complain of Donnelly? A ~~Exdidntttxhaxextttxkixitix~~ No, sir.

Q When was it you first told this story after the shooting

A I didn't have to tell it; it was known I was there.

Q How did the police know? A I don't know.

Q Have you ever told a police officer about this?

A No, sir.

Q Did you ever talk to Madden's relatives about the night you saw Donnelly with the pistol and he said he would kill Madden on sight? A No, sir.

Q What time of night was it that you and Charles Davis came down 8th Avenue? A About 8 o'clock.

Q Where had you been? A Up to 31st Street right off 8th Avenue; I went up there to meet a friend of mine.

Q Where? A On the corner, and after we had a drink in the 31st street saloon we came down and were going into Donnelly's to have a drink.

Q Were there any people standing around at the time? Madden crawled out under the door? A A lot of people stopped.

Q Who were they? A I couldn't tell; they were strangers to me.

Q And you and Davis saw that? A Yes, sir.

Q Madden ~~xxaxlax~~ was crawling out on his hands and knees under the screen door? A Yes, sir.

Q And Donnelly had his pistol? A Yes, sir.

Q He didn't fire it? A I didn't hear any report.

Q An you saw Madden arter he got up on his feet?

A Yes, sir.

Q And he didn't look to you as if he had been shot?

A No, sir; we saw the pistol and I run.

Q You saw Madden next day? A Yes, sir.

Q He was not shot then? A No, sir.

Q So when he was crawling out you saw Donnelly with the pistol? A Yes, sir.

Q And he didn't shoot it off? A Not at that time.

Q There was nothing to prevent him from firing it at that time? A I don't know unless it was not loaded.

Q Assuming it was loaded there wasn't anything to prevent

A No.

Q Madden was on his hands and knees? A He was crawling out on the street.

Q They were swinging doors? A Yes, sir.

Q Did Donnelly come out through them? A No, sir.

Q Where did you go? A I went to the side door and saw Donnelly and he had his pistol.

Q What did he say? A He says, "I thought he stooped in under the bar and I was waiting to shoot him."

Q What else did he say? A That is all I know; we had our drink and went out.

Q That time his explanation was he thought he was stooping under the bar and he was waiting to shoot him? A Yes, sir.

Q That is all he said to you about that occurrence?

A Yes, sir.

-----000----- (23)

JOHN BUTLER, duly sworn:-

BY MR. HOUSE:

Q Whereabouts do you live? A 210 West 27th Street.

Q How long have you live there? A I have not been living there but a short while.

Q What is your business? A Porter.

Q You work for different people? A Mr. Donnelly.

Q What Doneally? A Felix.

Q Is that Felix Donnelly with whom the defendant lives?

A Yes, sir.

Q How long have you worked there? A Over two years.

Q Are you a man of family? A yes, sir.

Q What family have you? A Wife, and one child.

Q You know James Donnelly of course? A Yes, sir.

Q Did you know Madden in his lifetime? A Yes, sir; slightly acquainted with him.

Q Were you present on the 28th of May when the shooting took place? A No, sir; in regard to the shooting I don't know anything at all about it.

MR. O'HARE: Then I object to any further testimony.

Q Did you ever hear Madden in his lifetime say anything about Donnelly? A Yes, sir.

Q Did you ever hear Madden ~~ask~~ make any threats as to what he was going to do to him? A Yes, sir.

Q How long before the shooting did you hear Madden make any threats against Donnelly? A About 6 or 8 weeks ago I was outside, I have a bootblack stand; they had some trouble inside, and he says, he came out, and he says, "I



will lay for you, I won't do like I did with the "Coon";  
I will make a corpse of you.

Q Did you tell Mr. Donnelly that? A No, sir; I guess  
he heard it himself.

Q Were you about the saloon some weeks before this shooting  
when there was trouble between a colored man and Madden?

A No, sir. I had gone home.

Q But you did hear Madden say "I will do different with  
you than with the coon, I will make a corpse of you?"

A Yes, sir; I did.

Q There was no question about that? A No, sir; I was  
at the bar.

BY MR. O'HARE:

Q How long have you been living in New York? A turn-  
ing into five years.

Q Where did you come from? A My home is in Brandy  
Station, in Virginia.

Q Did you come directly here? A No, sir.

Q Where did you live before coming here? A Washington.

Q How long were you there? A 6 or 7 years.

Q How old are you? A About 29 years old.

Q Where did you live before you lived in Washington?

A Virginia.

Q Where did you live in Washington? A When I was there  
929 F Street; I worked for M. J. Wine; I lived at 1114  
Goat Alley.

Q How long did you live in Goat Alley? A I don't know.

Q What was your business? A I worked in a cabinet shop.

Q What did you do there? A In the cabinet shop?

Q Are you a cabinet maker? A No, sir; I was a helper and porter.

Q What is the name of the employer you mentioned?

A M. J. Wine; I worked for him a good while.

Q Did you work for anybody else in Washington? A Yes, sir; Doctor Walsh, I drove for him.

Q What is his address? A I forget his address; New York Avenue between 13th and 14th Streets.

Q What was his first name? A I think Ralph; I am not sure.

Q Where did he live? A New York Avenue between 13th and 14th Streets.

Q How long were you with him? A About 18 months.

Q Was there anybody else you worked for? A 333 Pennsylvania Avenue; I was porter in a Club room.

Q A kind of gambling room? A It was a hotel club room.

Q Where gambling was carried on? A A little of everything I suppose.

Q They played cards there? A Yes, sir.

Q And Faro? A Yes, sir.

Q Poker? A Yes, sir.

Q Did they play Roulette? A No, sir.

Q How long did you work there? A I guess four or five months.

Q What was the name of your employers? A Taylor; I don't know his first name, all I know is Taylor.

Q Anybody else you worked for in Washington? A No, sir.

Q The cabinet makers name was Wine? A Yes, sir.

Q Was he the first man you worked for? A Yes, sir.

Q What did you leave him for? A Well, the same as anybody else when you get tired you look for something better.

Q Did he discharge you? A No, sir; I left of my own accord.

Q You didn't have any difficulty? A No, sir.

Q And all this time you lived in Goat Alley? A Yes, sir.

Q The whole time? A Except when I was at the club, sometimes I stopped at the club at night.

Q You slept in Goat Alley in the daytime? A yes, sir.

Q You didn't have any difficulty with anybody that caused you to leave Wines employment? A No, sir.

Q When you worked for Dr. ~~xxxx~~ Walsh what did you do for him? A I drove his buggy.

Q You worked for him 18 months? A Yes, sir.

Q Why did you leave him? A I naturally got tired.

Q Was it natural for you to get tired? He didn't discharge you? A No, sir.

Q Did you show signs of being tired while you were with him? A I left and went home.

Q Where were you living at that time? A Brandy Station Virginia.

- Q How long did you remain in Brandy Station after leaving Doctor Walsh? A I don't know, about 6 or 8 weeks.
- Q Then you got over your tired feeling?
- A Yes, sir.
- Q And you went to work in the Club House? A Yes, sir.
- Q Doctor Walsh didn't discharge you?
- A No, sir.
- Q Did you ever have any difficulty while working with Doctor Walsh? A No, sir.
- Q No complaints were made against you of having done anything wrong while working for Doctor Walsh or Wine or this Club? A No, sir.
- Q You left there of your own accord? A Yes, sir; I got tired and came to New York.
- Q You have been in New York five years? A Yes, sir.
- Q Whereabouts did you work when you came here?
- A At Watch Hill, Rhode Island, as a waiter.
- Q How long did you remain there? A All the season.
- Q During the Summer season? A Yes, sir.
- Q And then you came to New York? A Yes, sir.
- Q Where did you go then? A 7 and 9 Union Square, Snyder Campbell & Co.
- Q Were they manufacturers of chandeliers?
- A Yes, sir.
- Q How long were you there? A Two months.
- Q Up to the time of the fire? A No, I was there before the fire.
- Q You know they were burned out? A Yes, I know.
- Q Did they discharge you? A No, sir; they did not.

- Q Why did you leave there? A Well, we were working there, and I couldn't get along with his son, and I left.
- Q Whose son? A Snyder's son.
- Q What did he say was the cause of the trouble?
- A He didn't say no cause at all; he wanted me to call in Mr. Snyder, he was nothing but a boy, and I didn't do it and I got paid Saturday and he told me not to come back Monday morning. I didn't do any work then for a while, and then I went to work for a man by the name of "Pete" Volmer.
- Q How do you spell it? A I don't know how to spell it.
- Q Where is his place? A He owns the house 365 8th Avenue, I was janitor for him.
- Q You were on quiet friendly terms with him?
- A Yes, sir.
- Q You called him "Pete"? A Yes, sir; I called his name; I was there till the house was sold, I don't know how long.
- Q For whom did you go to work after that??
- A I got a janitor's place from Mr. Appell, 253 West 28th Street.
- Q How long were you there? A A good long while.
- Q For whom did you work next? A Mr. Donnelly.
- Q Since you have been in New York where have you lived?
- A 217 West 35th Street.
- Q How long did you ~~ix~~ live there? A About a year.
- Q Where did you go after that? A After I left there I think I went to 257 W. 33rd Street.

- Q How long did you live there? A I do not know.
- Q Where next? A 253 West 28th Street.
- Q Are you there now? A No, sir.
- Q How long were you there? A Over two years, I do not know.
- Q Where did you move then? A 228 West 28th Street.
- Q How long were you there? A 5 or 6 months.
- Q From there where did you go? A 337 West 37th Street.
- Q Between 8th and 9th Avenues? A Yes, sir.
- Q How long were you there? A 4 months there.
- Q Where did you move then? A From there to where I am now.
- Q Have you ever been arrested? A Once to my life.
- Q For what? A Fighting.
- Q With whom? A Supposed to be fighting.
- Q It was said you were fighting? A Yes, sir.
- Q With whom? A A fellow by the name of 'Jim' Butts.
- Q Where? A Corner of 28th Street and 8th Avenue.
- Q And Mr. Donnelly went bail for you? A No, sir.
- Q Were you discharged? A Yes, sir.
- Q Where? A Jefferson Market.
- Q When? A Monday, this was Sunday.
- Q When was this? A Easter Sunday a year ago.
- Q Who was 'Jim' Butts? A A colored friend of mine.
- Q Where does he live? A I don't know.
- Q Where did he live then? A I didn't know at the present time where he lived.
- Q You have got some relatives in New York?

A I have one cousin here.

Q He had some difficulty with Madden, didn't he?

A No, sir.

Q Never had?

A No, sir; not as I know of.

Q You don't remember the day he drew a revolver on him?

A No, sir.

Q And Madden hit him with a bottle?

A No, sir. I never heard of that.

Q You didn't speak to your cousin of the day he drew

the revolver on Madden? A No, sir; that is the

first I heard of that, a cousin of mine.

Q Has Mr. Dennelly, Felix, spoken to you about this case?

A No, sir.

Q Or James?

A No, sir.

Q And you never told him anything about the remark Madden

made that he would make a corpse of him instead of hurting

him as he did to the coon? A No, sir.

Q Who is that coon? A Henry Johnson.

Q Where does he live? A 228 W. 28th Street.

Q Is he here to-day? A Yes, sir.

Q Is he any relation of yours? A No, sir.

BY MR. HOUSE:

Q You have been followed pretty well around the country  
and your antecedents have been inquired into. Let us see

what a bad man you are. Show me that razor you have in

your pocket? A I can't show that I haven't got.

Q You don't carry one? A No, sir.

Q You don't need it? A No, sir.  
 Were  
 Q ~~Where~~ you ever arrested and charged with murder?  
 A Murder?  
 Q Yes. Killing anybody? A Not yet.  
 Q Have you ever been arrested and charged with committing burglary? A No, sir.  
 Q Or Highway robbery? A No, sir.  
 Q Have you ever been arrested and charged with committing rape? A No, sir.  
 Q Have you ever been arrested and charged with having committed larceny, grand or petty larceny? A No, sir.  
 Q Have you ever been arrested and charged with treason against the government? A Nothing more than I was telling you about the fight.  
 Q You are going on 29 years of age? A ~~Yes~~ Yes, sir.  
 Q And you have told us where you were born? A Yes, sir.  
 Q And where you lived? A Yes, sir.  
 Q And with the exception of this one Sunday when you and Butts were arrested for fighting were you ever arrested before? A Not before.  
 Q Were you taken to the station house? A Yes, sir.  
 Q And kept all night? A Yes, sir.  
 Q And ~~to~~ taken Jefferson Market the next day?  
 A Yes, sir.  
 X Q And the Judge heard the story?  
 A Yes, sir.  
 Q And discharged you both? A No, sir; he wasn't there nobody but me, I was discharged.

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MR. HOUSE: The defence has no further witnesses to call.

The Coroner read to the jury the ante-mortem statement taken at the hospital May 28th, 1893.

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THE CORONER: This question has been gone into at considerable length; there will be no difficulty in arriving at a verdict as to how when and where the deceased came to his death. There is nothing in dispute as to the facts.

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VERDICT: WE FIND THAT CHARLES MADDEN came to his death on June 9th 1893 at Roosevelt Hospital New York City from a penetrating pistol shot wound of the thorax inflicted at the hands of James Donnelly at 28th Street and 8th Avenue May 28th 1893.

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# THE ROOSEVELT HOSPITAL,

59TH STREET AND NINTH AVENUE,

JAS. R. LATHROP,  
SUPERINTENDENT.

New York, *June 10 1893.*

*Charles Madden died  
between 12 and 1  
o'clock on the afternoon  
of June 9, 1893 from  
the effects of a bullet  
wound of the thorax.*

*Edwin McCord.*

THE ROOSEVELT HOSPITAL,

59TH STREET AND NINTH AVENUE,

JAS. R. LATHROP,  
SUPERINTENDENT.

New York, May 31 1898

This is to certify  
that Chas Madden is  
in patient at this  
hospital and that  
his condition is serious.

Howard C. Taylor M.D.,

House Surgeon

## THE ROOSEVELT HOSPITAL,

59TH STREET AND NINTH AVENUE,  
JAS. R. LATHROP,  
SUPERINTENDENT.

New York June 3 — 1893

This certifies that  
Chas Madden is still a  
patient at this hospital  
and that his condition  
is serious. He will not  
be able to leave the hospital  
for at least two or three  
weeks.

Howard C Taylor M.D.  
House Surgeon

# THE ROOSEVELT HOSPITAL,

59TH STREET AND NINTH AVENUE,

JAS. R. LATHROP,  
SUPERINTENDENT.

New York, May 29 1893

This is to certify  
that Charles Madden  
is a patient at this  
hospital suffering from  
what appears to be a  
pistol shot wound of  
abdomen - and arm.  
His condition is  
serious, but it is  
not yet possible to  
say what the outcome  
will be.

Howard C. Taylor, M.D.  
House Surgeon.

CITY AND COUNTY } ss.  
OF NEW YORK,

POLICE COURT, 2 DISTRICT.

Edward O. Neill

of No. 214 1st Precinct Police

occupation Police Officer

Street, aged \_\_\_\_\_ years,

that on the

28

day of

May 1883

at the City of New York, in the County of New York, he arrested James

Donnelly (now here), on the charge of having committed a Felonious Assault upon the body of Charles Madden, and that said Madden is now confined to the Rosserell Hospital in consequence of injuries received by said Assault, and is unable to appear in Court, deponent therefore asks that said Donnelly may be held to await the result of injuries or until said Madden can appear in Court Edward O'Neill

Sworn to before me, this 28 day of May 1883

John W. Sullivan Police Justice

Police Court, \_\_\_\_\_ District.

THE PEOPLE, &c.,  
ON THE COMPLAINT

AFFIDAVIT.

*Assault*

*James Donnelly*  
*215-5 - am*  
*324 - Pa*

Dated *May 29* 188*3*

*Donkin* Magistrate.

*O'Neill* Officer.

Witness, *George F. Ruch*  
*319 West 36 Street -*

*Daniel O. Keefe*  
*242 West 19 Street -*

*Patrick F. Gallen (Paired)*  
*218 West 27 Street -*

*\$2000 & 4. July 3. 1883.*

Disposition, \_\_\_\_\_

*Comm<sup>d</sup> for Ex<sup>t</sup> without Bail May 31. 9 a.m.*  
*June 3 9 a.m.*

Coroners' Office.

CITY AND COUNTY  
OF NEW YORK, ss.

942

being duly examined before the under-  
signed, according to law, on the annexed charge; and being informed that he was at  
liberty to answer, or not, all or any questions put to him, states as follows, viz:

Question. What is your name?

Answer. James Donnelly

Question. How old are you?

Answer. 30 years

Question. Where were you born?

Answer. Ireland Tyrone North

Question. Where do you live?

Answer. 313 9th Avenue

Question. What is your occupation?

Answer. Bartender

Question. Have you anything to say, and if so, what—relative to the  
charge here preferred against you?

Answer. By advice of Counsel  
pleads Not Guilty

James Donnelly



From Roosevelt Hospital.New York, June 9<sup>th</sup> 1893

To Coroner.....

Sir:

Please hold an inquest on the body of

Name: Charles Madden Residence: 228 W. 29<sup>th</sup> St.Age: 22 years ..... months ..... days. Admitted Sun + day MayFather Irish 29<sup>th</sup> 1893, at 4 40 o'clock P. M.Nativity N.Y.; ofMother ..... By Ambulance ALived in U. S. Life in City. From 28<sup>th</sup> St & 8<sup>th</sup> Ave. BCivil Bond Single Occup. Driver Examined by Dr. ....Suffering from symptoms of Bullet wound of thorax CSaid Injuries said to have been received about 4 o'clock May D29<sup>th</sup> 93 at 28<sup>th</sup> St & 8<sup>th</sup> Ave (in Saloon)Said to have been shot by James Donnelly EDeath took place Tuesday, June 9<sup>th</sup> th 1893 at 12 45 o'clock P. M

The Autopsy revealed ..... F

Remarks: In course of his illness, patient G  
developed pyopneumothorax and  
septicaemia.Edwin M. Cuy M. D.HOUSE SURGEON ~~PHYSICIAN~~

Ad. f. State the day of the week.

Ad. A. State whether by Ambulance or Friends.Ad. B. State whether from a Presinct or a Residence and give the name.Ad. C. State whether from Natural Causes or from Shock (conscious or unconscious) due to Injuries, and if so, give name, place, date, number, character and Extent of injuries, always stating where indicated, whether right or left.Ad. D. State when, where, how, by what means or persons received, also whether Accidental, Suicidal or Homicidal; in falls, the distance, location and place; in Burns and Scalds, the circumstances attending the same; in runover cases, the line of Street Car, Railroad or Conveyance; in Weapons, the character of the same, &c., &c., always giving such information as will lead to an accurate knowledge of the case and facilitate judicial inquiry and justice.Ad. E. State name, date, place, character and results of any operation or amputation performed.Ad. F. Give a short resume of the Autopsy, with the Pathological Diagnosis and the Cause of Death at the end.

Ad. G. State here any important facts not embodied in the above statements.

TESTIMONY.

Albion J. Weston M. D., being duly sworn, says:  
I have made an autopsy of the body of  
Charles Madden now lying dead at  
Roosevelt Hosp. and from such ~~autopsy~~  
and history of the case, as per testimony, I am of opinion the cause of  
death is ~~fratricide~~ by ~~frustrating~~  
a shot wound of the thorax  
at 58<sup>th</sup> St. & 8<sup>th</sup> Ave. May 5<sup>th</sup> 1893  
Pyo = pneumonia, thorax,  
Exhaustion  
A. J. Weston, M. D.

Sworn to before me  
this 10<sup>th</sup> day of June 1893  
M. J. McKenna  
CORONER.

MEMORANDA.

AGE			PLACE OF NATIVITY	WHERE FOUND	Date When Reported
Years	Months	Days			
57				My. Rowanville	June 9 <sup>th</sup> 93

D. Driver  
578 W. 29<sup>th</sup> St.

Brought to book, from  
28<sup>th</sup> St. Dr. May 28<sup>th</sup>  
93 at 4<sup>th</sup> St. when he  
was said to have been shot  
by James Donnelly in a store

When 28<sup>th</sup> St.  
near Farmers  
with a gun,

James Donnelly  
Chicago, Ill.

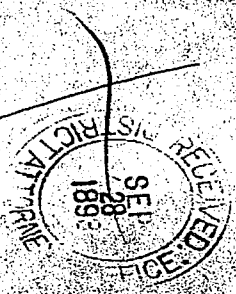
Agencies consulted  
to ascertain names of persons  
to who were by  
James W. J. M. O'Leary  
or suggest June 7<sup>th</sup> 1893

AN INQUIRY

On the VIEW of the BODY of

Charles Madden

whereby it is found that he came to  
his death by



Engaged taken on the 2<sup>nd</sup> day  
of June 1893 before

WILLIAM J. MCKENNA

1028

1038  
1893

STATE OF NEW YORK,

CITY AND COUNTY OF NEW YORK, ss.

AN INQUISITION

Taken at the *Coroner's Office*  
No. 27 *Chambers* Street, in the *6<sup>th</sup>* Ward of the City of  
New York, in the County of New York, this *21<sup>st</sup>* day of *June*  
in the year of our Lord one thousand eight hundred and ninety *four* before  
WILLIAM J. MCKENNA, FERDINAND LEVY, Coroner,  
of the City and County aforesaid, on view of the body of *Charles Madden*

*Eight* good and lawful men of the State of New York, duly chosen and  
sworn, or affirmed, and charged to inquire, on behalf of said people, how and in what manner  
the said *Charles Madden* came to his death, do upon  
their Oaths and Affirmations, say: That the said *Charles Madden* now lying dead at  
Roosevelt Hospital, New York City, came to his death by on June 9, 1893, at  
pistol shot wound of thorax, inflicted by the hand  
of James Donnelly, at 28<sup>th</sup> street and 8<sup>th</sup> avenue  
on May 28, 1893.

In Witness Whereof, We, the said Jurors, as well as the CORONER, have to this Inquisi-  
tion set our hands and seals, on the day and place aforesaid.

JURORS.

*Mr. McCausland 307 East 9<sup>th</sup>*  
*Christopher Rooney 1376 Ave Regt Poppr 1526-2<sup>nd</sup> av*  
*John F. Cagle 1641 B'way*  
*J. Meisohn 1878 B'way*  
*Edward Stewart 1597 2 Avenue*  
*R. W. Beebe 1601 B'way*  
*Geo. H. W. Lührs 1312 2<sup>nd</sup> av*  
*Wm J. McKenna*  
Coroner. E. S.

STATE OF NEW YORK,  
CITY AND COUNTY OF NEW YORK, ss.

AN ANTE-MORTEM INQUISITION,

Taken at *Roosevelt Hospital*  
No *Ninth Avenue* 9<sup>th</sup> Street, in the \_\_\_\_\_ Ward of the City of  
New York, in the County of New York, this *28<sup>th</sup>* day of *May*  
in the year of our Lord one thousand eight hundred and *93*  
before  
*Wm. J. McKenna* Coroner,  
of the City and County aforesaid, on view of the body of *Charles Madden*

*Roosevelt Hospital* at  
Upon the Oaths and Affirmations of  
good and lawful men of the State of New York, duly chosen and  
sworn or affirmed and charged to inquire, on behalf of said people, how and in what manner  
the said *Charles Madden* was injured, do upon  
their Oaths and Affirmations, say: That the said *Charles Madden*  
*came to his injuries at the Hands of James*  
*Dorrmally in a saloon corner 28<sup>th</sup> Street and*  
*8<sup>th</sup> Avenue kept by Felix Dorrmally May 28<sup>th</sup> 1893*

In Witness Whereof, We, the said Jurors as well as the Coroner, have to this Inquisition  
set our hands and seals, on the day and place aforesaid.

JURORS.

*Runcan MacBaldern*  
*Roosevelt Hospital*  
*E. Healdstead*  
*Roosevelt Hospital*

*Wm. J. McKenna*  
CORONER, & C.

City and County of New York, ss.

Statement of Charles Madden now lying  
dangerously wounded at Roosevelt Hospital in the Ward  
of said City and County, on the 28 day of May 1897

Question—What is your name?

Charles Madden

Answer—

Question—Where do you live?

228 West 29<sup>th</sup> St

Answer—

Question—Do you now believe that you are about to die?

Answer—

No

Question—Have you any hope of recovery from the effects of the injury you have received?

Answer—

Yes

Question—Are you willing to make a true statement, how, and in what manner, you came by the injury from which you are now suffering?

Answer—

I went into Felix Sonnelly's saloon, 28<sup>th</sup> St & 8<sup>th</sup> avenue about 3 P.M. to-day and had a glass of beer from one of the bartenders. I went into the toilet and when I came out there was another bartender. I asked him for a glass of beer and he refused me. I said "all right" and went to walk out of the place; he turned around suddenly, put his hand in the drawer and drew a revolver. The bartender's name is James Sonnelly whose address I don't know. As I was walking out of the place he said "I'll fix you" and fired one pistol shot which struck my waist and then it struck my ~~stomach~~ stomach. I walked out of the saloon and fell outside. This assault was the outcome of a woody quarrel which I had with him some three months ago on which occasion

he drew a revolver on me in the same return

Charles Madden

Taken before me this 28<sup>th</sup> day of May 1893.

Wm. J. McKenna  
Coroner

MEMORANDA.

AGE		PLACE OF NATIVITY	WHERE FOUND
21	Years. 6 Months — Days	N.Y. city	Roosevelt Hospital

AN ANTE-MORTEM INQUISTION

On the VIEW of the BODY of

Charles Madden

whereby it is found that he was injured by

James O'Sullivan

Taken on the 28th day of May 1895 before

Wm. M. O'Sullivan  
Coroner.

Committed

Bailed

Discharged



POLICE COURT— 2nd DISTRICT.  
CITY AND COUNTY }  
OF NEW YORK, } ss.  
RECOGNIZANCE TO TESTIFY.  
BE IT REMEMBERED, That on  
the 30 day of May, in the year of our Lord 1898.  
of No. George F. Ruch  
and Frank Davidson Street, in the City of New York,  
of No. 161 West 82 Street, in the said City,  
personally came before the undersigned, one of the Police Justices in and for the City of New York, and  
acknowledged themselves to owe to the PEOPLE OF THE STATE OF NEW YORK, that is to say: the said  
George F. Ruch  
the sum of me Hundred Dollars,  
and the said Frank Davidson  
the sum of me Hundred Dollars,  
separately, of good and lawful money of the State of New York, to be levied and made of their respective  
goods and chattels, lands and tenements, to the use of said People, if default shall be made in the con-  
dition following, viz:  
The Condition of this Recognizance is such, That if the person first above recognized shall personally  
appear at the Second Police Court SESSIONS of the Peace, to be holden in and  
for the City and County of New York, and then and there Testify and give such evidence, in behalf of  
the People of the State of New York, as he may know concerning an Offence or  
said to have been lately committed in the City of New York aforesaid by  
James Dinnally

And do not depart thence without leave of the Court, then this Recognizance to be void, otherwise to remain in full force and virtue.

Taken and acknowledged before me, the }  
day and year first above written. }

George F. Ruch  
Frank Davidson

John H. [Signature] Police Justice.

CITY AND COUNTY } ss.  
OF NEW YORK, }

day of March 1893  
Subscribed and sworn to before me, this  
1893  
J. M. McCarley, Police Justice.

Frank Davidson  
the within-named Bail, being duly sworn, says that he is a house holder in  
said City, and is worth two Hundred Dollars,  
over and above the amount of all his debts and liabilities; and that his property consists of  
house hold furniture and  
other chattels in the premises  
No 161 West 82 Street and  
worth two thousand dollars  
over all circumstances.  
Frank Davidson

New York Sessions.

THE PEOPLE, &c.

Recognition to Testify.

Magistrate

188

day of

Filed

POLICE COURT—2 DISTRICT.  
CITY AND COUNTY } ss.  
OF NEW YORK,

RECOGNIZANCE TO TESTIFY.

BE IT REMEMBERED, That on  
the 30<sup>th</sup> day of May in the year of our Lord 1893  
of No. 218 West 127<sup>th</sup> Street, in the City of New York,  
and Margaret Glasgow  
of No. 236 9<sup>th</sup> Avenue Street, in the said City,  
personally came before the undersigned, one of the Police Justices in and for the City of New York, and  
acknowledged themselves to owe to the PEOPLE OF THE STATE OF NEW YORK, that is to say: the said

Patric. F. Collins  
the sum of One Hundred Dollars,  
and the said Margaret Glasgow  
the sum of One Hundred Dollars,  
separately, of good and lawful money of the State of New York, to be levied and made of their respective  
goods and chattels, lands and tenements, to the use of said People, if default shall be made in the con-  
dition following, viz:

The Condition of this Recognizance is such, That if the person first above recognized shall personally  
appear at the next COURT OF 2<sup>nd</sup> Dist. Court SESSIONS of the Peace, to be holden in and  
for the City and County of New York, and then and there Testify and give such evidence, in behalf of  
the People of the State of New York, as he may know concerning an Offence or  
said to have been lately committed in the City of New York aforesaid by

James Donnelly

And do not depart thence without leave of the Court, then this Recognizance to be void, otherwise to  
remain in full force and virtue.

Taken and acknowledged before me, the }  
day and year first above written. }

Patric. F. Collins  
Margaret Glasgow

John H. Kearney Police Justice.

CITY AND COUNTY }  
OF NEW YORK, } ss.

day of March  
1887  
Sworn before me this 3 day of March  
John H. McLeod Police Justice.

Margaret Glasgow  
the within-named Bail, being duly sworn, says that he is a personal property holder in said City, and is worth Two Hundred Dollars, over and above the amount of all his debts and liabilities; and that his property consists of Four horses and harness and two wagons used in the ice business and situated at 236 9th Avenue and is of the full value of Two hundred dollars.  
Margaret Glasgow

New York Sessions.

THE PEOPLE, &c.

Recognition to Testify.

Magistrate

Filed  
day of  
188

POLICE COURT— 2 DISTRICT.

RECOGNIZANCE TO TESTIFY.

CITY AND COUNTY }  
OF NEW YORK, } ss.

BE IT REMEMBERED, That on

the 31 day of May in the year of our Lord 1893

of No. 242 West 19<sup>th</sup> Street, in the City of New York,

and James M. Vick

of No. 212 West 19<sup>th</sup> Street, in the said City,

personally came before the undersigned, one of the Police Justices in and for the City of New York, and acknowledged themselves to owe to the PEOPLE OF THE STATE OF NEW YORK, that is to say: the said

the sum of One Hundred Dollars,

and the said James M. Vick

the sum of One Hundred Dollars,

separately, of good and lawful money of the State of New York, to be levied and made of their respective goods and chattels, lands and tenements, to the use of said People, if default shall be made in the condition following, viz:

The Condition of this Recognizance is such, That if the person first above recognized shall personally appear at the next COURT OF SESSIONS of the Peace, to be holden in and for the City and County of New York, and then and there Testify and give such evidence, in behalf of the People of the State of New York, as he may know concerning an Offence or Warrant said to have been lately committed in the City of New York aforesaid by

James Donnelly

And do not depart thence without leave of the Court, then this Recognizance to be void, otherwise to remain in full force and virtue.

Taken and acknowledged before me, the }  
day and year first above written. }

David Keefe  
James M. Vick

John P. McVicker Police Justice.

CITY AND COUNTY } ss.  
OF NEW YORK, }

*John McVicker*  
Police Justice.

day of *May*  
188*9*  
Sworn before me, this *31*

*James McVicker*  
the within-named Bail, being duly sworn, says that he is a *free* holder in  
said City, and is worth *200* Hundred Dollars,  
over and above the amount of all his debts and liabilities; and that his property consists of

*Unimproved lot of land*  
*situate 204 West 20 Street*  
*and is of the full value of*  
*200 hundred dollars*  
*James McVicker*

New York Sessions.

THE PEOPLE, &c.

Recognition to Testify.

23.

Magistrate

Filed

day of

188

## AFFIDAVIT FOR COMMITMENT OF WITNESS.

4771

POLICE COURT ✓ DISTRICT.CITY AND COUNTY }  
OF NEW YORK, } ss.

Edward O'Neill  
 of the 20 Precinct Police, being duly sworn, deposes  
 and says that George F. Ruck  
 (now here) is a material witness for the people against  
James Donnelly charged  
 with felonious assault. As deponent has  
 cause to fear that the said George F. Ruck  
 will not appear in court to testify when wanted, deponent prays  
 that the said George F. Ruck be  
 committed to the House of Detention in default of bail for his  
 appearance.

Edward O'Neill

Sworn to before me this 29  
 day of July 1895

John W. Doolittle  
 Police Justice.

AFFIDAVIT FOR COMMITMENT OF WITNESS.

4771

POLICE COURT.....DISTRICT.

CITY AND COUNTY }  
OF NEW YORK, } ss.

*Edward O'Neill*  
of the *20* Precinct Police, being duly sworn, deposes  
and says that *George F. Ruck*  
(now here) is a material witness for the people against  
*James Donnelly* charged  
with *felony Assault*. As deponent has  
cause to fear that the said *George F. Ruck*  
will not appear in court to testify when wanted, deponent prays  
that the said *George F. Ruck* be  
committed to the House of Detention in default of bail for his  
appearance.

*Edward O'Neill*

Sworn to before me this  
day of *July* 189*3*

*Shubert*  
Police Justice.



AFFIDAVIT FOR COMMITMENT OF WITNESS.

4771

POLICE COURT 2 DISTRICT.

CITY AND COUNTY }  
OF NEW YORK, } ss.

Edward O. Heill

of the 20 Precinct Police, being duly sworn, deposes  
and says that Patrick J. Collins

(now here) is a material witness for the people against  
James Donnelly charged

with Selicious Assault. As deponent has  
cause to fear that the said Patrick J. Collins

will not appear in court to testify when wanted, deponent prays  
that the said Patrick J. Collins be

committed to the House of Detention in default of bail for his  
appearance.

Edward O. Heill

Sworn to before me, this  
day of May 1893

John W. [Signature]  
Police Justice.

## AFFIDAVIT FOR COMMITMENT OF WITNESS.

4771

POLICE COURT.....DISTRICT.

CITY AND COUNTY } ss.  
OF NEW YORK, }*Edward O'Neill*of the *20* Precinct Police, being duly sworn, deposes  
and says that *Daniel O. Keefe*(now here) is a material witness for the people against  
*James Donnelly* charged  
with *Arson* As deponent hascause to fear that the said *Daniel O. Keefe*  
will not appear in court to testify when wanted, deponent prays  
that the said *Daniel O. Keefe* be  
committed to the House of Detention in default of bail for his  
appearance.*Edward O'Neill*Sworn to before me, this  
day of *May* 189*3**John W. McArthur*  
Police Justice.

ORIGINAL

0352

Sec. 192.

District Police Court.

Undertaking to Appear during the Examination.

CITY AND COUNTY  
OF NEW YORK, ss:

An information having been laid before John B. Porhis a Police  
Justice of the City of New York, charging James Donnelly Defendant  
with the offense of

Morvius - Assault

and he having been brought before said Justice for an examination of said charge, and it having been  
made to appear to the satisfaction of said Justice that said examination should be adjourned to some other  
day, and the hearing thereof having been adjourned,

James Donnelly Defendant of No. 313  
Michael J. York Street, by occupation a Bar tender  
and of No. 329 West 27 Street,  
by occupation a Brewer Surety, hereby jointly and severally under-  
take that the above-named James Donnelly Defendant shall personally  
appear before the said Justice, at the 2 District Police Court in the City of New York during  
the said examination, or that we will pay to the People of the State of New York the sum of Twenty  
Hundred Dollars.

Taken and acknowledged before me this

day of June 189 3

James Donnelly  
Michael J. York  
John B. Porhis Police Justice.

City and County of New York, ss:

*Michael J. Gosh*  
*Free*

the within-named Bail and Surety, being duly sworn, says, that he is a resident and  
holder within the said County and State, and is worth *Forty* Hundred Dollars,  
exclusive of property exempt from execution, and over and above the amount of all his debts and liabilities,  
and that his property consists of *House and lot of land*  
*Situated at No 450-10<sup>th</sup> Avenue,*  
*and worth 10,000 dollars free and*  
*Clear of all encumbrances*

*Michael J. Gosh*

Sworn to before me this  
day of *June*  
*1898*  
Police Justice.

District Police Court.

THE PEOPLE, &c.,  
ON THE COMPLAINT OF

vs.

Undertaking to Appear during  
the Examination.

Taken the ..... day of ..... 189

Justice.

Sec. 508.

District Police Court.

UNDERTAKING TO ANSWER—

SESSIONS.

CITY AND COUNTY }  
OF NEW YORK, } ss.An order having been made on the 29 day of May, 1893 by  
John R. Smith a Police Justice of the City of New York. ThatJames Donnelly be held to answer upon a charge ofViolation of the Lawupon which he has been duly admitted to bail, in the sum of one Hundred Dollars.Defendant of No. 313  
James Donnelly Street; Occupation Barman, and  
Michael J. Gosh of No. 329 West 27 Street.Occupation Brewer Surety, hereby undertake jointly and severally,  
that the above named James Donnelly shall appear and answer the charge above-  
mentioned, in whatever Court it may be prosecuted : and shall at all times render h self amenable to the orders  
and process of the Court ; and if convicted, shall appear for judgment, and render h self in execution thereof,  
or if he fail to perform either of these conditions that we will pay to the People of the State of New York, the sum  
of one Hundred Dollars.Taken and acknowledged before me, this 3  
day of June, 1893James DonnellyMichael J. Gosh

POLICE JUSTICE.

CITY AND COUNTY } ss,  
OF NEW YORK, }

day of March 1888  
 Sworn to before me at the City of New York, by Michael J. Gork  
 Police Justice.

the within named Bail and Surety, being duly sworn, says, that he is a free  
 holder within the said County and State, and is worth Twenty Hundred Dollars,  
 exclusive of property exempt from execution, and over and above the amount of all his debts and  
 liabilities, and that his property consists of House and lot of land

situated at No 450-10-Avenue  
and worth 10000 dollars free and clear  
of all encumbrances

Michael J. Gork

New York Sessions.

THE PEOPLE, & c.,  
 ON THE COMPLAINT OF

Undertaking to Answer.

vs,

Taken the \_\_\_\_\_ day of \_\_\_\_\_ 188

Justice,

Filed \_\_\_\_\_ day of \_\_\_\_\_ 188

Police Court, 2<sup>nd</sup> District,

1901

City and County of New York, ss.

Edward O. Reill  
 of No. 25<sup>th</sup> Precinct Police Street, aged \_\_\_\_\_ years,  
 occupation Police Officer being duly sworn, deposes and says,  
 that on the 2<sup>nd</sup> day of May 1893, at the City of New  
 York, in the County of New York,

James Donnelly (now here) with force and arms in and upon the body of Charles Madden in the peace of said people, then and there being, feloniously, did make an Assault, and to, or toward and against, said Charles Madden with a certain revolving pistol loaded with powder and ball, which the said James Donnelly did then and there shoot off and discharge with intent kill the said James Donnelly, thereby then and there feloniously and unlawfully to kill said Charles Madden by means of said revolving pistol loaded with powder and ball that said James Donnelly did then and there hold in his hand, from the following facts to wit: that about the hour of four o'clock P.M. of said date while deponent was standing on the North East corner of 8<sup>th</sup> Avenue and West 28<sup>th</sup> Street, in the discharge of his duty as Police Officer, he suddenly heard the discharge of a pistol in the Liquor Store on said corner, and on his turning around to go towards the side entrance of said store in West 28<sup>th</sup> Street, he saw one Charles Madden reel from the side door of said entrance, and on reaching the sidewalk fall down, and on his going to where said Madden was lying, and on his asking said Madden, who was bleeding at the time who shot him, said Madden made reply James Donnelly shot me; and on said Officer going in to the said Liquor Store, he saw the Defendant James Donnelly behind the bar, and on deponent asking said Donnelly who shot said Charles Madden, said Donnelly made reply I shot him, and that he then took from a drawer

day of \_\_\_\_\_ 189 , at the City of New  
York, in the County of New York,

in said Bar, a five barrel revolving pistol  
three barrels of which were loaded, and one  
barrel empty, and the other barrel, having  
a discharged shell in a chamber of said  
barrel, and deponent further says that on his  
telling said James Donnelly to the outside where  
said Charles Madden was lying, said Madden  
in presence of deponent and said Donnelly  
immediately identified the defendant James  
Donnelly as the man who shot him. Deponent  
further says that on the 9<sup>th</sup> day of June 1893  
about the hour of 4, 17 o'clock P.M. he went  
to the Roosevelt Hospital, and there saw  
the dead body of said Charles Madden,  
he at the time recognizing said Madden  
as the person who was shot by said James  
Donnelly, and as the one who was lying  
on the sidewalk on the aforesaid date, and  
also at that time, stated to deponent and  
identified said Donnelly as the one who shot  
him -

Sworn to before me this } Edward O'Neill  
10<sup>th</sup> day of June 1893

J. H. Brady  
Police Justice



CITY AND COUNTY  
OF NEW YORK, ss.

POLICE COURT, DISTRICT.

*George F. Ruch*

of No. *219 West 36<sup>th</sup>*

Street, aged *26* years,

occupation *Bar tender*

that on the *24* day of *May* 188*3*

at the City of New York, in the County of New York, *while standing in the*  
*Legum Store at the North East Corner of 8<sup>th</sup> Avenue and*  
*West 24<sup>th</sup> Street, in company with one Daniel O'Keefe,*  
*about the hour of four o'clock, he saw one Charles*  
*Madden enter said store, and that while in*  
*conversation with said O'Keefe, he suddenly*  
*heard the discharge of a pistol in said store,*  
*and on his turning around he saw the defendant*  
*James Donnelly placing a pistol which he held in*  
*his hand away in a drawer, and that said*  
*Madden then came towards defendant, and he*  
*heard said Madden make the remark I am shot,*  
*George F. Ruch*

Sworn to before me this

of

188

day

Police Justice.

Police Court, 2 District.

1901

City and County of New York, ss.

of No.

occupation.

that on the

York, in the County of New York,

District.

Street, aged

being duly sworn, deposes and says.

1893, at the City of New

Patrick L. Collins  
218 West 27  
Ice  
28 day of May  
While deponent was standing in the Liquor  
Store at the North East Corner of 8<sup>th</sup> Avenue  
and West 28<sup>th</sup>. That, one Charles Madden  
about the hour of 3.58 o'clock P.M., entered  
said Liquor Store by means of a side entrance  
on West 28<sup>th</sup>. That - and that said Madden  
on entering said store went towards a cigar  
light which was on the Bar in said store for  
the purpose of lighting a cigar, which he held  
in his hand, and on reaching the front of  
the Bar, he asked the defendant James  
Donnelly who was behind the Bar, for a glass  
of Beer, and that said Donnelly then made  
reply, you can't have any Beer, get out, I  
told you to keep out of here before, and then  
deponent saw said defendant James Donnelly  
open a drawer, behind the bar, and take  
from said drawer, a pistol, and he then  
saw said Donnelly point and aim said  
pistol at the body of said Madden, and he  
then heard and saw the discharge of said  
pistol, and he then heard Madden make  
the remark I am shot, and he then saw  
said Madden reel and stagger towards the  
side entrance of said store -

Sworn to before me  
this 10 day of June 1893

Patrick L. Collins

John H. Brady

Police Justice

Sec. 198-200

CITY AND COUNTY  
OF NEW YORK, ss.

District Police Court.

*James Donnelly* being duly examined before the under-  
signed according to law, on the annexed charge; and being informed that it is h right to  
make a statement in relation to the charge against h ; that the statement is designed to  
enable h if he see fit to answer the charge and explain the facts alleged against h  
that he is at liberty to waive making a statement, and that h waiver cannot be used  
against h on the trial.

Question. What is your name?

Answer. *James Donnelly*

Question. How old are you?

Answer. *32 years*

Question. Where were you born?

Answer. *Ireland -*

Question. Where do you live, and how long have you resided there?

Answer. *313-9 Avenue - 10 years*

Question. What is your business or profession?

Answer. *Or lender*

Question. Give any explanation you may think proper of the circumstances appearing in the  
testimony against you, and state any facts which you think will tend to your  
exculpation?

Answer.

*I am not guilty -*

*James Donnelly*

Taken before me this

day of

188

93

*John W. McArthur*

Police Justice.

232  
June 18/89

Police Court... District...

685

BAILED,

No. 1, by

Residence

No. 2, by

Residence

No. 3, by

Residence

No. 4, by

Residence

No. 5, by

Residence

No. 6, by

Residence

No. 7, by

Residence

No. 8, by

Residence

No. 9, by

Residence

No. 10, by

Residence

THE PEOPLE, &c.,  
ON THE COMPLAINT OF  
James Smully  
Alfred J. Hall  
Offense: Murder

James 10  
189

Magistrate  
O. Hall

Witness  
Daniel F. Bolens

218 West 27th  
521-10 Ave

June 7 Luck

219 West 26th

Daniel O'Keefe

242 West 10th

Common to Murray

Common to Murray



It appearing to me by the testimony of the witnesses that the crime mentioned has been committed, and that there is sufficient cause to believe the within named Defendant

guilty thereof, I order that he be held to answer the same, ~~and he be admitted to bail~~ and be committed to the Warden and Keeper of

the City Prison of the City of New York, until he is legally discharged  
Dated June 23 189 3 John B. Williams Police Justice.

I have admitted the above-named Defendant to bail to answer by the undertaking hereto annexed.

Dated, June 23 189 3 John B. Williams Police Justice.

There being no sufficient cause to believe the within named Defendant guilty of the offense within mentioned, I order he to be discharged.

Dated, June 23 189 3 John B. Williams Police Justice.

COURT OF GENERAL SESSIONS OF THE PEACE, PART 11,  
City and County of New York.

\*\*\*\*\*  
The People,

vs.,

JAMES DONNELLY.

\*\*\*\*\*  
Before,

HON. FREDERICK SMYTH,

and a Jury.  
\*\*\*\*\*

Tried, FEBRUARY 26TH, etc., 1894.

Indicted for MURDER in the FIRST DEGREE.

Indictment filed JULY 13TH, 1893.

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APPEARANCES:

ASSISTANT DISTRICT ATTORNEYS JOHN F. McINTYRE and  
RANDOLPH B. MARTINE, Jr.,

For THE PEOPLE.

MESSRS. HOUSE & FRIEND,

For THE DEFENSE.  
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PATRICK F. COLLINS, called by the People, being duly sworn, testified that at the time of the trial he had no regular place of residence. His last residence had been at 207 West 27th street. He knew Charles Madden, the deceased, in his life time. He knew the defendant. He knew the saloon at the north-east corner of 28th street and Eighth avenue. He went into that saloon on the afternoon of the 28th of May, 1893, about a quarter past 3. A man named McCabe, George Ruch, and O'Keefe were also in the saloon. The deceased, Madden, entered the saloon about five minutes past 4, at which time the defendant was behind the bar. The deceased stepped up to the cigar-lighter and lit a cigar, and then asked the defendant for a glass of beer. The defendant said, "No; get out of here; get out of here. God Damn you, I have told you before to keep out of here. The defendant then turned around and took a revolver from a drawer and turned and fired. The deceased then turned around and staggered out the side door, saying, "I am shot." He followed the deceased out. Before he went out, Officer O'Neill entered the saloon. Officer O'Neill wanted

to know who fired the shot. The officer asked Ruch and O'Keefe and him and then the defendant said, "I fired the shot." The officer took the names of Ruch, and O'Keefe. The officer then took the defendant out, and he, the witness, also went out with them. The deceased was then lying on the sidewalk, and the officer asked him, "Who shot you?" The deceased said, "Mr. Donnelly, and that's him, and he shot me for nothing at all." At the time the deceased was in the saloon, he, the witness, could see him plainly; the deceased was within three feet of him, leaning with his left arm on the bar. The deceased's right hand was by his side. He did not see anything in the deceased's right hand; nor did he see the deceased make any motion towards his hip pocket with his right hand. He, the witness, remained with the deceased until the deceased was taken to the hospital. After the defendant fired the shot, he put the revolver back in the back. The officer got the revolver when he entered the saloon. The defendant was behind the bar when he fired the shot.

In cross-examination the witness testified that the shooting occurred on Sunday afternoon, the 28th of May, 1893. At that time, he, the witness, was engaged in the ice business, as a driver for Mrs. Glasgow. At that time he had been employed by Mrs. Glasgow for over two years. He had been delivering ice at the saloon in question about nine months before the shooting occurred. He had known the defendant about two years and a half, and during that time had frequently come in contact with the defendant. He had known the defendant to be a bartender in a saloon at 33rd street and Eighth avenue. He knew other people who knew the defendant. Up to the afternoon in question, he had always found the defendant to be a peaceable and quiet man. At the time of the shooting, he was not acquainted with Ruch and O'Keefe. The deceased entered the saloon about five minutes after he went in; that is, about twenty minutes past 3. A man named McCabe was then behind the bar. The deceased got a glass of beer from McCabe, and then left the saloon. The deceased



entered the saloon again about five minutes after 4. When the deceased entered the saloon, the defendant had just put on his apron and gone behind the bar. The defendant did not appear to be cross or angry when he entered. He did not know whether the cigar that the deceased had had been lit before or not. There were newspapers on the bar in front of him at the time, and he was looking at them. The deceased's left side was towards him. After the arrest of the defendant, the other bartender went behind the bar again. When the deceased was lying on the side-walk he was surrounded by about one hundred or a hundred and fifty people. He had been in the House of Detention for two or three days. He was discharged by Mrs. Glasgow, some time in the summer. He had a fight with Mrs. Glasgow's son, William, and he had "abused the boy." He had had no steady employment since that. He was born in Boston, and came to New York about ten years before this occurrence. After coming to New York he had worked about a year for The New York Cooperative Lead Works, about a year

for T. J. Pope & Sons, about a year for Skidmore & Sons, coal-dealers; about four years for a Mr. Scott, in the ice business; about a year for the New York Central & Hudson R. R. Co.; and he had made a trip to Havana on a coasting steamer, as a coal-passer. The first name of the young man who was his assistant on the ice-wagon was Bob. Bob had charge of the wagon while he, the witness, was testifying before the Coroner in this case; and Bob was discharged shortly after he, the witness, had testified before the Coroner. He, the witness, had never said, in conversation with any person, that it was an easy matter for the driver of an ice-wagon to skin the boss. He knew a person of the name of Davis and a person of the name of Kiernan before the shooting. He knew where the Oak saloon was, at 23rd street and Eighth avenue. He had never had a conversation with Ruch in regard to a man who was employed in the HERALD office going to see him. He did not know where Bob was at the time of the trial. He knew a man named Barney McCullagh, but he did not know

where McCullagh lived. He did not know whether McCullagh was in the employ of Dr. Betts.

DANIEL O'KEEFE, being duly sworn, testified that he was a tin and sheet-iron worker. His place of business was at 433 and 435 West 42nd street. On the 28th of May, 1893, he resided at 242 West 19th street. He remembered being in the saloon in question on the day of the shooting. He went into the saloon between 4 and 4 o'clock in the afternoon, in company with George Ruch. There were people in the saloon when he got in there, but he did not know who they were. He entered the saloon through the side entrance. He and Ruch had beer. He and Ruch had an argument as to who was the taller, and they went over to the wall and measured themselves. The defendant entered the saloon, through the side entrance, and went behind the bar. The bartender who had been behind the bar before the defendant entered, then went into the closet. He did not know the deceased, Madden, in his life-time; but he saw a man enter the saloon whom

he afterwards learned was Madden. When he and Ruch were measuring their heights, the deceased was standing leaning on the bar, talking to the defendant. The deceased and the defendant were talking "in a quiet way." He, the witness, heard the report of a pistol, and he looked up and saw the defendant place a pistol in the drawer. He then went to go out the side door, but was stopped by the officer coming in. Collins was standing at the end of the bar at that time. Madden, the deceased, staggered past him, the witness, saying, "I am shot; that man shot me." The officer asked Ruch who fired the shot, and Ruch said he did not. The officer asked him, the witness, who fired the shot, and he said he did not. The defendant then said, "I shot the man." He, the witness, then left the saloon. He did not see the deceased on the side-walk. There was a crowd there, and he did not stop.

In cross-examination the witness testified that for the last two or three years he had had no steady employment, but had been working at his

brother's. He did not know one Kiernan at the time of the shooting. He knew one Charles Davis. He, the witness, and Ruch did not stand at the door of the saloon before they went in. The defendant did not go into the saloon while they were standing at the door. McCabe was the name of the bartender who served them with the beer.

GEORGE RUCH, being duly sworn, testified that, at the time of the trial, he was a janitor, in 36th streets, between Eighth and Ninth avenues. On the 28th of May, 1893, he was tending bar for Daniel O'Shea, 334 West 36th street. He remembered meeting O'Keefe on the afternoon of the 28th of May, and going into the saloon in question with him. He and O'Keefe each had a glass of beer. They were not waited on by the defendant. He saw a man in the saloon whose name, he had subsequently learned, was Collins. The defendant entered the saloon, by the side door, and went behind the bar. The other bartender then went towards the closet. He, the witness, and O'Keefe

then went over towards the side door and measured themselves. He then saw a man whom he afterwards learned was Charles Madden, standing at the bar. When Madden, the deceased, was standing at the bar, the defendant was behind the bar. He was the deceased and the defendant talking together, but he did not hear any of the conversation. He heard the report of a pistol, and looked towards the bartender, the defendant. He saw the defendant open a drawer and put the pistol back in it. The deceased went towards the side door, and he said, "I am shot." The officer then came in and took his name and O'Keefe's name. The officer asked who did the shooting and the defendant said that he did. The officer asked for the pistol, and placed the defendant under arrest. He heard the officer ask the deceased who shot him, and the deceased replied, "James Donnelly." The deceased said, "I didn't do a damned thing; I asked him for a glass of beer, and he shot me." He, the witness, did not see any quarreling in the store. In cross-examination the witness testified

that he did not know where O'Keefe was when Madden said that he did not do anything to the defendant. He had become acquainted with Collins subsequent to the shooting. He remembered having been in the Oak saloon with Collins. He did not ask Collins, on that occasion, if he had seen a little fellow who represented himself as coming from the HERALD. He remembered that a man went to his house one day and said he was from the HERALD office, but he did not remember mentioning that to Collins. Nobody said to him, in the Oak saloon, "I have heard of the bloke and he has been to see Davis and Kiernan, but he has not been to see me." He did not know Bob Crawford. He met a man in the Oak saloon who, he had heard, worked on the ice-wagon with Collins for a while. He had been to the theatre twice with that man. He did not recollect that, after their second visit to the theatre, the man asked him to go into Donnelly's saloon, and that he refused to go, saying that he did not want to go in there. He had never said to any person in his life, after the shooting

and before the hearing before the Coroner, that he and Collins and the rest of them had stood back, expecting that Donnelly would offer them some money, that it was his chance to have done so then, and that he could have made a statement which would have helped the defendant out, but that the defendant had not gone to see him, and that it was too late then. He had an uncle who had been killed by an Italian on Seventh avenue; there was a woman in the case, but whether or not she testified, he did not know.

ALBERT F. WESTON, being duly sworn, testified that he was a physician. On the 28th of May, 1893, he was one of the Coroner's Physicians of the city of New York. He made an autopsy on the body of the deceased, Charles Madden, at the Roosevelt Hospital, on the morning of the 10th of June. Witness then testified as follows: "I found on external examination of the body a small line wound, just below the point of the breast bone and a little to the left of the middle line of the body. It was at that point -- about an



inch to the left of the median line of the body. The wound was almost entirely healed. On the left forearm there were two small wounds, in the fleshy portion of the fore-arm, almost completely healed; upon opening the body there was found a track of a bullet from this wound in the body passing backward and to the right. It passed through the liver, through the diaphragm and into the right lung where the bullet was found. There was an abscess of the liver along the track of the bullet and the pleural cavity contained a large quantity of exudation, the result of an inflammatory process, caused by the bullet wound. The other organs of the body were in a healthy condition. The cause of death was the result of pleurisy and abscess of the liver, resulting from a pistol shot wound." The bullet was in the right lung, and was a 38 calibre.

In cross-examination the witness testified that the body showed that the deceased had been a fairly muscular man in life.

PATRICK J. KIERNAN, being duly sworn, testified that he resided at 231 West 35th street. Up to the 12th of January, 1894, he had been running an elevator for William Schroeder & Co., 469 Broome street. He was out of employment at the time of the trial. He was acquainted with Charles Madden, in his life time. He had also been acquainted with the defendant for a short time before the shooting. He knew the saloon in question; the saloon was kept by Felix Donnelly, and the defendant was the bartender there. About the middle of May, 1893, he heard the defendant say in the saloon at 28th street and Eight avenue, that he would shoot the cock9eyed son of a bitch on sight. As he, the witness, was going into the saloon, by the Eight avenue door, the deceased, Madden, went out of the saloon, under the screen doors. He the witness, looked into the saloon, and he saw the defendant there with a pistol in his hand. He then went around to the side door and went into the saloon, when he heard the defend nt make the remark. Charles Davis was with him at the time. The doors

of the saloon at that time were made of rattan, and Madden the deceased, crawled under the doors.

In cross-examination the witness testified that he was twenty-two years of age. About eleven years before the trial he had lived in the same house with the deceased. He was pretty friendly with the deceased. He was a warm personal friend of Davis. He knew a colored man named Johnson. He was present in Donnelly's saloon one night when Johnson and the deceased were present. The defendant was behind the bar on that occasion. There was something said about the loss of an umbrella, in the defendant's presence. The deceased took up a beer glass and hit Johnson over the head with it, cutting his face. Johnson told him, afterwards, that he had gone to the hospital and had his face sewed up. When Johnson and a stranger had some talk about the umbrella, the deceased did not say to Johnson, "I will let no nigger son of a bitch call a white friend of mine down." Somebody accused Johnson of taking the umbrella, and Johnson denied it. The deceased

turned around and said, "One of you fellows took it!" Johnson said, "You are a white son of a bitch." The deceased said, "Don't call me a son of a bitch," and then the deceased threw the beer glass at Johnson and hit him. Johnson drew a pen-knife and made a lunge at the deceased, before the deceased threw the beer glass at him. On the night on which he heard the defendant threaten to shoot the deceased on sight, he, the witness, did not try to get the deceased to leave the saloon, and the deceased did not refuse to leave the saloon.

In red-irect examination the witness testified that after he and Davis went into the saloon, after seeing the deceased crawling under the swinging doors, the defendant said, "I thought he stood in under the bar, and I was waiting to shoot him."

CHARLES DAVIS, being duly sworn, testified that he lived at 327 West 29th street, and was a painter. He knew the saloon kept by Felix Donnelly. He knew the defendant, and he had known the deceased, in his life-time.

About six weeks previous to the shooting, he and Kiernan were going in the front door of the saloon where the defendant was the bartender, and the deceased crawled out underneath the door. They then went around to the side door and went into the saloon. The defendant then said, "I will shoot the sock-eyed son of a bitch on sight." They had a glass of beer and walked out.

In cross-examination the witness testified that he did not go to Madden immediately and tell him that the defendant had threatened to shoot him on sight. He had known the deceased five or six years, and had been quite friendly with him.

ARNOLD H. KNAPP, being duly sworn, testified that he was a physician, and on the 28th of May he was connected with the Roosevelt Hospital. He remembered when Charles Madden was taken into the hospital. In conjunction with Dr. Cox, he made an examination of the body. "There was a small round hole in the skin, directly below the breast bone or the sternum, which led into

a track which traced backwards and to the right." There was aslight wound on the left fore-arm. Madden was in the hospital, under treatment, until the 9th day of June, when he died. He, the witness, was present when Dr. Weston held the autopsy; and the autopsy held by Dr. Weston was upon the person who was taken into the hospital on the 28th of May, 1893.

EDWARD O'NEILL, being duly sworn, testified that he was a police officer, attached to the 20th precinct. He was connected with that precinct on the day in question. On that day his beat was in the vicinity of the premises in question. About four o'clock in the afternoon, he was standing on the corner of 28th street and Eighth avenue, when he heard a pistol shot. He then saw the deceased, Charles Madden, reel and fall to the side-walk in front of the side-door of Donnelly's saloon. He sent for an ambulance, and an ambulance from Roosevelt Hospital went there. He went into the saloon, and saw Rush, Collins and O'Keefe there. Rush had his hat off, and he thought

that Ruch had done the shooting. He made Ruch put up his hands, and then he asked him who did the shooting. Ruch, O'Keefe and Collins denied doing the shooting, and he then asked the defendant, who was behind the bar, and the defendant said that he did the shooting. He asked the defendant for the pistol, and the defendant went to the drawer, picked the pistol up, and gave it to him. The pistol now shown to him by the District Attorney was the pistol which he had received from the defendant. He examined the barrel of the revolver and found that one shell had been exploded. There were three loaded cartridges in the revolver, one empty chamber, and one empty cartridge. There were five chambers in the revolver. He then took the defendant outside, to where the deceased was lying, on the side-walk. He asked the deceased who shot him; and Madden said, "James Donnelly." He said, "Is this the man?" Madden said, "Yes." He said, "What did he shoot you for?" Madden said, "I didn't say a God damned word to him." The defendant did not say anything at that

time. There was a big crowd of people gathered around the deceased. On the way to the station house, the defendant said that the deceased put his hand to his hip pocket and that he, the defendant, had ordered him out of the place before. The defendant said, "He has been raising trouble in the place, and I am afraid of the man." He did not examine the deceased's clothes.

In cross-examination the witness testified that he had been in that precinct for about three years. He had known the defendant somewhat intimately for about a year. He knew other persons who knew the defendant. During the time that he had known the defendant, he had known him to be of excellent character and to associate with decent people.

ELLEN E. MADDEN, being duly sworn, testified that she lived at 228 West 29th street. She was the mother of the deceased, Charles Madden. She saw her son almost daily from the time of his admittance to the hospital to the time of his death, on the 10th of June. The



deceased was buried from her residence. He was twenty-two years of age at the time of his death.

THOMAS McCABE, being duly sworn, testified that his place of business was at 413 West 26th street. He had a liquor store at that address. He had had the liquor store since the 29th of December, 1893. On the 28th of May, 1893, he was employed by Felix Donnelly, at the corner of 28th street and Eighth avenue. On the 28th of May, 1893, he went on duty at 5 o'clock in the morning, and remained until he was relieved by the defendant. Collins and O'Keefe were in the saloon when the defendant entered on that afternoon. While he was in the closet, he heard a pistol shot and went outside into the bar-room. He then saw an officer, the defendant, and three or four men there. He had known the deceased about a year. The deceased had not frequented the place for some time before the shooting.

In cross-examination the witness testified that he had told the deceased not to go into the

store. He told the deceased that, because he had heard that the deceased had had some trouble with the defendant. To his knowledge, he was not in the place when the deceased had any trouble with a man by the name of Tucker.

In re-direct examination the witness testified that he had seen the deceased in the saloon frequently, and the deceased had always been a quiet and peaceable man.

In re-cross examination the witness testified that he had never, to his own knowledge, known the deceased to quarrel with anybody. He did not know, of his own knowledge, that the deceased had had a quarrel with a man named Johnson.

I WILLIAM McKENZIE, being duly sworn, testified that he was the first orderly in the surgical ward of Roosevelt Hospital. On the 28th of May, 1893, he received one Charles Madden in that ward. The deceased's clothing was very bloody. He took whatever the deceased had on his person at the time; he did not take anything at

all; he did not take any revolver, knife, or anything of that sort.

FOR THE DEFENSE, MICHAEL J. GROH, being duly sworn, testified that he lived at 329 West 27th street. He was in the brewing business, and had been engaged in that business about eleven years. He knew the defendant, and had known him about four or five years. He knew other people who knew the defendant, and the defendant's character for peace and quietness was good.

In cross-examination the witness testified that he was a member of the firm of M. Groh's Sons. His firm sold liquors to Felix Donnelly, who, he believed, was a cousin of the defendant. He had been in the saloon in which the defendant was the bartender, five or six times a week. He had never discussed the defendant's character with any one.

JAMES K. PRICE, being duly sworn, testified that he was a captain of police, and had been connected with the police

department about twenty years. He was attached to the 20th precinct. He did not know the defendant before the arrest. He knew other people who knew the defendant, and the defendant had the reputation of being a peaceable, quiet man.

In cross-examination the witness testified that the defendant had never gone to the station house to make a complaint against the deceased.

BERNARD CAMPBELL, being duly sworn, testified that he lived at 547 West 37th street. He was in the fertilizing business, and had been engaged in that business about three years. He had been a resident of this city about twenty years. He knew the defendant, and had known him about fifteen years. He knew other people who knew the defendant; and, as far as he knew, the defendant's general character for peace and quietness was good.

In cross-examination the witness testified that he knew the defendant's brother, Patrick. The defendant had worked for him for about six months.

about three or four years preceding this trial. At that time he, the witness, kept a liquor store. The defendant left his employ of his own accord. He had never heard anybody discuss the defendant's character.

PATRICK McKENNA, being duly sworn, testified that he was attached to St. Joseph's church, on Long island. He had known the defendant since childhood, and knew the defendant's father and mother. As far as he knew, the defendant's general character for peace and quietness was good.

JOHN JEROLOMON, being duly sworn, testified that he was an attorney and counsellor at law. He had been engaged in practice since 1868, and had been Judge of one of the District Courts. He knew the defendant, and had known him about fifteen years. He knew many other people who knew the defendant; and the defendant's general character for peace and quietness had been excellent.

JAMES J. McCUSKER, being duly sworn, testified that he was Catholic priest. He knew the defendant, and had known him since he was born. He knew many other people who knew the defendant; he had never known anything against the defendant's character.

JOHN EARLY, being duly sworn, testified that he resided at 310 East 30th street. He was in the furniture and carpet business, and had been engaged in that business for twenty-five years. He knew the defendant, and had known him about twelve years. He knew other people who knew the defendant, and, as far as he knew, the defendant's general character for peace and quietness was good.

In cross-examination the witness testified that he sold merchandise to the Deonnellys, but not to the defendant.

JOHN TURNEY, being duly sworn, testified that he was connected with the firm of Bambach & Son, in the cigar business. He had been connected with that concern about seven

years. He lived at 417 West 34th street. He knew the defendant, and had known him about six years. He knew other people who knew the defendant; and the defendant's general character for peace and quietness was good.

In cross-examination the witness testified that his concern sold cigars to the Donnellys from time to time, but he had known the defendant for many years outside of that business.

PATRICK McCAGNEY, being duly sworn, testified that he lived at 449 West 31st street. He had frequently been a juror in the criminal courts of this city. He knew the defendant, and had known him about fifteen years. He knew other people who knew the defendant, and the defendant's general character for peace and quietness was good.

In cross-examination the witness testified that he was in the agency business; he bought and sold liquor stores. He had never had any dealings with any of the Donnellys.

JOHN DEERING, being duly sworn, testified that he lived at 384 Ninth avenue. He was a plumber, and had been in that business thirty-five years. He knew the defendant and had known him about ten years. He knew other people who knew the defendant, and the defendant's general character for peace and quietness was good.

JOHN TURNEY, being duly sworn, testified that he was in the coal business, at 514 and 516 West 34th street. He knew the defendant, and had known him thirteen or fourteen years. He knew other people who knew the defendant, and the defendant's character for peace and quietness was good.

In cross-examination the witness testified that he was in business with his father. Occasionally, they sold coal to the Donnellys.

PETER BOYER, being duly sworn, testified that he lived at 320 West 32nd street. He was in the restaurant business, and had been in that business thirty years. He knew the defendant, and had known him about five or six



years. He knew other people who knew the defendant, and the defendant's general character for peace and quietness was good.

JOHN BUTLER, being duly sworn, testified that he lived at 210 West 29th street. On the 28th of May, 1893, he was working as a porter in the saloon in which the defendant was the bartender. He had been employed in that saloon about three years. He knew the deceased, Madden, in his life time, and had known him about two years and a half. He saw the deceased nearly every day during the two years and a half. The deceased was a quarrelsome man. The deceased was a drinking man, and he, the witness, had drank with him. He knew a colored man named Henry Johnson. He heard of a difficulty which had occurred between the deceased and Johnson, the night after it occurred. About three weeks before the shooting, the deceased went into the saloon one afternoon, when the defendant was behind the bar. The deceased asked the defendant for a glass of beer; and the defendant said,

"I will not sell you anything, because it is against orders, because you raise too much trouble around the place, when you get drunk." The deceased said, "Oh, hell; I want a drink; if I can't get it here, I can get it some place else, but I want the drink while I am here." The defendant said, "I won't sell it to you," and the deceased then left the saloon. About two and a half weeks before the shooting, the deceased was in the saloon, one day, about 6 o'clock in the evening. There were three or four other men in the saloon at the time, but he did not know who they were. The deceased had some conversation with the defendant; but he, the witness, did not know what that conversation was. He saw the deceased take up a cuspidor and tell the defendant that he would brain him behind the bar. The defendant did not say a word, but just looked at the deceased. The deceased's friends made him put the cuspidor down. One night, about four weeks before the shooting, he, the witness, was standing beside his boot-blackening stand, outside of the saloon, and the de-

ceased left the saloon. The deceased "remarked, 'I will do you a damned sight worse than I done the coon. I won't take any threat from you; I will make a corpse of you.'" When the deceased said that he was looking back toward the defendant, who was behind the bar at the time.

In cross-examination the witness testified that he had been working in a gambling house. He had never been convicted of any crime. He had been arrested for fighting, and discharged. The gambling house he had worked for was at 333 Pennsylvania Avenue, Washington, D. C., and was kept by a man named Taylor. He, the witness, was born in Virginia. He had worked on a farm in Virginia for from seventy-five cents to one dollar per day. He left Virginia and went to Washington. He had worked for a contractor in Washington. The contractor did not discharge him; he left the contractor to take a position in a cabinet shop. The contractor paid him \$1.50 per day, and in the cabinet shop he got only \$7. per week. After that he worked for the Ericsson

Steamboat Company, in Baltimore, as a porter. He received \$15 a month there. He got tired of being there, and he went back to Washington and then back to Virginia. He lived four or five weeks in idleness in Virginia, supporting himself with what he had saved. He then went to Washington and was working for a contractor, laying concrete on the street. He did not remember the name of the contractor. He did not work at that very long, and then he came to New York. He got a job as a porter at 7 and 9 Union Square, with Snyder & Campbell. He worked in that place about six months, and was laid off, on account of business being slack. He then went to Watch Hill Rhode Island, where he worked as a waiter, in the Watch Hill House. He worked there until the end of the season, when he was discharged, and came to New York. He then worked as a porter for Jacob Appel, on 23rd street, near the corner of Eighth avenue. Appel kept a liquor store, and, next door to that, he kept a saloon. He did not remember how long he worked for Appel, but he got \$9 per week. He "got

tired" of working for Appel, and then went to work at 365 Eighth avenue, as a janitor, for a man named Volmer. He worked for Volmer about four months. At that time he also "had another job, on out outside, at Donnelly's." He received \$10 a month from Volmer. He received \$4 a week at Donnelly's. Volmer sold his house, and he, the witness, was discharged. He "hadn't anything against the defendant," and was quiet friendly with Patrick Donnelly. He had not talked with Felix Donnelly about this case. He had not received any money to testify on this trial. He had not been supported by the Donnellys subsequent to the 28th of May, 1893. He was not in Donnelly's employ at the time of the trial. He left that job about the middle of December, 1893, when he was sick. At the time of the trial he was working for the Street Cleaning Department, driving a cart. He was an extra man in that department. He secured the position by applying to a Mr. Wood, the foreman. No one had seen Mr. Wood in his behalf. Henry Johnson was a friend of his, and he was associated with

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Johnson a great deal. The signature to the paper shown to him by the District Attorney was his signature. He had sworn to what was in the paper. In that paper he said, "Madden and I were friendly up to the time of the fight with my friend (Johnson), and after that I had no more to do with him." At one time Johnson had lived with him, in 25th street; but that was not the place they called the Black Chapel. He, the witness, had a family. His family lived at 210 West 29th street, where he also resided. He had come down to court that morning with Johnson and a man named Henry Tucker. About 9 o'clock that morning he was at home. He remembered testifying before the Coroner, and he had also been called down to the District Attorney's office, to give his statement. He did not say anything to Mr. Martine about the cuspidor incident; and the reason he did not say anything about that was because he did not think it necessary. When he testified before the Coroner, about the 21st of June, he did not say anything about the cuspidor episode; it was not in his mind, he had

forgotten it. He knew that the deceased had worked as a truck-driver. On one occasion, when the deceased was in the saloon, a man named Tucker went in and asked for a drink." The deceased said, "I won't drink at the bar with a God damned coon," and struck Tucker. Tucker did not ask the deceased to drink with him. The deceased knocked Tucker down. Tucker was a well-built man, but not very tall. Tucker did not do a thing when he was knocked down by the deceased. He, the witness, caught hold of the deceased, but did not do anything to him. He had heard the deceased quarreling with Johnson, also. A good many colored people frequented the saloon in question. He had never had any trouble with the deceased. He did not say anything to Mr. Martine, in the District Attorney's office, about the second assault upon Johnson or the trouble that Tucker had had with the deceased, because he had not been asked about it. He had told the defendant's counsel about them. He had been to see defendant's counsel about some other business, and Mr. House had asked him if

he was the same Butler who had appeared as a witness at the Coroner's office, and then he told Mr. House about the threats. He had lived in a place called Goat Alley, in Washington, and had worked for a Dr. Walsh. He had been arrested for fighting with one Butts; but Donnelly did not go bail for him on that occasion.

In redirect examination the witness testified that he had always worked for a living. During the three years that he had known the defendant he frequently came in contact with him. He knew other people who knew the defendant, and the defendant, as far as he knew, had always been a peaceable and quiet man.

HENRY TUCKER, being duly sworn, testified that he lived at 210 West 29th street. He was employed in the Street Cleaning Department, and had been in that employment over two years. He met the deceased one night in the saloon in which the defendant was bartender; he did not know the deceased before that night. He, the witness,



asked for a drink, "and he came to say that he would not take a drink at a bar with a nigger, and with the next word out of his mouth he knocked me down. I hadn't spoken to the man. He hit me and knocked me down in the gutter, after he followed me out, and kicked me when I was lying in the gutter." He had not given the deceased any reason whatever for striking him.

In cross-examination the witness testified that he knew Butler pretty well. He had not talked to Butler about the testimony he was to give. He had not spoken to Mr. House about the case, and would not know Mr. House, if he saw him. He knew the defendant's brother, Patrick Donnelly, and his cousin, Felix Donnelly, but he had not said anything to them about the testimony he was to give. Before working in the Street Cleaning Department he had worked in the Mail stable, in 28th street; and before that he had worked on the new aqueduct.; before that he had worked in Virginia. He had never gambled in his life, and had never worked in a gambling house. After the

the deceased knocked him down and kicked him, he was hardly able to walk for three or four days. He did not go to the Police Court and make a complaint, because he did not know who the man was. The deceased was a good deal taller than he, the witness, and had sandy hair. He had not been promised any money to come to testify on this trial; he was "expecting something," but he did not know from whom he expected to receive it. He knew Patrick Donnelly, Felix Donnelly, and the defendant. He had known the defendant for a long while, "and would like to help him out of this trouble, if he knew how."

THOMAS COLEMAN, being duly sworn, testified that he was a police officer, attached to the 20th precinct. He had been a police officer about six years. He had been attached to the 20th precinct about two years and eight months. He knew the deceased, in his life-time. He was acquainted with a colored man named Johnson. He knew the defendant. He, the witness, was on the corner of 27th street, one day, and Johnson went up to

him and said that the deceased had assaulted him. He saw the deceased after that, and the deceased was under the influence of liquor. The deceased said that he would "get square" with Johnson and the defendant, because they had put him out of the saloon.

In cross-examination the witness testified that he had been in the Grand Jury room with the two colored men who had testified for the defense, but he did not say anything to them about what they were to testify to. He was not a particular friend of the defendant's. He had played poker in the saloon where the defendant was employed, once. He had been subpoenaed to appear before the Grand Jury. Johnson refused to make a complaint against the deceased, and the deceased was not drunk enough to justify him in arresting him for intoxication. He had known the deceased for about twelve years, and had never seen him quarreling with any one.

THOMAS DOWNEY, being duly sworn, testified that he was a police

officer, attached to the 20th precinct. He had been a police officer about ten years. He knew a colored man named Johnson. In May, 1893, before the shooting of Madden, he saw Johnson in the station house. Johnson's face was cut and bleeding at the time, and he took Johnson to Roosevelt Hospital. A doctor stitched the wound in Johnson's face, and he went away.

In cross-examination the witness testified that he knew Butler and Johnson, and had talked to them, but not about the case. When Johnson went to the station house he said he had been assaulted. He, the witness, was not instructed by the Sergeant to arrest the man who committed the assault. He did not know the name of the Sergeant who was behind the desk at the time. He did not know whether or not the Sergeant instructed Johnson to go to the Police Court, the next morning, to make a complaint.

HENRY JOHNSON, being duly sworn, testified that he lived at 210 West 29th street. He had lived there about a month,

and before that he had resided at 253 28th street. At the time of the trial he was attending a colored friend of his, who was sick, in 55th street. In 189 he worked in a boarding house. He knew the saloon in question. He knew a colored man named Butler. During the year 1893 he had worked for Butler, as a boot-black, in the saloon. He knew the deceased, in his life-time. He had been in the habit of meeting the defendant four or five times a week. He was in the saloon one night, in February, 1893, when the deceased was in there, and the defendant was behind the bar. A young man went into the saloon, carrying an umbrella. The young man was throwing dice with Kiernan, and lost his umbrella. The young man turned around to him and said, "Johnson, have you seen my umbrella?" He said, "No, sir, I did not." The young man looked around for it and said, "You must have known something about it. You were standing between me and Kiernan." He said, "I don't know anything about it." The young man said, "You ought to have known something about it, because you

were right here." He, the witness, said, "I don't, and I wouldn't take anything from you or anybody else." The deceased then said, "I don't want you, Johnson, to give any of my white friends a calling down in this place." He said, "Madden, I would give you, or anybody else, a calling down, if they accused me of stealing anything in this case. The deceased replied, "Neither you or any other black son of a bitch has a right to give any white friend of mine a calling down, and, moreover, no black son of a bitch has any right to give back talk to a white man." The deceased then struck him in the head with a glass, and the scars in his face were the result of the blow. The defendant then said, "You are cut!" He took out his handkerchief and wiped his face. The deceased then ran out of the front door, and he went out of the side door. He did not see the deceased outside, so he returned to the saloon, and looked out the front door. He went to the station house that night and from there to the Roosevelt Hospital. About three days after that he went to

the Jefferson Market Police Court and made a complaint. He remembered that, two or three weeks before the shooting, on a Sunday afternoon, he had seen one Charles Morris and the deceased. After seeing them he saw Officer Coleman. He met the deceased and Morris on the corner, and the deceased said to him, "Hello, Johnson." He turned around and said to the deceased, "Madden, don't you never speak to me any more, unless I speak to you first," and he went into the saloon. The deceased and Morris followed him in there, and the deceased caught him by the collar. He said, "Madden, I don't want no trouble with you or Charlie Morris neither, and the best thing you can do is to let me alone," and he went out. They followed him out, and he met Officer Coleman on the corner and explained the matter to him. Officer Coleman told the deceased that, if he did not get off the corner, he would lock him up. Two young men carried the deceased away, and as they were carrying him off, the deceased said, "Never mind. I will fix Johnson, and also that Jimmy Don-

nelly that had me put off the corner. I'll get square on both of them." He had seen the deceased intoxicated. When the deceased had been drinking "he was very mussy."

In cross-examination the witness testified that he had been convicted three times -- once for fighting, and twice for gambling in the street, in Washington, D? C. He had never worked in a gambling house. He was born in Memphis, Tennessee, and went to Virginia when he was quite young. He worked on a farm in Virginia. He left V rginia in 1883 and went to Washington City. He worked at waiting in Washington for about nine years. He came to New York in 1888, and went to work for a colored man, at South Beach. He worked there three or four months, and then came to New York and went to work in a boarding house, at 17 East 31st street. He asked the woman who kept the boarding house for his pay, and she discharged him. He worked there two or three months. He then worked in 23rd street, as a waiter, for three or four months. The woman broke up house-keeping. He then worked in a barber shop



in 52nd street, as a boot-black, for a couple of months. He then went to Newburgh, New York, where he worked in the Merchant's Hotel. He stayed there all the season, and then returned to New York. He worked in a boarding house in 52nd street for about four months. He was not discharged from that place for stealing; he never stole anything in his life. During this time he was living in 28th street. He was married, but his wife had deserted him about three years before this trial. He did not live in a place called "The Black Chapel" in 28th street, and did not know of such a place. He then returned to Newburgh, and worked in the United States Hotel, about four months. He left there, because the wages were too small, and came back to New York. He went to work in New York for a colored man, at whitewashing and kalsomining. He received \$2 a day at that work, and remained with the man about two months, when there was no more work. He then assisted Butler in shining shoes. He was not a friend of the defendant's. He bought the clothes which he wore

at the time of the trial, about a year before. The defendant had not given him any clothes. He had not been promised any money for testifying, nor did he expect to receive any. He had been accused, upon one occasion, of stealing a handkerchief from the young man who had the umbrella on the night that the deceased hit him with the glass. He did not know that, after the young man had left the saloon, the umbrella had been found behind the bar. He, the witness, did not pass the umbrella over the bar to the defendant. He did not call the deceased a white son of a bitch, as testified to by Kiernan. He did not put his hand in his pocket and take out a knife.

In re-direct examination the witness testified that when he was arrested for gambling it was for "shooting craps." He had never been arrested for stealing in his life.

FRANK RAFFERTY, being duly sworn, testified that he resided at 447 West 37th street. He was a bartender, and was em-

ployed by Felix Donnelly, the defendant's cousin. He had been in Donnelly's employ something over three months. He was employed in the saloon in which the shooting occurred. He knew one Davis, who had been a witness for the People in this case. He remembered that Davis had been in the saloon, one day in February, 1894, in company with Thomas Rawley and James O'Keefe. Davis said, on that occasion, that he knew nothing whatever of this case, and would not be "implicated in it, only for Patrick Kiernan."

In cross-examination the witness testified that he had been in company with Patrick Donnelly and Thomas Carroll the morning before the day on which he testified, but he did not discuss this case with them. He went to Mr. House's office with Donnelly and Carroll, and he rehearsed his testimony there. Rawley had been in the employ of Felix Donnelly, in the saloon.

THOMAS CHAILL, being duly sworn, testified that he lived at 253 West 17th street. He was a coach driver, for Mr.

Farrell, Eighth avenue and 33rd street. He knew Patrick Kiernan, and had seen him a good many times. One night, about two weeks before this trial, he was standing on the corner of 28th street and Eighth avenue, in front of Donnelly's saloon. It was about half-past 7 o'clock, and Kiernan went up to him and said, "Who is inside?" He said, "Mr. Donnelly." Kiernan said, "I have got a subpoena to come down here, and I know nothing about this." He, the witness, had been at Mr. House's office the day before he testified, and had made his statement there.

In cross-examination the witness testified that he was a single man. He had not discussed what he was to testify to with any one. He told Patrick Donnelly what Kiernan had said to him, about an hour after Kiernan had spoken to him, and he afterwards told Felix Donnelly. He had never had much conversation with Kiernan before.

WALTER HAIGHT, being duly sworn, testified that he lived at 552 Broome street. He was a clerk, and was employed by

Mr. Anderson, 169 Eighth avenue. He knew the defendant. He knew the premises where the shooting occurred. He knew the deceased, Madden, in his life-time. About two or three days before the shooting, he was going through 28th street, about 8 or 9 o'clock in the evening. When he was between Seventh and Eighth avenue, going towards Eighth avenue, he saw the deceased and a stranger standing in front of the stable where the deceased was employed. As he walked down the street, he saw the stranger hand the deceased a revolver, and the deceased put it in his right hand hip pocket.

In cross-examination the witness testified that Mr. Anderson was a tea merchant and had a store at 169 Eighth avenue. He was not working for Mr. Anderson at the time of the trial; but he expected to go to work for him immediately after the trial. He had worked for Mr. Anderson about four or five years before the trial. Mr. Anderson had not employed him, but he presumed that he was going to

employ him. After leaving Anderson's employ, five or six years before this trial, he had worked for D. O. Farrel, at 31st street and Eighth avenue, for about four months. After that he worked for J. J. Coogan, on the Bowery, for about three or four months. Business was dull, he claimed sickness, and Coogan told him he should stay away. He had also worked for Mr. Glasgow, in the ice business, for four or five months; and Winch, also in the ice business, for four or five months. That was all the work that he had done in five or six years, with the exception of odd jobs. He had friends in England who sent him money occasionally. During the time that he had not been doing anything, he had been a frequenter of Donnelly's saloon. He had not had a remittance from the other side for about nine months. He had not done any work for four or five months. He had not been promised any money, nor had he received any, for testifying on this trial. The deceased was about five feet ten inches in height, had light hair, and was cleanly shaven. On the

night that he saw the deceased with the pistol, he said to the defendant, "Jimmy, you had better look out. I saw the fellow that you had trouble with, and he has got his pop-gun." The defendant laughed and said, "Oh, I guess not; I guess there will be no further trouble between us." The defendant did not appear to be afraid at that time. He knew, before that night, that there was bad blood between the deceased and the defendant. He was about ten paces away when he saw the deceased receive the revolver from the other man. He had been requested by Patrick Donnelly to go down to Mr. House's office, to tell him what he knew about the case, if anything. The stranger who was with the deceased was a short-stockily built man; a young fellow.

JAMES DONNELLY, THE DEFENDANT, being duly sworn, testified, in his own behalf, that he was thirty-three years of age. He was born in Ireland, and came to this country on July 27, 1878. Immediately after his arrival in New York, he went to work for his cousin, Felix Donnelly,

at the corner of 27th street and Eighth avenue. Felix Donnelly, at that time, was engaged in the liquor business. He worked in that store until 1880, and then he went to work at 26th street and Eighth avenue where he remained until 1891. He then left Felix Donnelly, and went to work for his, the defendant's, brother, who had opened a store at 28th street and Ninth avenue. He worked there for his brother until 1885, when he started in business for himself, at 44th street and Ninth avenue. He continued in business for himself about two years, and then, not being in very good health, he sold out his business and took a trip to Ireland. He stayed away about three months, and then returned to New York, in the latter part of September, 1887. In March, 1888, he went to work for a man named Barney Campbell. He worked for Campbell about five or six months, and then was compelled to leave his employ, being laid up with rheumatism. After he recovered from the attack of rheumatism he went to work for Felix Donnelly, at 33rd street and Eighth avenue. He worked



in that place until July, 1891, when he went to work at 28th street and Eighth avenue. He had never been arrested before, and had never been convicted of any crime. He knew the deceased, and had known him about eighteen months before the shooting. His hours in the saloon were usually from 10 in the morning until 2 in the afternoon, and from 7 at night until 1 the next morning. The deceased was in the habit of lounging around that corner. The deceased was about five feet eleven inches in height, weighing about one hundred and sixty pounds, large-boned, not very fleshy, fair complexion, and clean face. He had seen the deceased intoxicated in that saloon. The deceased was "always for raising a disturbance when he got a drink." He had refused to sell the deceased any drink, and had requested him to go out and to remain out of the saloon; he told the deceased that in the latter part of March, 1893. He knew the colored man, Johnson, who had been a witness on this trial. He was present on the night that Johnson had the difficulty with the deceased. John-

son did not pass the umbrella across the bar to him, the witness, that night. He was present at the latter part of the difficulty which the deceased had with Tucker. The trouble between Tucker and Madden, the deceased, was called to the attention of his employer, Felix Donnelly, and Felix Donnelly gave him instructions not to sell the deceased any more drink, and to tell the deceased to keep out of the place, to go some place else to spend his money, that he had done damage enough in the place by cutting up this colored man, and that he did not want him to go there. He communicated those instructions to the deceased. After he had repeated those instructions to the deceased, the deceased remained away from the place for two or three days. In the early part of April, 1893, the deceased went into the saloon and asked him for a drink. He refused to serve the deceased. The deceased said that he could not keep him out of the place. When the deceased saw that he could not get a drink, he said he would pull him, the defendant, from behind

the bar. Two of the deceased's friends then got the deceased to go out of the side door. He had heard the testimony of Kiernan and Davis, about seeing the deceased crawling under the swinging doors, that they went around to the side door and went in and saw him with a pistol in his hand, that he then said that he would shoot the cock-eyed son of a bitch on sight. Never in his life had he made a threat against the deceased. On that day he went on duty at 4 o'clock. The deceased returned to the place about 6 or 7 o'clock, alone. The deceased went over to the bar, struck it with his fist and said, "You are a son of a bitch, if you don't sell me a drink, and I will kick you all around the store." He said, "I have told you before you couldn't have a drink. I want you to get out of here; I don't want to have any more trouble with you; you have done damage enough in this place." The deceased struck the bar again and he said, "You can't put me out; you some from behind the bar and put me out, if you are a man." Kiernan and Davis then entered by the side

door and Kiernan walked up to him and took him by the shoulder, saying, "Let me get hold of the son of a bitch, and I will kill him." Kiernan went around to the front door and said, "I don't want to be in a place where there is going to be any killing," and then Davis went out through the front door. At that time Butler was at the front door. The deceased rushed in and picked up an iron cuspidor which was in front of the bar. He, the defendant, reached under the counter where the pistol was kept and got hold of it and said, "If you fire that at me or strike me with it, you won't get out of this place." The deceased dropped the cuspidor and "made off toward the door, and he dropped to the floor and made a dive on his knees through the folding doors." He then put the pistol back. He did not point the pistol at the deceased. The deceased turned around in the door-way and said, "I will get you, you son of a bitch, no matter who is with you. I will do you but not the same as Johnson, but I will make a corpse of you." Davis then walked in the side door and went

up to the bar and was talking to Butler. He did not see the deceased from that time until the day of the shooting. The first time that the deceased threatened him with physical violence was in the latter part of March. On the Sunday afternoon in question he got to the saloon about a quarter to 4 o'clock. O'Keefe and Ruch were not in the saloon when he entered; they were standing at the side door to the saloon, outside. Collins and the other bar-keeper, McCabe, were the only people in the saloon when he entered. Collins was reading the Sunday papers, which were spread out on the bar. When he, the defendant, entered the saloon, McCabe unfastened his apron and went to the closet, in the rear part of the store. He, the defendant, took off his hat and coat and was tying his apron around him when Ruch and O'Keefe entered the saloon. He did not see Madden in the store at that time. When he first saw the deceased on that day, the deceased was walking towards the bar, from the rear of the store. He did not know whether the deceased entered the saloon

through the side door or whether he was leaving the closet. He, the defendant, was putting some soft stuff in the ice-box, when the deceased went up to the bar and asked him for a drink. He said to the deceased, "Haven't I told you you can't have any drink in here? I want you to get out of here." The deceased said, "I want you to come around here and put me out." The deceased walked up to the cigar-lighter and lit his cigar and walked back to where he, the defendant was standing, about the center of the bar. The deceased said, "I won't leave this place until I get that drink." He said, "Haven't I told you you couldn't get any drink here?" The deceased said, "If you don't sell me a drink, I will knock you down right where you stand." He said, "I want you to get out of here; you have done damage enough already; you have cut a colored man here. You can't come in here." The deceased then said, "Damn you, I'll fix you," and put his right hand towards his hip pocket. "Fearing my life of him, and as he had threatened he would kill me, on the impulse of

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the moment, I grabbed for the pistol, and, taking it in my hand, I snapped the trigger, without taking aim. He threw up his hand and said, 'I am shot, and held his arm in this manner (indicating), and turned from the bar." When the deceased put his hand towards his hip pocket, he, the defendant, feared that the deceased intended to inflict some great bodily injury upon him. He did not take deliberate aim at the deceased, and had no intention to kill the deceased. An Officer entered the saloon and asked who had done the shooting, and he told the officer that the shooting had been done by him, in self-defense. The officer placed him under arrest. He saw the deceased lying on the side-walk when he went out with the officer. The officer asked the deceased who shot him, and the deceased replied that he, the defendant shot him. The pistol with which the shooting was done was in the saloon before he, the defendant, went there to work. The drawer out of which he took the pistol was about half open, as he had taken his apron out of the drawer a few minutes before.

He was under the impression, when he saw the deceased leave the saloon, that he had only wounded him in the arm. He had met the deceased on the avenue, between the time when the deceased attempted to throw the cuspidor at him and the time of the shooting, and the deceased said to him, upon one occasion, "I'll put you where the dogs won't bite you; I will not cut you the way I cut the coon."

In cross-examination the defendant testified that he had known Collins for about three years. He did not authorize Patrick Donnelly to offer Collins \$400 to leave the country and go to Ireland, in order to get away from the trial of this case. Collins went to see him in the Tombs and said to him, "I am sorry that I ever swore so falsely against you at the time I made the statement in the Police Court. I was pretty drunk then and I did not know what I was saying." Collins said he was willing to do anything to get him, the defendant, out of it. Collins said he was willing to take \$400 and get out of the way; that that was the only way



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he, Collins, could be a friend to him, the defendant, as he had made a statement and the District Attorney would hold him to his statement. He did not ask Collins to write down the statement that he had sworn falsely against him, the defendant. He did not authorize Rafferty to go to Davis and say to him: "There is such a thing as getting mixed up on the stand, when you are called to testify. Let counsel for the defense mix you up in your examination." He had known Rafferty about three years, and Davis about two years. He had known Kiernan about two years, but he had known Ruch only a short time. He had never had any difficulty with Ruch. There was never any hard feeling between him, the defendant, and Kiernan. The only trouble he had with Collins was that he didn't want Collins to serve ice. He had never had any difficulty with O'Keefe. Those men were perjuring themselves -- O'Keefe and Ruch were telling the truth. He, the defendant, was in the saloon when the deceased had the difficulty with the negro, Johnson. He had told the officer on that

beat about the assault which the deceased had committed on Johnson, but he could not remember the officer's name, and he had made no effort to bring him to court. The deceased quarreled every time he had a drink, and insulted him at every opportunity. The deceased had struck him with a bale-hook, but he had not made any complaint to the police about it. He feared his life was in danger when the deceased struck him with a hook, but he did not pull a pistol because some of the deceased's friends took him out of the saloon. McCabe did not tell the truth when he said that he had never had any trouble with the deceased; McCabe was seeking to have revenge on him. He had not made any effort to find the two men who were in the saloon on the occasion when the deceased threatened to pull him from behind the bar. The witness Hight had informed him that the deceased had a revolver. When he was taken to the station house, on the night of his arrest, he saw Captain Price. He made a statement to Captain Price, and Captain Price wrote it down. Captain Price read the

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statement over to him afterwards, and he signed it. Captain did not make any threat against him; he made the statement freely and voluntarily. That statement, however, was not entirely correct. He did not say, as was written in the statement, "As he did that, I opened the drawer and pulled out the revolver and fired at him." He did not say, "He never said a word." Captain Price asked him if the deceased was drunk at the time, and he said that the deceased was not so very drunk." He did not tell Captain Price about the deceased's throwing a cuspidor, or attempting to throw one, nor did he say anything about the hook to Capt. Price. He did not turn around to take the revolver out of the drawer. The deceased did not take any revolver out of his pocket that he, the defendant, saw. He did not know that the pistol was loaded -- he knew that some of the cartridges were loaded, but he did not know that all of them were.

IN REBUTTAL, ELLEN E. MADDEN, being recalled, testified that her son

was not a quarrelsome person; he was a very quiet boy. She had never known her son to carry a revolver, and had never seen one on his person. He lived with her, and drove a truck for a Dr. Betts. He had worked for Dr. Betts a long while.

PATRICK F. COLLINS, being recalled, testified that he did not hear the deceased say, on the afternoon of the shooting, "I will fix you." He did not see the deceased put his hand towards his hip pocket, although he was in a position to see. There was no disturbance between the deceased and the defendant. At the request of Haight, after the defendant had been in prison about a month, he went to the Tombs to see the defendant. The defendant wanted him to take \$400 and leave the country; the defendant said, "You must not remain in the United States; you must go to Ireland." He said, "I can't very well leave my wife," and the defendant said, "Well, we will have her fixed all right; we will attend to her." He did not tell the defendant that he had given false testimony in the

case.

GEORGE RUCH, being recalled, testified that he did not hear the deceased say, on the afternoon of the shooting, "I'll fix you." He did not hear any loud or quarrelsome talk between the defendant and the deceased.

DANIEL O'KEEFE, being recalled, testified that he did not hear the deceased say to the defendant, "I'll fix you." He could not understand any of the conversation which passed between the deceased and the defendant. The deceased might have used those words, but he did not hear them.

CHARLES DAVIS, being recalled, testified that he had not said to the witness Rafferty, one day in February, that he knew nothing about this case. Rafferty told him, on one occasion that, if he would come down and get mixed up in his testimony, he would be well paid for it.

PATRICK J. KIERNAN, being recalled, testified that he never saw the deceased raise a cuspidor in the saloon, and he never took the deceased away when he had a cuspidor raised. It was a fact that he had told the witness Cahill that he knew nothing about the case; because he knew Cahill worked for the Dennellys and he thought it would be no use for him to testify if they knew before-hand what he was going to testify to. He was on good terms with the defendant, and had never had any trouble with him.

IN SUR- REBUTTAL, FRANK RAFFERTY, being recalled, testified that he never told Davis that he would be well paid for it if he would get mixed up on the stand.

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,

against

*James Donnelly*

The Grand Jury of the City and County of New York, by this indictment, accuse

*James Donnelly*

of the CRIME OF MURDER IN THE FIRST DEGREE, committed as follows:

The said *James Donnelly*

late of the City of New York, in County of New York aforesaid, on the *Twenty eighth* day of *May*, in the year of our Lord one thousand eight hundred and ninety-*three*, at the City and County aforesaid, with force and arms, in and upon one *Charles Madden*, in the peace of the said People then and there being, wilfully, feloniously and of *his* malice aforethought did make an assault; and the said *James Donnelly*, a certain pistol then and there charged and loaded with gunpowder and one leaden bullet, which said pistol the said *James Donnelly* in *his* right hand then and there had and held, to, at, against, and upon the said *Charles Madden*, then and there feloniously, wilfully and of *his* malice aforethought, did shoot off and discharge, and the said *James Donnelly* with the leaden bullet aforesaid, out of the pistol aforesaid, then and there by force of the gunpowder aforesaid, shot off, sent forth and discharged, as aforesaid, *him* the said *Charles Madden*, in and upon the *breast* of *him* the said *Charles Madden*, then and there feloniously, wilfully and of *his* malice aforethought, did strike, penetrate and wound, giving to *him* the said *Charles Madden*, then and there, with the leaden bullet aforesaid, so as aforesaid discharged, sent forth and shot out of the pistol aforesaid, by the

said James Donnelly in and upon the person of  
the said Charles Madden, one mortal wound of the breadth of  
one inch, and of the depth of six inches, of which said mortal wound he the  
said Charles Madden, at the City and County aforesaid,  
from the said Twenty-eighth day of May in the  
year aforesaid, until the ninth day of June, in the same year  
aforesaid did languish, and languishing did live, on which said ninth  
day of June, in the year aforesaid, the said Charles  
Madden, at the City and County aforesaid, of the said mortal  
wound did die.

AND SO THE GRAND JURY AFORESAID do say: That the said  
James Donnelly, Junr,  
the said Charles Madden in the manner and form, and by  
the means aforesaid, wilfully, feloniously and of his malice aforethought, did kill  
and murder against the form of the statute in such case made and provided, and against the  
peace of the People of the State of New York and their dignity.

DE LANCEY NICOLL, District Attorney.



0430

**BOX:**

527

**FOLDER:**

4800

**DESCRIPTION:**

Dwyer, William

**DATE:**

07/21/93



4800

0431

**BOX:**

527

**FOLDER:**

4800

**DESCRIPTION:**

Dwyer, William

**DATE:**

07/21/93



4800

Stewart's 10000 barometer  
had pressure in the center  
had 100000  
Wm 29/29

Saturday

Andrew Norton  
July 29/90 175 Park Row

South America

Henry Brown

175 Nassau St

July 29/90

Counsel

2 H J

Filed

21 day of July 1893

Pleads

Not Guilty (Aug 9)

THE PEOPLE

vs.

29 P 332 #

William Dwyer

petition for a new  
trial denied by  
Judge Callahan, Aug 9

DE LANCEY NICOLL

petition for a new trial denied  
by Judge Callahan, Aug 9

A TRUE BILL

James H. Keen

Foreman

March 21, 1894

Indy and Corral  
of Oppression with strong  
recommendations to every

Wm 2 mus

March 29, 1894

RS 29

Assault in the Third Degree.  
(Section 219 of Penal Code.)

70 July 1/90  
403

COURT OF GENERAL SESSIONS OF THE PEACE,  
 City and County of New York,  
 Part 2.

\*\*\*\*\*

The People,

vs.,

WILLIAM DWYER.

"

"

"

"

"

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Before

HON. RANDOLPH B. MARTINE,

and a Jury.

\*\*\*\*\*

Tried, New York, March 16, etc., 1894.

Indicted for ASSAULT in the THIRD DEGREE and OPPRESSION.

Indictment filed JULY 21, 1893.

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 APPEARANCES:

A ASSISTANT DISTRICT ATTORNEY STEPHEN J. O'HARE,

For THE PEOPLE.

MESSRS. FRIEND & HOUSE,

For THE DEFENSE.  
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HENRY KRESS, THE COMPLAINANT, being duly sworn, testified that he was born in Germany and was forty-six years of age. He had been in the United States twenty-three years and had resided in the city of New York all that time. On the fourteenth of June, 1893, he was in business at 72 Nassau street corner of John. His place was on the northeast corner, in the basement. There was an entrance on John Street, about twenty feet from Nassau Street, and one in Nassau Street about twenty feet from John Street, about seven steps down from the sidewalk. He had a restaurant and wine and beer saloon there. He had been in business at that place over ten years. He remembered the evening of the fourteenth of June, 1893. He was in his place on that night, about half past eight. A Mr. Haege, Mr. Tugendreich, Mr. Felix, and a man named Arnstein, who was employed as a general helper in the saloon. He, the complainant, knew the defendant, and had known him about a year before the day in question. (It is admitted that the defendant is a member of the Municipal Police

Force, and was at the time of the commission of the alleged offense.) About half past eight o'clock on the night in question, the defendant entered his saloon, in unifor, and said, "Give me a drink." He, the complainant, had his hat and coat on at the time and had a key in his hand. He said to the defendant, " Everything is shut up now. You can't get anyth ibg; and I don't want you here in my saloon, anyhow, and don't come down any more." The defendant said, "You mean it?" He said, "Yes, I mean it." The defendant said, "I will lock you up, if you say that again." He had had some difficulty with the deendant before that time. He said to the defendant, "I don't care, I go with you right away." The defendant then caught him by the right lapel of his coat, and said, "Now, come along." He said, "Now, come, I want to lock up the door first." He locked the door and he went up the stairs to the street, with the defendant. Arnstein had locked the John Street door before the defendant entered the saloon. When he, the

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complainant, got up to the corner of Nassau and John streets, he told the defendant that he wanted to see if the John street door was locked. He the defendant handled him so roughly that the top button of his coat was pulled off. Haege then remarked, "It is very mean to handle a man like him in such a rough manner." The defendant then pushed Haege with his club, in the breast, and Haege fell down in the middle of Nassau street. He, the complainant, and the defendant, then crossed Nassau street and were met by Mrs. Fuchs, who kept a restaurant on Nassau street. Mrs. Fuchs said to the defendant, "What have you arrested Mr. Kress for? You are a very mean loafer." The defendant then took hold of Mrs. Fuchs and told her she was under arrest. There was another officer on the other side of the street and the defendant called him to his assistance. The other officer then took him, the complainant, to the station-house, and the defendant took Mrs. Fuchs to the station house. He and the defendant were followed

to the station house by the men who were in the saloon at the time the defendant entered. He and the other officer got to the station house about a minute or two before the defendant and Mrs. Fuchs arrived there. When they went before the Sergeant in the station house, the defendant said, "I make a complaint against this man; disorderly conduct, making a noise on the sidewalk in John street. He, the complainant, explained the matter to the Sergeant, and the Sergeant said, "I don't want no explanation of you; you explain this to-morrow before the Police Justice. The officer then searched him, and took all his personal property from him. While the defendant was searching him, he the complainant said to the defendant, "Officer, I fix you for that matter, what you are doing to me." He was very much excited at the time. The Sergeant then said, "Lock him up," and the door-keeper, Officer Finken took a hold of him. He told Officer Finken that he wanted to get a bondsman. He then took a paper from his pocket, wrote something on it, and gave it to Arnstein. He said to Arnstein,



"You go up to fifty seventh street, and get this man to bail me out to-night."mSergeant McCormickk was at the desk at the time, and said, "I wouldn't accept any man, without I know him." He was then locked up. In about two minutes, Haege and Tugendreich were also put in the cell. In about three-quarters of an hour he was released on bail. Tugendreich and Haege were also released on bail, at the same time. He went to the Tombs Police Court the next morning, and the defendant was also there. Justice Ryan was on the bench. He had no counsel there. Th e defendant said to him, in the Police Court, "You had better take a lawyer;2 and he said, I don't see wh t for I need a lawyer here; my case is plain enough! Haege and Tugendreich were standing near him, when the defendant said that . The Justice said, "Well, whaw is the complaint about?" The defendant held a conversation with the Justice, but he, the complainant, could not hear whjat the Justice was saying. The Justice remarked to him that he was charged with disorderly conduct and asked him whaw he had to say. He told

the Justice that the defendant went into his place and wanted a drink; that he refused to give the defendant any drink, told the defendant to go out of his place, and not to go in there any more; and that the defendant said, "If you say that again, I will lock you up." The Justice remarked, "Fined Five Dollars." He did not tell the Justice that he had any witnesses in Court, and did not ask to have his witnesses heard. He paid his fine. He subsequently went before Police Commissioner McLean and made a complaint against the defendant. The defendant was not present when he made that complaint. About two weeks after the day in question, he went before Inspector Williams, in the Inspectors office, in Police Headquarters. The defendant was also before Inspector Williams at the time. Sergeant McCirmick, Mr. Haage, Mr. Felix, Mr. Tugendreich, and Mr. Henderson were also in the Inspector's Office. Inspector Williams asked him the complainant, in the presence of the defendant, how the thing happened, and he told the Inspector

substantially the same story as he had told on this trial. Inspector Williams then asked the defendant how the thing happened and the defendant then said, "Well, I arrested the man standing down on the corner of John and Nassau streets, making so much noise and shouting around, and I arrested him for disorderly conduct." Inspector Williams then said, "Well, as far as I see, these people are business men, and no cow-boys or corner loafers.

You had better have said to these gentlemen, 'Go home,' and be nice to those men and don't use your club the way you generally do. I will make a charge against you. I don't believe a word you said." Inspector Williams then said to Sergeant McCormick, "Go with Mr. Kress, to the Complaint Clerk, and make a complaint against the Officer." He, the complainant, subsequently went before the Police Commissioners and the Grand Jury.

In cross-examination, the Complainant testified that in the Police Court, he was standing about ten feet away from the defendant when the defendant was talking to the Judge. He, the

complainant, was very much excited in the Police Court. All the men who were in the saloon on the night in question, were present in Court at the time of the trial, with the exception of Mr. Henderson, who was sick. Arnstein had been in his employ about two years. The men who were in his saloon on the night in question were in the habit of going in there nearly every night, about six o'clock and staying until about eight o'clock. - He generally closed his saloon about half past eight. He had not drunk more than usual on that day. He was standing about two or three feet from the door, when the defendant entered the saloon. Arnstein was behind the bar, washing out the glasses. The defendant did not hit him with his fist or his club at the time of the arrest or subsequently. The club that the defendant had in his hand was a small one. He did not see either Haege or Tugendreich take hold of the defendant. Tugendreich and Haege did not take hold of him, the complainant, and try to take him away from the officer. Haege and Tugendreich

protested against the arrest, on the side-walk. He did not stay on the corner of John and Nassau street, with the defendant more than two minutes before they started to the station house. He believed that Mrs. Fuchs grabbed a hold of the defendant, but he did not see her do it. Mrs. Fuchs called the defendant a dirty loafer, because the defendant was arresting him, the complainant. He did not hear the defendant ask any man to take Mrs. Fuchs down into her own place. He was followed to the station house by Haege, Tugendreich, Arnstein, and Henderson. He heard the defendant say to Mrs. Fuchs, "Mind your own business;" and, later on, he heard the defendant say to her, "I arrest you." He did not shake his fist under the defendant's nose in the station house. When the defendant searched him, he remarked to the defendant that he would fix him for that, and Sergeant McCormick said, "Look out what you mean by that; that means something, to fix a man!" The Sergeant ordered the defendant to search him.

PAUL J. FELIX, being duly sworn, testified that he lived at 808 Bergen street, Brooklyn, and was a watch-case maker. He was in business, on his own account, at 143 Fulton street, in this city, and had been at that place for twenty-nine years. About half-past 8 o'clock on the night in question he was in the complainant's saloon. He went there that night about half-past 6 o'clock. Haege, Tugendreich, Henderson, Arnstein and the complainant were there when the defendant went in. He was standing at the head of the stairs, and he heard the defendant ask the complainant for a drink. He heard the complainant refuse to give the defendant a drink, and the defendant then took the complainant up the stairs, under arrest. He heard the complainant say that he wanted to see if the John street door was locked, and the defendant allowed him to see. The officer then took the complainant away. He, the witness, followed the defendant and the complainant to the station house. He saw Mrs. Fuchs placed under arrest. He heard Mrs. Fuchs call the defendant a dirty

loafer. The defendant told Mrs. Fuchs to mind her own business, or he would take her in. He was in the station house when the complainant was before the sergeant, but he did not remember what was said on that occasion. He saw the complainant ordered to a cell and searched.

In cross-examination the witness testified that he did not hear the defendant ask the complainant for a drink. He had known the complainant about ten years, and had been in the habit of going in the complainant's place about four or five times a week. He had his supper in the complainant's place on the night in question. He had known Haege, Tugendreich, and Henderson about three years.

ADOLPH HAEGE, being duly sworn, testified that he lived at Union Hill, New Jersey. He was in the watch-case business, and had an office with the preceding witness at 143 Fulton street. He had been in business about ten years. He entered the complainant's saloon about half-past 7 on the night in question. He was

accompanied by a man named Fisher. Felix, Tugendreich, Handerson, Smith, the complainant, and a barkeeper were in the place when he went in, and they were there when the defendant entered the saloon. He saw the defendant in the complainant's place on that night. He heard the complainant refuse to give the defendant a drink. He, the witness, was ready to go out of the saloon when the defendant entered, and he went right out. The defendant said to the complainant, "I will arrest you," and the complainant said, "All right; lock me up." He thought the defendant was fooling with the complainant. The complainant and the defendant went up the stairs to the side-walk. He thought the defendant was handling the complainant too roughly, and he said to him, "Don't handle him too rough." The defendant had a small club in his hand. The defendant hit him, the witness, with his fist, and knocked him into the street. The defendant then took the complainant and they walked down the West side of Nassau street. When they were opposite Mrs.



Fuchs' place, Mrs. Fuchs had a dispute with the officer, and she was placed under arrest. The defendant then called for assistance. He, the witness, followed the defendant and the complainant and Mrs. Fuchs to the station house. On the way to the station house, the defendant turned around and asked him why he was following them. He said he was going to be a witness for the complainant. When they got to the station house the defendant preferred a charge against the complainant and Mrs. Fuchs and then, turning around and pointing to him said, "I make the same charge against this man, for disorderly conduct." He, the witness, was then locked up, and remained in a cell about three-quarters of an hour.

In cross-examination the witness testified that he was not drunk on the night in question. He had only six or seven glasses of beer. He saw a man talking to Mrs. Fuchs, but he did not know the man's name. When the defendant put Mrs. Fuchs under arrest, Officer Ryan took charge of the complainant. He heard Mrs. Fuchs call the defendant a dirty

loafer. The defendant told Mrs. Fuchs to mind her own business. He did not take hold of the defendant before the defendant hit him. He did not take hold of the complainant and demand that the defendant release him. He heard the complainant say, in the station house, to the defendant, "I will fix you." The defendant was searching the complainant when the complainant said that. He did not hear the complainant say to the defendant, "I will break you," or, "I will have the buttons taken off of you." He was not called as a witness for the complainant the next morning, in the Police Court. The defendant did not hit him, the witness. He was standing on the edge of the side-walk, the defendant made a motion towards him, he stepped back, lost his balance and fell in the street. He remembered that the Sergeant, in the station house, said to the complainant that it was not right for him to talk about fixing a man. He, the witness, was not arrested in the street. He saw Officer Mackay in the station house, but did not see him outside.

EMIL TUGENDGREICH, being duly sworn, testified that he lived at 311 West 117th street. He was engaged in the cork business, at 76 William street. He had been in business there about two years. He knew the complainant. He was in the complainant's place about half-past 8 o'clock on the night in question. He saw the defendant there that night. Felix, Haage, Henderson, Arnstein, the complainant and some other parties were also there. He, the witness, was standing at the top of the steps leading to Nassau street. The defendant rushed down past him and said to the complainant, "Kress, give me a drink." The complainant refused to give the defendant a drink, and told him to get out of there, that he did not want him in there any more. The defendant said, "You mean it?" The complainant said, "Yes, I mean it." The defendant then placed the complainant under arrest, and the defendant and complainant went up the stairs to the street together. The defendant pushed Haage with his club, and said, "You fellows get out of here; what have you got to do here?" The de-

defendant and the complainant then started down Nassau street, and when they got to the middle of the block they were met by Mrs. Fuchs. Mrs. Fuchs asked the complainant what he was arrested for, and the defendant said, "None of your business; get down," meaning that Mrs. Fuchs should go down into her place. Mrs. Fuchs called the defendant a dirty loafer. The officer caught hold of Mrs. Fuchs' dress, and tore it. The defendant then called for assistance, and Mrs. Fuchs was placed under arrest. In the station house, the defendant made a charge of disorderly conduct against the complainant, Mrs. Fuchs, Haege and him, the witness. He knew a man named Smith, and he thought he had seen Smith on the night in question.

In cross-examination the witness testified that Haege and Felix were standing at the head of the stairs with him. He, the witness, did not remonstrate with the defendant against the arrest of the complainant. He did not take a hold of the complainant that night, trying to pull the complainant

away from the defendant. He had known the complainant for twenty years, and was in the habit of visiting his place about three or four times a week. He was a married man. He went to the complainant's place on the night in question to see the complainant about a business matter. The complainant was excited when he entered the place, about 7 o'clock. While the complainant, the defendant, and all the other men were on the street, and before they started for the station house, he did not hear the complainant say that the defendant had robbed his place, the Sunday night previous.

HELENA FUCHS, being duly sworn, testified that she lived at 63 Nassau street in this city, and was a widow. She had a restaurant and bar, at 63 Nassau street. The restaurant was in the basement, and she lived on the top floor. She had been in business about five years, having succeeded her husband, at his death. She saw the complainant and the defendant on the night in question. She had known the complainant

for some years. She had known the defendant for a few years. She saw the defendant taking the complainant down the street, and she said, "What is the matter?" The complainant turned around and said, "This man is taking me in, because I refused to give him a drink." She said, "Don't make that arrest, Officer, for your own sake." The defendant said to her, "Shut your God-damned mouth, or I will take you, too." She said to the defendant, "You dare," and the defendant "grabbed her bodily," and took her down the street, calling her vile names. She was in the station house when the defendant made the complaint against the complainant. She went to court, the following morning, and was discharged.

In cross-examination the witness testified that she did not call the defendant a dirty loafer, and if Haege, Rugendreich and Felix testified to that they must have been mistaken.

IGNATZ ARNSTEIN, being duly sworn, testified, through the Official Interpreter, that he lived at 89 Cannon street, and was a waiter, employed by the complainant. He knew the defendant, and had known him for about two years. The defendant had been in the habit of going into the kitchen of the restaurant, in uniform. He saw the defendant, on the night in question, about half-past 8 o'clock. He, the witness, was behind the bar, washing glasses. The defendant entered the saloon and said, "Kress, give me a drink." He corroborated the complainant in regard to the complainant's refusal to give the defendant drinks, and the subsequent events. .

In cross-examination the witness testified that Tugendreich, Haege, Felix, and Henderson were all in the saloon at the time the defendant made the arrest.

In re-direct examination the witness testified that he thought Tugendreich was on the stairs when the arrest was made. He was washing the glasses at the time, and did not pay much attention

to the men who were in the saloon.

FOR THE DEFENSE, MOSES W. CORTWRIGHT, being duly sworn, testified that he was a Captain of Police, and had been attached to the Police Department of the City of New York for twenty-seven years and three months. He knew the defendant, and had known him about fifteen months, during which time the defendant had been under his command. During that time, the defendant's general character as a citizen had been good.

In cross-examination the witness testified that he did not know any of the defendant's relatives, and did not know where the defendant lived. His only acquaintance with the defendant was derived from the fact that the defendant had been his subordinate.

JAMES W. TICE, being duly sworn, testified that he was in the employ of the New York Standard Watch Company, as a salesman and watchmaker. His place of business was in the Corbin building, in John street. He knew



the defendant, and had known him about two years and a half. He did not know other persons who knew the defendant. He had observed the defendant during the two years and a half, and from his observations he considered the defendant's general character very good.

In cross-examination the witness testified that he was not related to the defendant. He did not know any of the defendant's relatives.

HAROLD S. FAIRCHILD, being duly sworn, testified that he was a salesman for the R. H. Gilmore Manufacturing Company, at 82 John street. He knew the defendant, and had known him about two years. He knew other people who knew the defendant. The defendant's general character was good.

In cross-examination the witness testified that he knew two other people who knew the defendant. He had no knowledge of the defendant except what he had gained by the defendant being an officer on that post.

JAMES J. MORAN, being duly sworn, testified that he lived in Brooklyn and was private secretary to R. M. Gilmore of the R. M. Gilmore Manufacturing Company. He knew the defendant, and had known him about a year and a half or two years. From his observation of the defendant, during that time, he thought the defendant's general character was good.

WILLIAM DWYER, THE DEFENDANT, being duly sworn, testified, in his own behalf, that he was twenty-nine years of age and was born in Ireland. He had been in this country twelve years. He lived at 220 East 33rd street, with his wife and child. He was a member of the Municipal Police force, and had been attached to the Police department two years and nine months. He was attached to the First Precinct, and had been attached to that precinct at the time of his appointment. He knew the complainant, and had known him about two years and a half. He knew Mrs. Fuchs and had known her about two years. He had come in contact with them from having his post in the neighbor-

hood. Previous to the day in question he did not know Haege, Tugendreich, Felix or Anrstein. On the night in question his post was John street, from G ld street to Broadway, which included the complainant's place of business. He went on duty that night at 6 o'clock. He first saw the complainant that night at about half-past 8. At that time the complainant was just coming up the steps, and came on to the side-walk. He, the defendant, was standing in front of 37 John street at the time, and was engaged in conversation with a Mr. Cherry and a Mr. Shea. Mr. Cherry was a lawyer, and Mr. Shea was in the desk business. He saw a Mr. Wade on that night. He did not go into the complainant's place that night, at any time, and demand a drink. His attention was attracted by hearing a noise in the complainant's place, and then five or six people came out of the complainant's place on to the street. They were talking very loud, and using violent language. He, the defendant went up to the complainant and said to him, "This is a very unbecoming way

for you to be acting; why don't you go home?" The complainant said, "You mind your own business; how dare you interfere with me?" He again advised the complainant to go home, and the complainant said to him, "How dare you interfere with me? If you interfere with me, I will put you off the force, and I will have them buttons taken off of you." The complainant rushed up close to him and put his clenched fist in his face as he said that. The complainant then said, "You are a thief; you robbed my place Sunday night." He, the defendant, said, "You are mistaken; your place was found open Sunday night, by officers Robinson and Powers." He again advised the complainant to go home, and told him that, if he did not go home, he would arrest him for disorderly conduct. The complainant "continued acting that way, and dared" him. The complainant said, "If you interfere with me, I shall have them buttons taken off of you and I will put you off the force." He then caught hold of the complainant, by the coat collar, and said, "I arrest you for disorderly con-

duct." He and the complainant went about two steps in the direction of Nassau street, and the complainant said, "Let me see if I locked that door after me, the door of 33 John street." He went with the complainant, still retaining his hold on him, and let the complainant see if the door was locked. He and the complainant then walked to the corner of John and Nassau streets. When they got to the corner, Haeger went behind him, the defendant, and grabbed a hold of him. Tugendreich grabbed hold of the complainant, and demanded that he, the defendant, should let the complainant go. He said, "Now, gentlemen, you mind your own business; I have this man under arrest for disorderly conduct, and I am going to take him to the station house. If you have anything to do for him, come down there and do it." He and the complainant proceeded down Nassau street, on the West side. He did not know why they went on the West side. In front of 63 Nassau street Mrs. Fuchs and a man were standing, and Mrs. Fuchs said to the complainant, "What is the matter?" The com-

plainant said, "This son of a bitch has me locked up." Mrs. Fuchs grabbed him and tore his blouse open, called him a dirty loafer, and demanded that he allow the complainant to go. He then said to the man who was standing with Mrs. Fuchs, "You know this lady; you are a friend of her's. Take her down into her place or I will have to lock her up for interfering with me in the discharge of my duty." The man took hold of Mrs. Fuchs and asked her two or three times to go down into her own basement. Mrs. Fuchs refused, and would not let go of his coat. He then whistled for assistance, and Officer Ryan, who had been on Maiden Lane, went to his assistance. He said to Officer Ryan, "Take this prisoner to the station house for me; I have him under arrest for disorderly conduct; I have got to lock this lady up." Officer Ryan then took the complainant to the station house, and he took Mrs. Fuchs to the station house. In the station house, he said to Sergeant McCormick, "I have this prisoner on a charge of disorderly conduct." He explained the

circumstances to the Sergeant, and the Sergeant took the complainant's pedigree. The Sergeant ordered him to search the complainant, and he proceeded to do so. The complainant then became very violent and said, "I will fix you; you have no right to interfere with me or take my property away. I will put you off the force. I will take them buttons off you." The complainant put his clenched fist in his, the defendant's, face, and said, "You son of a bitch, I will fix you." Sergeant McCormick then called the complainant to order, and told him that that was very improper language for him to use. The Sergeant then cited a case which had occurred in which a man had used language like that, and the said to the complainant, "Judging by the way you act in front of this desk, you must have been very disorderly on the street." He, the defendant, turned the complainant's property over to the Sergeant, and the Sergeant ordered the door-man to lock the complainant up. He, the defendant, remained in the station house about fifteen minutes, and then he

went back on post. He next saw the complainant the next morning, in the Police Court. He made a complaint there against the complainant. His complaint was in writing, and he swore to it. Judge Ryan was presiding in the Police Court that morning. Judge Ryan read the complaint to the complainant and asked the complainant what he had to say. The complainant replied that he had nothing to say, and Judge Ryan fined him \$5. The complainant paid his fine. He did not hit Haegel on the night in question. Haegel was standing on the curb-stone, and he pushed him and Haegel stepped backward into the street and fell. . At the time of the arrest, there were about fifteen people present.

In cross-examination the defendant testified that Shea was in the desk business, on his own account, at 29 John street. Wade was an electrician. Cherry was a lawyer, and he, the defendant, had known him about twelve years. On the night in question he met Cherry and Shea on John street, between William and Goldstreets. The crowd was not on Nassau street; it was on John street. He did not



remember, particularly, what he, Wade and Shea were talking about. The crowd came out of the John street door from the complainant's place. He heard the complainant call Haege and Henderson a son of a bitch. He could not tell all they were talking about. Some of the men were talking English, and some German. He, the defendant, did not say anything to any of the men there but to the complainant. The complainant seemed to be more excited than the others, and appeared to be under the influence of liquor. Haege did not say anything to him about treating the complainant roughly. He did not hit Haege with his club. He had his club in his pocket all the time. Haege was put under arrest, constructively, in Nassau street. Officer Mackay also went to his, the defendant's, assistance. He told Haege that he was under arrest, and Haege volunteered to go to the station house. During the time that he had been on that post, he had been in the complainant's premises only twice. Those were the occasions when he found the doors open, and he went in to

close them and see if there was anybody in the place. He had never had a drink in the complainant's saloon. Notwithstanding the testimony of the complainant, Arnstein, Tugendreich, Haege and Felix he was not in the complainant's saloon on the night in question.

JOHN RYAN, being duly sworn, testified that he was a member of the Municipal Police force, and was attached to the First Precinct. He had been a member of the Police Department nine years. He knew the defendant? On the night in question he was on duty from 6 till 12. His attention was attracted, about half-past 8, by hearing a police whistle. At that time he was on Maiden Lane, between Nassau and William streets. He hurried to the corner of Maiden Lane and Nassau street, and he saw a crowd on Nassau street, in front of Mrs. Fuchs' place. He hurried down to where the crowd was, and found fifteen or twenty people there. The defendant said to him, "You take this man to the station house," and he took the complainant

into his custody. He took the complainant by the arm, and, after they had walked a few steps, the complainant said, "I don't want to be taken like that; I will walk with you, but I will fix the other son of a bitch." The complainant shook his fist in the defendant's face in the station house, and said he would fix the defendant. He, the witness, then went back on post.

In cross-examination the witness testified that he did not see Mrs. Fuchs have a hold of the defendant.

JAMES WADE, being duly sworn, testified that he lived at 424 West 39th street, and had lived there about two years. He was an electrician, and was employed by the Mount Morris Electric Light Company. He had been in the employ of that company about five years. The company had lights in the neighborhood of Nassau and John streets, and it was his duty to inspect those lights every night. On the night in question he was in the neighborhood of Nassau and John streets

about half-past 8 o'clock. He knew the premises of the complainant. He knew the defendant, and saw him upon that night. He saw the complainant, Haege, and Tugendreich upon that night. His attention was attracted by hearing a lot of men talking very loudly and coming out of the basement of 33 John street. At that time the defendant was talking to two citizens, in front of 37 John street. When the men got to the side-walk they were acting in a very disorderly manner and talking very loudly. The defendant went over to the men and told them to go home and not be making any disturbance on the side-walk. He saw the complainant put his fist up in the defendant's face and call him a thief. He, the witness, was in that neighborhood that night to adjust a light at the corner of Gold and John streets. The defendant then placed the complainant under arrest. Tugendreich then got the defendant around the waist and Haege took hold of the complainant by the shoulder, and they demanded that the defendant should let the complainant go-- Tugendreich took

hold of the complainant, and Haege took hold of the defendant. He, the witness, did not go to the station house. There was a lamp down there that had a bad carbon in it, and which showed a red light, and he went there to repair it.

In cross-examination the witness testified that he did not see the defendant strike Haege. He had known the defendant by sight before the night in question, but had never spoken to him. About a week after the occurrence, he saw the defendant again and asked him, out of curiosity, how he had made out with his case.

In redirect examination the witness testified that he had not received any compensation for testifying on this trial. There was no reason why he should testify to anything but the truth.

THOMAS McCORMICK, being duly sworn, testified that he was a Sergeant of Police, and had been connected with the Police Department nearly twenty-two years. On the night in question he was on duty in the First Precinct sta-

tion house. He knew the defendant. He was at the desk when the complainant and the defendant were in the station house. The defendant told him, the witness, that he had found the men in front of 37 John street acting in a disorderly manner, creating a disturbance, shouting, and using profane and indecent language, and that he had ordered them to move away, which they refused to do. The complainant was very much excited at the time. While he was taking the complainant's pedigree, the complainant shook his fist in the defendant's face, and said to the defendant, several times, "You son of a bitch, I will get square of you; I will take the buttons off of you." He, the witness, said to the complainant, "Now, Mr. Kress, you are acting in a very improper manner and using improper language. If anything should come out of the case I should certainly have to be a witness against you." He then cited the case of Putnam and Foster, on Broadway near the Gilsey House, to him, saying that, some years ago, one man was killed and the other was hung where less

threats than that were made? After he had finished taking the complainant's pedigree, he ordered the defendant to search him, and ordered the complainant locked up. In his opinion, the men who were taken into the station house by the defendant and Officer Ryan were pretty well under the influence of liquor. He said to the complainant, "If you have acted as disorderly in the street as you have here, you deserved being arrested."

In cross-examination the witness testified that Officers Finken, Ryan, and Mackay were in the station house at the time the complainant was before the desk. Mrs. Fuchs was slightly under the influence of liquor. Mrs. Fuchs admitted to him that she had torn the defendant's blouse. The complainant did not make any statement in the station house in answer to the accusation against him. The first time he heard any one say that the defendant was in the complainant's premises on the night in question, was before Inspector Williams. Haeger and Tugendreich were taken into the station house as

prisoners.

JAMES L. TOHER, being duly sworn, testified that he lived at 697 Third avenue. He was a married man, and resided there with his family. On the 14th of June, 1893, he resided at the corner of Fulton and Nassau streets. At that time he was the janitor of the building there, but at the time of the trial he was out of employment. He had hurt his hand a week before the trial, and he could not work. He knew the complainant, by sight. He knew the defendant by sight. On the night in question, about half-past 8 o'clock, he was in the neighborhood of John and Nassau streets. He saw the defendant standing in front of 37 John street, talking to two citizens. He saw five or six people come out of the John street entrance of the complainant's saloon. The men who came out of the complainant's place were talking very loudly, and he thought there was going to be a quarrel. The defendant went up to the men and told them they had better disperse. He heard



somebody in the crowd say, when the officer was approaching, "Cheese it, the cop," and somebody else said, "To hell with the cop." He heard the defendant say to the complainant that he had better go home, that he thought he needed sleep. The complainant then said, "You son of a bitch, you are the thief that robbed my place last Sunday. When the complainant and the defendant were near the corner, two men tried to rescue the complainant. The defendant and complainant continued down Nassau street, and when in front of No. 63 Mrs. Fuchs "wanted to interfere," and caught hold of the defendant by the blouse." The defendant told Mrs. Fuchs to mind her own business, and Mrs. Fuchs called the defendant "a dirty, stinking loafer." He, the witness, then returned to his building, to let out some tenants who were working there that night. He had a disagreement with the engineer of that building.

In cross-examination the witness testified that after his discharge he had been employed with V. Henry Rotschild & Co, running an elevator. The

complainant told the defendant to mind his own business. The complainant was not on the side-walk when the defendant ordered the crowd to disperse; he came up afterwards. He did not see any officer but the defendant. On the morning of the day on which he testified, the defendant had gone to his, the witness's, house and told him that a man on his, the defendant's, beat had said that he, the witness, knew something about the case, and asked him to testify on his trial. He, the witness, had never been a policeman. The complainant came out of the same door as the other men; and he was positive that that was the John street door. The fact that five or six persons testified that they came out of the Nassau street door would not change his opinion at all. He did not see the complainant go down to examine the door. He did not hear the complainant ask permission to examine the door. He remembered hearing the complainant say that he would have the defendant's buttons taken off. The last he saw of the complainant and the defendant, they were at Maid-

en Lane, and at that time they were together. He did not know what happened to Mrs. Fuchs. Mrs. Fuchs remained standing in front of her place, after the defendant and the complainant had gone down the street.

WILLIAM MONK, being duly sworn, testified that he resided at 220 Fourth street, Brooklyn. He was in the office-desk business, at 29 John street street. He had met the complainant once. He knew Mr. Shea. He was not present at the time of the arrest, but he heard of it subsequently. Subsequent to the arrest, he had a conversation with the complainant about Shea. She was not present at that conversation, nor was the defendant. He was in business with Shea. In consequence of what he was told by one of his employees, he went to see the complainant. He asked the complainant what he wanted to see his partner, Shea, for and the complainant said that he had heard that Shea intended to be a witness against him, in an assault case. He, the witness, said that he believed that

that was so. The complainant then told him that, if Shea did appear as a witness against him, that he, the complainant, would make it very warm for Shea, because he had evidence in his possession that Shea was a returned convict. He then asked the complainant who his lawyer was, and the complainant wrote his lawyer's name on a piece of paper. He subsequently communicated the substance of the conversation to Shea.

IN cross-examination the witness testified that he did not know where Shea was at the time of the trial. He had seen him the day before. Shea had told him that he had been intimidated in the case, and was afraid to go on the stand to testify.

IN REBUTTAL, HELENA FUCHS, being recalled, testified that on the night of the arrest she was not intoxicated. She had not drunk to excess on that night.

HENRY KRESS, THE COMPLAINANT, being recalled, testified that he had once had a conversation with the witness Monk. On that occasion, Monk told him that Shea was his

brother-in-law. He referred Monk to his lawyer, Mr. Fennell. He did not say to Monk that, if Shea became a witness against him, he would make it warm for him, as he had heard that he was a returned convict. On the night in question, he did not call the officer a son of a bitch. No one used that expression in his place on that or any other night; he would not allow it. He was not under the influence of liquor on the night of the arrest. . He did not say to the defendant, in the station house, that he would take his buttons off or that he would have him removed from the force. . The John street doors were locked from the inside, with bars. There were no locks on those doors; they were fastened from the inside.

EMIL TUGENDGREICH, being recalled, testified that he did not hear anybody use the words son of a bitch on the night in question, either in the street or in the station house. He did not attempt to rescue the complainant from the defendant. The defendant did not place

him, the witness, under arrest in the street.

IGNATZ ARNSTEIN, being recalled, testified, through the Official Interpreter, that on the night in question he closed the John street doors to the complainant's place. Those doors were closed with bars. The defendant had been in the complainant's place very frequently, in the mornings, about half-past 5 or 6 o'clock, and had drinks there.

Fol. 1

At a Special Term of the Court of  
the Court of General Sessions  
of the City of New York, held  
at the Criminal Court Building  
in the City of New York on the  
15<sup>th</sup> day of April, 1900.

Present:

~~HON. WARREN P. FOSTER,~~  
Justice.

*W. Hon. Martin J. McMahon*

-----X  
The People of the State of New York, :  
Plaintiff, :

against :

William Dwyer, :  
Defendant. :  
-----X

2

Upon reading and filing the notice of motion  
with proof of due service thereof and the affidavit of  
Francis P. Garvan, verified the 19th day of April, 1900,  
and all the pleadings and proceedings had herein and  
after hearing Francis P. Garvan, Esq., in support of  
said motion and assistant District Attorney Charles E.  
Le Barbier, opposed,

3

NOW ON MOTION of James, Schell & Elkus, at-  
torney for defendant appellant, it is

**O R D E R E D** that the time of the defendant  
William Dwyer to make, serve and file his case on appeal  
be and the same hereby is extended two months from the  
29th day of April, 1900.

Enter.

*MTM*  
*[Signature]*

No specific provision is made in the Code of Criminal Procedure relating to the power of the Court to make rules in civil process in general.

Rule 32, of the General Rules of Practice.

I have no power to grant within delay. Applied to the President Judge as to "a judge of the Supreme Court".

(Code Crim. Proc § 460)  
April 25 1900  
M.W.F.

Court of General Sessions of the Peace of the City and County of New York.

People of the State of New York

against

William Dwyer.

(ORIGINAL.)

ORDER EXTENDING TIME TO SERVE CASE ON APPEAL.

JAMES, SCHELL & ELKUS,  
Attorneys for

Defendant,  
56 Pine Street,  
Borough of Manhattan,  
New York City.

25

FILED APR. 26

1900

1000-8-99.

Please take notice that the within is a copy of an order this day duly entered and filed in the within entitled action in the office of the Clerk of the Court of General Sessions in the Borough of Manhattan, in the City of New York.

Dated, New York, April 25<sup>th</sup>, 1900  
Yours, &c.,

JAMES, SCHELL & ELKUS,  
Attorneys for Defendant

56 Pine Street,  
Borough of Manhattan,  
New York City.

Due service of a copy of the within is hereby admitted.

Dated, New York, ..... 1

0477





Martin T. Mc Mahon

Court of General Sessions,  
Judges Chambers,  
32 Franklin St., N.Y.

New York, \_\_\_\_\_ 189

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

THE PEOPLE ETC., VS WILLIAM DWYER.

This is an application made by the defendant for an order setting aside the judgment and conviction herein and directing a new trial.

On March 16th, 1894 the defendnat WILLIAM DWYER, then a member of the N.Y. Police Force, was tried and convicted before Hon. Rudolph B. Martine and a jury and sentenced to imprisonment for two months under an indictment charging assault in the third degree and oppression. No appeal was taken and the defendant served out his imprisonment. Because of his conviction and sentence it is understood that he was dismissed from the Police Force.

Application is now made for a new trial 1st "Upon the broad ground of newly discovered evidence showing a conspiracy formed and carried out by the complainant herein and all the witnesses for the prosecution", and on the further ground that two of the witnesses under dates of September 24, 1898 and September 30, 1898, have sworn that their testimony against the defendant on the trial was false in material statements. Their affidavits accompany the papers. Another affidavit is filed by a person who corroborates the



Martin T. Mc Mahon

Court of General Sessions,  
Judge's Chambers,  
32 Franklin St., N.Y.

New York,

189

more recent statement of these witnesses but who was not called on the trial. Other witnesses were examined on the trial whose statements do not appear on this application. Without at all going into the merits of the case, it is sufficient for the purposes of this motion, to refer to the provisions of the Code of Criminal Procedure regulating the practice. Section 466 of the Code of the Criminal Procedure reads as follows:

" The application for a new trial must be made before judgment, except an application made under subdivision seven of section four hundred and sixty-five, which may be made at any time within one year, and except in case of a sentence of death when the application may be made at any time before execution". . . . .

This application is made under sub-division 7 of Section 465 of the Code of Criminal Procedure, but was not made within a year. It is not clear that the facts presented in the petition would bring the case within this sub-division which reads as follows:

"When it is made to appear, by affidavit, that upon another trial, the defendant can produce evidence such as, if before received would probably have changed the verdict; if such evidence has been discovered since the trial, is not cumulative; and the failure to produce it on the trial was not owing to want of diligence. The



*Martin T. McMahon*

*Court of General Sessions,  
Judges Chambers,  
32 Franklin St. N.Y.*

*New York, 189*

Court in such cases can, however, compel the personal appearance of the affiants before it for the purpose of their personal examination and cross-examination, under oath, upon the contents of the affidavits which they subscribed".

It is urged that the petition should be granted in the interests of justice as it is necessary to enable the defendant to right the alleged wrong and to obtain his reinstatement on the Police Force.

As to the contention that the court in its general powers and in the interests of equity should order a new trial, it is enough to say that if the papers presented in support of the motion are sufficient to prove that the conviction was erroneous, the relief sought for can be as well obtained by application to the executive, for a full pardon, removal of disabilities and restoration of civil rights.

The same facts that would move the court to order a new trial, would certainly influence the decision of the Governor and thereafter the action of the Police Board.

It is to be noted that the sentence in this case has been fully executed and it is not in the power of any court to alter that fact or to undo what has been done in that particular, and it is a



*Martin T. Mahony*

*Court of General Sessions,  
Judge's Chambers,  
32 Franklin St., N.Y.*

*New York,* \_\_\_\_\_ *189*

settled principle that a court will not engage in a proceeding or occupy its time in the consideration of a case wherein it can afford no possible relief.

If a new trial were granted and a new conviction had, the court certainly could not, in justice, impose another sentence. If an acquittal was had the court is powerless to undo the fact that the defendant has already served out his sentence. The provision in the code limiting the time in which a new trial may be ordered is certainly a wise one. To order a new trial after a lapse of years particularly when a sentence has been fully executed and when witnesses have disappeared or may be dead, and upon affidavits of certain of the witnesses that they deliberately committed perjury, would certainly be against public policy and make litigation everlasting.

The motion for a new trial is, therefore, denied but of course, without prejudice to an application on the merits and the facts, to the Executive of the State.

*M T Mahony*  
*J*

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ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

120. Walter G. Thompson

\_\_\_\_\_



Court of General Sessions,  
Judge's Chambers,  
32 Franklin St., N.Y.

New York, \_\_\_\_\_ 189.

— People vs. Dwyer —

The story of the complaint  
(Chess) was substantially supported  
by Paul J. Felix, who comes  
forward now & avers that  
his previous testimony was untrue

(2) Adolph Haege, who comes  
forward now & avers that his  
previous testimony was untrue

(3) Emil Tugendreich - who  
cannot now be found

(4) Ignatz Arndstam - who  
cannot now be found.

(5) Mrs. Fuchs - who makes no  
statement now. (over)

A new witness Martin  
Fisher who did not testify  
on the trial now appears  
& makes affidavit supporting  
the defendant's story.

Fol.1

At a Special Term of the Court of  
General Sessions of the Peace,  
Part I thereof, held in and for  
the City and County of New York  
at the Criminal Court House in  
the City of New York, on the  
27<sup>th</sup> day of March, 1900.

Present:

HON. MARTIN J. McMAHON,  
Justice.

-----x  
The People of the State of New York, :  
Plaintiff, :  
against :  
William Dwyer, :  
Defendant. :  
-----x

Upon reading and filing the indictment found  
herein against the defendant on the 21st day of July,  
1893, and the minutes and proceedings of the trial had  
thereon, and the order of conviction entered therein,  
and the affidavit and notice of motion to set aside the  
conviction had herein and for a new trial on the indict-  
ment, and proof of due service thereof, the affidavits  
of William Dwyer, verified the 15th day of July, 1899,  
Adolph Haeger, verified the 24th day of September, 1898,  
Paul J. Felix, verified the 30th day of September, 1898,  
and Martin Fisher, verified the            day of September,  
1898, and upon all the pleadings and proceedings, and  
after hearing Francis P. Garvan, of counsel for the  
defendant and Charles L. LeBarbier, Assistant District  
Attorney for the County of New York, for the plaintiff,  
it is

O R D E R E D that the said motion be and  
the same hereby is in all respects denied.

Enter.

*M T M*



Please take notice that the within is a copy

of \_\_\_\_\_  
this day duly entered and filed in the within  
entitled action in the office of the Clerk of  
the \_\_\_\_\_  
in the Borough of Manhattan, in the City of New  
York.

Dated, New York, \_\_\_\_\_ 1

Yours, &c.,

JAMES, SCHELL & ELKUS,  
*Attorneys for*

56 Pine Street,  
Borough of Manhattan,  
New York City.

Due service of a copy of the within is  
hereby admitted.

Dated, New York, \_\_\_\_\_ 1

COURT OF GENERAL SESSIONS  
OF THE PEACE.

The People of the State of  
New York

*against*

William Dwyer.

(ORIGINAL.)

ORDER DENYING MOTION FOR  
NEW TRIAL.

JAMES, SCHELL & ELKUS,  
*Attorneys for*

Defendant,  
56 Pine Street,  
Borough of Manhattan,  
New York City.

*Filed*  
*Dec 27*  
*1900*

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

.....x

THE PEOPLE OF THE STATE OF NEW YORK,  
Plaintiff,

-against-

WILLIAM DWYER,  
Defendant.

: B R I E F .

:

:

.....x

This is a motion made by the defendant for  
an order setting aside the judgment and conviction  
herein and directing a new trial of the indictment  
herein.

The application is based upon the broad  
ground of newly discovered evidence showing a conspir-  
acy formed and carried out by the complainant herein  
and all the witnesses for the prosecution, for the pur-  
pose of committing a fraud upon this honorable court  
and giving false testimony in order to obtain the  
conviction of this defendant.

The application is further based upon the  
discovery of Martin Fischer, a hitherto unknown wit-  
ness, who will testify in contradiction to the witness-  
es for the prosecution.

The facts in the case leading up to this motion are as follows:

On the 21st day of June, 1893, the defendant William Dwyer, a member in good standing of the New York Municipal Police Force, upon the complaint of Henry Kress was indicted for assault in the third degree and oppression.

On March 16, 1894, he was tried upon the indictment before the Hon. Randolph B. Martine and a jury, convicted and sentenced to an imprisonment of two months, which sentence he has fully served and satisfied.

For a full statement of the evidence upon which this defendant was convicted, the Honorable Court is referred to the petition of the defendant upon which this motion is made, and to the stenographers minutes, which are also made a part of the moving papers here.

Suffice for the purpose here-- the prosecution relied solely upon the testimony of Henry Kress,, Adolph Haage, Ignatz Arndstein, Emil Tugendgrich and Paul J. Felix, all to the effect that on the evening of June 14, 1893, this defendant at that time a mem-

ber of the New York Municipal Police Force, entered a saloon of Henry Kress on the corner of John and Nassau Streets, and demanded of him a drink. That upon his request being refused he assaulted said Kress and took him into custody, charging him with disorderly conduct, upon which charge he was the next morning convicted and fined five dollars.

The arrest of Mrs. Fuchs was but an incident.

The defense, in addition to testimony of his good character and of the threats of complainant to "do him up" and "take the buttons off him", relied upon his own testimony, supported by the witnesses James Wade and James S. Thoer, to the effect that he arrested Kress, the complainant, on the night in question because, together with others, he was creating a disturbance on the corner of John and Nassau Streets and refused to move on at his order, replying thereto with oaths and accusations of theft.

Upon this evidence the jury found the defendant guilty. The defendant served out his sentence not having the necessary money to pay the costs of an appeal.

Barred by his conviction from re-entering the Police Force, his very service in which left

him unfitted to obtain other lucrative employment, he has been compelled for four years to earn a precarious livelihood.

After ceaseless searchings for these four years it now becomes possible for him to lay before this Court evidence that his conviction was "conceived in fraud and maintained by perjury."

Therefore in this motion he asks the Court for an order setting aside the judgment of conviction herein and directing a new trial of the indictment found against him.

P O I N T S .

I:

THIS COURT HAS THE JURISDICTION OVER AND POWER  
TO GRANT THIS MOTION.

Rapelsky vs. Lynch 43 Howard, 157.

American & Eng. Encyl. of Pleading & Pr., Vol. 14 p. 842.  
" " " " Law, Vol. 16, p. 604 et seq.  
Bishops New Criminal Procedure, Sec. 1273.

The affidavits upon which this motion is made disclose the facts:-

1: That a conspiracy was entered into by the witnesses for the prosecution under the leadership and domination of Kress for purpose of using this court of justice to obtain a fraudulent conviction of the defendant herein.

2: That said conspiracy accomplished the purpose.

3: That as a result your petitioner has been deprived of his liberty, his reputation and his means of obtaining a livelihood but more, that this court itself has been boldly made the victim and instrument of fraud and injustice.

The Code of Criminal Procedure (Sections 462--466 ) provides for new trial under specific conditions therein set forth.

Under these Sections this defendant has no standing here as his application has not been made within one year. (Sec.

These sections cannot however be construed to deprive this court of its original and broad jurisdiction to protect itself against fraud practised

upon it or to redress any injustice which it has through fraud been made the instrument of.

In so far as these sections attempt to limit this inherent right of our courts they are unquestionably unconstitutional.

Let us suppose this defendant convicted of murder in the second degree by means of a similar conspiracy. He is sentenced for imprisonment for life.. After one year he obtains the clearest evidence of this conspiracy and seeks his liberty.

Will the court hold that he must remain in prison for the rest of his life even though it have the proofs of his innocence before it?

No criminal cases are cited in support of this contention for the reason that no appeal can be taken by the people from an order granting a new trial on the ground of newly discovered evidence, hence no decisions appear in the reports.

Code of Criminal Procedure, Section 518.

People vs. Beckwith, 42 Hun, 367.

Had not this relief always been granted the books would contain many cases appealed by the defendant. A thorough search reveals none.

I I .

THE RULES APPLICABLE TO MOTIONS FOR A NEW TRIAL  
IN CIVIL CASES ARE APPLICABLE HERE.

14 Amer. & Eng. Encyl. of Pleading, & Practice, 842.  
116 Amer. & Eng. Encyl. of Law, 604, et seq.  
Bishop's New Criminal Procedure, Sec. 1273.  
United States vs. Williams, 1 Cliff (U.S.) 5.  
State vs. Robinson, 20 W. Va., 713.  
Smith vs. State, 64 Ga., 439.  
Deniors vs. State, 103 Ind., 142.  
People vs. Vanderpool, 1 Mich., 157.

In Section 1273 of Bishop's New Criminal Procedure, that eminent author declares: "Numerous cases assume that the question whether or not to grant a new trial depends in criminal causes on the same rule as in civil. And justly it does as to a part of the rules. But we have seen that the burden of proof is in a degree different and very different is the weight of evidence which in a criminal case requires the party to be satisfied of guilt beyond a reasonable doubt. Therefore and because by the entire spirit of the criminal law the prisoner is under a protection from the Judge which a party in a <sup>civil</sup> ~~criminal~~ suit is not many deem it is believed rightly that



new trials should be awarded more freely in criminal causes than in civil and in criminal the more freely in proportion to the gravity of the punishment."

And again in Section 1279: "Newly discovered evidence is a common, perhaps the most common ground of application for a new trial." The author cites many cases in support thereof.

On page 842 of Vol. 14 Amer. & Eng. Encyl. of Pleading & Practice, the author states: "The general principles which govern applications for new trial in criminal cases on the ground of newly discovered evidence are the same as in civil cases where this is a ground for a new trial.

I I I .

ALL THE REQUIREMENTS LAID DOWN BY THE COURTS  
ARE FULFILLED IN THIS APPLICATION.

Raphelsky v. Lynch, 43 How., 157.  
Platt vs. Monroe, 34 Barb., 291.  
Jackson vs. Kinney, 14 John., 186.  
Jackson vs. Crosby, 12 John., 354.  
Jackson vs. Hooper, 5 Coven, 207.  
Glassford vs. Lewis, 82 Hun, 46.  
Oakley vs. Steers, 1 Robert, 73.

b

(a) The evidence has been discovered since the trial. This is proven by the verified petition of the defendant herein (Petition Fol. 4, p. 5.)

(b) It could not have been obtained upon the former trial by the exercise of reasonable diligence.

Baylies New Trials and Appeals thus lays down a definition of the diligence required,-- "The law does not exact from a party or his counsel the exercise of more than reasonable diligence in the conduct of his cause, and if notwithstanding its exercise, material evidence has eluded discovery until after the trial which would probably change the result a case is presented for granting a new trial unless the evidence is cumulative or otherwise objectionable under the rules above stated.

Bonynge vs. Waterbury, 12 Hun. 534.

The same writer says: "But the exercise of reasonable diligence does not require a party to anticipate the introduction of manufactured evidence, and to be prepared to meet it on the trial; and if he is in fact surprised by such evidence and unable to

meet it at the trial, the court may grant a new trial to let in after discovered rebutting evidence. (See Powell v. Jones, 42 Barb., 24.)"

(c) It is material to the issue and goes to the merits of the case.

This the evidence set forth in the annexed affidavits shows for itself-- without the conspiracy to be shown this action would never have been commenced. Had evidence of its existence been obtainable at the trial no conviction would have been possible.

At that time the conspiracy still held fast and it was not until the power of Kress over his co-conspirators was broken that any evidence thereof was possibly obtainable.

(Affidavit of

(d) It is not cumulative.

It shows a new fact to this court. No evidence was offered of this conspiracy at the trial for none was then obtainable.

This new evidence is not alone evidence of perjured witnesses but it is more, it is evidence of a conspiracy to obtain a fraudulent conviction and hence the cases holding new evidence in the shape of affidavits of witnesses that they committed perjury

d

on the trial not sufficient to warrant a new trial are not applicable here. This point was directly passed upon in Raphelsky vs. Lynch, (43 How., 157)

In this case the controversy arose about a quantity of tobacco which defendant levied on as Sheriff of the County. Plaintiff took upon to prove that some few days before the levy the property had been transferred to him through the assignment of warehouse receipts. The verdict was found for the plaintiff on the trial. Affidavits were then presented on motion for a new trial, showing the newly discovered evidence existing, proving this suit to be a conspiracy on the part of the plaintiff and others and that their design was to use this court to enable them to carry out their fraud against the Sheriff. McCunn, J., speaking for the Court said: "I need not say that if such a conspiracy exists or has existed on the part of the plaintiff as is shadowed forth in the affidavits, it is the duty of this Court to intercept it at once. x x x The affidavits show a conspiracy to enable suit to be brought against the Sheriff and that these facts were not discovered until a quarrel took place after the trial between the plaintiff and the party from whom he claimed

"title and the witnesses on the trial. It could not have been obtained and some of the conspirators disclosed the fact, because it was their secret known to them alone and could not be reached by physical industry. x x x It is not

cumulative for the reason that no proof of any kind was offered defendant going to show this conspiracy.

x x x It relates to a point upon which no testimony was given on the trial. Now, in the name of justice, would it be right to deprive the Sheriff, a public officer, acting in the line of his duty, of an opportunity to show the truth of the statements contained in his affidavits."

(e) It is so decisive in its character that there is a reasonable certainty that on another trial it would change the result.

On a new trial at this time the prosecution could only offer the testimony of Kress and Tugendgrich, if the latter could be found, while the defendant can offer not only all the testimony in his favor given on the first trial, but in addition this newly discovered evidence, the conspiracy. The result no one can doubt.

(f) Defendant has been guilty of no laches. This motion has been as soon as practicable after the discovery of the new evidence. Whatever delay there has been has been spent in efforts to find the remaining co-conspirators and former witnesses.

IV.

THIS APPLICATION IN ADDITION TO FULFILLING  
ALL THESE REQUIRED CONDITIONS IS OF A NATURE  
TO DEMAND THE EXERCISE OF THE DISCRETIONARY  
POWER OF THIS COURT TO GRANT A NEW TRIAL WHEN-  
EVER THE BEST INTERESTS OF SUBSTANTIAL JUSTICE  
REQUIRE IT.

Rapelsky vs. Lynch, 43 How., 157.  
Glassfor vs. Lewis, 82 Hun, 46.  
Barrett vs. The Third Ave. RR. Co., 45 N.Y., 652.  
Young vs. Stone, 77 Hun, 395.  
McKeever vs. Weyler, 11 Weekly Digest, 258.  
Macy vs. Wheeler, 30 N.Y., 231.  
Standard Oil Co. vs. Amazon Ins. Co., 79 New York  
506.  
Graham vs. Waterman on New Trials & Appeals, 642,  
1085-6.  
Sistare vs. Olcott, 23 New York St. Repr., 564.  
Darbee vs. Elwood, 21 Hun, 599.  
Platt vs. Munroe, 34 Barb., 291.

In Glassfor vs. Lewis (82 Hun, 46) Martin J.  
said: "When these facts appear (the facts stated in  
Point III) and the Court is satisfied that the ends of  
justice will be promoted by allowing the moving party  
an opportunity to present the newly discovered evidence  
the motion will be granted. Motions for new trial are  
addressed to the discretion of the court, whether based  
upon the weight of evidence, surprise, newly discov-  
ered evidence or the fact that the party had been de-  
prived of his evidence by accident or other like

g.

"grounds and modern practice they are liberally granted in the furtherance of justice."

It was said by Allen, J., in Barrett vs. Third Ave. RR. (45 New York, 652) "Motions to set aside verdicts as contrary to evidence as well as motions for a new trial upon the ground of newly discovered evidence are not governed by any well defined rules but depends in a large degree upon the peculiar circumstances of each case. They are addressed to the sound discretion of the court and whether they should be granted or refused involves the inquiry whether substantial justice has been done, the Court having in view solely the attainment of that end."

In Young vs. Stone (77 Hun, 395) the Court said: "We think a trial judge is invested with power to set aside a verdict and grant a new trial on the ground that the verdict is against the weight of evidence and because the damages are excessive or insufficient or when for any other reason substantial justice will be promoted thereby. This power we think an important one and one that ought perhaps to be more often exercised by trial courts for the proper protection of the rights and interests of litigants."



h

In Platt vs. Munroe, (34 Barb., 291) Allen, J.,  
said: "The action of the courts upon applications  
for new trials consists in a proper exercise of dis-  
cretion not arbitrary but legal, forming and moulding  
their decisions on each case according to some pre-  
cedent or upon its own particular circumstances so as  
to best subserve the purposes of substantial jus-  
tice. "

That the interests of substantial justice  
can only be subserved in the case before the court by  
the setting aside of this unjust and fraudulent con-  
viction and granting to this innocent defendant a  
new trial, needs no further proof.

This defendant, your petitioner herein,  
prior to being made a victim of this conspiracy was a  
member of the New York Municipal Police Force in good  
standing. He was an officer of this court discharging  
the public duty, and while in the discharge of that  
duty it became necessary for him to arrest the com-  
plainant herein on the charge of disorderly conduct.

In order to avenge himself for that arrest,  
this complainant formed this conspiracy, using this  
Honorable Court as a means to his end. Through this  
Court he has accomplished the ruin of this defendant,

depriving him of his character and employment.

V.

THIS MOTION SHOULD BE GRANTED.

ABRAM I. ELKUS,  
Attorney for Defendant,  
Office & Post Office Address,  
56 Pine Street, Borough of Manhattan,  
New York City..

Please take notice that the within is a copy

of \_\_\_\_\_  
this day duly entered and filed in the within  
entitled action in the office of the Clerk of  
the \_\_\_\_\_  
in the Borough of Manhattan, in the City of New  
York.

Dated, New York, \_\_\_\_\_ 1

Yours, &c.,

JAMES, SCHELL, ELKUS & MCGUIRE,  
*Attorneys for*

56 Pine Street,  
Borough of Manhattan,  
New York City.

Due service of a copy of the within is  
hereby admitted.

Dated, New York, \_\_\_\_\_ 1

Court of Genl. S.  
the Peace of City  
of New York.

The People of the State  
of New York,

against

William Dwyer

(ORIGINAL)

Defendant's Brief.

JAMES, SCHELL, ELKUS & MCGUIRE,  
*Attorneys for Defendant*

56 Pine Street,  
Borough of Manhattan,  
New York City.

Fol.1

COURT OF GENERAL SESSIONS,  
COUNTY AND STATE OF NEW YORK.

.....X  
PEOPLE OF THE STATE OF NEW YORK, :  
Plaintiff, :

-against- :

W I L L I A M D W Y E R, :  
Defendant. :

.....X  
S I R :-

2 PLEASE TAKE NOTICE that upon the annexed  
affidavits of William Dwyer, Paul J. Felix, Martin  
Fischer, Adolph Haege and upon the Stenographers Min-  
utes of the trial of this action, the defendant here-  
in will move before Mr. Justice *Neuberger*  
at Part *One* of the Court of General Sessions, on  
the ~~25th~~ <sup>28th</sup> day of ~~August~~ <sup>August</sup> at 10:00 o'clock in the fore-  
noon of that day or as soon thereafter as counsel can  
be heard for an order setting aside the judgment and  
conviction herein, directing a new trial and for such  
other and further relief as to the court may seem

3

proper.

Dated, New York, <sup>Aug.</sup>~~July~~ 15<sup>th</sup>, 1899.

Yours &c.,

*Abram I. Elkus,*

~~JAMES SCHILL & ELKUS,~~

Defendant's Attorneys,

Office & Post Office Address,

56 Pine Street, New York City,

To, -

ASA BIRD GARDINER, ESQ.,

District Attorney of the City of New York,  
Centre Street, New York City.

Fol.1

COURT OF GENERAL SESSIONS,  
COUNTY AND STATE OF NEW YORK.

.....x  
PEOPLE OF THE STATE OF NEW YORK,  
Plaintiff,

-against-

WILLIAM DWYER,  
Defendant.  
.....x

CITY AND COUNTY OF NEW YORK, ss.-

2

WILLIAM DWYER, being duly sworn, deposes  
and says: That he is a citizen of the United States  
and of the State of New York and a resident of the City  
of Brooklyn, State of New York. That he is thirty-  
four years of age and was born in Ireland.

That <sup>on or about</sup> ~~upon~~ the *first* day of *March*  
1890, he became a member of the New York Municipal  
Police Force and was stationed in the First Precinct.

That he remained a member of said Police  
Force during the period of \_\_\_\_\_ years and  
\_\_\_\_\_ months or until July 21, 1893. That  
during this period his record as a patrolman was clear  
and satisfactory to the authorities controlling said  
police force.

3

4 That on June 21, 1893, on the complaint of Henry Kress, he was indicted for assault in the third degree and for oppression. That upon March 16, 1894, he was tried and convicted before the Hon. Randolph B. Martine and a jury. That said Justice sentenced him to imprisonment for two months, which sentence he has fully served and satisfied. That he was entirely innocent of the charges made against him and that said charges were the result of a conspiracy between Kress and others to ruin and disgrace him. That at the time of his trial and conviction he felt and believed that this conspiracy existed and that the testimony given against him was false but he was unable to verify said belief and prove the same before a Court of Justice. That since his conviction information and proof have come to him of the truth of this belief, the sources of which are set out more fully in the affidavits of Harge, Fischer and Felix. That he verily believes that he will be able to prove upon the trial that his conviction was the result of a conspiracy entered into by Kress, Felix, Haege and others for the purpose of giving testimony in order to convict this affiant.. That said false testimony was given and was the only testimony introduced upon which

5

this defendant was convicted.

That the following is a condensed statement of the facts testified to by Henry Kress, Paul J. Feliz, Adolph Haege, Emile Tugendgrich, Helena Fuchs and Ignatz Arndstein (the complete record of the trial herein is hereby made a part of the moving papers, upon which this relief is requested)

That on the 14th day of June, 1893, and about halfpast eight o'clock in the evening, this affiant then a policeman in the City of New York, entered a saloon, that of the complainant, Henry Kress, on the corner of Nassau and John Streets and demanded a drink. That said complainant thereupon refused this request, upon which refusal after some conversation, he was taken into custody by the defendant herein.. That this defendant and affiant took said complainant to the police station, after roughly handling him and beating his companion Haege on the breast with his club and knocking him down in the middle of the Nassau Street..

That on the way to the station house an altercation took place between the affiant herein and Mrs. Fuchs, who remonstrated with this affiant for arresting Mr. Kress; whereupon defendant arrested



Mrs..Fuchs, calling Officer Ryan to assist him.

That upon arriving at the police station this defendant and affiant entered a charge against this complainant for disorderly conduct, and for making a noise on the sidewalk of John Street. That after some words the complainant was placed in a cell but was shortly afterwards bailed out.

On being brought before Judge Ryan at Chambers Street Police Court, the next morning, the complainant herein refused to employ a lawyer and said Justice fined this complainant five dollars for disorderly conduct, after holding a conversation with defendant and affiant herein, during which conversation said defendant and affiant stated his story of the arrest of said complainant.

That the complainant herein thereupon went before Police Commissioner <sup>Clare</sup> ~~McElaine~~ and before Inspector Williams, where he repeated his charges of assault &c. in the presence of defendant, of Sergeant McCormick, of Mr. Haeger, Mr. Felix, Mr. Turgendgrich and Mr. Henderson, and after hearing the above stated facts, Inspector Williams requested Kress to file his complaint with the Complaint Clerk, and from there the charge was brought before the Police Commissioner and a Grand Jury.

11.

Said complainant further testified that he was not standing on the corner of John and Nassau Streets when defendant approached him. That he did not threaten the defendant with "disgracing him" or "fixing him", and that Mrs. Fuchs called the defendant a dirty loafer.

This story of the case as told by complainant was substantially supported by

PAUL J. FELIX ✓  
ADOLPH HAEGE ✓  
EMILE TUGENDGRICH ✓  
MRS. FUCHS and  
IGNATZ ARNDSTEIN. ✓

12

PAUL J. FELIX:-

Testified that he was in the saloon on the corner of John and Nassau Streets at half past eight o'clock in the evening. That at that time he there saw defendant and asked complainant for a drink, and upon complainant's refusal that he saw defendant arrest complainant. That he then followed this defendant and complainant to the station house.

13

Said Felix now voluntarily comes forward and in an affidavit signed and sworn to on the 30th day of September, 1898, repudiates the

14

above testimony declaring that he was standing on the sidewalk in front of the saloon talking to Haege, Tugendgrich, Henderson and Arndstein, when this defendant came along. That defendant requested this gathering of men to move on. That complainant Kress, refused, declaring that the police had broken into his place on Sunday night and robbed him. That thereupon this defendant arrested Kress.

15

In this affidavit said Felix further declares that he testified falsely on the trial of this defendant at the solicitation of Mr. Kress and under an agreement with him and after talking over his testimony with him before the trial, complainant Kress, giving as his reason for entering this complaint, that he desired to get square with Officer Dwyer for arresting him.

The next witness,-

ADOLPH HAEGE testified on the trial that he was in the saloon at halfpast eight o'clock accompanied by a man named Fischer. That Fischer, Tugendgrich, Henderson and Smith and the complainant Kress and the barkeeper were in the saloon when defendant entered. That he heard complainant refuse to give defendant a drink and thereupon heard defendant say,

"I arrest you."

16

That thereupon defendant hit him, Haege, the witness, with his fist and knocked him into the street and that he then knocked him into the street ~~and~~ and that he then followed him to the police station and heard the charge against Kress, but that he did not hear complainant threaten defendant with "having the buttons taken off him".

17

Adolph Haege now comes forward and in an affidavit voluntarily made, signed and sworn to on the 24th day of September, 1898, he deposes and says, that the testimony given by him on the trial was entirely false. That at the time of the arrest he was standing on the sidewalk in front of Kress' place with Paul Felix, Samuel Henderson, Emile Tugendgrich, talking in very loud tones when this defendant came along in uniform and requested them to move on .

18

Thereupon Kress refused to move on saying that the police had broken into his place last Sunday night and robbed him.. Thereupon this defendant arrested Kress and afterwards arrested me..

That after being locked up we were released on bail. That we appeared at court the next morning before the Police Magistrate where Mr. Kress, the

complainant was fined Five dollars and I, Adolph Haege, the witness, was discharged.

19. Kress at that time repeatedly threatened that he would get square with this defendant. That many times thereafter and before the trial of this defendant, Kress requested me to testify that Dwyer came into the saloon just as he was about closing up and asked for a drink of beer and that because he refused him the drink he arrested Kress upon the alleged charge of disorderly conduct. That upon complainants solicitation he agreed to so testify, not daring to refuse because at that time he owed Mr. Kress money and was under obligations to him.

That in pursuance of said agreement with Kress he so testified at the trial, which testimony was not true.

20. He further deposes and says in his affidavit that he never saw Officer Dwyer on that occasion or at any other time. That he never heard him ask Mr. Kress for a drink and that the only time that he saw the defendant at that time was when he ordered him to move on.

That all the witnesses on the trial who testified for Kress agreed upon their testimony <sup>before</sup> ~~at~~ the trial.

That he makes this affidavit in order that the defendant may have <sup>the</sup> wrong which has been done him righted.

EMILE TUGENDGRICH testifies substantially to the same facts.

21

Your affiant further says that after most diligent inquiry he is unable to ascertain the whereabouts of said Tugendgrich and upon information and belief he believes that he has returned to his Austrian home..

*That* IGNATZ ARNDSTEIN, the bar-keeper, testified substantially the same and that his whereabouts after diligent inquiry is still unknown and seemingly unascertainable to this deponent.

22

That for the defense on said trial your affiant placed upon the stand Moses Cortrite, Harold S. Fairchild, James S. Tice and J.J. Moran, who testified as to the defendant's general reputation and good character.

That your affiant thereupon took the stand and testified that on June 14, at about 8:30 o'clock in the evening, while on duty on John Street, his beat extending from Gold Street to Broadway, he stood at the corner of John and Nassau Streets. At that time

23

complainant was just coming up the steps and on to the sidewalk. Your affiant was standing in front of Number 37 John Street and engaged in conversation with Mr. Cherry, a lawyer, and Mr. Shea, a desk manufacturer. That his attention was attracted by hearing a noise from complainant's place and then five or six people came out from said place, talking in a loud tone of voice and using vile language. That deponent requested them to desist, whereupon he was met with abuse from the group particularly from complainant, who cried out to deponent, "You are a thief; you robbed my place Sunday night."

24

Deponent further requested complainant to keep quiet, but complainant refused and dared deponent to arrest him.. Deponent thereupon arrested complainant for disorderly conduct.

25

That Haege and Tugendgrich who were with complainant made an attempt to rescue him. That while passing No. 63 Nassau Street on the way to the station house, Mrs. Fuchs, a friend of complainants, called deponent vile names and insulted him; tore his blouse open and demanded that he allow complainant to go. Deponent requested her to keep quiet and she refused. Deponent then called Officer Ryan and told him to arrest her also for disorderly conduct.

26

That on reaching the station house, deponent entered the charge of disorderly conduct against complainant and the next morning appeared in the police court and made the same charge in writing before Judge Ryan. That complainant upon being asked by Judge Ryan what he had to say replied , that he had nothing to say, whereupon Judge Ryan fined him Five Dollars.

That this testimony herein in favor of deponent was further supported by John Ryan, a member of the Municipal Police Court, who took Mrs. Fuchs into custody and testified as to the vile remarks she addressed to this affiant.

27

JAMES WADE, an electrician employed by the Mt. Morris Electric Light Company, testified that on the night in question he was in the neighborhood of Nassau and John Streets, about halfpast eight o'clock; that he saw a group of men consisting of Haege, Tugendgrich, Felix and Henderson standing on the corner talking very loudly. Upon defendant requesting them to go home and cease their disturbance he saw complainant put his fist in this defendant's face and call him "thief". That thereupon defendant arrested complainant.



28

That Tugendgrich accosted defendant and demanded that he should let complainant go.

29

THOMAS MC CORMICK testified that he was a Sergeant of Police, having been connected with the Police Department nearly twenty-two years. That on the night in question he was on duty in the First Precinct Station House. That he knew the defendant and heard him enter the charge against complainant for creating a disturbance by shouting and using profane language &c. That while in his presence complainant shook his fist in defendant's face threatening to get square with him and take the buttons off him. That in his opinion when brought to the station house, complainant was pretty well under the influence of liquor. That Mrs. Fuchs was lightly under the influence of liquor and that she admitted that she tore defendant's blouse..

30

JAMES L. THORER testified on behalf of defendant, that on the 14th day of June, at about halfpast eight o'clock, he was standing on the corner of John and Nassau Streets. That he saw a group of men on the corner talking very loudly .. He heard defendant advise complainant to go home and heard complainant answer with an oath, "You are a thief; you

robbed my place last Sunday. That he saw Mrs. Fuchs catch hold of the defendant by the blouse, at the same time calling deponent a "dirty loafer".

31 MARTIN MONK On behalf of defendant testified as to an attempt of the complainant to induce him to testify against this defendant.

That this is a resume of all the testimony introduced against this defendant and upon which testimony he was found guilty of the charge of oppression with a strong recommendation to mercy and sentenced to imprisonment for two months.

32 That deponent was desirous of entering an appeal therefrom and remained in the Tombs for a period of five weeks, trying to raise the necessary amount of money to perfect said appeal. That Mr. Fred. House of the firm of Friend & House, his attorneys, stated that One thousand dollars was necessary for this purpose. That after five weeks he found himself unable to raise this money and so went to jail and served his sentence. That at that time he knew that his conviction was the result of a conspiracy but could introduce no legal proof thereof.

33

That about the first day of September, 1898, he heard of the whereabouts of Adolph Haege and went to see him in the hope that said Haege would be willing to repair the damage he had done by his false testimony given on the trial. That he found said Haege residing at 428 Fifth Avenue in the City of Brooklyn. That said Haege willingly and freely signed and swore to the annexed affidavit in the office of James, Schell & Elkus, your affiant's attorneys.

That Paul J. Felix residing at Number 1 Fulton Street, Brooklyn, New York, willingly and freely made his annexed affidavit on the 30th day of September, 1898.

34

That after most diligent searching your deponent has been unable to find or discover the whereabouts of Tugendgrich and Arndstein.

That Martin Fischer although a witness of the arrest of the complainant, did not testify on the previous trial but has now willingly and freely signed and sworn to his affidavit annexed hereto. That deponent was guilty of no lack of diligence in not discovering the whereabouts of this witness before the trial. That prior to September, 1898, your affiant had no evidence saving his own conviction, that the evidence for the prosecution

35 witnesses for the prosecution were bound together in  
a conspiracy to accomplish the ruin of this defend-  
ant by perjury and false swearing. That as soon  
as practicable after the discovery of such evidence  
he has made this application. That he verily believes  
that upon a new trial he can clearly and distinctly  
establish his innocence of the crime of which he was  
charged and convicted.. That such conviction renders  
it difficult for him to obtain a livelihood and stamps  
his life with disgrace and shame.. That such un-  
36 just conviction obtained by fraud and conspiracy should  
be set aside. That he verily believes that without  
the perjured testimony of the witnesses Haeghe and Felix  
that this conviction would never be obtained. After  
having proved such testimony to have been false and  
the result of conspiracy he verily believes that a new  
trial should be granted to him herein.

Sworn to before me this :  
15 day of July, 1899.:

Francis P. Garvey  
Notary Public (99)  
N. Y. County

William Sawyer

Fol. 1

COURT OF GERNERAL SESSIONS OF THE PEACE.

PEOPLE OF THE STATE OF NEW YORK,  
Plaintiffs,

-against-

WILLIAM DWYER,  
Defendant.:

CITY AND COUNTY OF NEW YORK)ss.

A D O L P H H A E G E, being duly sworn, says-  
I reside at No. 428 Fifth Avenue in the City of  
Brooklyn. In June, 1893, I was acquainted with Henry  
Kress, who then kept a saloon at the corner of John and  
Nassau Streets in the City of New York, in the basement  
thereof. I also know William Dwyer the defendant  
above named, who in June, 1893, was a police officer of the  
City of New York, attached to the First Precinct.

I was present when officer Dwyer arrested Henry  
Kress in front of Kress' saloon, on June 1893.  
I remember very distinctly what occurred upon that occas-  
ion. I had been in Kress' saloon with Martin Fisher,  
Emil Tugenreich and Henry Kress during most of the after-  
noon of that day. We were drinking all that after-  
noon. Kress was occasionally drinking, but not as much  
as the rest of us. I was drinking beer, Kress was drink-  
ing wine.

About eight o'clock that evening Kress began to  
close up his place and Paul Felix, Samuel Henderson, Emil

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Tugenreich and myself preceded Kress to the sidewalk, where we waited for him, in the meantime we were talking in very loud tones, and officer Dwyer came along in uniform and requested us to move on.

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Just at that time Kress came up with us, and Dwyer repeated his statement to us to move on, and Kress refused to move on, and said that the police had broken into his place last Sunday night and robbed him. We all refused to move on, and then officer Dwyer arrested Kress, and afterwards arrested me. We went to the station house and there Mr. Kress and myself were locked up, and afterwards released on bail. We appeared the next morning before the Police Magistrate in the Tombs' Police Court, and Mr. Kress was fined \$5 and I was discharged. Kress said repeatedly that he would get square with officer Dwyer. He went before Police Commissioner McLean with me and we made charges there, but nothing came of that.

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After this occurred, Kress, Fisher and myself had many interviews in reference to Kress' arrest, and Kress asked us to testify that Dwyer came into the saloon just as he was about closing up and asked for a drink of beer and that because he refused him the drink he arrested him upon the alleged charge of disorderly conduct. We all agreed to do this. I did not dare refuse, because at that time I owed Mr. Kress money, and was under obligations to him.

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I attended the trial of officer Dwyer on the indictment, which was found against him by the Grand Jury, which trial took place before Mr. Justice Martine and a jury, and I testified as a witness for the people at the request of Mr. Kress. I testified there that officer Dwyer had come into the saloon in the evening, just as Mr. Kress was about closing up, and he asked for a drink and had been refused by Mr. Kress, and that thereupon or shortly afterwards officer Dwyer had arrested Mr. Kress for disorderly conduct, because he had refused to give him a drink. This testimony was not true, and I simply so testified, because Mr. Kress asked me to, and because I was unable to refuse him. I never saw officer Dwyer in the saloon on that occasion, or at any other time. I never heard him ask Mr. Kress for a drink, and the only time I saw the defendant that day was when he was on the sidewalk and ordered us to move on, when we came there after leaving the saloon, and when Mr. Kress, myself and others refused, he arrested Mr. Kress and myself. All the witnesses on this trial <sup>also</sup> testified for Kress, talked over their testimony with him before trial, and agreed that they would testify for him. Kress repeatedly stated to me and to the others that he wanted to get square with officer Dwyer for arresting him.

I make this affidavit in order that the defendant may have the wrong which has been done him righted.

Sworn to before me this 24<sup>th</sup> day of Sept. 1898.

*Rose M. Loughlin*  
Commr. of Deeds.  
N. Y. City.

*Adolph Kress*

COURT OF GENERAL SESSIONS OF THE PEACE.

.....X

THE PEOPLE OF THE STATE OF NEW YORK, :  
Plaintiff, :

-against- :

W I L L I A M D W Y E R, :  
Defendant. :

.....X

CITY AND COUNTY OF NEW YORK, ss.-

PAUL J. FELIX, being duly sworn, says:

I reside at Number 1 Fulton Street, Brooklyn, New York.  
I know Henry Kress who was the complainant in the above  
entitled matter. On the evening of June 14, 1898, at  
about half past six I went into the saloon of Mr. Kress  
on the corner of John and Nassau Streets in the City  
of New York to get my supper. When I went there I saw  
Haeg, Tugendreich, Henderson, Arnstein and Mr. Kress .

Before I saw officer Dwyer on that  
evening and at about eight o'clock all of those who  
were in the saloon including myself went out on the  
sidewalk, Kress being about to close the place for  
the night. I was standing on the sidewalk in front of  
the saloon talking to Haeg, Tugendreich, Henderson and  
Arnstein when Officer Dwyer came along. Kress was  
just then locking the door on the outside. Dwyer re-



quested us to move on. Then Kress came up the steps and Dwyer repeated his request to move on and Kress refused to move on and said the police had broken into his place on Sunday night and robbed him. None of us moved on and then Dwyer arrested Kress, <sup>and</sup> Haeg. We went to the station house and there Mr. Kress and Haeg were locked up. After this occurred I had a number of interviews with Kress and he requested me to testify upon the trial of Officer Dwyer whom he had indicted. I did testify as he requested me on the said trial. I never heard Officer Dwyer ask Mr. Kress for a drink, nor did I hear Mr. Kress refuse him a drink, nor did I see Officer Dwyer in the saloon on the evening of the 14th of June 1898. All of the witnesses on the trial who testified for Kress talked over their testimony with him before the trial. Kress repeated to me that he wanted to get square with Officer Dwyer for arresting him.

SWORN to before me this :  
30th day of September, 1898.:

*Rose M. Laughlin*  
*Commr. of Deeds*  
*N. Y. City.*

*Paul J. Kelly*



Fol .1

COURT OF GENERAL SESSIONS OF THE PEACE.

..... X  
THE PEOPLE OF THE STATE OF NEW :  
YORK, Plaintiff, :  
-against- :  
WILLIAM DWYER, :  
Defendant. :  
..... X

CITY AND COUNTY OF NEW YORK)ss.

MARTIN FISHER, being duly sworn, says:-

I reside at Union Hill, New Jersey. In June, 1893,  
I was acquainted with Henry Kress, who then kept a saloon  
on the corner of John and Nassau Streets, in the City of  
New York, in the basement thereof.

I know William Dwyer, the defendant above named.

I was present when the defendant Dwyer arrested  
Henry Kress on June 1893. I had been in Kress'  
saloon during the afternoon of that day with Adolph Haege,  
Emil Tugenreich and Henry Kress. We had been drinking  
wine and beer all that afternoon. Kress was drinking  
also, but not as much as the rest of us.

I saw officer Dwyer arrest Mr. Kress for disorderly  
conduct. The arrest took place on the side-walk in  
front of Mr. Kress' saloon. I did not see officer Dwyer  
in the saloon at any time that day, and I was there until  
the saloon closed up, until about eight o'clock that even-  
ing.

3

I never heard or saw officer Dwyer come into the saloom and ask for a glass of beer or a drink from Kress, and when Kress refused, threaten to arrest him. No such transaction took place.

4

I was present on the side-walk and Haage, Tugereich, Felix, Henderson and myself were making a lot of noise, talking loudly, when officer Dwyer requested us to move on. We refused to do so and just as we did, Kress came up and also refused, and then there were some words between Dwyer and Kress, and Dwyer then arrested Kress for disorderly conduct. This is all that took place in reference to Kress' arrest.

I did not testify on the trial of Dwyer. ~~After Kress had been arrested and fined in the Police Court, he repeatedly stated to me and to others that he wanted to get square with officer Dwyer for arresting him.~~

I have no interest in this matter at all.  
Sworn to before me this 3<sup>rd</sup> day of Sept. 1898.

5

*Martin Fischer*  
:) )  
*Robert M. Gill*  
*Notary Public*  
*NY County*

The within motion is hereby adjourned  
to Thursday, August 31st 1899 same  
time & place.

Dated N.Y. Aug. 25, 1899.

*Robert J. McKim*  
Attorney at Law

The within motion is hereby adjourned to Friday Sept 8/1899  
same time & place

Dated N.Y. Sept 5-1899

*Robert J. McKim*  
Attorney at Law

Please take notice that the within is a copy  
of

this day duly entered and filed in the within  
entitled action in the office of the Clerk of  
the  
in the Borough of Manhattan, in the City of New  
York.

Dated, New York, 1

Yours, &c.,

JAMES, SCHELL, ELKUS & MCGUIRE,  
Attorneys for

56 Pine Street,  
Borough of Manhattan,  
New York City.

Due service of a copy of the within  
hereby admitted.

Dated, New York, 1

COURT OF GENERAL SESSIONS.

PEOPLE OF THE STATE OF NEW  
YORK

against

WILLIAM DWYER.

(ORIGINAL.)

AFFIDAVITS & NOTICE OF  
MOTION.

*Abraham I. Elkus*

JAMES, SCHELL, ELKUS & MCGUIRE,

Attorneys for defendant,

56 Pine Street,

Borough of Manhattan,

New York City.



JOHN FENNEL,  
ATTORNEY & COUNSELOR AT LAW,  
No. 280 BROADWAY,  
STEWART BUILDING,  
1ST FLOOR, ROOM 2, CHAMBERS ST., ELEVATOR.

TELEPHONE: 3867 CORTLANDT.

NEW YORK, March 23d. 1894.

Hon. Randolph B. Martine,  
Judge, Court of General Sessions.

Dear Sir:

In the conviction of Officer William Dwyer I feel that I have secured a vindication, and that by their verdict they have declared that on the night of the 14th. of June, 1893, I was not guilty of disorderly conduct, as charged by Officer Dwyer. Now, that this result has been reached, I am content and have no feelings of animosity or spite against the officer, and recommend him to your Honor's extremest mercy and clemency.

I understand that Officer Dwyer has a wife and family depending upon him for support, and I do not wish to be in any way the cause of their suffering. I am also informed that the conviction of Officer Dwyer in all likelihood will result in his dismissal from the Police force; however this may be, in his conviction and my vindication I am satisfied that the ends of justice would be served, under all circumstances, by the slightest punishment you can inflict.

Yours very respectfully,

*Henry Press*

72 Nassau Street, N.Y. City.

# Record.

Name William Burger. Patrolman  
Appointed on Probation. May 8. 1891  
" June 10/1891. Age 26 yrs 3 mo 20 days

Date of Complaint		Date of Judgment	Judgment
July 27/91	Did not properly patrol	Aug 12/91	2 days
" 23 "	" " " "	" " "	1/2 "
" 23 "	Absent from post & in liquor store	" " "	3 "
Mch 20/92	Absent from post & coming from Oyster House	April 19/92	1/2 "
" 21 "	Did not properly patrol post	" " "	1 "
Feb 29 "	Absent from post & in conversation	May 24/92	2 "
June 7 "	Loitering & in conversation	July 1 <sup>st</sup> "	1 "
" 26 "	Absent from relieving point	" 15 "	1/2 "
" 26 "	At expiration of Patrol duty so much under the influence of liquor as to be unfit for duty, Did while in front of desk at S. H. at 12:25 am. say "I don't care a damn for any son of a bitch in the business"	July 22/92	1 day
Oct 10/92	Absent from return roll call	Nov. 11/92	1 day
	To second grade Dec. 30/92		

New York, March 28th, 1894.

To His Honor, Randolph B. Martine,

Court of General Sessions.

The undersigned, citizens of the First Ward, do most earnestly and sincerely petition Your Honor to consider carefully the case of William Dwyer, who will be arraigned before you for sentence Thursday, March 29th 1894 at 11 A. M. If it is impossible for you to find extenuating circumstances in his case, we pray that you will, for the sake of his wife and child, be merciful. That he may be let off with a fine, and not be made to suffer a term in prison, to the disgrace of a highly respected family is the earnest prayer of

Your most obedient servants,

*M. C. Murphy*  
*Francis Annis*  
*Augustus B. Peters*  
*Evan Shuman*  
*A. S. Shans 15 Broadway*  
*W. A. Nash 66 Broad*  
*Laffin Lovey*  
*J. Van Schaick*  
*J. R. Wood*  
*Henry A. Bush*  
*John J. Libroy*  
*Chas. J. Hauke*



Wm. Davis & Co

M. F. Proust 102 Maiden Lane

J. N. M. M. M. 148 Broadway

Snow & Finch, Co 151 Maiden Lane  
by Alden O. Snow Pres<sup>th</sup>

John Blumail 50 Maiden Lane

Morris & Myers 50 Maiden Lane

J. M. F. Proust 39 Maiden Lane

Chas. J. Bourgeois

78, 96, 98, 100

E. A. Johnson Jr. Maiden Lane

76 Maiden Lane

Robert Terane 27 Maiden Lane

Henry A. Bliss 23 Maiden Lane

C. Mäthen 21 Maiden Lane

John S. Spurr 15 Maiden Lane

F. G. Rof 14 1st 111 Lane

Wm. Barstman 1 Maiden Lane

Ruben Worn 102 Fulton St.

E. A. Phall 176 Broadway

C. E. Wackett 64 Nassau St.

William Jones  
47 Nassau St.

Edwin S. Co. of H. H. Nassau St.  
Samuel Oppenheimer 56 Beaver St.

Court of General Sessions of the Peace

491

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

*William Singer*

The Grand Jury of the City and County of New York, by this indictment accuse

*William Singer*

of the CRIME OF ASSAULT IN THE THIRD DEGREE, committed as follows:

The said *William Singer*,

late of the City of New York, in the County of New York aforesaid, on the *fourteenth*  
day of *June* in the year of our Lord one thousand eight hundred and  
ninety-*three*, at the City and County aforesaid, in and upon the body of one *Samuel*  
*Thress* in the peace of the said People then and there being, with force  
and arms, unlawfully did make an assault, and *Singer* the said *Samuel Thress*,  
did then and there unlawfully beat, wound and illtreat, against the form of the statute in such case  
made and provided, and against the peace of the People of the State of New York and their dignity.

~~DE LANCEY NICOLL,~~

*District Attorney.*

*Second*, COUNT.

And the Grand Jury aforesaid, by this indictment, further accuse the said

*William Surger*

of the CRIME OF *oppression*.

committed as follows:

The said *William Surger*,

late of the City and County aforesaid, afterwards, to wit: on the day and in the year  
aforesaid, at the City and County aforesaid, *being a public*  
*officer, to wit: a patrolman of the*  
*municipal police of the City of*  
*New York, unlawfully and*  
*arbitrarily, under pretense and*  
*color of official authority did*  
*arrest one Henry Gross, and*  
*detain him against his will;*  
*against the form of the Statute*  
*in such case made and provided,*  
*and against the peace of the*  
*People of the State of New York,*  
*and their dignity*  
*Delaney Mehl*  
*District Attorney.*