

0711

BOX:

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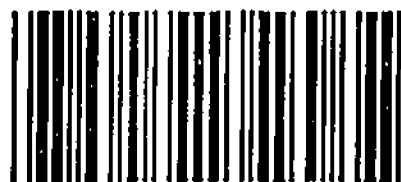
2715

DESCRIPTION:

Lomel, Philip

DATE:

11/02/87



2715

POOR QUALITY
ORIGINAL

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Phil. Schlenker
District Attorney

Witnesses:

John F. Ahern

John Lyra

Chas. McKean

W. Coogan

Geo. Kennedy

Bailed by
George Schlenker

2026 - 2d Ave.

I have carefully examined the
proof herein, and am of opinion it is
entirely sufficient to sustain the
indictment, which I ac-
cordingly recommend should be
dismissed.

May 13/90

AD Parker
Sgt

Counsel, J. B.
Filed, 2 day of Nov 1887
Pleads, Chy. 17/17

Section 96 Penal Code.

THE PEOPLE

vs.

B

Philip Lomel

W. J. M.
Nov. 17/87

RANDOLPH B. MARTINE

District Attorney.

A True Bill.

Geo. Schlenker
Bail docket
May 13/90

Court of General Sessions

The People
against
Joseph O'Neil

Trial Brief.

Memoandum for the Opening.

The defendant is indicted for perjury under § 96 P.C.

The crime was committed in the Court of General Sessions before Justice Cowing in the trial of Edward Hahn for the murder of Jack Thurey.

The trial took place on the 12th day of October, 1887.

The defense tried to show that Thurey did not die in consequence of the pistol shot received from Hahn, but in consequence of the improper treatment he received in the Government Hospital where he was confined from the 2^d of June to the 21st of June, 1887.

O'Neil testified that on the day of the John Thurey's picnic he was outside ^{of the hospital} the Chickens Market

and on that said day saw Jack Hursey in the hospital; that Hursey was pointed out to him, as Hursey was passing a window of the hospital, walking around there.

Hursey was received in the hospital on the 2^d of June, 1887, and died there on the 21st of June, 1887.

The Rehearsal picnic took place on the 25th of July, 1887.

No excursion boat landed at the foot of Governor's Pier.

It was a physical impossibility to see Hursey from the street walking around in the hospital.

Order of Proof.

- 1) Indictment against Hahn.
- 2) Oath administered to O'Neil
- 3) Jurisdiction of the court. Verdict.
Clerk of the Court.
- 4) Minutes of the Hahn trial
Stenographer
 - a) Inculcated part of O'Neil's testimony

- 6) Facts showing the materiality of O'Neil's testimony, to-wit: Hussey's improper treatment in the hospital.
- 7) Date of Shearn's picnic
John F. Shearn
Charles E. Peters.
- 8) Conversion boat landed at the foot of Gouverneur Street between the 2^d and 3^d of June 1887.
~~W. C. C.~~
J. W. Atkinson or Wm. H. Gilman
Charles E. Peters,
W. C. Edgerton
James J. Pucery
Officer Mosley.
- 9) Photograph of the ward where Hussey was confined.
George J. Hall
- 10) Impossibility of seeing Hussey from the street, the shutter being constantly down.
Henry Hoffmann
John J. Norton.

Court of General Sessions.

The People
against
Joseph O'Neil

Depositions:

John F. Shearer,

44 Governor St.

Clerk of the 3^d District Police Court. I am the standard bearer of the Shearer Association, whose head quarters is on the corner of East Broadway and Governor Street. This association held a picnic on the 25th of July, 1887. I am sure of this date. We started in the morning from the dock at the foot of Governor Street. There is a hospital on said dock. I do not know O'Neil, as far as can remember.

Henry Heffernan,

Orderly in Governor's Hospital.
Received Henry in the hospital
and placed him in the middle bed
on the North side of ~~the ward~~
of the hospital on the ~~third~~ floor
thereof. The doctors had given orders
not to allow him to leave the bed
and I watched him constantly
for that reason. He did not leave
his bed until ~~at~~ eight o'clock
in the morning of the 2^d of June
~~when~~ at which time I was re-
lieved by the day orderly. The
shutters of the windows were
never allowed to be opened, until
the windows were provided with
curtains, and that was done in

believed that he was all right, but I always allayed his anxiety to get out by saying, that he would be discharged in a few days, if he kept quietly in bed. I was constantly in the ward where Thorne was confined, except when assisting at an operation in another room, or fetching up drugs, or taking my meals. During my absence from the ward someone of the patients ~~would~~ kept watch and, if any thing happened in the meanwhile, I was usually informed thereof upon my return. The lower shutters of the windows were always kept closed, until we got aways, which occurred in August or September, 1887. Thorne could not have been seen from the street, even if he had been walking around in the hospital. I never saw him put his hands to a shutter.

James F. Duane

466 Morris St., Brooklyn

Wharfinger for the N. Y., New Haven
and Hartford R. R. Co. at Pier No. 57,
E. R., at the foot of Governor Street.
I have an account of all the excursion
boats that landed at said pier, ac-
cording to my account ~~there was~~
no excursion boat landed at said
pier during the month of June, 1887.
Boats some times land at said
pier, without my knowledge or per-
mission, but I am afterwards
informed thereof by the men on the
pier. I have not received such in-
formation during the month of
June, 1887.

W. C. Egerton,

Paris's Office, foot of Courtland St.
I am in the employ of Mr. Paris,
as general superintendent of the
excursion boats owned by Mr.
Paris. An examination of our
books shows that none of our
excursion boats landed at the
foot of Governor Street between
the 2^d and the 21st of June, 1887.

Charles I. Peters.

384 West Street,
Bookkeeper and Manager of
Priggs' Excursions. None of our
excursion boats landed at the foot
of Governor Street between the 2^d
and the 21st of June, 1887.

J. W. Atkinson,

Agent, or
Wm. H. Gibbons,

General Manager of Myers
Excursion and Navigation Com-
pany, 371 West Street.

Their record shows that none
of the company's excursion boats
landed at the foot of Governor
Street between the 2^d and the 21st
of June, 1887.

Officer Looley.

Watchman of the N.Y. N.H.
& Hartford R. R. Co. at Pier No. 37,
N. R., who was a municipal
police officer in June, 1887, and
stationed at the foot of Governor
Street says that to his knowledge
no excursion boat ~~landed~~ at the

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Foot of ~~Government~~ Street between
the 2^d and 3^d of June, 1887.

George P. Hall

157 Fulton Street,

Will identify the photograph
of the ward in which Thayer was
confined.

June, 1887. Jack Hursey was confined in the said hospital from the 2^d to the 21st of June, 1887. I remember that, while I was in the other ward on the same floor attending to an operation, Hursey got out of bed. I was at once called in, and found Hursey near the stove on his way to the water closet in the hall. He was not walking up and down or around the room.

We had strict orders from the doctors not to allow Hursey out of bed, but to keep him as quiet as possible. We paid more care to him than to other patients, because he was a powerful man and an object of public notoriety. The other patients in the hospital knew that Hursey should not leave his bed, and when he made the said ^{to get to the wing at} attempt, ~~the~~ several patients tried to prevent him from leaving the room. If he had left his bed at any other time, I would have heard it from the ^{other} patients. He was desirous to go home, because he

the latter part of August or the beginning of September, 1837. A patient could not be seen at the window of the hospital, by a person in the street. The chicken market is on the South side of the hospital, opposite the side where Thackeray stood. There are small tables between the beds on the South side of the room, which prevent a man from going near the window. The tables are from $1\frac{1}{2}$ to 2 feet wide, and this distance must necessarily be between the window and a man standing at the table.

Mr. Hoffmann has taken the measurement of the beds, of the space between them, of the small tables, of the shutters, of the aisle, etc.

John J. Norton,

640 Water Street.

Orderly in the Governor's Hospital. Have been such for about two years and six months last past. I was ^{and} orderly during the whole month of

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COURT OF GENERAL SESSIONS.

THE PEOPLE, &c.

vs.

Joseph D. Weil

BRIEF OF FACTS.

For the District Attorney.

Dated May 11th 1888.

Edward Groves

Deputy Assistant.

Court of General Sessions of the Peace
in and for the City and County of New York

The People of the State of New York
Plaintiffs.

- against -
Joseph O'Neil

Defendant.

Sir:-

Please to take notice that upon the annexed affidavit of Frederick B. House, the undersigned will move before the Hon. Henry A. Gildersleeve, Judge of above Court, at Part III thereof, to be held at the Court House, No. 32 Chambers Street, in the City of New York, on the 22nd day of March, 1888, at 11 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order dismissing the indictment herein, for want of prosecution.
Wlsted New York, March 21st 1888.

Yours Respectfully,
Frederick B. House,
Atty's for Deft.
25 Chambers St.
N.Y. City.

To
John R. Fellows, Esq.
District Attorney.

Court of General Sessions of the Peace
in and for the City and County of New York

The People of the State of New York
Plaintiffs

- against -
Joseph O'Neil

Defendant

City and County of New York. S.S.

Frederick B. House

being duly sworn deposes and says, that
he is one of the attorneys for the above named
defendant.

That on the 2nd day of November, 1887, an
indictment charging defendant with the
crime of perjury, was filed in this Court.

That more than four terms of this Court,
for the trial of causes have passed since the
filing of said indictment, without the trial
thereof, although such trial has not been
postponed upon defendant's application.

That said cause has been upon the cal-
endar of this court, a number of times for
trial, and although defendant was
ready and anxious for trial each
time, trial of said indictment was
postponed on motion of the people

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Sworn to before me this {
21st day of March, 1888. { Frederick B. Houder
Benjamin Hoffman
Com of Hoods
M. Co

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N.Y. General Sessions Court.

*The people of the State
of New York*

Plaintiff

against

Joseph O'Neil

Defendant

*Notice of Motion and
Affidavit -*

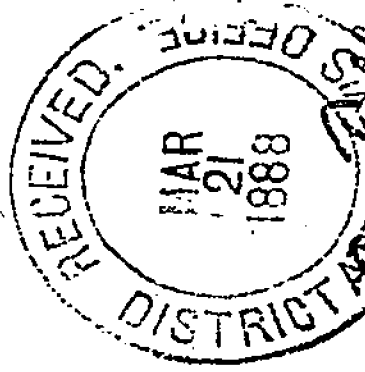
City

MERZBACH & FRIEND,

*Attorneys for
Friends & Family*

25 CHAMBERS STREET,

NEW YORK CITY.



*To
John H. Williams Esq
Chief Atty*

*Delivered to
23 March 88*

POOR QUALITY
ORIGINAL

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DISTRICT ATTORNEY'S OFFICE,
32 CHAMBERS STREET,

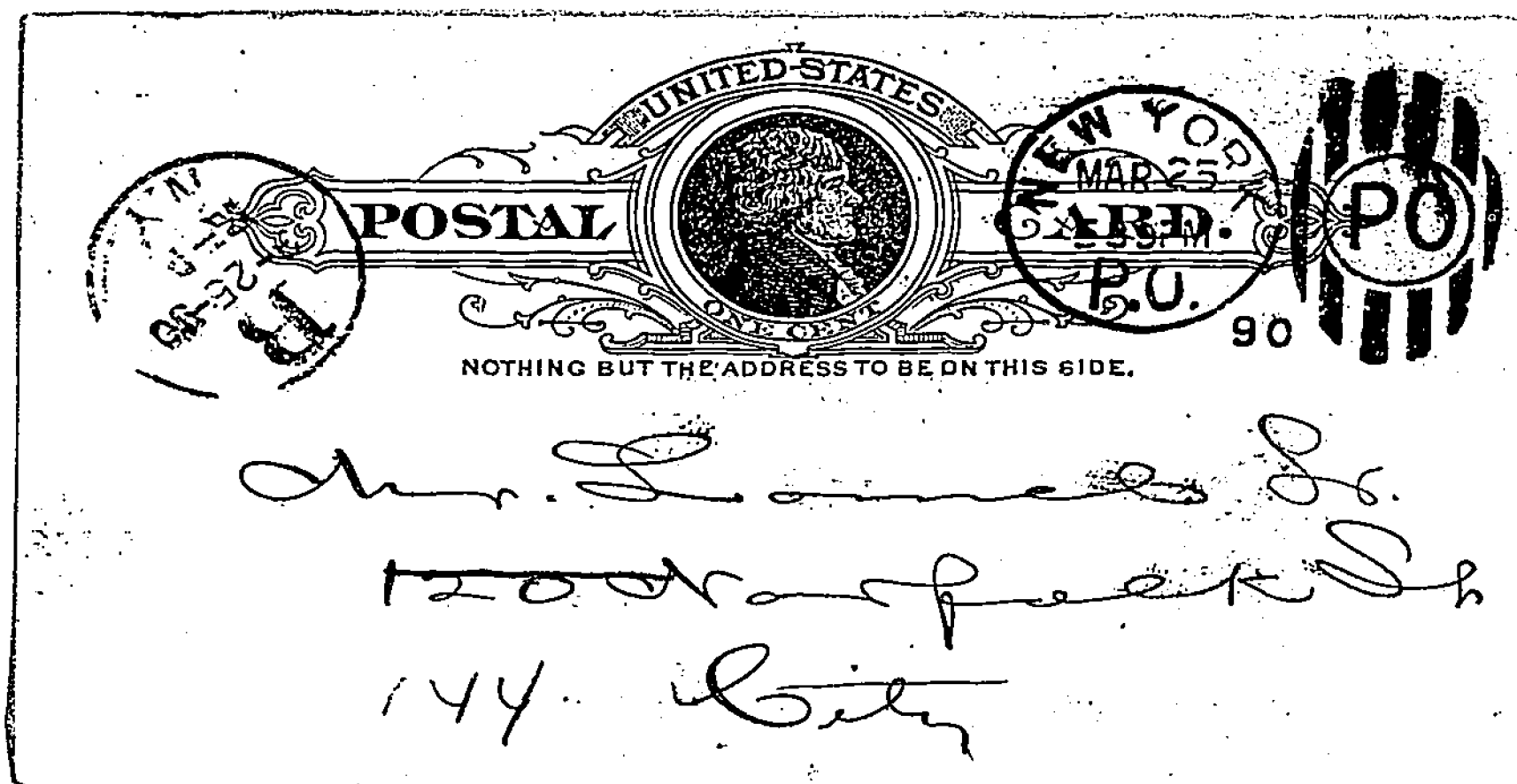
NEW YORK

March 25 1890

Dear Sir
Please send me
the Wednesday at 11 A.M.
(26th inst.) -
H. H. Robinson

POOR QUALITY
ORIGINAL

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Court of General Sessions.

The People
vs.
Philip Lomel

Indictment:

Perjury.

§ 96 Penal Code.

At the trial of Edward Hahn for the murder of Jack Nussey, before Judge Currier, on the 12th of October, 1887, the defendant swore that in the night of the 2^d day of June, 1887, he saw bricks, stones and missiles flying through the air, being thrown at said Hahn by a crowd of people collected at the corner of Jackson and Cherry Streets, and that there were building operations going on there at said time from where the stones might have been taken.

These statements are alleged as being perjurious. There were no building operations going on there at the ~~the~~ time, nor were

there any piles of stones in the street.

Perigraphic Minutes.

pp. 28, 29, 30 & 35.

Alfred H. Ducke, Perigrapher
150 Nassau St.

James Kennedy,

695 Water Street.

Will testify that there were no building operations going on and no piles of brick or stones near the place of shooting, and that no stones were thrown at officer O'Leary, nor any crowd pressing him. Was a witness to the shooting.

Charles Heckmann

635 East 17 St.

There were no building operations in the vicinity.

Matthieu Cogan

422 East 115 Street

Same testimony as Mr. Heckmann.

John Lyman

398 Front Street

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has refused to obey the sub-
poena to appear before me.
He has testified before Mr.
Parker that there were no
building ~~or~~ operations carried
on ^{in the neighborhood} at the time of the shooting.
This witness ought to be ex-
amined, before he is placed
on the stand.

James Kennedy,

695 Water Street.

Laborer. Previous to November, 1887, I was employed off and on as a lamp man by the Department of Public Works. My duties were to place lamps in the streets which were undergoing repairs. On the 2^d and 9^d of June, 1887, I was not employed by said Department, but I went every day from my home, at No. 72 Jackson Street, to the said department, almost every day for several years prior thereto. I know what the condition of said locality, where the shooting of Hursey occurred, was at said time. On the 2^d or 9^d of June, 1887, there were no buildings torn down or erected in said neighborhood. There were no piles of bricks or any other building materials lying in the streets of said block bounded by Cherry and Jackson Streets. I did not see any, but I would have ^{seen} them, if there had been any there. I was an eye witness of the shooting of Hursey by ~~Stahr~~ Stahr. Hursey stood at the southwest corner of Cherry and Jackson

Street, and Hahn stood on the North west corner of said streets. I heard three shots fired, one of which, the second, I saw it fired off by Hahn. He fired it across the street. At that time I came down Jackson Street towards Cherry Street, and when I saw the said shot fired, I turned around the corner into Cherry Street. There were ^{five to ten persons, but} no crowd near Hahn at said time. While in Cherry Street I heard a third shot fired, and when I returned, I saw about twenty to twenty five persons assembled around Hursey. I did not see any stones fly around. There were no stones thrown at Hahn. When Hahn fired the second shot, I was looking at him. There was no crowd pushing him. There were no building operations going on in said locality on the 2d or 3d of June, 1887. Several days after the shooting a building was torn down on the corner of Jackson and Cherry Streets. I am sure of these facts. I was living there with in a block of the shooting. I did

Charles Heckmeyer

635 East 17 Street.

I am in the lumber business. On or about the 14th of June, 1887, I commenced tearing down a building on the corner of Jackson & Cherry Streets. It was several days after the shooting of Hursey. I remembered this because a young man whom I employed to watch the said building told me on the first day of the employment, that the murdered man Hursey had been his uncle. At said time I had read a report about the shooting of Hursey in the newspapers, and I knew positively that the tearing down of said building was commenced after the shooting of Hursey, as reported in the newspapers. There were no building operations going on around said corner at said time, nor was any new building there that might have been finished just previous to said shooting. The building which I tore down, was a frame building, and there were no bricks in the street until

about one week after we commenced with the tearing down.

Matthew Cogass,

422 East 115 Street.

Builder, I have no special place of business. In the month of May, 1887, I visited Jackson and Cherry Streets to view a building on the corner of said streets, which I was to tear down. I did not see any building materials in that neighborhood. If any thereof had been lying in the streets I should have seen them. I commenced the tearing down of the said building on or about the 10th of June, 1887, and not sooner. The reason why I am positive about this, is that I told the people in the house, that they did not need to hurry with their moving out, as I would not commence with my work before the 1st of June, and I did not commence for over a week thereafter. The building was a frame building, and we did not place any bricks

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in the streets until ^{after} the 1st of July,
1887.

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COURT OF GENERAL SESSIONS.

THE PEOPLE, &c.

vs,

Philip Gould

BRIEF OF FACTS.

For the District Attorney.

Dated *November 18* 1887

Edward Green

Deputy Assistant.

-----X
The People

vs.

Joseph O'Neill & Philip Lomel
-----X

Testimony of defendants at the trial of the People
against Edward Hahn.

Joseph O'Neill, on behalf of the prisoner, being
duly sworn testified as follows:

Direct Examination.

By Mr. Howe:--

I live at 51 Rutger Street. I am a truck driver. I
remember the night of the shooting of Hussey. It was
on the 2nd of June. I came out of a liquor store 34
Jackson Street. on going down I heard a pistol shot, on
turning around I saw a man in the middle of the cross-
walk. The man was walking towards Grand Street. I saw
two or more men come out of a liquor store and follow
this man out. He followed him as far as the liquor
store on the other side of the way by the name of Lang-
don. I stood out side of the baker shop. This man ran
over towards me. I stood there and this gang followed
him, and when the pistol shot was heard there was a great
number of people backing up Hussey and following the
prisoner, as I understand now. I saw the man walk across
the street again and fire another shot in the air. The
man held the pistol by his side and walked up towards
Grand Street. The second shot - then he came over, he

went over again across the way and fired it in the air.
I am sure he did not fire it at any person. The gang
approached him from the four corners, that is in Jackson
Street, he stood amazed for a moment.

By Col. Fellows:

Q. You are sure he was amazed. A. I am sure he stood
and didn't know which way to go, then I heard another
pistol shot. That is all I heard of the shooting.

The people that were backing Hussey made every-
kind of threats. They were urging him on.

By the Court:- You don't know what he said? A. No sir

I am no friend of this man Hahn. I have seen him, I
believe it was the 15th or 16th of June. I was arrested
for an assault, and I seen this man in Essex Market.
We were not prisoners together. I was down in one end and
he in the other. We were prisoners. My lunch was sent
up to me, a can of tea and some sandwiches in a news-
paper. I seen an account of Hussey's trial in a paper.
I knew the keeper there, and he left me in the tier. I
read it to this man and he asked me if I knew anything
about it. I told him I didn't know anything. That was all
I told him I was there and saw it. That is how I came
here to-day. I have never been arrested before that.
I am a married man with family, and I was discharged
~~when I was arrested~~ I was acquitted of the charge
upon which I was arrested. and I was discharged.

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The charge was insulting a woman. I work for Dunham Buckley & Co. sometimes, Corner of Worth Street and Broadway. They are dry-goods merchants.

Cross-examination.

By Col. Fellows.

Q I have not seen Hahn since he has been in the Tombs. I was not locked up with him in that cell in Essex Market. I was locked up by myself, in a single cell. Hahn was locked up in another cell. I was there about eighteen hours. Hahn was not with me. He was there, he was about five cells below me. I could not talk from one cell to another. They let me out on the tier. I stood outside of my own cell. I did not go to his cell. He was inside of his. When I stood outside of my own cell, I did not read to him from there. I went up to his cell. I read it to him. He was inside. I made this known to him as a person who knew something about the occurrence.

Not until he asked me. Q. What had you said that gave him any reason to suspect you knew anything about it?

A I told him just exactly what I thought of the case.

Q I want to know what you said before that, that made him ask you? A. Before that I read it out of the news I did not know the prisoner at the time. I did not know that ~~Hahn was~~ the man I was reading to was Hahn.

Q After reading that account to a stranger locked up in a cell what was it that induced him to ask you if you

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saw the occurrence. There was nothing in the article that said you saw anything of it? A. No sir; I did not say anything to Hahn at the time about seeing anything of it, yet he asked me if I knew anything about it. Then I went on and told what I ~~have~~ saw to-day. I say I saw a man walking up towards Grand Street, and I saw two men coming out of a liquor store, and go towards him, walking up behind him, after a while he turned and the crowd kept following. There ^{were} ~~was~~ more than these two men. A crowd had collected.

Q. You didn't see anything to occasion a crowd to collect? A. I heard a pistol shot. I do not know where it was fired, or who fired it. It is strange that in that neighborhood that people should assemble when pistol shots are fired in the street, pistol shots are rare occurrences up there. It is not a very quiet neighborhood.

Q. These disturbances are not unfrequent there?

A. I can't answer that question; I don't belong up there.

Q. What do you know then about the practice of the people up there? A. I worked up there. Hahn did not tell me. I worked up there in Cherry Street for Teft, Weller & Co..

Q. You must have heard something the crowd said when they were backing up Hussey. You say they were urging him on? A. They were pushing him. They did not push him with their hands. They were merely pushing him with

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words. A. Yes sir; they were urging him on.

Q How could you tell whether they were urging him onles you heard the words?— you must have heard them, refresh your memory, you heard a man say go and kill that son of a bitch of an officer ?

A It was pretty hard to understand; I didn't.

Q Well, there is a cop; kill him, or go and do the cop, you heard that frequently?

A I don't remember.

Q Give us some langauge that induced you to think the crowd was urging Hussey on? A I can't answer that question.

Q Why do you tell the jury they were urging him on for all you know, they were trying to get him to to back?

A I don't know.

Q You didn't hear anything that was said?

A No sir.

Q Didn't understand a single word?

A If I heard it I don't remember it.

It was a good while after the shooting when I saw Hahn in Essex Market, about fifteen days. I used to work for Teft, Weller & Co. they stabled in the 7th Ward. This occurrence was in the 7th Ward. I had worked in that locality. I don't forget what excites my attention, and claims my interest in the space of two weeks. I had seen some shooting on that day on Jackson & Cherry Street I had seen Hussey assault this man Hahn, or go towards

him, backed up by a big crowd. I did not know Hahn at that time. Two weeks after that time I went to Hahn's cell and read him an account of this occurrence not knowing who he was, then I told him all I knew about it. It was fifteen days after the shooting. I didn't tell him any language these people used. I did not remember it.

Q. Isn't it true that you didn't hear a single word said by anybody that you could understand?

A. I might understand some. There was not a single word uttered that night that I could understand. Still, I tell the jury they were urging that man on. I told the jury that the gang was urging Hussey on. I saw men walking up towards the prisoner and the gang behind him, I don't remember the words they said.

Q. If you didn't hear the words they said, how do you know they were urging him on?

A. Only for the gang had a motive in doing such. They would not follow up the man. Hahn did not tell me the motive. I read it in the news. The gang was following Hahn for doing him an injury I suppose.

Q. I want to know what the paper said did you ever read any paper in this city that charged that the crowd was following Hahn? A. No sir. I never read any statement of that kind in the News or any newspaper. I believe myself it was their own motive. I did not gather that opinion without hearing a single word said. I was within two miles of Cherry street and Jackson street that night. I never knew or pretended to know one single

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thing about this occurrence until I was a fellow prisoner with Hahn.

Re-direct-examination.

By Mr. Howe:-

Q Do you mean to say you did not see this and that it is not true- your statement is not true - that you saw Hussey following him and the people were urging him on, and that you invented it when you saw Hahn in the prison?

A I am only giving my testimony of what I saw, what I have stated is true, what I saw there that night.

Q Did you understand Col. Fellows question, when he said it was not true that you knew anything about it until you saw Hahn in prison? A. I knew about it when I read it. I saw it. I am not blessed with a very fine education. I have driven for Teft, Weller & Co. two falls, in the year about six months, and for Dunham, Buckley & Co. ~~xxxxx~~ eight months. I have lived in that neighborhood about two years. I am no personal friend of Hahn. I came here to tell the truth.

Q Did you go to the hospital and see Hussey in the hospital?

A I saw Hussey in the hospital.

Q When was that? A The day of John Ahearn's pic, nic.

Q When was that? A I don't remember.

Q Who is John Ahearn? A He is some politician up there.

Q You only know of his name? A . Yes sir.

Q On that day you were in the hospital?

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A I was outside of the hospital, near the chicken market.

Q You didn't go there to steal chickens? A No sir.

Q You were at the chicken market? A Yes sir.

Q What took you there? A. Coming up from the dock after the excursion went out.

Q There's is a dock there? ^{yes sir} A. At the foot of the street.

Q You are of the same nationality as Hussey?

A I don't know.

Q You are Irish?

A I am Irish descent.

Q You knew Hussey by sight?

A I knew him by sight; yes sir.

Q You saw him that day? A I saw him that day in the hospital.

Q Whatever that day was? A Yes sir.

Q Cannot you think of the date? A I don't know what day it was.

Q What was Hussey doing?

A He was pointed out to me passing the window, walking around there.

Q In the hospital? A Yes sir.

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PHILIP LOMEL, called on behalf of the prisoner, being
duly sworn testified as follows.

By Mr. Howe:- I live at No. 120 Norfolk Street. I am
in the piano moving business. I work for an uncle of
mine named Louis Swain. My uncle has been in that busin-
ness for fifteen or twenty years. On the night of the
shooting of Hussey, I was on the corner of Jackson and
Madison Street, When I heard the first shot fired I ran
towards the direction from where the first shot came from
I was on the west side of the street. After I ran down the
west side of Jackson Street, I got near Cherry Street, and
saw a man with a light suit, the prisoner Mr. Hahn. I saw
the defendant Edward Hahn running from the south-west
corner of Jackson and Cherry Street. He was running
through the square. He got near the north-east corner or
on the corner, I don't know which it was. I saw him take
something and put his hand over his head, and seen a
flash of a revolver, and heard a shot. He held his hand
over his head and shot in the air. I swear to it I am
sure. I seen a crowd running after him. The crowd was
led by a heavy built man. John Hussey it was. He had on
a light shirt of white color. I think, he was bare-footed
and no hat, fully twenty or twenty-five people were fol-
lowing after Hussey. He said, Kill the son of a bitch he
is no good, and throwing stones and half of bricks at the
prisoner. The prisoner ran up Jackson Street on the east
side of the street, as he got within three houses from
Cherry Street the crowd was still running after him when

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I heard another shot and seen Hussey Stagger, and seen a policeman come along and took hold of Huusey, and he made strikes at him. I heard some one says helloo, I think it was the defendant, bring him to the hospital. I heard "ahn say, I have shot him, take him to the hospital. I lost my watch that night. After I got from the crowd I went to see the time, I had a silk cord on my watch and found the cord cut in two.

Cross-examination.

I know Mr. Hahn rahan ~~re-han~~. only from seeing him down here. I heard is name called Tuesday. I saw him last on Monday and Tuesday in the hall-way in this building. I may have seen him elsewhere. I never spoke to him. I may have seen him since last Monday, but I never spoke to him.. I was not before the Coroner. This is the first magistrate I have been before. This is the first time I have been before anyone in this case except Mr. Howe. I knew the man was accused of murder. I ~~knew~~ did ~~this~~ not know this action was going on before the Coroner. I read very seldom. I did not know there was any proceedings before the Coroner after Hussey's death. I first told the story four or five weeks after the shooting. I am slightly acquainted with the brother of Mr. Hahn, I got an introduction to him, at a ball last winter. I met him and said How do you do. He said how do you d. I says: It is too bad about that brother of yours. He said, yes. He said, What do you know about it? I said I seen part of that shooting affair last night. I am speaking e

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of the night of the shooting. I told him what I knew about the shooting that happened on the 2nd of June. Not last night. This was four or five weeks after the shooting. I met his brother and he said, the chances are you make a good witness in this case. I said if I have time to spare, and if I can do anything for you, you know where I live, you can come and can call on me any time. I have seen no one else since that. The only one I have seen is Hahn's brother. The only one I have told the story to was Mr. Howe. I told Mr. Howe, I think, four or five weeks ago. The date I cannot tell. I have only told him including the man I am working for. I don't know Mr. Moss or Mr. Hummel. I did not hear Hahn's brother's testimony. ^{I was positive} ~~that before the third shot was fired there was a crowd~~ I am quite sure - perfectly sure. that before the third shot was fired there was a crowd there, throwing bricks and stones at the prisoner. I will swear to it. It was quite dark, and I could not count how many were thrown. There was bricks, stones and missiles flying through the air - no razors. I seen them thrown after the second shot was fired. Before Hussey was wounded. The officer was not standing still when he held the pistol over his head and fired. He was running. After the second shot was fired, or at the time it was fired, I think, this large heavy man was within twenty feet of the prisoner, the crowd was still back of him. Hussey was the nearest man to the officer.

Q Will you tell me where you got the stones from?

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confine yourself to the stones?

A I cannot tell you. If I am not mistaken, I think there was a good many buildings at the time being erected in the neighborhood.

Q Were they erecting buildings of cobble-stones?

A You generally find all sorts of stones where they erect new buildings, to my judgment.

Q They threw bricks ?

A Yes sir.

Q Did you see where they got them from?

A No sir., all I seen, bricks were flying through the air, where they got them I don't know.

Q After the third shot was fired, there was a great deal of confusion? A. Yes sir; crowds were coming from all directions. This same crowd I saw at first were there. After the third shot was fired, I heard the prisoner saying: bring him to the hospital; I shot him. I don't know anything about that the prisoner came back to where the wounded man was. I saw officer Deegan or Dugan take hold of Hussey. It was officer Dugan that Hahn made that remark to. Hahn was close by him. I didn't see Hahn come up to where the wounded man was. When the third shot was fired Hahn was fifteen feet from Hussey to my judgment, that was when the last shot was fired. I didn't see Dugan have hold of Hussey and Hahn standing by. I saw Dugan take hold of Hussey, I know something about it. I saw Dugan and Hussey together. I saw Hussey

(5)

attempt to strike him, and I heard some remark, what he said I don't know. I heard him say something. I was on the opposite side of the street. I stood close enough to hear what I have sworn to. I don't know how near Hahn was when Duggan and Hussey stood together, when he told him to take Hussey to the hospital. I could not say whether Hahn was there at the time Duggan took hold of Hussey. I have said, I heard Hahn tell Duggan to take the man to the hospital. Hahn was about fifteen feet away when he said that. He shouted to him, called to him, stood there in the same place where he was when he fired the shot. The crowd with bricks and stones were near Jackson and Cherry Streets, back of Hussey. After the second shot was fired the crowds came from all directions Hussey cried out to the mob, "Kill the son of a bitch he is no good". Hahn only fired three shots. I heard them fired. I then saw a shot fired in the air. The crowd was coming on, led by Hussey. Then, three shots were fired. Then Hahn and Hussey were three feet apart. Then Duggan came up and took hold of Hussey, Hahn then told Duggan to take him to the hospital; He had shot him. At the time Hahn said that Hussey was in the same ^v place he was when he fired the third shot.

Q. Where was the crowd with the bricks and stones that were attacking him? A. They were right behind Hussey. They all rushed at Hahn still throwing stones.

Q. Quite a crowd of them? A. Twenty or twenty-five.

Q. Quite a rain of stones and bricks through the air?

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A Yes sir; lots of them; plenty of them.

Q The air was thick with them; plenty flying about?

A Yes sir .

Q See any of them hit Hahn?

A I seen half a brick go along side of his head..

Q See any of them hit Hahn?

A I wont swear to that; no sir.

Q Will you swear any of them hit him?

A No sir; I wont swear to that.

Q The crowd after the third shot was fired rushed on Hahn?

A Yes sir.

Q Hahn stood still in the same place?

A Yes sir.

Q It did not take the crowd long to rush fifteen feet, it is not more than from here to the window?

A I suppose the point of the pistol kept them back. The crowd rushed on Hahn. They did not go near him; they went within four or five feet to him. They kept throwing brick and stones until they got within four or five feet. There was one hundred and twenty at that time. The crowd came from all directions. I don't say they were all throwing. but who were I don't know. A great number were throwing. They were all throwing halves of bricks and cobble stones

Q By the third juror?

Q Did you know that this was Hahn's brother?

A No sir; I never saw the gentleman in all my life.

(4)

Q How did you know it was his brother at the time you met him?

A The next day I seen it in the paper. I was not very busy and I picked up the paper and I heard about the shooting.

Q How did you know it was his brother when you met him?

A I got an introduction to his brother at a ball.

Q Did you state the conversation with his brother?

A I stated it with the brother.

Re-direct examination.

Q By Mr. Howe:

Q You have been asked about coming to see Mr. Howe, when you first came to my office, If I am correct, I may be mistaken, I didn't speak to you, did I, try and recollect, see if I am in error?

A I remember you coming to the office and not speaking to you, then I remember your coming outside and asking me if I was a witness in Hahn's case. You asked me to tell you all I knew about it. There was a clerk of yours sitting at the desk and you told him to take down your answers and statement. That is the way my statement was taken down, by a man named Bruent. Yesterday I saw you. I saw you ~~xxx~~

Outside of the court room this morning in the Clerk's office. ~~xxxxxxx~~ No one in your office suggested anything to me what I should say in this case. My uncle, the piano manufacturer, lives at 17th Street and Avenue B. he keeps his office and trucks at eight and ten Union Square. His name is advertised there.. He has two trucks

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five carts, and two express wagons, two wheel carts for removing pianos. He moves for the large piano manufacturers, Steinway and people of that kind.

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THE PEOPLE OF THE STATE OF
NEW YORK,

against

Joseph O'Neill
and
Philip Lomeli.

Testimony of
above defendants
on trial of Hahn.

JOHN R. FELLOW'S,

DISTRICT ATTORNEY,

No. 32 CHAMBERS STREET,
NEW YORK CITY.

0757

Mr. Grace,
Dist Atty's Office.

Before

Hon. Rufus B. Lowrig,
and a Jury

New York, October 14th 1888.

[illegible]

Peter P. McLaughlin,
Official Stenographer,
34 Nassau St.
City.

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COURT OF GENERAL SESSIONS.

PART III.

The People of the State of New York. :

against :

E d w a r d H a h n . :

Before Hon. Rufus R.

Cowing, and a Jury.

New York, October 14th 1887.

APPEARANCES: For the People, Assistant
District Attorney Fellows.

For the Defendant, Mr. William

F. Howe.

Trial continued.

Mr. HOWE: Not desiring to interrupt your Honor's charge, I
have some requests to charge which I will ask leave to read ~~at~~
now.

The COURT: I would rather have them made at the end of my
charge; I may cover the points fully, and it may not be
necessary.

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The Court charged the jury as follows:

Gentlemen of the Jury: The defendant, Edward Hahn, is in your charge and is accused of the indictment of committing the crime of murder in the first degree, to wit: with having feloniously, willfully, and with malice aforethought killed one John Hussey on the second day of June 1887, in this city and county. The indictment sets out all the facts necessary to constitute murder in the first degree and that is the crime for which the prisoner is now on trial and upon which you are to determine as to his guilt or innocence.

This case was commenced one week ago this morning and it has now progressed so far, that after you shall have received my charge it will be wholly in your hands to determine the guilt or innocence of this defendant. Each one of you stated if I remember correctly, that you fully understand and appreciate the duties appertaining to the office of a Jurymen; and each one of you also stated that you could try this case fairly and impartially and decide it upon the evidence, and that you would do so. I don't suppose that any one of you has heretofore been called upon to settle a question so weighty as this one. It is important to the people of this great state, and it is certainly important to the defendant at the bar. So far as the people of the state

I are concerned, there is no crime which has a tendency to so disturb their peace, repose, and quiet, or to disturb the public order as the crime of murder; and there can be no question but that when the crime of murder is made out it ought to be punished.

Now, in disposing of this case gentlemen, you have sworn to decide it upon the evidence, and that alone. You are to do so fearlessly and without favor. This defendant is to be treated fairly; he has no peculiar rights because he is a policeman; he is a citizen as well as a policeman, and is subject to the laws of the land just as much as any other citizen; he is equally amenable to those laws, and he is to be tried by no other or different rule than any other man; there is to be no prejudice against him because he is a policeman, nor is there to be any favor shown him on that account; he is to ^{be} tried by the same rules as any other person who may be brought to this bar.

I Now, the law of this state provides that the killing of a human being by another, unless it is justifiable or excusable as I shall define those terms to you, is a crime. If it is a crime, it is either murder in the first degree, murder in the second degree, manslaughter in the first degree or manslaughter in the second degree. If it is not a crime

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it comes under what is defined in the law as excusable or justifiable homicide. You see at once that I am required to instruct you as to what constitutes the crime of murder in the first and murder in the second degree, manslaughter in the first and second degree, and excusable and justifiable homicide. I shall proceed in the first instance to read to you from the Penal code, the definitions of the various crimes, which I have just stated to you, and also of excusable and justifiable homicide; and shall then take up the definitions, and refer to the evidence to ascertain whether the act which has been proven is criminal or not.

The law declares that no person shall be convicted of murder or manslaughter unless the death of the person alleged to have been killed, and the fact of killing by the defendant as alleged, are each established as independent facts, the former by direct proof and the latter beyond a reasonable doubt. That John Hussey is dead is conceded by all the evidence in this case, therefore the first fact is established by the plain, unimpeached and uncontradicted evidence. As to the fact of whether his death was caused by the defendant, I shall have something to say later on.

Murder in the first degree is defined to be "The killing of a human being ' (unless it is excusable or justifiable,)

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when committed from a deliberated and premeditated design to effect the death of the person killed or of another."

Murder in the second degree is defined as follows:

"Such killing of a human being is murder in the second degree, when committed with a design to effect the death of the person killed, or of another, but without deliberation and premeditation."

The only distinction between these two degrees, you will observe is that in one deliberation and premeditation are required, and in the other deliberation and premeditation are not required. In both of them however, there must be intention to kill.

Manslaughter in the first degree is defined as follows:

"Such homicide is manslaughter in the first degree when committed without a design to effect death (unintentional killing) in the heat of passion, by means of a dangerous weapon".

Manslaughter in the second degree is defined as follows:

"Such homicide is manslaughter in the second degree when committed without a design to effect death, (the same as in manslaughter in the first degree, there must be an absence of intent to kill) when committed in the heat of passion but not by a deadly weapon, or by the use of means cruel and unusual".

The distinction therefore between manslaughter in the

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first and second degree, you will see, is that while both must be committed in the heat of passion and without an intention to kill. Manslaughter in the first degree must be committed either by means cruel and unusual or with a deadly weapon, while manslaughter in the second degree must be committed without the use of a deadly weapon and without cruel and unusual means.

So much for the criminal definitions which will be necessary and essential, for you to carry in your minds when you come to deliberate on the evidence in the case.

Now as to excusable homicide; "Homicide is excusable when committed by accident or misfortune in lawfully correcting a child or servant, or in doing any other lawful act, by lawful means with ordinary caution and without any unlawful intent". I don't understand in this case that the counsel claims that this was an accidental shooting.

Mr. Howe: Certainly not.

The Court: Therefore gentlemen, I shall not during the progress of my charge have anything more to say upon the definition of excusable homicide. I have read to you so that you may understand what constitutes excusable homicide.

What the law defines to be justifiable homicide you will be required to remember, and I shall read to you so much

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of the definition as appears to be applicable to this case:-

"Homicide is also justifiable when committed in the lawful defence of the slayer, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer, and there is imminent danger of such design being accomplished."

Now, gentlemen, those definitions, which I have read to you, I have read from the penal code of this state. Each of them I have read accurately so far as it applies to the evidence in the case, and each of them is the law applicable to this case.

In the outset, gentlemen, you understand undoubtedly that so far as questions of fact are concerned you are the sole judge.. I have no right to instruct you or give you any direction at all as to what are the facts in this case and I don't intend to do so. If, however, I shall inadvertently trespass on your domain, I hope that you will not pay any attention to it at all, but use your own judgment and consciences in settling every question of fact in this case.

You are not bound in the least by my opinion on the facts; your own judgments are to be your sole guide upon questions of fact. You will distinctly remember that if I

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I make any allusion to a fact being made out in the case you are not bound to agree with me, except where it fully agrees with your own consciences and judgment irrespective of my opinion. With reference to the law applicable to the case, you are ~~not~~ bound to take it from the court, remember it and be guided by it. You are to examine the evidence and ascertain the facts, and see how far they fit the law as I give it to you.

Now, gentlemen, I am going to discuss this case in an inverse order. I am going first to take up the defences, because if either of the defences in this case are established to your satisfaction this defendant must be acquitted. There is no escaping it. If either of the defenses, (and there are but two as I understand) are made out by the evidence it must result in an acquittal. As I understand from the learned counsel for the defendant, the first defence is that Defendant's act was not the cause of death. If this is true, then the defendant is not guilty of murder. The second defense is that defendants act, was legally justifiable before the law. If true, then the defendant is not guilty of any offence. Now, so far as the defence is concerned it is conceded by the undisputed evidence that Hussey is dead, and it is further conceded that the defendant shot him, that the shot took effect and made a pistol shot wound

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I in the abdomen of the deceased. The question now is: "Whether that wound caused the death of Hussey? If it did not cause the death nor contribute to it, then the defendant you see at once is not guilty of killing him and he should be acquitted.

Now this question has been discussed in numerous decisions in this country and in England, and I will read to you, as the law applicable to this case, and which will guide you in determining whether or not the wound was the cause of the death of Hussey, from Stevens Digest of the Criminal Law of England. In my judgment no abler law writer lives. Stevens says:-

I "A person is deemed to have committed homicide although his act is not the immediate or sole cause of death in the following cases among others; First: If he inflicts a bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment, or had observed proper precautions as to his mode of living. Second: If by any act he hastens the death of a person suffering from any disease or injury which would have caused death, the act would be charged against the party who did the killing as a homicide." Then he gives two examples, one under each of these heads,

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and I shall read to you each example so you may see how it is applicable: "A injures B's finger. B is advised by the surgeon to allow it to be amputated; B. refuses to do so and dies of lockjaw, A. has killed B, his act in that case in is the cause of b's death or a contributing cause, at least."

This is the second example: "A strikes b who is at the time so ill that he could not possibly have lived more than six weeks if he had not been struck. B. dies earlier than he otherwise would have died, consequently A. has killed B. "

No doubt the rule which prevails in these cases is; that as against a wrong doer every human being is entitled to every minute of his life, and if a man was dying and it could be definitely ascertained that he has but one hour to live, and an assailant should come and cut short his hour of life, he would be guilty of homicide, he would be guilty of taking away perhaps only thirty minutes of his life, or if he shortened the time by one minute he is responsible for the killing.

I shall now read to you from another eminent author of this country, Mr. Bishop, an able law writer. He says: "Whenever a wound is inflicted under circumstances which render the party inflicting it criminally responsible if death follows he will be deemed guilty of homicide though

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I the person wounded would have died from other causes, or would not have died from this one, had not other causes operated with it, provided the wound really contributed either mediately or immediately to the death, in a degree sufficient for the laws notice."

He says again by way of illustration: "In an old case it was resolved that if one gives wounds to another who neglects the cure of them, or is disorderly and doth not keep that rule which a person wounded should do, yet if he die, the person giving him the wounds will be deemed guilty of the homicide." He goes on to say: "And the doctrine is established that if the wound caused the death it is sufficient, though the individual might have recovered, had he used proper care himself, or submitted to a surgical operation to which he refused submission or had the surgeons treated the wound properly."

I Again he says: "If a person wounded would have died from some other cause already operating, yet if the wound hastened the termination of life, this is enough".

As against wrong doer, I repeat; a person is entitled to every minute of his life, and although he had been mortally wounded by another, and would have died in two weeks, yet if another person has taken off one week of his life he is ac-

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countable for the homicide. "If a person died from the wound, and from a surgical operation jointly, the wound must clearly be regarded sufficiently the cause of the death; if it is the cause, no more is required".

I have read to you from these eminent authorities and it will be for you to determine in the light of this law, as I have defined it, whether or not, the wound which the defendant admits he gave to the deceased, caused or hastened his death. This is the question for you to determine upon the first defense.

I will now draw your attention to the evidence applicable to this defense, and then I shall have nothing more to say upon it. If I remember correctly, and if I do not your better recollections must serve you, there have been two doctors called who have given a positive opinion as to the cause of death. Both of these doctors, if I remember their testimony correctly, have sworn that the wound caused an abscess in the abdomen, and a rupture of the abscess caused peritonitis, which caused death. Therefore you see at once, that if this testimony is reliable and I may say that there is not a particle of testimony in the case, as I remember from beginning to end contradicting it, the wound caused the death. If there is any such you will take

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it into consideration as against this evidence.

Both doctors therefore, attribute the cause of the death to the wound. The wound causing the abscess, and the abscess being ruptured causing peritonitis or blood poisoning and that causing death. The defendant claims, through his counsel, that mismanagement and improper acts on the part of the deceased caused his death. If I remember correctly, there has not been a single witness who has testified that John Hussey died from any such cause. If there is any such evidence, and I don't say there is not you will please tax your memories to find it. If ~~any~~ one has sworn that John Hussey came to his death by reason of eating grapes or other fruit or beef steak, or from any other act on his part, you will remember it and give it consideration. But I have stated, two doctors have sworn, one at least positively that the cause of the death was the wound. What are you going to say in the light of the evidence as to the cause of John Hussey's death?

I need not say anything more to you than this: That if you come to the conclusion from all the evidence in the case, that the wound was not the cause of the death, that he died from other natural causes, that the wound did not hasten or accelerate his death, you must acquit this defendant without leaving your seats; or if you have reasonable

WITHOUT LEAVING YOUR SEATS AS IF YOU HAVE REASONABLE

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doubt on that subject you must acquit him, because if defendant's act did not cause his death he is not guilty of homicide. Because you must determine upon the evidence whether or not this defense is made out. So much, gentlemen, for the first defense. I don't think I need draw your attention to any other evidence or say anything further on this question than I have already done.

Now we come to the next defense, as I have remembered the arguments and evidence, they have been very largely directed towards this defense. It is not the only defense, but it seems to me that it has the main ^{con}intention in this case, that is the defense of justifiable homicide. Gentlemen, this is a good defense when it is established; it is the law of nature, and it does not gain any force by reason of any statute. Every person, under certain circumstances has a right to take the law in his own hands and defend himself. But, the circumstances must be such as justify him before the law in doing so. Let me read to you Section 205 of the Code, which defines justifiable homicide: It is "When committed in the lawful defense of the slayer, when there is reasonable grounds to apprehend a design on the part of the person slaying to commit a felony or to do some great personal injury to the slayer, and there is imminent

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danger of such design being accomplished. " There is a decision in this state, which I have often read to Jurors which defines so tersely, concisely and plainly the law applicable to this defense, that I am going to adopt a portion of it as a part of my charge on the law in this case. I refer to a case decided many years ago in which the late Judge Bronson delivered the opinion in which he said--- "When one who is without fault himself, is attacked by another in such a manner, or under such circumstances as to furnish reasonable ground for apprehending a design to take away his life or to do him great bodily harm, or there is reasonable grounds for believing the danger imminent that such design will be accomplished, I think he may safely act upon appearances and kill the assailant, if that be necessary to avoid the apprehended danger; and the killing will be justifiable although it may afterwards turn out that the appearances were false, and there was ⁱⁿ fact neither design to do him serious injury, nor ^{it} danger that ^{it} would be done. He must decide at his peril upon the force of circumstances in which he is placed, for that is a matter which will be subject to judicial review".

That is the test, you are to review the facts and circumstances, and you are to determine whether he had reason-

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I able ground, taking all the facts and circumstances into consideration, to justify his belief. "There must not only be a reasonable ground for apprehending a design, but also a reasonable ground for beleiving the danger imminent."

I There is another rule which will guide you in settling this question of self-defense. It is right to the point and it is good law, and you are to be governed by it settling this question. It is as follows: "Where one believes himself about to be attacked by another, it is his duty, if possible, to avoid it, and the right of attack for the purpose of self defense does not arise until he has done everything in his power to avoid the necessity." This is a good rule and a wise one. The law must not be taken into ones own hands, except as dernier resort: if a man can avoid the necessity he is bound to do so, there must be a real or apparent necessity, necessity real or apparent is the key-stone of this defense. Could he with safety to himself have avoided it? If he could it was his duty to do so.. His right of taking the law into his own hands does not arise until he has done everything in his power to avoid the necessity of doing ^{so} it. I shall not go over all the evidence upon the defense, and if I dont allude to this or that witness' testimony, you are not to suppose that you are not to consider his testimony. You will take it all into con-

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sideration. Let me call your attention to some of the evidence bearing particularly on this question of justification. So far as I remember, three witnesses, have given an account of the occurrence, which took place in McEvoy's saloon; McEvoy himself, Featherstone, McLaughlin and the defendant and I don't remember of any other witnesses who has pretended to give one particle of testimony as to what took place in McEvoy's saloon. I need not say to you that there is discrepancy between McEvoy's, McLoughlin's, Featherstone's testimony, and the testimony of this defendant. It is not for me to say which one of these witnesses has told the truth; that became a question of fact, and a question peculiarly for you to determine. Has McEvoy, McLoughlin, and Featherstone told the truth, or has this defendant told the truth? The People claim that their witnesses have told the truth. But it will be for you to determine whether the claim is made out. The counsel for the defendant claims that his client has told the truth. On this question of credibility, I ought to say to you that you have a right in determining the credit due to a witness to observe his demeanor upon the stand, and his manner of testifying. You have a right to look at their cross-examination, and their whole conduct upon the stand.

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I For many years in England, and down to 1869 in this country, it was the law that the defendant was incompetent as a witness, he was not allowed to take the stand and testify in his own behalf. It was considered that the temptation to commit perjury was so strong that his testimony was not reliable, it was thought that his interests to prevaricate and to tell an untruth was so great that his testimony could not be relied upon. In 1869, however, the legislature of this state very wisely, I think, passed a law which they allowed the defendant to be a witness in his own behalf, leaving the question of the credibility to the Jury. So you see that now interest is a circumstance in every criminal case. The interest which a person has in the result, who is charged with a crime may be weighed as affecting his credibility. The people claim in this case that this defendant had every interest in the world to prevaricate and make the facts from what the People claim them to be; they claim that he has an interest to prevaricate because his life is in the balance; there can be no higher interest than this to affect a persons credibility. It is for you, gentlemen, to understand that you have a right to weigh this circumstance in determining the credit which you will give this defendant. It is not for me to say how much weight

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I you should give to it, or whether you shall give it any weight at all. But I say that it is a circumstance in this case. If I remember the testimony correctly, these three men went into McEvoy's saloon, McLaughlin, Hussey, and the defendant. When they were in there, the substance of the peoples testimony is, that Hahn the defendant asked the other two to take a drink and they accepted, the deceased for whiskey, McLoughlin asking for a cigar and the defendant for beer. About that, I think there is no dispute.

I The deceased helped himself to whiskey, McLoughlin took his cigar, and while the bartender was getting the beer Hussey took his drink, and then it was that the first altercation occurred. The defendant remonstrated with the deceased for drinking before him, and the deceased replied by stating that he had money and could pay for his own drink, or words to that effect. Some witness have sworn, even stronger than that. I think one witness at least swears that Hahn said "You are a mean man to drink before me when I am treating", or words to that effect; and that the ^{deceased} ~~defendant~~ retorted by saying; "You are a meaner one to speak of the drink, I have got money, I am not a beggar," There was the first clash, there was the first time, as I remember the testimony, that these two men came to harsh words.

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What then occurred? Here is where the discrepancy arises. Neither one of the three men swear that the deceased put his hand on or touched the defendant. All three of the men swear that Hahn left the saloon without taking his drink. That he went outside leaving the three in the saloon; that after he had been outside of the saloon a short space of time, he put his revolver through the slats of the door and stated to Hussey; "Come out here in the street" or "Now come out here you cur". About this there was a slight difference in what was said. McEvoy swears to it, McLaughlin swears to it, and Featherstone swears to it. These three witnesses have sworn to it. Gentlemen, did that take place? The people claim that it is a very important circumstance on the question of the state of mind in which this defendant was; on the question of intent, and on the question of premeditation and deliberation. That defendant denies that it took place. Who are you going to believe? Which of these witnesses tell the truth? I apprehend that when you retire to your room you will discuss the question and ascertain, if possible, who tell the truth as to what took place. If you come to the conclusion, gentlemen, that the witnesses for the people have told the truth, what is the fair inference for you to draw as to what defendant meant? The defendant

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I swears positively that Hussey followed him out of the saloon, followed him across the street; that as he went across the street he fired two shots in the air, and the third shot he fired when he was across the street, ten or fifteen feet away from Hussey. That ^{is} ~~in~~ his statement, whereas the testimony of the people is that the deceased did not leave the saloon during that time. Featherstone states that left the saloon and that he left the deceased and McLoughlin in the saloon. Is that true? Another witness has sworn that they were in there as much as five minutes before they left. Another witness has sworn that it was a minute, but all of these witnesses swear that for some space of time after the defendant left the saloon the deceased remained there. Featherstone says he went out of the saloon leaving the deceased and McLaughlin there, and at that time he saw the defendant crossing the street. Meantime there had been a shot fired. The defendant says that shot was fired into the air, and there is no question but that the first shot was fired in the air. The the evidence on the part of the people is that the deceased came out of the saloon with McLaughlin; that the deceased went over to a wagon on the sidewalk and leaned on it. The witness Lally also swears that deceased was leaning on the wagon. ~~He~~

MR. FELLOWS: Featherstone's testimony was,

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that these parties went out of the saloon, and just as he went out he saw Hussey against the wagon.

I THE COURT: I want to be perfectly fair, and if your recollections are better than mine, I wish you to correct me as I don't desire to mistake the evidence.

Some witness swore that Hussey came out of that saloon, went on the sidewalk and leaned on a wagon, and some of the witnesses swear that while he was in that position, the defendant, who was across the street fired at him. Is that true, gentlemen? The defendant says it is not true, and some of the witnesses also state it is not true. The people claim that it is true.

If it is true that Hussey came out of the saloon, walked up to this wagon and rested his arms on it, and that then the defendant across the street fired at him, what are you going to say as to the law of self defense? as I have defined it to you? What are you going to say as to the necessity if that is true, what are you going to say in the light of the other testimony, of the people, assuming that you come to the conclusion that it is true, that defendant challenged deceased to come out on the street with a pistol in his hand? If all of this testimony is true, what conclusion are you going to come to as to the question whether there was necessity real or apparent for the defendant to defend himself. If it was true that Hussey was resting upon the wagon

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looking over the wagon, when the defendant being across the street aimed and fired at him. Was he justified in doing so?

I As to this testimony there was a great deal of conflict.

I think all the witnesses agree that afterwards the deceased came from behind the wagon and started towards Hahn. All the witnesses agree that after that second shot the deceased

either ran or walked toward the defendant; that then there being according to some of the witnesses fifteen feet between them, the defendant the shot which the people claim was the fatal shot, the shot which caused the death of Jack Hussey.

Timothy Dacey says that about that time a car was coming along the street, that Hahn was on one side of the car, and the deceased was on the other. So that at that time when the car went by, the defendant fired a shot which the people claim was the fatal shot and inflicted the mortal wound.

Now, gentlemen, had defendant a right to fire at the deceased Could he not have avoided the necessity of doing so. To be

fair to him he says; there was a crowd there; but if I

I remember the testimony correctly they were in the rear of Nussey, and you must remember that the whole of this affair from the entrance to McEvoy's saloon down to the time when the first shot was fired does not seem to have taken a very long time. Where did this crowd come from. What ~~was~~ evi-

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dence in the case is there that they knew what was the cause of the altercation, or who were the contestants? Dacey says that he heard a woman scream, and the People claim that whatever people were there, were drawn there from curiosity, from the fact that near midnight they heard a pistol shot. The people claim that this is a fair inference, because this whole thing occurred in a very short time. The People claim that there was not time to marshall a mob or a crowd, but they claim that they were brought there from the fact that the pistol was fired. Dacey, who seems to be a disinterested witness, says that he saw a certain number following behind Hussey, and that he heard a shout or a call from a person in light clothes; "Go back", or something of that kind, and that they all scampered into the hallways. Is that true? Did this crowd which was following after or behind Hussey, ^{on} command from the defendant, he being the person dressed in light clothes, seek the hallways and leave their leader. So far as the firing of stones is concerned, several witnesses who have been called, say that they saw no missiles or stones thrown. Now, gentlemen, taking this as the true version of this case, if you come to the conclusion it is true, what are you going to say? In determining whether this shooting was justifiable or not. What are

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I You going to say in the light of this rule which I read to you for a second time, " When one believes oneself about to be attacked by another, it is his duty if possible to avoid it, if possible, and the right of attack does not arise until he has done everything in his power to avoid its necessity". A man must not invite an attack for the purpose of slaying the person who attacks him. He must not in bad faith cause a person to attack him for the purpose of getting a better opportunity to slay him. He has no legal right to do this. He must be without fault himself. The law goes so far as to say that, where two meet and fight in a street neither one until he has withdrawn from the fight and retreat has the right to kill the other . He must desist from fighting before he can exercise that right. I think, gentlemen, I have said sufficient on this question of self defense for you to thoroughly understand the law applicable to the same, and you are to determine, taking the whole evidence into consideration what the true circumstances are which surrounded the defendant at the time .

I Whether he was justified in apprehending, as design to take his life, or to do him some great personal injury; and whether, taking all the circumstances into consideration, such danger was imminent that the design would be accomplished.

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I If you come to the conclusion that the circumstances justified the defendant in believing and apprehending that there was a design to do him great personal injury, and that the danger was imminent, and that he rightly and properly invoked the law of self-defense, then you will acquit him. You will also acquit him if you find that the wound was not the cause of Hussey's death. I have stated the law to you applicable to those two defenses and I hope I have stated it so that you thoroughly understand it. If you come to the conclusion that either one of these defenses is made out in this case you will acquit the defendant. But, if you come to the conclusion, gentlemen, upon ^{all} the evidence in the case that the pistol shot wound was the cause of the death, and that that wound was inflicted without legal excuse or justification then this defendant is guilty of some crime.

I The people claim that the evidence in this case establishes that the defendant is guilty of the crime of murder in the first degree, and it will now be my duty to define again, murder in the first degree, and also the definition of murder in the second degree, and the two degrees of manslaughter, and to inform you what facts are essential, and necessary to be proven in each one of the offences before the defendant can be convicted. I will assume now, by way

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I of argument that you have come to the conclusion that the defendant is guilty of some crime. Before you can convict of murder in the first degree, you must find that this defendant killed John Hussey; second that the killing was intentional, and third, that he did it with a deliberate and premeditated design to effect his death. These are the facts which you must find before you can convict of murder in the first degree. That John Hussey' is dead is proven beyond question. If you come to the conclusion that the defendant first; killed him, then the question is; did he intentionally kill him; and second; did he intentionally kill him with a deliberate and premeditated design to effect his death. Now, as to the law which is to govern you in arriving at a conclusion as to what was his intention, and whether there was deliberation and premeditation, I shall make as a part of my charge the opinion of Chief Justice Ruger, in the case of the People against Conroy. This is the law of this state and is applicable to this case. First on the question of intent, Judge Ruger says:- "In capital cases as well as other cases, it must be held that a person intends that which is the natural and necessary consequence of an act done by him, and unless the act was done under circumstances which preclude the existence of such an intent, the Jury has the right

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I to find from the result produced an intention to effect it. Whenever intent is made an element in determining the character of an act, it is in accordance with our general observation, and experience to infer its existence by reference to the laws which have usually and generally been found to control human conduct. Indeed it is the only method by which intent can be made to appear; the intent formed is a secret and silent operation of the mind, and its only visible physical manifestation is in the accomplishment of the act determined upon. The individual whose intent is sought to be ascertained, may remain silent, or if he speaks may, and probably will if he has a crime to conceal speak untruly, and thus the mind is compelled from necessity to revert to the actual physical manifestation of intent exhibited by the result produced, as the safest if not the only proof of the fact to be ascertained. This rule is always applied unless from the circumstances of the case, it affirmatively appears that the will of the actor was subordinated to some controlling and irresistible cause precluding the existence of any voluntary mental action".

I The Judge Ruger cites with approval, Starkie on Evidence and says "that a rational agent must be taken to contemplate and intend the natural and immediate consequences of his own act is a presumption so cogent as to constitute

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rather a rule of law than of mere evidence". There is a general presumption in criminal matters that a person intends whatever is the natural and probable consequences of his own actions. It was said by Judge Andrews, that it is a fundamental rule of evidence of very general application that a man is presumed to intend the natural consequences of his acts."

There is one other section of Judge Ruger's opinion which I shall read to you on that subject:- If a person is undisturbed by sudden and uncontrollable emotions excited by unexpected and observable causes and is in the possession of his usual faculties, it will be presumed that his actions are prompted by reason, and are the result of causes operating upon his mind, and deemed sufficient by him to inspire his action. A strange person meeting a stranger upon the street, and in the absence of a sudden impulse produced by an observable cause, without words of explanation or warning, immediately drawing a deadly weapon, and therewith causing death unquestionably brings himself within the provisions of the statute and penalties prescribed for the punishment of the crime of murder in the first degree. The shortness of time elapsing between the conception of the intention and its execution form no legal defense to the crime. Under such

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I circumstances it would be impossible to conceive of a voluntary act, the commission of which requires physical exertion as being independent of mental operation and unaccompanied by a determination to perform such act."

Now this law is to govern you in determining the question of the intent of this defendant. The people claim in this case that it is shown that a deadly weapon was used and that it was fired at a vital part of the body of the deceased. If all of these facts are made out by the evidence they are to be considered by you in determining the question of intent. What is a man's intention who uses a deadly weapon and inflicts a mortal wound The law is, that a man is presumed to know and intend the natural consequences of his own acts. So much for the question of intent. You are to take the evidence as to what took place in the saloon, and all the other evidence into consideration and determine what was the intent of this defendant.

I Up to 1872, that law of this state left out the word "deliberation" in cases of murder in the first degree. At that time the courts had construed the law to be that if a man formed an intent to kill, and immediately carried that intent into execution, it was murder in the first degree. All that was necessary to prove that the intent to kill

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I preceded the act. In 1872 the legislature amended that law by putting in the word "deliberation", and ever since this law went into operation there has been a great many cases on the question of what constitutes premeditation and deliberation. The law as to this question is well settled in the case of the people against Conroy which was tried before me in this court, and in which the Court of Appeals passed upon this very question of premeditation and deliberation, and they have explained it so concisely and plainly that I can do no better than read to you from the opinion of the Chief Justice, and instruct you that that is the law which is to govern you on this question of premeditation and deliberation. He cites in the first place the opinion of Judge Danforth in the case of Leighton and says: "If the killing is not the instant effect of impulse; if there is hesitation or doubt to overcome a choice made as the result of thought however short the struggle between the intention and the act, it is sufficient to characterize the crime a deliberate and premeditated murder"

I The law does not fix any portion of time, a minute, a week or a day, in which a person is to premeditate and deliberate to kill

He also cites another case in which the opinion was rendered by Judge Earl, than whom in my opinion, there is no

and that is the case of the State vs. Earl

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abler Judge in the Court of Appeals of the State of New York. Judge Earl says: "Under the statute there must not only be an intention to kill, but there must also be a deliberate and premeditated design to kill. Such design must precede the killing by some appreciable space of time. But the time need not be long. It must be sufficient for some reflection or consideration upon the matter, for choice to kill or not to kill, and for the formation of a definite purpose to kill. The human mind acts with a celerity which is impossible to measure, and whether a deliberate and premeditated design to kill was formed must be determined from all the circumstances of the case."

This law is to guide you in settling the question of deliberation and premeditation. In order to find the defendant guilty of murder in the first degree you must find that he killed John Hussey without justification or excuse; you must find that he intentionally killed him, and you must also find that he did it with premeditation and deliberation. If you examine all of the evidence in this case and come to the conclusion that all the facts as you shall find them fit the definition of murder in the first degree as I have defined it to you, beyond a reasonable doubt, it will be your duty to convict. If you come to the conclusion that the evi-

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dence does not make a out all of the elements of that crime, then you will pass to murder in the second degree. The only difference between murder in the first degree and murder in the second degree is that murder in the first degree is done with deliberation and premeditation, and murder in the second degree is done without premeditation and deliberation, but intentionally.

We come now to manslaughter in the first degree. That crime is where there is an absence of intent to kill, where it is done in the heat of passion, and by means of a dangerous weapon. In this case, in order to convict the defendant of manslaughter in the first degree, you must find that there was an absence of an intent to kill and that it was done in the heat of passion, and with a deadly and dangerous weapon.

Manslaughter in the second degree differs from the first only in the fact that it must not be done with a deadly and dangerous weapon.

Now, gentlemen, of the jury, it is for you to determine the question of passion. Was there any passion or any cause sufficient in your judgment to have engendered passion. It does not appear that there was any mutual combat unless it be the defendant's testimony that the deceased took hold of

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his coat, and it doesn't appear that there were any blows struck.

MR. HOWE: The defendant swears that a stone struck him.

THE COURT: Yes, he says a stone struck him. As I understand it that stone was not fired until after the second shot. I desire to avoid as far as possible going into the evidence. I don't want to say much about the evidence. You must determine first, gentlemen of the jury, taking all the evidence into consideration; was the accused justified in shooting deceased. In the second place, if the act of shooting was not justifiable, of which one of the four crimes has this defendant been guilty. ?

There are one or two other matters which I ought to call your attention to. First the question of character: The character of the deceased, and the character of this defendant. I will say to you in the first place that I did not allow the evidence of the character of the deceased to go before you for the purpose of establishing that defendant had a right to kill deceased, because he was a bad man. There is no such right. If a man goes into States prison and there kills the most vile and wicked prisoner, he is guilty of murder in the first degree and will be hanged for it. There is no law which gives any man a right to take

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the life of another, even if he be the most despicable creature in the world. The law protects all alike. There is not one law for the bad man and another law for the good man, but the same law applies to both. No one has the right to take the life of any human being on God's footstool for the reason he is a bad man. The law don't allow individuals the right to determine what persons should be put to death. I did not allow that evidence for the purpose of creating a prejudice in your mind against the people. You are to consider the character of the deceased in considering the defendant's defense of self defense. I allowed it for that purpose and for that purpose only. In determining the question of whether he acted in self-defence, you have a right to consider that as a circumstance in weighing the question as to whether he had reasonable ground to believe that his life was in danger. You have a right to weigh and consider his character for quarrelsomeness in determining whether the circumstances surrounding this defendant justified him in the belief that his life was in danger. I exclude all specific acts of assaults on other persons for the simple reason that they would complicate the case, ~~and the evidence~~ and would raise issues innumerable, and the evidence would have been illegal. I therefore ruled, out as I think the law of this State has well settled that they

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should be ruled out all evidence as to specific acts of violence against other persons.

I also charge you that anything that counsel have said by way of argument is not evidence. You must be very cautious when you go to your room in reference to this. You may get some aid from counsel's speeches but they are not evidence. You are in no way bound by them. Able speeches have been made on both sides and they may aid you in settling different questions but I repeat they are not evidence, and you should be very careful not to mix them up with the testimony of the witnesses.

Now as to the question of the character of this defendant. It has been held in this state that evidence as to character is admissible in every case. It is a circumstance which is to be weighed in conjunction with the other evidence in the case. Several witnesses have testified as to the defendant's good character, and you are to give that testimony just such weight as you consider it entitled to.

There is no conclusive presumption of law that a man whose character is good is innocent of crime. The Jury have a right to and should weigh it in determining the question of his guilt or innocence. There is one word I desire to say, and then I shall have finished. We have been a

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week trying this case. You have all been selected by the defendant as well as by the people because you were intelligent gentlemen. The County has been put to great expense in trying this case, and I say in the interest as well as the People that you should try to reconcile your differences, and come to some conclusion in this case. Don't, of course, violate or stifle your own consciences. Don't decide contrary to your judgments, but try and come to some conclusion consistent with your judgment and consciences. I urge you to come to some conclusion.

If, after you shall have examined all the evidence from beginning to end, it leaves upon your minds a reasonable doubt as to whether this defendant is guilty or innocent, give him the benefit of the doubt and acquit him. I think I have covered all that is necessary for me to say.

MR. HOWE: Your Honor omitted the usual legal charge which is necessary from the Court; if the Jury conclude that the prisoner is guilty of some offence and have ~~and~~ doubt as to what grade it is, their duty to convict of the lower grade.

THE COURT: I so charge.

MR. HOWE: I have some exceptions to take to your Honor's charge. As to the law of self-defense, your

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Honor stated to the jury that it was the duty of the defendant to avoid the attack.

THE COURT: If in his power to do so.

MR. HOWE: But I ask your Honor to add that if in avoiding it, he would be at all imperilled then it was not his duty to avoid it.

THE COURT: Under scertain circumstances a man may stand his ground.

MR. HOWE: In speaking of Lally's evidence, you said that Lally stated that Hussey was leaning on the wagon.

THE COURT: I have corrected that.

MR. HOWE: You stated that if a sane person draws a weapon then the intent must be inferred from that--- I ask you to charge that in taking that into consideration the jury must also take into consideration the circumstances of the case.

THE COURT: Certainly.

MR. HOWE: As to character, I ask your honor to charge these propositions: That the jury shall take into consideration in determining this case the good character of the defendant, if it has been established to their satisfaction.

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THE COURT: I have already charged that.

MR. HOWE: That the defendant having evidence of good character he is entitled to the benefit of it when he is accused of crime which is inconsistent with that good character; and that good character is the eye-glass through which the Jury may look at the case.

THE COURT: He is entitled to have that considered in every conceivable aspect of the case.

MR. HOWE: I ask you Honor to charge the Jury that the mere fact that when Hussey was searched at the Hospital no weapon was found on him, is not to control the Jury in determining whether the defendant had reasonable cause for believing his life in danger.

THE COURT: That is a circumstance.

MR. HOWE: It is immaterial whether the defendant was actually attacked, or merely assaulted; if the jury believe that from the manner of the deceased, and the crowd following him, the prisoner believed his life in danger or believed himself to be in danger of great bodily harm, he had a right to shoot, and the Jury must acquit.

THE COURT: I have covered that ground.

MR. HOWE: That even if the defendant was the aggressor in assaulting the deceased--- if the jury believe

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that before the wound was given the prisoner ran away and was pursued by Hussey, and if in such pursuit Hussey ~~had~~ had shot the prisoner, such shooting would not be justifiable on the part of Hussey, because in that case Hussey would have no right to pursue the prisoner.

THE COURT: That is so.

MR. FELLOWS: That is not this case.

MR. HOWE: If the jury have a reasonable doubt whether the defendant was justified in believing his life in danger, or in danger of personal injury to himself, they shall not convict.

The COURT: That is so.

THE JURY RETURNED A VERDICT OF NOT GUILTY.

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..... COURT.

Handwritten notes:
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4-11-1888

**TRANSCRIPT OF
STENOGRAPHER'S NOTES.**

NEW YORK, 188

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The People of the State of
New York,
against
Edward Stahl,

Before

Hon. Rufus B. Cowing,
and a Jury.

New York, October 12th 1887.

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[illegible]

Peter P. McLaughlin,
official stenographer,
No. 34 Nassau St.
City.

0800

The People of the State of New York
against
EDWARD HAHN.

New York, October 12, 1887

F R A N K L E O N A R D , a witness called on behalf of
the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Howe:

Q You are, as I take it by your uniform a member of the
Fire Department of this city ? A Yes, sir.

Q How long have you been in that Department ? A Going on 15
years.

Q Fifteen years ? A Going on 15, past 14.

Q Were you confined in the Gouverneur street hospital in
this city ? A Yes sir.

Q Were you a patient there ? A Yes sir, on two occasions.

Q At the time that John Hussey was there, suffering from a
shot wound ? A Yes sir.

Q When was it you were there ? A I entered Gouverneur Hospital

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on the 27th day of May last, and I left Gouverneur Hospital
on the 20th day of June.

Q When was Hussey brought there? A On the evening of the 2d
of June, on a Thursday night, I believe that was the night

Q Were you there when he died? A No sir

Q You had left? A I left on the 20th, the day before he
died.

Q Now, on the morning after he was brought into the hospital
did you see him? A Yes sir.

Q Was he in bed? A Yes sir.

Q Was he talking? A I spoke to him myself.

Q What did you say to him?

Col. Fellows: I object.

Mr. Howe: I offer this on two grounds,
first, in contradiction of the anti-mortem state-
ment to show that he was not about to die, and
that he did not believe that he was about to die at
the time he made it; and also separately and dis-
tinctly for the purpose of showing that Hussey was
not properly treated, and that he died in the Hos-
pital from maltreatment and not from the effects
of the wound.

The court: I will allow him to answer.

Q When was that? A In the forenoon of the 2d of June

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Q When was that ? A In the neighborhood of eight or nine o'clock.

Q Night or morning ? A Morning.

Q On Thursday ? A The day after he came in; between 20 minutes and half past twelve.

Q He came in on June 3d, at nine o'clock.

A Yes sir. I asked John Hussey how he felt and he said "Pretty fair"; I asked him if he would have a drink and he said "N o sir, I have taken the pledge just now from Father Degman" a priest who was there a little previous.

Q Taken the pledge not to drink again ? A Yes sir.

Q This was the morning after his admission to the hospital?
A yes sir.

Q Go on and tell us what he said ? A That is about all the conversation at that time.

Q That morning ? A Yes sir.

Q Did you see him the next day ?

Col. Fellows: I object, and I ask that this testimony thus far given be stricken from the record, and that the jury be instructed to utterly disregard it, upon the statement of the counsel that he intended to prove by this witness that the anti-mortem statement was wrong and to contra -

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dict it. The statement of the counsel was that he intended to contradict the anti-morten statement of Hussey by this witness by what occurred at this interview on the 3d of June, and second, that he intended to show by that conversation that there was malpractice and improper treatment of the patient. We have had all the conversation and I submit that it does not in the slightest degree affect that proposition and should be excluded.

Mr. Howe: My statement was that I intended by this witness to contradict the statement in the anti-morten statement that Hussey was then about to die; and I said that I should show you by subsequent acts of Hussey that on the next day and for some days after he believed he was going out; and I claimed that the fact that he stated to this man that he had just taken the pledge not to drink again is evidence to go to the jury as to whether he believed he was then in extremis

The court: I will reserve my decision.

Q He declined to drink ? A Yes sir.

Q Now, on the 4th of June did you see him ?

A yes sir, every day up to the 20th of June; I believe I

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left the hospital on that day between 12 and 1 o'clock as near as I can recollect.

Q On the next day, was he in bed ? A Yes sir he was in bed on the 4th; he was in bed to the best of my belief for over a week.

Q For a week ? A Yes sir, for a week, but I saw him get out of bed and go to the water closet; put a wrapper on him and go out; there was one time there, I cannot remember the day that he had taken my counterpane and rolled it around him; he had nothing but an undershirt on him.

Q And he got out of his bed ? A Yes sir.

Q And went where ? A To the closet, as I supposed, of course I couldn't see.

Q Did he go out of the room ? A Yes sir, frequently.

Q What time ? A He had no counterpane at this time; his and another's man had been taken to wash and he got out and pulled my counterpane off of the next bed and put it on his shoulders.

Q You saw him leave the room ? A Yes sir.

Q With nothing on him but this counterpane ? A Yes sir, and an undershirt.

Q Was that a frequent occurrence ? A Well, he went very often.

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Q Now did Hussey ever tell you that he was getting well and would soon leave the hospital ?

The court: Ask your question so that it wont be leading.

Q After the first week did Hussey state to you that he was getting well and expected to get out ?

Objected to on the ground that it is leading.

The court: You must not ask leading questions.

Q Did Hussey say anything at any time about his recovery and getting out that he was nearly well ?

Col: Fellows: I object.

The Court: I will let you draw his attention to a specific time and to state what he said about getting well.

Mr. Howe: The difficulty is, that he cannot recollect the precise date.

Q Give us the conversation you had with Hussey about the first week about his being in bed ? A Well, I cannot recollect the conversation.

Q As near as you can ? A Mr. Hussey couldn't read, and he used to hand me the papers to read for him; more especially in case there was anything in regard to the shooting and his affair, more particularly about that; he would

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would have me look through the paper thoroughly to see if there was anything about that.

Q Now about his health, did he say anything to you about his recovery after the first week ? A Yes sir; I remember the morning that I came out, that I was to leave the hospital.

Q June 20th ? A Yes sir. A. He asked me if I wouldn't wait in the hospital until Wednesday, and he says "If you wait until Wednesday, I will go out with you;" Well I said "I can't wait until Wednesday, I want to go home, I have made up my mind to go home"; he said "I will be up at your house the first thing Wednesday when I get out".

Q What day of the week was that ? A On Monday sir.

Q Did you see what was given to Hussey to eat or drink ?
A Well, I have seen it at times, yes sir.

Q Well tell us what it was ? A Well I saw him eat eggs, fried on one side and a piece of toast; and saw him eat beefsteak, the dates I cannot remember.

Q Any fruit ? A Yes sir.

Q What fruit ? A I saw him eat cherries; he gave some cherries to my daughter for going on an errand for him; I saw him eat bananas, oranges and pears; in fact we used to change one with the other, if I had any pears or bananas

**POOR QUALITY
ORIGINAL**

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I would give them to Hussey and if he had any he would give some to me.

Q Did you ever see Hussey get any whiskey ? A No I never did.

Q How far was it from Hussey's bed to the door of the room the exit to the water closet ? A Well, the first door, as near as I can carry it, I should judge was between 8 or 9 feet from the foot of his bed to the door; I never measured it.

Q Where was the water closet situated ? A To get to the closet you would have to go through that door and probably ten feet more and then you go off an angle that way (indicating)

Q Through a hallway ? A Yes sir, just off the hallway from the stairs, on the west side of the building.

Q Off the hallway from the stairs ? A The hospital runs north and south, and it is east and west; we were in the southerly part of the hospital on the east side, and in coming out to go to the water closet you would have to walk probably ten feet due north; then you would have to go west to get to the water closet and it ran north and south on the western side of the building.

Q The temperature outside in the hall was lower than it was in the ward ? A I was frequently told myself to keep out

**POOR QUALITY
ORIGINAL**

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of it, and never to go into the hall when I was under treatment.

Q It was much colder outside in the hall of course ? A Yes sir, I have experienced that myself.

Q

CROSS EXAMINATION by Col. Fellows:

Q You are a fireman ? A Yes sir.

Q Were you connected with the old force ? A Well, I was elected a member but chief Decker at that time told me that the Bill was before the Assembly and told me to wait, and that was as far as I got.

Q Did you know of Hussey being a member of the old fire course in this city ? A I did not sir.

Q You understand your duties as a fireman, I assume ? A Yes sir.

Q I assume you don't understand anything about surgery ? A No sir.

Q Or the proper treatment of gun shot wounds ? A No sir.

Q Or about the proper treatment to be given to a person in a hospital who is under the charge of surgeons ? A No sir; I don't understand anything about it.

Q You don't assume to say that you can tell what temperatures are dangerous ? A I generally keep temperatures about as even as possible.

**POOR QUALITY
ORIGINAL**

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		(9)
Q	I am asking you if you know what temperatures are dangerous in any given condition, do you know ?	A No sir.
Q	Now, the period of which you speak was in June ?	A Yes sir.
Q	And it was warm ?	A Very warm, sir.
Q	It was not only warm, but very warm ?	A Very warm; we had to open the windows.
Q	You remember that the early part of last June was extremely warm and very much warmer than the latter part of June?	A Yes sir.
Q	When Hussey left his cot in the hospital ward, I understand you to say that his blanket having been taken to the wash he sometimes took your blanket ?	A Yes sir.
Q	And then when he took yours, he left you uncovered ?	A No sir, I had a sheet.
Q	He took your blanket ?	A Yes sir.
Q	He had a sheet also ?	A Yes sir.
Q	You didn't experience any discomfort when the blanket was taken away ?	A No sir.
Q	You were quite warm enough ?	A Yes sir, quite warm enough. at that time without it .
Q	He took the blanket and wrapped it around him because he was going into a cooler place ?	A Probably so; but I take it that he used it in passing up and downstairs; probably

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probably he would be exposed to visitors or something like that and he took the blanket to cover his body and legs ?

Q Now there was the usual attendance in this ward ?

A One orderly, sir, and the doctors used to call frequently.

Q An orderly was always there ? A Yes sir.

Q The ward was never left without some care ? A At no hour at all; one orderly was there night and day.

Q If Hussey or any other patient went out they went out under the eye of the person in charge ? A Yes sir, they seen him and spoke with him.

Q I understand you to say that it was on Monday you left the hospital ? A Monday the 20th.

On Monday Hussey stated to you that he would call at your house on Wednesday ? A Yes sir.

Q You know he died on the Tuesday, the following day?

A Yes sir.

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ORIGINAL

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EDWARD H. MULLIN, a witness called on behalf of the defendant, being duly sworn testified as follows:

DIRECT EXAMINATION by Mr. Howe:

Q Were you educated for the medical profession? A I was, sir.

Q You have been a great deal in hospitals? A Yes sir, considerable.

Q You are familiar with the treatment of persons suffering from gun shot wounds? A They are not very common with me; but I am familiar with punctured wounds.

Q Now, on the 7th of June, did you go to the Gouverneur St. hospital? A Yes sir, I was sent there by the City Editor of the Evening Sun.

Q To ascertain Hussey's condition? A To find out all about Hussey; all I could about how he was.

Q Did you see Dr. O'Hanlan there? A Yes sir, after some delay I saw him; he was either engaged or not ~~in~~ when I first went there.

Q Did Dr. O'Hanlan tell you of the course of the bullet?
A He did.

Q Tell us what he told you?

Objected to.

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Q Was Dr. O'Hanlan the house surgeon who treated Hussey ?

A I was told by others, and I was told by himself.

Q Don't you know he was ? A Yessir, I know it as a matter of fact.

Q He treated Hussey ? A Yes sir.

Q Now, regarding O'Hanlan's treatment of Hussey as a patient suffering from this pistol shot wound, what did Dr. O'Hanlan tell you as to the wound itself and as to his treatment of it ?

The court: Why isn't that hearsay evidence, Mr. Howe ? We propose to show that Dr. O'Hanlan made a statement to this witness that the wound was not mortal and stating how he treated it.

Col. Fellows: Is this proper ?

The court: I will rule it out as being hearsay

Mr. Howe: This is what the physician in charge of the hospital who treated this patient told this witness as to his treatment of the patient, and that the wound was not mortal, I submit it is competent

By the Court: The Court: I will rule it out.

Q 1 Exception taken.

Q Now, did you see Hussey ? A No sir.

Q At no time ? A No sir.

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PHILIP F O'HANLAN, a witness called on behalf of
the defendant being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Howe:

Q Dr. O'Hanlan, you are the house surgeon at Gouverneur Hos-
pital? A I was, until last Thursday when my term expired.

Q You were house surgeon at the time of the admission of
John Hussey? A I was, sir.

Q How old are you, doctor? A 25.

Q How long have you been graduated? A I graduated in 1886.

Q Last year? A Yes sir, last year.

Q Where? A At the University of the City of New York.

Q In what month? A In the month of March or April, I think,
I don't know whether it was March or April, somewhere
about that time.

Q And you went immediately into practice? A No sir, I
never went into practice until I was appointed Ambulance
Surgeon at Gouverneur Hospital, eighteen months ago.

Q Now, when Hussey was brought to the hospital, were you the
gentleman who treated him? A When Hussey was brought to
the hospital, I was the house surgeon, and he was sent to
the ward. When Jack Hussey came to Gouverneur Hospital
I was down in the main entry; he came in with several men

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and one of them told me that he was shot in the abdomen; I didn't know it was Jack Hussey; I sent him upstairs to the ward, put him on the bed, examined him and found a pistol shot wound in the abdomen, I looked for the bullet, just made a mere superficial examination for the bullet, and was about to send for Dr. Ward, the visiting surgeon to whom I am responsible, and just at that minute Dr. Ward came in and he examined the wound and he ordered anti-septic dressing to be put on the wound, cotton bandages. That was put on and Hussey was made as comfortable as possible; he was under the influence of liquor and his temperature I think was about 101; he was suffering from a slight shock; he complained of a little pain and he was given $\frac{1}{8}$ grain of morphine, United States solution of morphine, 1 grain to the ounce. The next day Dr. Ward saw the patient again.

Q Was the bullet yet there? A Yes sir, the bullet was still there. The next night, I thought I would look for the bullet, I went downstairs and I examined Hussey in the front part very carefully, I could not find any trace of the bullet and I went for his back, from his neck right down along his spine with my fingers; he was a very fat man and I think it was on the right side of the body that I felt something hard just underneath the skin. I took the end of a scalpel, made of metal and I hammered

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on the outside of the skin and got a dull sound and I pre-
sumed that was the bullet. The next morning I sent for Dr
Ward and I told him that I had located the bullet; he
examined it and came to the conclusion that that was where
the bullet was and he took a scalpel, opened it and took
out the bullet.

Q Dr. Ward did that ? A Yes sir.

Q That was on the 3d ? A Yes sir. When the wound was opened,
I suppose about two drachms of puss, some considerable puss
came from it, and then Dr. Ward ordered that a poultice be
made of linseed and charcoal and I think solution of car-
bolic acid and that it be applied to the wound and that was
done.

Q As an anti-septic ? A Yes sir. That was done, and contin-
ued for several days; a great deal of puss exuded from
the wound during this time and Dr. Ward on the 4th or 5th
day ordered that the wound be cleansed with a solution of
bi-chlorate of mercury and that anti-septic dressing be
kept over the wound and the patient kept perfectly quiet.
Hussey's condition at that time was very good, his temper-
ature had come down to normal. This dressing of the wound
was kept up three or four times a day, and the wound was
kept clean, Hussey was kept under a light diet and order -

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ed to be kept perfectly quiet in bed. His temperature kept at 98¹/₂ and 99 right along ~~along~~ until the morning that he died. I was in the hospital at the time his temperature ran up and I was subpoenaed on the Grand Jury on the case. Dr. Ward saw him and examined him and ordered whiskey to be administered every hour, his pulse was very rapid and very feeble.

Q That was the morning he died ? A Yes sir, he was right well until that morning; he had been quite well; I had been repeatedly asked if I could not sign a certificate stating that Hussey was out of danger by different people, no one in particular, and I always made the same statement that he was still in danger up to the morning that he died. That is all, sir, he died.

By the Court:

Q He died what morning ? A I think on the 21st of June.

Q In the morning ? A Yes sir.

Vy Mr. Howe:

Q Do you know Mr. Mullin ? A No sir, I don't know him.

Q Dont you remember his speaking to you about Hussey's case?

A I recollected him this morning he told me who he was there are a great number of the gentlemen of the press that I know personally but I haven't the pleasure of knowing this gentleman.

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ORIGINAL

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- Q You were on the press for some time ? A Yes sir A
- Q And I had the pleasure of your acquaintance ? A Yes sir for four years.
- Q Don't you remember telling Mr. Mullin that the wound was a mere superficial wound ? A Mr. Howe, I dont recollect saying that.
- Q Will you say that you didnt say that ? A No sir, I will not
- Q As you have stated, doctor, at the time of Hussey's admission and the day after, his temperature was many degrees higher than normal ? A Not very many, it was never very high until the morning he died, when it went up to 104.
- Q It had been normal for many ~~days~~ prior to his death ?
A For eighteen ~~days~~ prior to his death.
- Q And there was a sudden jump of temperature ? A There was sir.
- Q You have told us that you ordered Hussey to keep quiet ?
A Yes sir, I did sir.
- Q To remain in bed ? A Yes sir.
- Q And, of course, you don't know whether he obeyed your orders implicitly or not, you cannot say of your own knowledge ? A I do with one exception. I went into the ward one day and I saw Hussey get out of bed and go toward the door I says "Jack, if you want to get well, and dont want

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to die, you better stay in bed and do as I tell you";
He turned around and went right back to bed and that is
the only time I know of his getting out of bed and going
out of the ward; he was ordered not to be allowed to get
out of bed.

Q He was ordered not to be allowed to get out of bed ? A Yes
sir.

Q Because, as we all know, that exposure to cold with a
wound of that kind would be likely to conduce to death ?

A The temperature of that ward, and the hall we re a_bout
the same on the 2nd of June; we keep the hospital open
having all the fresh air we possibly can.

Q If you had fresh walls it would be better too ?

A I am not familiar with the construction of the hospital
or ward.

Q You ordered Hussey to remain in bed for the reason that it
was necessary to his recovery, that was considered as
part of your treatment ? A I did sir.

Q And a violation of that and exposure to cold would be
likely to produce the result you wished to prevent, isn't
that so, beyond all question ? A And Hussey getting out
of bed, I think it is very wrong and improper.

Q I ask you whether or not exposure to cold on the part of

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ORIGINAL

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Hussey would be likely to conduce to the very result you wished to avoid? A Exposure to cold, yes sir.

Q Do you know of his eating fruits? A I do not sir.

Q Cherries? A I don't sir.

Q Pears? A No sir.

Q Bananas? A No sir.

Q Beefsteak? A No, I don't think I did, he might have eat a little, but I didn't know of it; these things I did not know until this morning when Mr. Leonard took the stand and stated that he was in the habit of passing anything to Hussey; that is the strictest rule observed in the hospital.

Q If a man be given prussic acid in sufficient dose it would kill? A It would kill anybody.

Q Whether administered by a fireman or a physician? A Yes sir.

Q We have been told yesterday that the point of entrance was about here (indicating)? A Yes sir.

Q And that was superficial to the extent that it merely passed over the cartilage of the rib, and then took its course around? A When Hussey entered the hospital I was under the opinion that the bullet was a penetrating wound and not a superficial wound.

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ORIGINAL**

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- Q In point of fact it did not pass through ? A I believe Dr Scholer demonstrated that .
- Q Did you see the post-mortem ? A I was present at part of it I saw the kidneys and lungs.
- Q I will assume then that Dr. Scholer has sworn here that the point of entrance was as I have described it, that it was not a penetrating wound, that it only touched the cartilage and then traversed around and lodged in the muscles of the back ? A I don't know whether that is so or not.
- Q Assuming that that is so, and that there a cavity in which puss was generated was formed and an abscess, that it bruised internally into the ilium, I think the doctor stated, and that that produced peritonitis, was the wound of itself a mortal wound ? A Without peritonitis ?
- Q Yes. A No sir, not if that is so.
- Q The doctor told us that the bullet entered no cavity, that neither the heart, or the lungs, or the spleen, nor the liver, nor the stomach, nor the abdomen, nor the intestines were entered or affected by the bullet, but that peritonitis ensued from the rupture of the abscess containing this purulent matter -- the bullet wound was not necessarily the cause of death? A I think the bullet was the cause of the abscess, and the abscess bursting into the

peritonital cavity was the cause of death. I think the bullet might have carried before it a piece of Hussey's undershirt, into and along the course of the bullet.

Q Repeat that ? A I said that I thought the bullet carried before it, might possibly have carried before it a piece of the shirt that Hussey wore, and that the bullet and the shirt, if the shirt contained septic matter, might set up the abscess and the abscess bursting into the peritonital cavity, peritonitis followed; pieces of clothing sometimes get in.

CROSS EXAMINATION by Col. Fellows:

Q You are a graduate of the University of the City of New York ? A Yes sir.

Q During your course of instruction did you have much of hospital experience ? A I had all the college afforded.

Q And that is very ample, is it not ? A Yes sir, very.

Q So far then as modern works go relating to surgery your instruction was as complete and thorough as that collegiate course goes ? A Yes sir.

Q You had then theoretical knowledge of the best and latest works upon surgery ? A I had the benefit of it, yes sir.

Q You had experimental and practical knowledge of surgery by

**POOR QUALITY
ORIGINAL**

0022

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your constant association with cases brought before the class in the college ? A My practical knowledge is limited to my eighteen months service at the hospital, where I served as ambulance surgeon and house surgeon.

Q You saw surgical operations at the college ? A Yes sir.

Q I consider that practical knowledge. You saw it under the charge of the ablest and most skillful of our professors ?
A Yes sir.

Q Now then, from your knowledge of the proper treatment as recognized by our best authorities of gun shot wounds, was the treatment administered to Jack Hussey at Gouverneur Hospital proper and correct ? A In every particular sir.

Q As to diet ? A As to everything concerning the case.

Q Doctor, you have stated that Jack Hussey was ordered to lie in bed and remain quiet ? A Yes sir.

Q What compelled Jack Hussey to lie in bed, for what reason did you deem it necessary that he should lie in bed ?

A I thought that getting up and walking around --

Q What made it necessary that he should go to bed in that hospital ? A The pistol shot wound.

Q Nothing but that ? A Nothing but that.

**POOR QUALITY
ORIGINAL**

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Q And it was by reason of the consequences you feared grow-
ing out of that pistol shot wound that you gave those di-
rections ? A Yes sir.

Q And administered those medicines ? A Yes sir.

Q Where is Dr. Ward ? A At No. 272 East Broadway.

**POOR QUALITY
ORIGINAL**

0024

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New York , October 13, 1887.

EXTRACT FROM MR. HOWE'S CLOSING ARGUMENT.

Now, one word as to the nature of the injury. There is not a question from all the medical evidence, but that the wound of course was not a mortal wound. It entered here and lodged in the back and Dr. O'Hanlan says that he could not find it at first, but that they were two days searching for it; he says that he searched from the top of the neck downward and then finally did find it and that it was cut out; that what they called proper treatment was given so far as they were concerned. But, as Dr. O'Hanlan says, he caught Hussey out of bed, and he told Hussey that he had no business to be disobeying his orders, that is, that he ought to have remained in bed and remained quiet; he also says that he did not sanction the giving of the pears or bananas or other fruits or the beef-steak or Hussey's walking about the ward in a semi-nude condition in a changing temperature. This is a matter of law which I shall ask the court to charge you about. You understand, as gentlemen of intelligence that this is only a point bearing on the legal aspect of the case as to whether that wound caused the death or not. Of course, if you have a doubt as to whether that wound was mortal,

POOR QUALITY
ORIGINAL

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or that Hussey brought about his death by his own imprudence, I shall ask the Court to instruct you that it is your duty to give the prisoner the benefit of that doubt. I merely mention that incidentally because it ^{will} ~~would~~ be a matter of legal request to the Court.

**POOR QUALITY
ORIGINAL**

0826

OFFICE OF
Gen'l Supt of Mains and Services,
Consolidated Gas Company
Of New York.

No. 4 Irving Place,

188

SUBJECT:

New York, June 7th, 1888.

Dear Sir:

In reply to your personal communication of the 4th Instant, desiring to know if any pavements were torn up or stones lying around the Corner of Cherry and Jackson Streets, on June 2nd, 1887 or a few days prior thereto, would reply:

We excavated in the vicinity of Cherry and Jackson Sts (radius of 100') as follows:

June 8th, 1887 429 Cherry & 41 & 43 Jackson St.

June 14th, 1887 39 Jackson St.

The only excavation prior thereto was that of the 13th of April, 1887, which since has been repaired.

Yours respectfully

Charles H. Morton
Genl. Supt. of Mains,

To

Edward Grosse Esq.,

Assistant District Attorney,

32 Chambers St.

**POOR QUALITY
ORIGINAL**

0827

OFFICE OF
Gen'l Supt of Mains and Services,
Consolidated Gas Company
Of New York.

No. 4 Irving Place,

188

SUBJECT: **Excavation of April 13th, 87**
at 32 Jackson St.

New York, June 20th, 1888.

Dear Sir:

In reply to your communication of the 3rd instant,
would state, that the above was "completely paved and the Street
"cleaned from superfluous stones = belonging to this Company's ex-
"cavation - on April 14th, 1887."

Yours respectfully

Chas Fellows

Genl. Supt. of Mains,

To

Edward Grosse, Esq

Deputy Asst.

32 Chambers St.

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ORIGINAL

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The special attention of Physicians is respectfully invited to the remarks below, and to the list of diseases upon the back of this certificate.

The Health Department of the City of New York

HAS MADE THE FOLLOWING ORDER:

"All Permits for the removal of the body of any deceased person from the City of New York for Interment, and all Burial Permits, and Permits for the Disinterment of the remains of deceased persons in the City of New York, shall be granted and signed by the Register of Records."

The Physician who attended any person in a last illness is responsible for the presentation of this Certificate, accurately filled out, to the BUREAU OF VITAL STATISTICS, within 36 HOURS after said person's death. (Sec. 161 of Sanitary Code.)

NO PERMIT FOR BURIAL CAN BE OBTAINED WITHOUT A PROPER CERTIFICATE. 14521

All physicians practising in New York City (including those in public institutions) are required to register their names in the Bureau of Vital Statistics. (Sec. 5 of Sanitary Code.)

CERTIFICATE OF DEATH.

1. Full Name of Deceased, { Write legibly and spell correctly. If an infant not named, give parents' names. } Nelson place M D
2. Age, 42 years, 4 months, days, Color, White
3. Single, Married, Widow or Widower (Cross out the words not required in this line.) Occupation, Doctor
5. Birthplace, (State or Country.) N.Y. City (How long in the United States, if of foreign birth) 17
6. How long resident in this city, 1881
7. Father's Birthplace, (State or Country.)
8. Mother's Birthplace, (State or Country.)
9. Place of Death, (If an Institution, please state the name.) No. 327 E. 17th St. Ward 7
10. If a Dwelling, by how many families, living separately, occupied, 2 Floor*
11. I Herewith Certify, that I attended deceased from July 2nd 1881 to July 6th 1881 that I last saw him alive on the 6th day of July 1881, that he died on the 7th day of July 1881, about 5 o'clock, A. M. and that the Cause of his death was:

First (Primary), † Alcoholism

Second (Immediate), Chronic Cerebral Meningitis inflammation and exud.

Time from Attack till Death:
(Write opposite each cause—if unknown it should be so stated.)

Can't say how long this

Probably about 3 or 4 weeks,
Signed by, who was very wise and

Joseph D. Hyatt, M.D.
Medical Attendant.

Address, 66 W. 75 St.

All the above information should be furnished by the Physician.

Place of Burial, Greenwood

Date of Burial, July 2/87

Undertaker, R. Chase

Place of Business, 327 E. 17th St.

Room for granting Burial Permits, No. 48. Hours from 7 A. M. to 6 P. M. on week days; from 8 A. M. to 5 P. M. on Sundays.

* By 1st floor is meant the floor immediately above or on a level with the grade of the street adjoining; the basement floor is below the level of the adjoining street.

† Please examine the list of diseases printed on the back of this certificate.

Law regulating Coroners' Inquests in the County of New York, Chapter 402, Laws of 1871.

SECTION I.—Hereafter, when in the City and County of New York, any person shall die from criminal violence, or by a casualty, or suddenly, when in apparent health, or when unattended by a physician, or in prison, or in any suspicious or unusual manner, the Coroner shall subpoena a properly qualified physician, who shall view the body of such deceased person externally, or make an autopsy thereon, as may be required (preparatory to an inquest).

POOR QUALITY
ORIGINAL

0029

J O S E P H O ' N E I L , called on behalf of the
prisoner , being duly sworn , testified as follows:-

Direct Examination by Mr. Howe:-

Q O'Neil where do you live ?

A 51 Rutgers Street.

Q What is your business

A Truck driver.

Q You remember the night of the shooting of Hussey ?

A Yes sir, perfectly well.

Q Now, O'Neil, please speak slowly and look at those gentle-
men and tell them what you saw that night?

A On the night of June 2nd, I came out of the liquor
store 34 Jackson Street, On going down I heard a
pistol shot; on turning around I saw a man in the
middle of the cross walk; the man was walking towards
Grand Street; I saw two or more ~~other~~ man come out
of the liquor store and follow this man out. He follow-
ed him as far as the liquor store on the other side of
the way by the name of Landos. I stood outside of
the baker shop; this man run over towards me. I stood
there and this gang followed him. , and when the pistol
shot was heard there was a great number of people backing

**POOR QUALITY
ORIGINAL**

0030

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up Hussey, and following the prisoner, as I understand now; I saw the man walk across the street again and fire another shot in the air.

Q Show the jury how Hahn held the pistol after the first shot ?

A The man held the pistol by his side and walked up towards Grand Street. The second shot when he came over he went over again across the way and fired it in the air.

Q Sure he didn't fire it any at any person ?

A No sir, he didn't.

Q Go on?

A the gang approached him from the four corners, that is, in Jackson Street, he stood amazed for a moment.

Q (By Col. Fellows) You are sure he was amazed ?

A I am sure he stood and didn't know which way to go; then I heard another pistol shot; that is all I heard of the shooting.

Q Now did you hear what the people were saying when Hussey was following him? A

A They were backing this man up--this Hussey.

Q What did you hear them say?

A They made every kind of threats when they backed him up.

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ORIGINAL

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Q What did they say ?

A They were urging him on .

Q Urging Hussey on ?

A Yes sir.

Q (By the Court) You don't know what he said ?

A No sir.

Q (By Mr. Howe) Are you any friend of this man Hahn ?

A No sir.

Q How did you come to be subpoenaed here ?

A I have seen this man, I believe it was the fifteenth
or sixteenth of June. I was arrested for ~~an~~ assault
and I seen this man in Essex Market.

Q This prisoner ?

A Yes sir.

Q You and he were prisoners together ?

A No sir.

Q Oh, excuse me ?

A I was down in one end and he in the other.

Q But you were prisoners ?

A Yes sir. My lunch was sent up *to me, a can of
tea and some sandwiches in a News.*

Q You mean a news paper ?

A Yes sir. I seen an account of Hussey's trial in the paper

POOR QUALITY
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I knew the keeper there and he left me on the tier.

I read it to this man and he asked me if I knew anything about it. I told him I did know a little; that was all.

Q You told him you were there ?

A Yes sir. I was there and saw it .

Q That is how you came here today?

A Yes sir.

Q Have you ever been arrested before that, O'Neil?

A No sir.

Q Are you a married man?

A Yes sir.

Q Family?

A Yes sir.

Q And the charge upon which you were arrested you were acquitted of ?

A Yes sir, I was discharged.

Q What were you charged with?

A I was charged with insulting a woman, but I didn't do it.

Q And the magistrate acquitted you?

A Yes sir.

POOR QUALITY
ORIGINAL

0033

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Q For whom do you work?

A I work for Dunham, Buckley & Co., sometimes, corner
of Worth Street and Broadway.

Q What are they?

A Dry goods merchants.

CROSS EXAMINATION.

Q (By Col. Fellows: O'Neil, have you seen Hahn since he has
been in the Tombs ?

A No, sir.

Q How long were you locked up with him in that cell in
Essex Market ?

A I wasn't locked up with him, I was locked up by myself.

Q You were locked up with him?

A On the same tier.

Q The place for prisoners at Essex Market is a large cell
in which all male prisoners are put together ?

A No sir.

Q You were locked up down stairs ?

A No sir, on the same tier^a.

Q You were locked up in one of the cells??

A A single cell.

Q I didn't ask you if you were locked up in two cells, you

**POOR QUALITY
ORIGINAL**

0034

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were locked up in one cell and Hahn in another ?

A Yexs sir.

Q That was during his examination before the magistrate ?

A I don't know.

Q But it was at Essex Market ?

A Yes sir.

Q How long were you there ?

A I was there about eighteen hours.

Q And all that time Hahn was there ?

A He wasn't with me.

Q He was there ?

A Yes sir %.

Q How near was he to you?

A Well, he was about five cells below me.

Q So you could talk from one cell to another ?

A No sir.

Q Did they let you out on the tier ?

A Yes sir.

Q And you went to his cell?

A No sir, I stood outside of my own cell.,

Q Was he inside of his ?

A Yes sir.

Q Then when you stood outside of your own cell you didn't

POOR QUALITY
ORIGINAL

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read to him from there ?

A No sir.

Q You went up to his cell?

A Yes sir, I read it to him.

Q He was inside ?

A Yes sir.

Q You made this ~~known~~ to him as a person who knew something about the occurrence ?

A Not ^{un}till he asked me.

Q He asked you?

A Yes sir.

Q What had you saidst that gave him any reason to suspect you knew anything about it?

A I told him just exactly what I thought of the case.

Q I want to know what you said before that, that made him ask you?

A Before that I read it out of the "News". I didn't know the prisoner at the time.

Q You knew Hahn was the man that the ~~News~~ was talking about.?

A I didn't know, I was reading it to him.

Q After reading that account to a stranger locked up in a cell, what was it that induced him to ask you if you

POOR QUALITY
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0036

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saw the occurrence ? There was nothing in the article that said you saw anything of it ?

A No sir.

Q You didn't say anything to Hahn ~~at the time~~ about seeing anything of it ?

A No sir.

Q Yet he asked you if you knew anything about it ?

A Yes sir.

Q Then you went on and told what you have to-day?

A I told what I saw.

Q You say you saw a man walking up towards Grand Street, and you saw two men coming out of the Liquor Store ?

A Yes sir.

Q And go towards him?

A Yes sir.

Q Walking up behind him?

A Yes sir.

Q You said after a while he turned and the crowd kept following?

A Yes sir.

Q Was the gang these two men?

A No sir, there were more than these two men.

Q A crowd had collected ?

**POOR QUALITY
ORIGINAL**

0037

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A Yes sir.

Q You didn't see anything to occasion a crowd to collect ?

A I heard a pistol shot.

Q Do you know where it was fired ?

A No sir.

Q Or who fired it ?

A No sir.

Q You didn't think it was very strange that people should assemble when pistol shots were fired on the street ?

A It is strange in that neighborhood?

Q Pistol shots are rare occurrences up there ?

A Yes sir.

Q Pretty quiet neighborhood ?

A No sir, not very quiet.

Q These disturbances are not unfrequent then?

A I can't answer that question. I don't belong up there.

Q What do you know then about the practices of the people there ?

A I worked up there .

Q Did Hahn tell you?

A No sir, I worked up there, in Cherry Street for Tefft, Weller & Company.

**POOR QUALITY
ORIGINAL**

0030

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Q You must have heard something the crowd said when they were backing up Hussey. You say they were urging him on?

A They were pushing him.

Q Did they push him with their hands?

A No sir.

Q They were merely pushing him with words ?

A Yes sir.

Q They were urging him on?

A Yes sir.

Q How could you tell whether they were urging him, unless you heard the words--you must have heard them--refresh your memory. You heard a man say, "Go and kill that son-of-a-bitch of an officer "?

A It was pretty hard to understand; I didn't.

Q Well, "There is a cop, kill him", or, "Go and do the cop", you heard that frequently?

A I don't know. remember.

Q Give us some language that induced you to think the crowd was urging Hussey on?

A I can't answer that question.

Q Why do you tell the Jury they were urging him on; for all you know they were trying to get him to go back?

A I don't know.

**POOR QUALITY
ORIGINAL**

0039

11.

Q You didn't hear anything that was said ?

A No sir.

Q Didn't understand a single word?

A If I heard it, I don't remember it.

Q When you saw Hahn in Essex Market it was only a few days after the shooting?

A It was ^{good} a while after the shooting.

Q How long, about ?

A About fifteen days.

Q You have a pretty good memory. You remember you used to work for Tefft , Weller & Company, in the Seventh ward?

A Not in the 7th, Ward. They stabled there.

Q This occurrence was in the Seventh Ward ?

A Yes sir.

Q You had worked in that locality ?

A Yes sir.

Q You remember that ?

A Yes sir.

Q You don't forget what excites your attention and claims your interest. in the space of two weeks ? Now, you had seen some shooting that day on Jackson and Cherry

**POOR QUALITY
ORIGINAL**

0040

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street ?

A Yes sir.

Q You had seen Hussey assault this man Hahn, or go towards him backed up by a big crowd?

A Yes sir.

Q You didn't know Hahn?

A No sir, not at that time?

Q Two weeks after that time you went to Hahn's cell and head him an account of this occurrence, not knowing who he was, then you told him all you knew about it ?

A Yes sir.

Q Now, at that time it was only two weeks after the shooting?

A Fifteen days?

Q Surely then you remember what language you heard these people use: you told it to Hahn?

A No sir, I didn't tell him any language.

Q Did you remember it ?

A No sir.

Q Isn't it true that you ~~has~~ didn't hear a single word said by anybody that you could understand ?

A I might understand some.

**POOR QUALITY
ORIGINAL**

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Q Did you?

A No sir, not that I could understand.

Q Then there was not a single word uttered that night
that you could understand?

A No sir.

Q Still you tell the Jury they were urging that man on;
you told the jury that the gang was urging Hussey on?

A Yes sir.

Q How do you know they were not trying to persuade him to
go home ?

A I saw a man walking up towards the prisoner and the gang
behind him. I don't remember the words they said.

Q If you didn't hear the words they said, how do you know
they were urging him on?

A Only for the gang had a motive in doing such, they would
not follow up the man.

Q Hahn told you the motive ?

A No sir.

Q How did you find out the motive ?

A I read it in the paper.

Q What paper ?

A The "News".

POOR QUALITY
ORIGINAL

0042

14.

Q What did it say the gang was following Hahn for ?

A For to do him an injury, I suppose.

Q I want to know what the paper said? Did you ever read
any paper in this city that charged that the crowd was
following Hahn. ?

A No sir.

Q Did you ever read any statement of that ~~kind~~
in the "News", or ^{any} newspaper?

A No sir.

Q Why did you say you read it in the newspaper ?

A I believe myself it was their own motive ?

Q You gathered that opinion without hearing a single word said ?

~~No sir.~~

Q ~~word said~~ ? Now, were you within two miles of
Cherry Street and Jackson Street that night ?

A No sir. Did you say was I within two miles of that place?

Q Yes sir ?

A Yes sir.

Q Did you ever know or pretend to know one single word
thing about this occurrence until you were a fellow
prisoner with Hahn?

A No sir.

Q

POOR QUALITY
ORIGINAL

0043

15.

Re-Direct Examination.

Q (By Mr. Howe:) Don't get excited. Now, do you mean to say, you didn't see this, and that it is not true--your statement is not true--that you saw Hussey following him, and the people were urging him on, and that you *invented it* when you saw ~~Hahn~~ in the Prison ?

A I am only giving my testimony of what I saw.

Q What you have stated is true ?

A Yes sir.

Q (By The Court) Which?

A What I saw there that night.

Q (By Mr. Howe:) Did you understand Col. Fellows question? When he said it wasn't true, that you knew anything about it, till you saw Hahn in Prison?

A I knew about it when I read it.

Q Did you see it ?

A Yes sir.

Q You are not blessed with a very fine education ?

A No sir.

Q How long have you driven for Tefft Weller & Company?

A Two Falls in the year, about six months.

Q And for the other firm?

**POOR QUALITY
ORIGINAL**

0044

16.

A Dunham, Buckley? eight months.

Q How long have you lived in that neighborhood?

A About two years.

Q You are no friend of Hahn?

A No sir, not personally.

Q You came here to tell the truth?

A Yes sir.

Q Did you go to the Hospital and see Hussey in the Hospital?

A I saw Hussey in the Hospital.

Q When was that?

A The day of John O'Hearn's picnic.

Q When was that?

A I don't remember.

Q Who is John O'Hearn?

A He is some politician up there.

Q You only know of his name?

A Yes sir.

Q On that day you were in the hospital?

A I was outside of the Hospital, near the chicken market.

Q You didn't go there to steal chickens?

A No sir.

Q You were at the chicken market?

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A Yes sir.

Q What took you there ?

A Coming up from the dock after the excursion went out.

Q There is a dock there ?

A Yes sir, at the foot of the street.

Q You are of the same nationality as Hussey ?

A I don't know.

Q You are Irish?

A I am Irish descent.

Q You knew Hussey by sight ?

A I knew him by sight, yes sir.

Q You saw him that day?

A I saw him that day in the hospital .

Q Whatever that day was ?

A Yes sir.

Q Cannot you think of the date?

A I don't know what day it was.

Q What was Hussey doing?

A He was pointed out to me passing the window, walking around there.

Q In the hospital?

A Yes sir.

**POOR QUALITY
ORIGINAL**

0046

18.

Re-Cross Examination.

Q (By Mr. Fellows) I wish you would tell the Jury where you were on the day of Pat Divver's picnic?

A I don't remember.

Q You don't remember it ?

A I don't remember pat Divver.

E D W A R D H A N R A H A N , called on behalf of the prisoner, being duly sworn, testified as follows:-

Q (By Mr. Howe) You live at 250 Munroe Street ?

A yes sir.

Q Mr. Hanrahan, what is your business ?

A Printer, pressman.

Q In whose employment ?

A J. J. Little & Co., in this city.

Q How many years have you been with them?

A About eight months.

Q Where were you before that, Mr. Hanrahan ?

A In John F. Trows.

Q The Directory people ?

A Yes sir.

Q How long were you with them?

A About one year.

Q Your business is that of a printer ?

**POOR QUALITY
ORIGINAL**

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A Yes sir.

Q Are you employed now ?

A yes sir.

Q In whose employ?

A J. J. Little .

Q A well known publishing house ?

A Yes sir.

Q Well, Mr. Hanrahan, did you see anything connected with this shooting of Hussey?

A Yes sir.

Q Now, will you please go very slowly, that is to say, speak very slowly and tell this jury what you saw, and tell it just as you saw it to your recollection to-day, keeping nothing back, for or against. Tell just what you saw ?

A As I was coming on my way home on the night of the shooting, when I reached the corner of Munros Street and Jackson Street, my attention was attracted by a shot in the direction I was going. I started to run in the direction, as I got within 30 feet off Cherry Street, I met the prisoner, followed by Hussey and quite a number of people; they were hollering and shouting

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at the time. I stood for a second or two and I seen the prisoner turn partly around and raise a pistol in the air and shoot it off.

Q Are you positive about that, that he fired that pistol in the air?

A Yes sir.

Q At no person?

A At no person whatever.

Q Are you a friends of the prisoner ?

A No sir.

Q Were you any friend of Hussey's?

A No sir.

Q Proceed sir ?

A The prisoner started in the direction that I was, and as I saw him coming in my direction, I turned and ran the other way. As I was running another pistol shot rung out, perhaps half a minute or a little more after-wards.

Then there was quite a commotion. I turned around again and went back. As I got to about fifteen feet or twenty feet from Cherry, I seen a police officer attempt to take hold of Hussey. The police officer was in the street at the time; Hussey was on the walk. Hussey made several passes at the policeman, striking him once

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I believe, in the face. Then again the policeman got on the walk, and tried to take hold of him, and he still put ~~up~~ for him again. Then the policeman took him as far as the lamp-post and examined him.

While he was examining him the prisoner crossed over and called out to him to take him down, or bring him down; after a little while he called out again, calling the officer named Dougan to take him down. Then I saw him start.

Q Saw the prisoner start?

A Yes sir, in the direction of Corlear Street, towards Grand Street Ferry, with quite a number of people after him throwing stones, so I turned back and went home, that is all I have seen.

Q You have no interest in this case, and know no one connected with it? Do you?

A No.

Q Are you a married man?

A No .

Cross-Examination.

None.

POOR QUALITY
ORIGINAL

00850

22.

P H I L L I P L O M E L , called on behalf of the
prisoner, being duly sworn testified as follows:-

Q (By Mr. Howe) Where do you live, Lomel?

A 120 Norfolk Street.

Q Are you in any business now ?

A Piano moving .

Q For whom have you worked at that ?

A For an uncle of mine, named Louis Swain.

Q He moves Pianos for manufacturers?

A Yes sir.

Q You worked for him?

A Yes sir.

Q Your uncle has been in that business for many years ?

A The last fifteen or twenty years.

Q Now, on the night of the shooting of Hussey, where were
you ?

A Corner of Jackson and Madison Street, when I heard
the first shot fired.

Q What did you then, if anything?

A I ran towards the direction from where the first shot
came from.

Q On which side of the street were you?

A On the West side of the street.

Q Now proceed

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Q Now, proceed from that moment and tell your story, just what you saw, speak slowly and distinctly?

A After I ran down the West side of the street--the West side of Jackson Street--I got near Cherry street and saw a man with a light suit, the prisoner, Mr. Hahn?

Q That was the defendant ?

A yes sir.

Q Go on?

Q I saw the defendant Edward Hahn running from the South West corner of Jackson and Cherry Street; he was running through the square; he got ~~near~~ ^{near} the North East corner, or on the corner I don't know which it was, I saw him take something and put his hand over his head and seen a flash of a revolver and heard a shot.

Q Was that shot fired into the air, or at the people in the street?

A He held his hand over his head and shot in the air.

Q There is no mistake about that ?

A I swear to it, I am sure.

Q What then?

A I seen a crowd running after him; the crowd was led by ~~a~~ ^{heavy built man,} John Hussey it was.

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ORIGINAL

0052

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Q How was he dressed?

A He had on a light shirt ~~and~~ white color, I think he was bare-footed and no hat.

Q Were many people following after Hussey?

A Fully twenty or twenty-five.

Q What were they doing?

A Can I express my self what he did say?

A Yes?

A "Kill the son-of-a-bitch, he is no good", and throwing stones and halves of bricks at the prisoner.

Q What then?

A The prisoner ran up Jackson Street on the East side of the street; as he got within three houses from Cherry street, the crowd was still running after him, and I heard another shot, and seen Hussey stagger, and seen a policeman come along and ~~took~~ hold of Hussey and he made strikes at him.

Q Did you hear what the policeman said to Hussey ?

A I heard someone, holow, I think it was the defendant, "bring him to the hospital."

Q Did you hear Hahn say he had shot him?

A I heard Hahn say, "I have shot him, take him to the Hospital".

POOR QUALITY
ORIGINAL

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Q I believe you lost your watch that night ?

A Yes sir, after I got from the crowd I went to see the time; I had a silk cord on my watch and found the cord cut in *two*.

Cross-Examination.%

Q Do you know Mr. Hanrahan?

A No sir, Only from seeing him down here; I heard his name called Tuesday.

Q When did you see him last before today?

A Monday ~~and~~ Tuesday in the ^Hallway, in this building.

Q See him anywhere else ?

A I may have seen him, never spoke to him.

Q Did you ever see him since that time ?

A What do you mean?

Q Since last Monday?

A I wont positively swear, I may have but I never spoke to him.

Q You were before the Coronor, were you not?

A No sir.

Q What ?

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ORIGINAL

0054

26.

A No sir.

Q You were before the ^{Magistrate?} ~~Coroner~~ ?

A This is the first Magistrate I have been before.

Q What ?

A This is the first magistrate I have been before.

Q This is the first time you have been before anyone in this case ?

A Except the Counsel, Mr. Howe.

Q You knew the man was accused of Murder ?

A Yes sir.

Q You knew this action was going on before the Coroner ?

A No sir.

Q Don't you read ?

A Very seldom.

Q You didn't know there was any proceeding before the Coroner, after Hussey's death?

A No sir.

Q When did you tell the story first ?

A I told the story four or five weeks after the shooting.

Q To who ?

A I am slightly acquainted with the brother of Mr. Hahn.

I got an introduction to him at a ball last winter; I met

**POOR QUALITY
ORIGINAL**

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27.

him and said, "How do you do". He said, "How do you", "I says, "It is too bad about that brother of yours", He said, "Yes". He said, "What do you know about it"? I said, I seen part of that shooting ~~afair~~ last night.

Q Last night ?

A I am speaking of the night of the shooting. I told him what I knew about the shooting that happened on the second of June.

Q Not last night then?

A No sir, becuae this was four or five weeks after the shooting, I met his brother, and he said, "The chances are you may make a good witness in this case", I said, "If I have time to spare, and if I can do anything for you, you know where I live, you can come and call on me any time".

Q You have seen someone since that ?

A No sir, the only one I have seen is Hahn's brother.

Q He is the only one you have seen?

A The only one I have told the story to was Hahn and Mr. Howe.

Qv You told Mr. Howe ?

A Yes sir.

Q When did you tell him?

**POOR QUALITY
ORIGINAL**

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A Who do you mean?

Q Mr. Howe?

A I think it must be four or five weeks ago, the date I cannot tell.

Q Have you told anybody since that ?

A I have only told him, including the man I am working for.

Q You haven't told Mr . Morse ?

A I don't know him.

Q He is this aimable young man whom Mr. Howe keeps constantly instructing to take something down?

A You don't know him?

A No sir.

Q Or Mr. Hummel?

A No sir.

Q You didn't hear Hanrahan's testimony?

A No sir, I was outside.

Q You are quite sure, perfectly sure, that before the third shot was fired there was a crowd there throwing bricks and stones at the prisoner ?

A I will swear to it .

Q Most of your testimony has been given under oath.
Before the third shot was fired there was a great crowd
number of bricks
and stones thrown ?

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A It was quite dark and I couldn't count, how many ~~there~~ were thrown.

Q I didn't ask you to count ?

A There was bricks, stones and missiles flying through the air?

Q No rasors ?

A No sir.

Q If ^athe witness has testified that the stones were thrown after the third shot was fired, and after Hussey was wounded, he is mistaken?

A I seen them thrown after the second shot was fired.

Q Before Hussey was wounded ?

A Yes sir?

Q Now, what was this officer doing, or this defendant doing when he held the pistol over his head and fired; standing still?

A No sir.

Q What was he doing? Please keep your eyes on me, or on the Jury, you let them ^awonder too much?

A It is immaterial to me whom I look at .

Q What was the policeman doing?

A He was running.

Q How near to him was this large heavy man?

A What do you mean, after the second shot was fired ?

**POOR QUALITY
ORIGINAL**

0050

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Q No. Well, yes; after the second shot was fired, or at the time it was fired?

A I think within twenty feet.

Q This crowd was still back of him?

A Yes, this is the heavy ~~built~~ built man (indicating) and he was right behind him.

Q He was the nearest man to the officer?

A Yes sir.

Q Will you tell me where they got the stones from?
Confine yourself to the stones?

A I cannot tell you. If I am not mistaken I think there was a good many buildings at the time being erected in the neighborhood.

Q Were they erecting buildings of cobble stones?

A You generally find all sorts of stones where they erect new buildings, to my judgment.

Q They threw bricks?

A Yes sir.

Q Did you see where they got them from?

A No sir, all I seen, bricks were flying through the air, where they got them I don't know.

Q After the third shot was fired there was a great deal of confusion?

**POOR QUALITY
ORIGINAL**

0059

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A Yes sir, crowds were coming from all directions.

Q This same crowd you saw at first were there ?

A Yes sir.

Q Did you see the prisoner go back to the crowd ?

A After the third shot was fired ?

Q Yes sir?

A After the third shot was fired I heard the prisoner say
"Bring him to the Hospital , I shot him".

Q The prisoner came back to where the wounded man was ?

A I don't know a nything about that .

Q Didn't you say you saw the officer take hold of
Hussey ?

A Yes sir, officer Deegan --I forget his name.

Q ~~Wasn't~~ Dougan ?

A Yes sir.

Q Wasn't it Officer Dougan that Hahn made that remark to ?

A Yes sir.

Q Then Hahn was close by ~~him~~ him?

A Yes sir.

Q Then you did see Hahn come up to where the wounded man
was ?

A No sir, I didn't.

Q How far was the officer from Hussey when the third
shot was fired ?

**POOR QUALITY
ORIGINAL**

0050

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A How far Hahn was from Hussey?

Q Yes sir, when the third shot was fired ?

A To my judgment fifteen feet.

Q That was when the last shot was fired ?

A Yes sir.

Q When Dougan had hold of Hussey, Hahn stood by ?

A I don't know anything about that , I didn't see it: I saw Dougan take ahold of Hussey.

Q Then you do know something about it ? You saw Dougan

A and Hussey together?

A Yes sir.

Q And saw Hussey attempt to strike him?

A Yes sir, he did.

Q And you heard some remark?

A Yes sir, what he said, I don't know.

Q You heard him say something ?

A yes sir.

Q You stood close enough to see and hear that ?

A I was on the opposite side of the street .

Q You stood close enough to hear what you have sworn to ?

A Yes sir.

Q When Dougan and Hussey stood together, how near was Hahn to them, when he told him to take Hussey to, the

**POOR QUALITY
ORIGINAL**

0061

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33.

hospital?

A I don't know.

Q Give your best judgment ?

A I couldn't say whether Hahn was there at the time Dougan took hold of Hussey.

Q I don't ask you to say that ? You have said you heard Hahn tell Dougan to take the man to the hospital?

A Yes sir.

Q How near was Hahn when he said that ?

A About fifteen feet.

Q He shouted to him?

A Yes sir.

Q Called to him?

A Yes sir.

Q Stood there in the same place where he was when he fired the shot ?

A Yes sir.

Q Where was the crowd with bricks and stones ?

A They were near Jackson and Cherry Street.

Q Back of Hussey?

A Yes sir.

Q The crowd didn't rush on after he was shot ?

A After the second shot was fired the crowds came from all

**POOR QUALITY
ORIGINAL**

0062

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~~all~~ directions; Hussey cried out to the mob, "Kill the son-of-a-bitch, he is no good".

I

Q (By the Second Juror) Who said that ?

A Hussey.

Q (By Col. Fellows) Then Hahn fired another shot ?

A He only fired three to my knowledge.

Q You did hear the shots fired ?

A yes sir.

Q You then saw a shot fired in the air ?

A yes sir.

I

Q The crowd were coming on led by Hussey?

A Yes sir.

Q Then three shots were fired ?

A yes sir.

Q Then Hahn and Hussey were three feet apart?

A Yes sir.

Q Then Dougan came up and took hold of Hussey?

A Yes sir.

O

Q Hahn then told Dougan to take him to the hospital ,
he had shot him?

A Yes sir. .

Q At the time Hahn said that, was Hussey in the same place
he was when he fired the third shot ?

POOR QUALITY
ORIGINAL

0063

35.

A Yes sir.

Q Where was the crowd with the bricks and stones that were attacking him ?

A They were right behind Hussey, they all rushed at Hahn still throwing stones.

Q Quite a crowd of them?

A ~~20~~ 20 or 25.

Q Quite a ~~lot~~^{rain} of stones and bricks through the air ?

A Yes sir, lotsof them. ~~Plenty of them~~

Q ~~Plenty of them~~, the air was thick with them, plenty flying about ?

A Yes sir.

Q See any of them hit Hahn ?

A I seen half a brick go along side of his head .

Q See any of them hit Hahn ?

A I wont swear to that, no sir.

Q Will you swear any of them hit him?

A I No sir, I wont swear to that.

Q The crowd after the third shot was fired rushed on Hahn?

A Yes sir.

Q Hahn stood still in the same place ?

A Yes sir.

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Q It did not take the crowd long to rush fifteen feet,
it isn't more than from here to the window?

A I suppose the point of the pistol kept them back.

Q I don't want your supposition, the crowd rushed on Hahn

A Yes sir.

Q They only had fifteen feet to go ?

A They didn't go near him?

Q How near did they go to him ?

A Within four or five feet.

Q Still with their bricks and stones they kept on

They kept
A throwing them, *on* till they got within four or five
feet ?

Q There were at least twenty of them.

A There was one hundred and twenty at that time, the crowd
came from all directions.?

Q They were all throwing?

A I don't say they all were, but who were I don't know.

Q A great number were throwing?

A Yes sir .

Q They were all throwing halves of bricks and cobble
stones ?

A Yes sir.

Q (By the Third Juror) Did you know that this was Hahn's
brother ?

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ORIGINAL**

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(37.-

A No sir, I never seen the gentleman in all my life.

Q How did you know it was his brother at the time you met him?

A The next day I seen it in the paper; I was not very busy and I picked up the paper and I heard about the shooting.

Q How did you know it was his brother when you met him?

A I got an introduction to his brother at a ball.

Q Did you state the conversation with his brother ?

A I stated it with the brother.

Re-Direct Examination.

Q By (By Mr. Howe) You have been asked about coming to see Mr. Howe . When you first came to my office, if I am correct--I may be mistaken--I didn't speak to you, did I ? Try and recollect, see if I am in error ?

A Please ask the question again?

Q You remember my coming through the office and not speaking to you ?

A Yes sir.

Q Then you remember my coming out side and asking you if you were a witness in Hahn's case ?

A Yes sir.

Q Did I not ask you to tell me all you knew about it ?

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A yes sir.

Q Was there not a clerk of mine setting at the desk, and didn't I tell him to take down your answers and statement?

A Yes sir.

Q That is the way your statement was taken down?

A yes sir. By a man named Druent, took it down .

Q That is it exactly. Yesterday you saw me?

A yes sir.

Q You saw me outside of the Court room this morning, in the Clerk's office ?

A yes sir.

Q I presume no one in my office suggested anything to you what you should say in this case ?

A Not a word, no sir.

Q I hope not. Where does your brother live the Piano manufacturer ?

A He is my uncle, he lives at 17th, Street and Avenue B, he keeps his office and trucks at 8 and 10 Union Square.

Q His name is advertised there ?

A yes sir .

Q How many trucks has he ?

A Two, trucks, five carts, and two express wakens.

Q Two wheel carts for moving pianos?

A Yes sir.

Q He moves for the large piano manufacturess ?

A Yes sir, zSteinway, and people of that kind.

E D W A R D H A H N , the prisoner, called in
his own behalf, being duly sworn, testified as follows:-

Q What age are you Hahn?

A Twenty six.

Q When were you appointed on the Police ?

A I was appointed on the sixth of March 1886, as a Patrol-
man. I was appointed on probation on the 1st, of February
1886, and done ^{days} thirty-six ~~hours~~ probation and was
fully appointed on the sixth of March 1886.

Q Assigned to what presinct ?

A The Thirteenth, now the Twelvth.

Q Under command of Captain Pettie?

A Yes sir.

Q Where were you born?

A I was born in the City of New York.

Q What was your trade ?

A I was a hatter.

Q Speak slowly and so the last gentleman will hear you,
and it is fair to assume the remainder will? Your trade
was a Hatter ?

**POOR QUALITY
ORIGINAL**

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A Yes sir.

Q For whom did you work?

I A Flackster, Ellis & Simonson, 72 & 74 McGreene Street

I didn't work for them directly, but in their business, the work was piece work and I went to work for another workman, as helper.

Q That was your business or trade until you were appointed on the police ?

A yes sir.

Q Did you follow any other occupation?

I A I kept a saloon one time.

Q Where ?

A 1599 Second Avenue, for a short while before I was appointed a policeman.

Q Hahn, you went to the Police picnic on the 2nd, of June ?

A Yes sir.

Q It was Starin's Excursions we have been told ?

A Yes sir.

Q A tribute which he pays to the police force every year ?

A I believe so, every year.

Q What time did you return to the dock at Franklin Street, at that time ?

A

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I A Sometime between eight and quarter ~~after~~, I guess, I
couldnot tell you the exact time, I think it was after
eight ofclock.

Q Had you been drinking that day?

A Not any more than usual.

Q But you had been ?

A Yes sir, I drank some lager beer that day.

Q You were not intoxicated ?

A No sir.

Q You had a young lady with you?

A Yes sir, I did.

Q Miss Annie Miller ?

A yes sir.

Q Did you take her home that day ?

A Yes sir, I did sir.

Q Where did she live ?

A On Front Street, two doors from Jackson; I don't
know the number.

Q With her father and mother ?

A Yes sir.

Q Did you take any car ?

A Yes sir.

Q What car was it ?

Q

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A I took the cross town line, Chambers Street, we took ~~at~~
at Duane Street and Greenwich Street, from the West
side over.

Q Did you ride with Miss Miller to Jackson and Cherry
Street?

A I rode with ~~her~~ Miss Miller to Jackson and Cherry Street.

Q Did you go in her house ?

A I did sir.

Q How long did you remain there ?

A I stopped there probably an hour talking to her
and the folks.

Q Was her father there ?

A Father, mother and brother.

Q She has been here to day?

A Yes sir, I think she is here yet.

Q Now, on the corner of Jackson & Front Street did you
meet any police officers ?

A I met Officer Snyder and officer Deevy.

Q Did you speak to them?

A Yes sir.

Q T^h_{en} where did you go?

A After having a little conversation with them I walked
up Jackson Street until I got to Madison Street; I stopped

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there probably a few moments, then entered Prect's store, and asked him if he will take charge of my umbrella. I then went out and walked up Madison Street a little way, thinking I might meet officer Dougan ; not meeting him I came back to Prect's store, went in and had a drink.?

Q What did you drink?

A A small glass of lager.

Q Only a beer ?

A Yes sir.

Q Did you get your umbrella ?

A No sir, I left the umbrella there, started out and walked down Jackson Street, thinking perhaps Dougan had been sent on Jackson Street. I had crossed Munroe street, when I seen the deceased, John Hussey, and another man on the ^{opposite} ~~opposite~~ side of the street about midway between Cherry and Munroe streets. Hussey was facing the West side of the street and this man ^{Laughlin} ~~Backlin~~ facing South, having both hands on Hussey's right arm, and Hussey had a stick in his left hand, It looked similar to the rung of a chair , a yellow stick. They were talking pretty loud, and thinking Hussey was drunk and liable to get into trouble I crossed the street, and laid my

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hand on Hussey's shoulder, and said, " Jack, what are you doing here making a fool of yourself again?? Why don't you go home?" He looked at me and said, "You are a pretty good fellow, I will". I then said to ~~Locklin~~ ^{Laughlin}, " Let go of his arm and he will go home". ~~Locklin~~ ^{Laughlin} let go and put a face on him as if he didn't like the interruption. Then the three of us walked down Jackson Street, I on the inside and ~~Locklin~~ ^{Laughlin} on the outside of Hussey. We got to Jackson Street where Hussey stopped at Lillienka~~th~~al's liquor store and said, "I am going to have a drink". I said, , "Jack you have had all you ~~want~~ ^{can} to drink; go home and you can get plenty of it there." He said, " No, I am going to have a drink". While talking some young lady came across Cherry Street from the direction of his house within six feet of us and said, " "Father, come home." I waited for Hussey to answer. He not answering I said, "He will be home soon". And he refusing to go home I thought I would conciliate him by giving him a drink . I said, "Come in and I will buy you a drink." All three of us entered the saloon and I called for drinks. The bar was a curved one I was here, (indicating) and ~~Locklin~~ ^{Laughlin} behind me. Hussey had a glass of whiskey, I had a small beer. What ~~Locklin~~ ^{Laughlin} had

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I cannot say. He had a drink in a glass similar to mine. Hussey asked if I am a detective. I said, "No". He said, "Are you a cop"? I said, "Yes sir".

Q Go on?

A We had our drink. I paid for the drinks, and we walked out of the ^lshoon across Cherry Street to within three or four feet of his door. He lived the second door, from Cherry Street on the West side of Jackson Street, No.

50. 50. We stopped there

. I intended leaving him, seeing he was as far as his door. He said, "Come have a drink at Pat Dominick's place". I said, "No". Jack you have all the drink you want. Go in the house. And, further more, I will not go to Dominick's place he is no friend of mine." Then Hussey said, "Let us to go McAvoy's." I said, "I will buy another drink, providing you promise to go home afterwards." He said, "All right". Then the three of us went across the street into McAvoy's store. I called for a round of drinks. Hussey called for ^{Lauphlin}whiskie, ~~Lauphlin~~ for a segar, I for a small glass of beer. Hussey got the whiskie and stepped back from the bar and raising his glass said, "Here goes." I said, "Jack, why don't you wait until I get my drink? I am treating." The expression I used didn't seem to

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satisfy him He said , " I am no beggar and you are a mean man talking about treat." I said nothing further to him. I had a short sack coat on and put my hand in my pocket to pay for the drink. As I did Hussey came over and reached his hand out and got me by the shoulder I drew my hand out of my pocket, and he put his hand in his pocket, and as he did I seen he was getting ugly and I backed out of the door. Being swinging doors there I went out backwards. The doors stopped swinging when he came out for me, and as I stepped across the street Hussey was making a break to come after me and I and fired a shot drew my revolver to attract a policeman knowing I was no match for him single handed from what I heard of him, and I wanted assistance in case he assaulted me. After firing the shot I walked rapidly across Cherry Street. I hadn't got across the street when the doors slammed open and Hussey came out on a run and two or three people behind him. Who those people were I could not say. Seeing Hussey running towards me and seeing no officer approaching, I raised the revolver above my head and fired another shot in the air, and as I did there was quite a crowd on the corner. Who was there before we went in, and when we came out. I started across Jackson Street and the mob crossed shouting. Someone said, "

**POOR QUALITY
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46.

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, "Kill the son-of-a-bitch." Who hollowed that I could not tell. There was several missiles thrown. Something struck me in the ba ck. I think it was a stone. Something grazed my head; What it was I could not say. I ran to the opposite side of the street and turned and ~~threw~~ ^{through} the shoutin g and throwing of stones ~~of~~ ^I got so frightened, not knowing if I fell into the hands of that crowd what would happen, I fired another shot with the intention of hitting him in the leg to cripple him so he would stop. I saw Hussey stagger, and then officer Dougan came and attempted to take hold of him, and there was a wrangle between them, and then I crossed the street and told the officer to take him to the hospital I called out twice. Then there were crowds coming from all directions; both sides were lined with people. I got out of the crowd and started through Cherry Street, when some of them followed me on a run through Cherry street to Corlears street, and threw missiles after me; they may ~~be~~ ^{have been} bricks or stones; some hard matter. When I turned Corlears they dropped behind. Then I went down to try to get some assistance for Dougan. Then I saw a watchman in Water street, the man works for Smith & Sons. I went to him ~~and~~ and said, ~~that~~

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"I shot Hussey on Jackson Street. I have only two cartridges left, have you any?" He said, "Yes." I said, "How many have you". He said, "Three". and he gave them to me. I said, "If the crowd tackles ^{me} I will have to use my revolver again". Then we walked up and met officer Deevy who came from East Street at the time. I told the officer I shot Hussey and gave him the revolver, and said, "Let us go to the hospital". We went to the hospital. Dr. O'Hanlon was down stairs. He took me up stairs to Hussey and asked Hussey--I cannot give you the exact words, but I think he asked Hussey if I was the man that shot him. Hussey reached out his hand and said, "What did you shoot me for?" I made no reply but walked out, and Dr. O'Hanlon told officer Deevy to put me under arrest. The officer, watchman and I, went up through Gouverneur street. I said, "Let us ~~kg~~ go to the Acting-Captain's house and I will give myself up to him. " We then went to the Acting-Captain's house who was about retiring. We went into the dining room and his wife or servant called him down in the basement. He came out. I said, "I shot Hussey and that was the revolver I did it with." Then Sergeant Lancer, I and Deevy ~~then~~ went back to the Hospital. Going back I gave

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the Sergeant a kind of detailed account of the affair; how it happened, not stating it as precise as I do here. We went back to the hospital and then the Doctor, Acting-Captain, Lancer, Deevy and I went up to see Hussey. There was a screen around Hussey's bed. The bed stood nine or ten feet from the door of the ward. Sergeant Lancer and the Doctor went behind the screen, I and Deevy stood inside the ward. What the conversation was I could not say. I heard an indistinct conversation. Me and Deevy were talking about the affair. Soon we got through talking and I heard my name mentioned and I went behind the screen. Hussey reached out his hand and said, "What did you shoot me for?" I made no reply and was taken to the station house and locked up.

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Court of General Sessions,

P a r t I I .

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vs.

E d w a r d H a h n .

New York, October 13, 1887.

Trial Resumed.

E D W A R D H A H N , re-called.

Direct Examination continued by Mr. Howe.

Q At the time you fired the shot that took effect on Hussey
or before it, had you any intention to kill him? A No sir.

Q You never had any quarrel or difficulty with Hussey?

A No sir, none at all.

Q And when you met him on that night and saw his condition
you were trying to coax him to go to his home? A That is
what I was trying to do.

Q Then you neither deliberated or premeditated to kill him?

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Objected to.

Q Or intended to kill him?

Col. Fellows:--I object to the latter part of this question.

The Court:--He has answered it.

Q Did you deliberate or premeditate to kill him?

Col. Fellows:--I object.

The Court:--Let him answer.

A No sir.

Q Hussey didn't strike you that night at all? A Well, no, I can't say that he did.

Q Only he pulled on your coat? A That is all.

Q Did you leave that store in anger? A No sir.

Q You said yesterday that you left it because you saw that Hussey was getting boisterous and ugly? A That is what I said.

Q And that is the reason you left it? A Yes sir, that is the reason.

Q Without taking your drink? A Yes sir.

Q Not on account of your anger or any animosity? A No sir.

Q And then it was when Hussey followed you out and you saw him coming after you fired the shot in the air---the first shot? A Yes sir.

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Q Did you until the third shot point your pistol at Hussey?

A No sir.

Q You fired the first shot and the second shot into the air? A Yes sir.

Q You said yesterday that Hussey was about fifteen feet from you, or in that neighborhood; is that your honest belief?

A Well, I should say ten or fifteen feet; I couldn't say.

Q It might have been fifteen? A Yes, it might have been.

Q And then when you fired, you believed from the appearances then presenting themselves, Hussey following, your knowledge of his character and reputation for assaulting the police and the people following behind, yelling and hallooing, that you were in danger of great bodily harm and great personal injury?

Mol. Fellows:--I object to the question as containing statements of Mr. Howe which are not in evidence, namely, that he knew the reputation of Hussey for assaults on the police.

The Court:--I excluded all evidence of assaults upon policemen.

Mr. Howe:--I offered to prove that Hussey had again and again assaulted the police, and was locked up for it. I now offer to show by

this witness that that information was brought
to this witness's knowledge.

The Court:--I will let him answer it.

Q Did you hear of assaults made by Hussey upon other police-
men? A Yes sir.

Mr. Howe:--Strike that answer out.

Q Have you heard of Hussey's assaulting other policemen?

Col. Fellows:--I object.

The Court:--Let him answer.

A Yes sir.

Q Did you also hear that Hussey had assaulted citizens?

Objected to.

The Court:--Let him answer.

A Yes sir.

Q Did you hear about Hussey having been engaged in the riots?

The Court:--I will rule that out.

Exception taken.

Q As a leader of the riots against the people?

The Court:--I will rule that out.

Exception taken.

Q My learned friend asked you if there were not two com-
plaints made against you for violation of the police rules
which was the first complaint? A Sitting down on a stoop

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at half past two in the morning.

Q Sitting on a stoop at half past two in the morning?

A Yes sir.

Q You were convicted of that offense were you? A I was sir.

Q By the Police Commissioners? A Yes sir.

Q And what was the penalty? A I was fined one days pay.

Q And afterwards, you tell us you were charged with being off post, was it? A Off post in a liquor store.

Q In a liquor saloon? A Yes sir.

Q And what was the penalty for that? A Three days pay.

Q Other than those two charges, have no other, to your knowledge, ever been made against you as a policeman? A No sir.

Q You have never been charged in court with any offense, have you? A No sir.

Q Did you have occasion to look over the blotters in your station house? A Yes sir.

Q The police keep what is termed a "blotter", don't they, on the desk? A Yes sir.

Q And on that is entered by the Sergeant on duty the name of the prisoner brought in and the specific nature of the offense charged against him? A Yes sir.

Q And afterwards, after the case has been heard and determin-

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ed by the magistrate, they put at the end of it the de-
termination, either fine, held to bail, or whatever it may
be? A Yes sir.

Q Isn't that so? A Yes sir.

Q Do you remember the case of Louis Sohn who was charged
with ~~shooting~~ the police?

Col. Fellows:--I object to the question.

It is utterly irrelevant, incompetent and
impertinent to this case.

Mr. Howe:--I propose to show that he was a
police officer in the case of Louis Sohn, or
some such name, who was charged with shooting
at the police, and that by the direction of
his superiors he had looked through the blot-
ter to find the record of Louis Sohn.

The Court:--That is clearly inadmissible.

Col. Fellows:--I object to any statement of
counsel.

Q Did you obtain a knowledge of Hussey's reputation for
assaults on the police by looking over the police blot-
ters?

Col. Fellows:--I object.

The Court:--I will rule that out.

Exception taken.

Q. Hussey's reputation for violence and assaults on the police, I mean; that is the question?

The Court:--I will rule that out.

C R O S S E X A M I N E D by Col. Fellows:

Q Q Do you know what deliberation and premeditation is within the legal meaning? A I have a pretty good idea of it, I think.

Q You have? A Yes sir.

Q Did you believe at the time you fired that shot at Hussey, the shot which hit him, that you were in danger of your life, or of imminent serious bodily injury? A I did, sir.

Q And that in order to protect your own life or person it was necessary to slay your assailant? A No, I don't think necessary to slay my assailant, but to cripple him for the time being.

Q And you fired to cripple him? A That is what I fired for.

Q Where did you aim for? A I aimed low, intending to hit him in the leg below the waist.

Q The natural course of a bullet, you understand from the use of a pistol, is downward from the time it leaves the pistol? A Generally it is.

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Q And aiming low, you know now that you hit him in the center of the abdomen? A Yes sir.

Q And that at a distance of between ten and fifteen feet?

A Yes sir.

Q Do you know anything about some buildings in the progress of repair or reconstruction about these corners? A I heard that they intended---I will give you the answer perfectly.

Q I want to know if, at the time of this shooting the 2nd of June, you know anything about repairs going on in buildings in and about that corner? A I can't say I do.

Q You would have known if there were? A I could not say whether there were or not.

Q You were accustomed to pass there daily? A Sometimes, and sometimes not for three or four days.

Q You were familiar with the neighborhood? A I was.

Q You know all about the location of these saloons on the corner? A Yes sir.

Q And are you prepared to say to this jury whether or not any repairs were going on in the buildings? A There had been repairs going on all the time there.

Q Where? A At the northeast corner.

Q Lillian Thalls? A No sir.

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Q Where? A At the northwest corner of Cherry sy. these wooden buildings opposite Lillian Thalls.

Q What repairs were going on? A They were digging cellars and going to take the house down.

Q You are sure that that was the case on the 2nd of June?

A I am not sure that they had been at it that day.

Q Are you sure that at that time repairs were going on?

A I am not.

Q Why do you say they were digging cellars? A I had seen them digging cellars prior to that.

Q How long prior? A It might have been two or three weeks.

Q It might have been several months? A No sir.

Q Do you know of any piles of bricks or stones about that corner anywhere at that time? A I couldn't say that.

Q You had been there during the evening? A Not any more than pass there.

Q Don't you know as a matter of fact that ^{there were} no repairs going on about the buildings there and there were no piles of stones or bricks anywhere about there? A I don't believe I made any assertion. -----

Q I ask you now for the fact; don't you know as a matter of fact-----A There were none on Jackson st--I will say yes sir. As far as Cherry st is concerned ^{the answer.}

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Q Don't you know as matter of fact, or as matter of information within your knowledge, that these buildings were torn down sometime after this shooting? A Well, it has been--

Q Don't you know it? A I can't say that I know it; I haven't seen it.

Q You say that a crowd was following you throwing stones and bricks at you that night? A Missles I said.

Q What kind? A To the best of my knowledge I think they were brick or stone.

Q Have you any idea where they were obtained? A From the streets, I suppose.

Q I ask you, have you no knowledge or idea where they were obtained? A No sir, I couldn't say that.

Q You are not accustomed, are you, in your travels as a policeman to find loose piles or brick or stone lying about the streets unless repairs are going on? A I am accustomed to finding a good many pieces of brick, marble and coal in that neighborhood.

Q What kind of brick and stone are you accustomed to find upon the streets in that neighborhood? A Generally brick used for building purposes.

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Q Lying about the streets? A Broken pieces of brick.

Q Lying about the streets? A Yes sir.

Q You have been on the police a year or more? A Yes sir.

Q And know the duties of a policeman with respect to such articles in the street, don't you? A Yes sir.

Q You had occasion to have them removed and complained of?

A Well, not for pieces of brick.
occasion

Q Have you had ~~information~~ to call the attention of the proper authorities to the presence of the brick and stone in the streets there? A Well, I can't say positively, I think I have.

Q You think you have? A Yes sir.

Q Well, you have no more definite recollection of it than you think you have? A Well, I can't say positively.

Q Well, if you have it is contained on the blotter, in your precinct? A Most likely, yes sir.

Q And it is within the last fifteen months preceding your shooting of Hussey? A Yes sir.

Q Now, I believe by your testimony, that Jack Hussey did not, at the first of your interviews that night, approach you?

A He did not.

Q Jack Hussey was going along the street with a friend of his, was he not? A No sir.

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Q Didn't I hear you say you saw him with a man by the name of Loughlin? A Yes sir.

Q Don't you know that that man was a friend of Husseys?

A I didn't know.

Q Don't you know it now? A Yes sir, I know it now.

Q Then Jack Hussey was going along the street with a friend of his? A He was not sir; he was standing.

Q He was in the street? A Yes sir.

Q And standing? A Yes sir.

Q Any crowd about him? A No sir.

Q Doing no harm? A Talking boisterously.

Q He was talking boisterously to one man? A Yes sir.

Q And that one man was a friend? A I did not know that at the time; I know it now.

Q You saw no assault? A No sir.

Q You had just before that met officer Deevy--a short time before? A Yes sir.

Q You knew where Deevy's post was? A Yes sir.

Q You knew the post in the neighborhood in which Hussey and his friend were? A I did sir.

Q You were not in uniform? A No sir.

Q Why did you go to Jack Hussey--what business had you with him? A Through a feeling of good nature more than any-

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thing else.

Q You didn't know him, did you, except by sight? A I did sir.

Q Well, you are aware that on that night he constantly denied knowing you, are you not? A I hear so now.

Q You heard so then? A I heard so after the shooting occurred

Q You heard before the shooting? A I never did.

Q Haven't you testified that he asked you who you were?

A He wasn't sure who I was.

Q And what your business was? A He never seen me in citizens clothes.

Q Didn't he ask you who you were? A Yes sir, he did.

Q Didn't you hear him say in the hospital he didn't know your name? A Yes sir.

Q Now, he asked you after you had conversed with him whether you were a detective? A Yes sir.

Q And then he asked you if you were a copper? A Yes sir.

Q And, as the other witnesses say, you told him you were a copper. Then Jack Hussey that night immediately upon your approach to him indicated that he didn't know you, didn't he? A Yes sir, he did.

Q Why did you remain with him? A Just as I said before,

through a feeling of good nature, to get him home out of trouble.

Q What trouble was he in? A The looks of the thing looked very much as though they would get into trouble as this man Loughlin had hold of his arm and Hussey having a stick and talking boisterously, there was every indication of a quarrel, and knowing what I did of Hussey----

Q Now, let us see what you know of Hussey; when you approached Hussey who was violent and boisterous with a stick in his hand and you in citizens dress and not knowing you, what did he say or do towards you? A Nothing in particular.

Q What did he say or do? A He says "You are a good fellow, I will go home."

Q He spoke in a kindly tone? A Yes sir.

Q You requested him to go home, and his reply was "You are a good fellow, I will go home"? A Yes sir.

Q There was no particularly boisterous conduct there? A No sir.

Q A rather friendly and good natured observation to you was his only reply? A At that time.

Q There was no offer to assault you or resist you? A No sir.

- Q He used no insulting language to you? A No sir.
- Q Passing over this drinking place in which you were until you came to McEvoy's, I ask you if it is true that Hussey took hold of you there? A It is, sir.
- Q Did you hear the testimony of Loughlin? A I did, sir.
- Q Did you hear the testimony of Featherstone? A I did, sir.
- Q Did you hear the testimony of McEvoy? A I did, sir.
- Q Is their testimony true or false? A It is false.
- Q It is not true then that you went to the door after this conversation with Hussey about drinking and come back and put your pistol through the door and said "Now come out here, you cur"? A I never did, sir.
- Q You heard all of Featherstone's testimony? A Yes sir.
- Q And you say his testimony as to the occurrence in the saloon, as to that occurrence about coming back with the pistol, is false? A It is false.
- Q You did go out of the saloon? A Yes sir.
- Q Leaving Hussey and Loughlin in there? A Yes sir.
- Q Why didn't you go away? A I did immediately after I fired the first shot.
- Q What did you fire the shot for? A He started to come for me.
- Q He started to go for you? A Yes sir, he did.

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Q You saw that before you got out of the saloon? A I saw that over the swinging doors.

Q After you got out of the saloon, passing through the doors, you turned back and looked in to see? A I was going out of that door backwards, and I never turned until I fired the shot.

Q You were going out backwards? A Yes sir.

Q And that is as true as anything you have stated here?
A Yes sir, that is.

Q When you got out of the saloon you fired to attract the attention of a policeman? A I did sir.

Q And no policeman responded? A Did not.

Q And then how soon after did you fire the second shot?
A Probably---I do not think there was a minute elapsed.

Q Well, a minute is some considerable time? A Yes sir.

Q You stayed there a minute? A I didn't stay there; I walked away from there.

Q You were there a minute before you fired another shot in that vicinity? A Yes sir.

Q And then you fired a second shot in the air? A Yes sir.

Q How near at any time had Hussey got to you? A Hussey was---well, when I fired the first shot I do not believe

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there was over six or eight feet between us; when I fired the second shot it was probably three-quarters of the cross walk; I could not say what distance it is, probably twelve feet.

Q And when you fired the third shot? A Probably ten or fifteen feet.

Q This stick you spoke of that you saw in Hussey's hand, he dropped in the street? A Yes sir.

Q And when he was in the saloon he had no weapon as far as you know? A No sir.

Q Well, after you fired the third shot what did you do?

A After firing the third shot I went from the sidewalk towards the middle of the street, from the east to the west side of the street, and I went down and called to Dugan twice in succession to take him to the hospital.

Q Did you know you had shot him? A Yes sir, I seen him put his hand there (indicating) and stagger. I was pretty sure the shot struck him. I went around the outskirts of the crowd and started through Cherry st to Corlear to see if I couldn't find some officer down around that neighborhood to come up and assist Dugan if necessary.

Q You went around the outskirts of the crowd? A Yes sir.

Q Did nobody interfere with you? A Not until I had passed

them.

Q What then? A Some of them got the side of me and started for me through Cherry st, towards Corlear

Q Were any stones thrown at that time? A Yes sir.

Q How many? A I didn't count them.

Q Can you give us an idea? A I couldn't give no idea.

Q Many or few? A There might have been a half a dozen; there might have been a dozen.

Q There might have been several dozen? A No sir, not several dozen.

Q Did any of them hit you? A No sir, not at that time.

Q At any time? A Yes sir, one hit me in the back.

Q Where and when? A After firing the second shot and before firing the third shot.

Q It was some heavy missile? A Yes sir.

Q Did it leave any mark? A No sir.

Q Did it make any bruise? A Well it was on the back, sir, and whether it made a bruise or not I can't say.

Q Did you have any examination made? A No sir.

Q Did you state to any of your brother officers that night that you had been hit with a stone? A I said it to Captain Lancer.

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Q You did state it to Capt. Lancer? A Yes sir.

Q Did you hear Capt. Lancer's testimony here? A Yes sir.
he gave

Q Was the testimony true in all respects as to what occurred
between you and him? A Partly.

Q Only part of the truth? A Pretty near; as near as he
can come to it, I guess.

Q He did leave something out? A Several little things, he
may have forgotten them.

Q Do you remember that he was asked several times if he
had stated all the conversation? A I do, sir

Q And you remember what his answers were? A I think I
do.

Q You say then that he did not give all the conversation?
A I do not think he did, no sir.

Q Now did you hear the testimony of this man, I have forgot-
ten his name---who was returning from the Academy of Music
with his wife? A Yes sir.

Q Was his testimony true? A No sir.

Q Did you hear the testimony of Daly? A I did sir.

Q Was that true? A It was.

Q It was? A Yes sir.

Q In all respects? A Yes sir---which Daly?

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Q Thomas Daly? A Yes sir.

Q Just as he gave it, that testimony was true? A Yes sir.

Q And it is true is it not that before you fired that second shot that Hussey and a crowd were advancing upon you?

A Yes sir.

Q And that missiles had been thrown and had hit you? A Not before the second shot, no sir.

Q I thought you said you were hit in the back? A Before the third shot.

Q It is true that a crowd was following you then? A Yes sir.

Q Quite a number of them? A Yes sir .

Q Gathered on both sides of the street? A Yes sir.

Q And that they got within fifteen feet of you? A Yes sir.

Q They got no nearer? A I couldn't say.

Q You went up to Thomas Daly's and got some bullets? A Yes sir.

Q What for? A I was in danger of meeting this crowd again, and as I intended to cross Jackson st and go to the Hospital I wanted to have something to defend myself with.

Q At the time you got these bullets you were away from the crowd? A Yes sir.

Q Some distance? A Yes sir.

Q Three blocks away? A I couldn't say three blocks.

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Q Mr Daly had sworn to three blocks? A I couldn't say the blocks, or Mr. Daly couldn't say i t---three blocks from where the thing happened---I don't believe he swore.

Q He swore it was three blocks from the corner of Jackson and Cherry sts. where you last saw the crowd and where you left them? A The last sight I got of the crowd was when I turned Cherry and Corlear st., that is two blocks from where I met Daly.

Q Well, that is the last you got sight of the crowd? A Yes sir.

Q The crowd at that time was some distance away? A Behind me.

Q And in the neighborhood of Jackson and Cherry? A Between Jackson and Cherry .

Q Corlear st is a block from there? A Yes sir.

Q Then as you turned out of sight of the corner of Jackson and Cherry and you went across you got your last view of the crowd? A Yes sir.

Q You then were two blocks further? A Yes sir.

Q You knew all the police of that precinct? A Yes sir .

Q And what danger were you in? A A good deal of danger.

Q Mr. Daly testified that there was not a soul there besides you and himself? A Was not?

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Q Nobody in sight? A No sir.

Q And you knew that you had all the protection that the law of this City could give you? A From who?

Q Did you not? A No sir; there was no protection there but Daly.

Q But you were away from the crowd and nobody was in sight and nothing to prevent you getting further away from the crowd? A I had occasion to go back that way by going to the hospital; I intended to go back.

Q I am not asking you about your intention, I am asking you about the necessity of it? A To be identified.

Q I want to know what necessity there was for your going back to that crowd? A To go to the hospital to ascertain the extent of this man's injuries.

Q The proper place for you to go was to the station house, was it not? A Not always; to ascertain the extent of this man's injuries was my first business, and then I was going to the station house.

Q It was? A Yes sir.

Q That is what you understand your duty as a citizen to be? A That is my duty as a policeman.

Q You were not on police duty? A I am always on police duty.

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- Q You were on police duty that night? A I was.
- Q You were on police duty that night? A Yes sir.
- Q You were on police duty that night? A Not on post.
- Q Were you on police duty that night? A Well, I do not understand your question properly.
- Q You said you were always on police duty? A Yes sir; the way I understand police duty.
- Q You seem to recognize what police duty is; I ask you if you were on police duty that night? A Yes sir.
- Q Were you on police duty when you went into Brecks saloon and took a drink? A That is allowable when a man is in citizens clothes.
- Q Were you on police duty? A Yes sir.
- Q Were you on police duty when you went into the other liquor saloon and treated to liquor? A Yes sir.
- Q And that is your conception of the duty of a policeman?
- A When I am in citizens clothes.
- Q Now you knew that you had shot a man? A Yes sir.
- Q And that there must be a legal investigation in some form? A Yes sir.

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Q And you deemed it your first duty to go and look after the man you shot ? A Yes, sir.

Q You had put him in charge of uniformed officers had you not ? A Yes, sir.

Q Who were on post ? A Yes, sir.

Q And whose duty as post officers were to take charge of any wounded man and accompany him to the proper place ?
A Yes, sir.

Q What had you to ^{do} with him ? A I had as much right to go there and get the results of his injuries or his condition as the other officers.

Q But you were not the policeman who had charge of Hussey ?
A No, sir.

Q And you felt it necessary to go to that hospital ?
A I did sir.

Q You didn't think that by going to the station house, and telling your superior officers what you had done, that you could there get all the necessary information about the wounded man ? A Well not at that time.

Q You were determined to go back where you saw the crowd was whom you believed threatened your life A I was determined to go back and cross that street. I had to cross it to get back.

Q And you had to go three blocks ? A Not in that direction.

I could cross through Water Street or cross Jackson one block from there.

Q You fired three shots from that pistol ? A Yes, sir.

Q The pistol is a five chamber revolver ? A Yes, sir.

Q Then there were but two shots remaining ? A Yes, sir.

Q I suppose the crowd grew in size as the various shots were fired ? A Yes, sir.

Q Each shot attracting more and more people there ? A Yes, sir.

Q And the crowd grew more and more violent did it not ? A Yes, sir.

Q As the shooting went on ? A Yes, sir.

Q Then when you fired the third shot the crowd was more infuriated and angry than they were before you fired the second ? A After I fired the third shot the crowd had suddenly stopped altogether and gathered around Hussey and the officers.

Q There were no further manifestations toward you ? A No, sir not at that moment.

Q Hahn, when you were taken in the presence of Hussey and confronted with him at the hospital you had the first opportunity then given you of telling why you shot him, why didn't you do it ? A I had no right to tell him.

Q You had not A No, sir.

Q You were identified by the inquiries of your superior officer ? A Yes, sir, I was.

Q As the man who had shot him ? A Yes, sir.

Q This turbulent and dangerous man who had a short time before threatened your life, as you say, manifested no particular ferocity or anger then, did he ? A Not that I can say.

Q Did he reach up and take hold of your hand ? A Yes, sir -- no sir not at the first time. When he reached up his hand -- when I went there before I went to Sergeant Lancer's house I refused to take his hand.

Q I am talking about the first time you were confronted with him ? A I refused to take his hand.

Q Did you hear Sergeant Lancer's testimony ? A Yes, sir.

Q Did you hear the testimony of the other witnesses who were present ? A Yes, sir.

Q That Hussey reached up and took hold of your hand, and said "Why did you shoot me ?" A That was the second time I seen Hussey after the shooting.

Q At any time immediately after the shooting ? A Lancer told me to take his hand.

Q Did you take his hand ? A Yes, sir, I did, sir.

Q And Hussey said "Why did you shoot me" ? A He did sir.

Q No anger or boisterous tone was it ? A No, sir.

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Q A tone of inquiry ? A Yes, sir.

Q And entreaty, was it ? A Not entreaty.

Q Was he trying to find out what you shot him for ? A I cannot say that there was any entreaty about the tone of his voice in this question he asked me.

Q You made no reply ? A No, sir.

Q You were just as well aware then that you shot him in self-defence as you are now ? A Yes, sir.

Q And you didn't think that it was the proper time to say to the man you had shot "I shot you because I had to do it, because you made it necessary I should shoot you" ?
A No sir.

Q Why did you tell Daly that you had shot him through fear, what kind of fear did you mean ? A I was in fear of him and the crowd of hoodlums following.

Q That was the kind of fear you alluded to there ? A Yes, sir.

Q You had been on this picnic that day ? A Yes, sir.

Q Do you remember when you came home and went into Breck's saloon what conversation you had with him ? A I do sir.

Q What did you say ? A I bid him the time of evening. Mr. Breck asked me where I had been and I told him I had been on the police excursion. And had a good time.

Q On that excursion did you drink anything ? A I did sir.

Q Frequently ? A Well no.

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Q Well about how often if you can give us any idea . A Well I can give you a pretty good idea of how much I drank that day. I drank about a dozen glasses of beer on that excursion.

Q You drank four that you have testified to after you returned ? A Two .

Q You did drink in Lillienthals ? A One small glass of beer

Q You did not drink in McEvoy's ? A No, sir .

Q You drank in Breck's ? A Yes, sir .

Q Had you had any other drinks ? A I don't remember having any others .

Q You are quite confident you had no more from the time you got off this excursion until this shooting ? A Oh yes. We had a glass of beer before we entered the cars, I think it was on Greenwich Street .

Q I asked you yesterday or you were asked if you had been drinking that evening and you said no more than usual ?

A Yes, sir .

Q You remember that answer ? A Yes, sir .

Q Was it usual for you to drink that much during the day ?

A Not on duty .

Q It was an unusual occurrence ? A It was an unusual occurrence on duty .

Q You were on police duty that day ? A Not while on the ex-

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cursion, not while out of the city limits

Q But while you were in the city limits you were on police duty ? A Yes, sir.

Q What was your business immediately before your appointment on the police ? A My business immediately before that -- I kept a saloon.

Q Where ? A At 1599 Second Avenue.

Q How long had you kept that saloon A Probably four or five months.

Q What was your business before you took that saloon ?
A I was a hatter.

Q Working at your trade ? A Yes, sir.

Q Have you ever been a barkeeper ? A No, sir except this time I kept a place myself.

Q Were you ever engaged in Hickey's saloon in any way ?
A No sir.

Q In no way or form ? A A number of times may be I stopped there an hour or two because I bought this saloon off him - but as to work for him, never.

Q You knew Hickey pretty well ? A Yes, sir.

Q You knew all about his character and reputation ? A What I got from the papers was not my idea of his character.

Q Then what you got from the papers supplied you with some information as to his reputation ? A I knew that because I

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was brought up in the neighborhood.

Q And you have from time to time served as barkeeper for him?

A I did not sir.

Q You say that you went in then and took his place for an hour or two at a time? A Yes, sir, that was a very rare occurrence.

Q Then I repeat my question, at times you served as a barkeeper for him? A He claims here that I served as a barkeeper, I don't call that serving for him by doing him a favor.

Q I don't care to know anything about that. I want to know if you were ever engaged for Mr. Hickey as a bar-keeper?

A Yes, sir in that capacity I explained.

Q How many times? A It might have been five or six times.

Q And after that you purchased the saloon? A Before that.

Q After you acted as bar-keeper you purchased the saloon?

A Before I acted as bar-keeper I purchased that saloon.

Q Well after you purchased the saloon of Hickey? A Yes, sir.

Q Then after that you did not serve as bar-keeper for Hickey?

A Yes, sir, in his down town saloon.

Q Then you went to some saloon that Hickey procured for xxx after you had bought this one from him. -- You bought a

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saloon of Hickey ? A Yes sir.

Q You remained in that four or five months ? A Yes sir

Q After you got out of that saloon you occasionally went to Hickey's down town saloon ? A Yes sir

Q And served as bar-keeper for him ? A In that capacity as I explained.

Q Then it was not true that immediately before your going upon the police that you were engaged in the saloon business for yourself ? A I was, yes sir.

Q You did not serve as bar-keeper for Hickey after you went into the police business ? A No sir.

Q Then there was an interval of time between the time of your selling out the saloon and the time you went on the police force ? A Yes sir.

Q I asked you what you were doing immediately before you were appointed on the police ? A Well if they call that employment.

Q I ask you what you were doing ? A Yes, sir, that is what I was doing.

Q Wasn't that a daily occurrence ? A No, sir.

Q Weren't you almost constantly in Hickey's saloon from the time you sold your own until you got on the police force ?
A No sir.

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Q Weren't you there a part of almost every week day ? A No sir.

Q You were not ? A No sir.

Q Mr. Hahn, do you remember any single week day from the time you sold your saloon until you obtained employment on the police force that you were not some part of the day in Hickey's saloon ? A Well I could not give you the dates, there were a good many days.

Q I ask you for your memory ? A There was a good many days I was not there.

Q Have you brothers ? A Yes, sir.

Q How many ? A Two.

Q Are they present here ? A I think they are.

Q You have seen them during the trial ? A Yes, sir.

Q You have seen them during your imprisonment at the tomb ?
A Yes sir.

Q And talked with them from time to time about your defence ?

A About the case, yes sir.

Q Talking with them about your witnesses ? A They might have mentioned their names to me.

Q They might have mentioned the name. I want to know what your recollection is ? A Yes sir, they mentioned about the witnesses.

Q Then there is no might be about it , you remember that your brother talked to you about your witnesses ? A Yes sir.

Q Did they ever say anything to you about this man O'Neil ?

A His name was mentioned.

Q Do you know this man Ahearn whose picnic was made the subject of evidence here ? A I don't know anything about the picnic; I know the gentleman by sight.

Q He is the clerk in the Essex Market Police Court ? A That is the gentleman.

Q You have known him some time ? A Yes, sir.

Q And that is the Ahearn whose picnic was referred to ?

A Yes, sir.

Q He is the Mr. Ahearn who annually gives a picnic ? A So I believe.

Q Have you had any conversation with this witness O'Neill ?

A No sir, except what I had in Essex Market, that was the only conversation that was had.

Q At that time did he tell you anything about seeing Hussey at the hospital window ? A No, sir not about the hospital window; I was not in the Essex market at that time.

Q You heard him testify to it here ? A Yes, sir.

Q And that he was at the chicken market which was near Gouverneur Hospital ? A Yes sir I heard him testify to that.

Q On the day of Ahearn's picnic ? A So he says here.

Q Do you know on what day Jack Hussey died ? A I believe on the 21st of June.

Q Don't you know as a matter of fact that the Ahearn picnic was not until the 26th of July following ? A No sir I do not, I was in the t o m b s at the time.

Q Don't you know from reputation ? A I do not sir.

Q You know nothing about it ? A No, sir, I know nothing about it.

BY the Court:

Q I understand that you fired three shots that night, and two you say you fired in the air ? A Yes sir.

Q One you fired at Hussey ? A Yes, sir.

Q How was Hussey dressed that night ? A He was in his undershirt and pants, no shoes or stockings, no hat and his undershirt open

Q You saw no weapon upon him at all ? A No sir.

Q When you fired the first shot where was Hussey ? A In the bar room.

Q Where were you ? A I was standing immediately outside of the swinging doors.

Q On the sidewalk ? A On the side of the saloon — the saloon corner is similar to this. (Indicating).

Q You had to point your pistol diagonally ? A The doors run like this . (Indicating) This is the corner, I stood immediately in this spot here where the swinging doors run across; the doors did not stop swinging when I fired this shot .

Q Where did you fire it ? A I fired outside the door

Q After you fired it what did you do ? A I turned and walked away .

Q Did Hussey then come out ? A He came out as soon as I got on the cross walk .

Q Which cross walk ? A Cross ways on the West side of the street .

Q You had to cross the street ? A No sir I came right out here (indicating) This is Jackson Street this side. I came out on Cherry Street and the door ran in that way and there is an entrance this way. I came and stood here when I fired the first shot then I turned and walked or was about to cross the street crossing from the south to the north side of Cherry Street .

Q You were on the opposite side of the street when he came out ? A No sir, on the same side of Jackson Street .

Q I thought you said you crossed the street ? A No sir, I crossed the crossing from north to south .

Q You did cross the street ? A I crossed on that cross walk .

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Q Up Jackson Street ? A Yes, sir.

Q So you were on the opposite side of the street when he came out ? A On the cross walk.

Q In the middle of the street ? A Midway in the street.

Q He stood in the door ? A The door slammed open and he came rushing out on a run.

Q Bare footed, bare headed and with no coat ? A Yes, sir.

Q Do you remember a wagon standing there in the street ?

A Yes sir, there was a merchandise wagon on the street.

Q Did Hussey go up and put his elbows on that wagon and look over ? A I can't say he did.

Q Can you swear he did not ? A I will swear he didn't while I was looking at him.

Q Did you lose sight of him at all ? A No sir.

Q You did not ? A No sir.

Q Can you swear whether he did or did not go up to that wagon and lean his elbows on the wagon, lean over ? A He did not lean on the wagon.

Q Or did he go to the side of the wagon on the sidewalk ?

A No sir.

Q He didn't go near the wagon ? A No sir, no nearer than it would fetch him when he came out of the store.

Q Didn't he stand right behind the wagon or at the side of

of the wagon at all ? A No sir.

Q Then it is not true when these witnesses tell us that as any part of this occurrence ? A No sir.

Q He came out of the saloon after you fired the first shot ? Where did he stand when you fired the second shot ?

A He was just running over the cross walk.

Q Where did he stand ? A He never stood.

Q There must have been a moment of time when he was in some particular place ? A When he was stopping on the side walk on to the cross walk the same cross walk I was on --

Q Stepping off the side walk on to the cross walk ? A Yes sir

Q In the meantime where had you gone ? A I had been right near the gutter on the opposite side of the street and as I stepped on to the walk I turned and fired another shot.

Q And at that time he was stepping from the sidewalk on the other side of the street on to the cross walk ? A Yes sir.

Q Then at that time the whole distance of the street was between him ? A Yes sir the distance of Cherry Street.

Q Then after you fired the second shot he approached you ?

A Yes sir.

Q When you fired the third shot where was he standing ?

A About the middle of the street.

Q The middle of Jackson Street ? A Yes sir above Cherry.

Q On the cross walk ? A No sir, a little off the cross walk.

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Q Where did you stand ? A I stood on the curb about the second or third house, I wont say positively.

Q How far did you go ? A From the northwest corner to the east side of the street.

Q You had to cross the street again ? A Yes sir.

Q After you fired the second shot you crossed the street again ? A I turned around and ran to the east side of the street.

Q Then at the time you fired the third shot Hussey was in the middle of Jackson Street near the cross walk ? A Yes, sir.

Q And you were in Jackson Street were you ? A Yes sir.

Q On the east side A Yes sir.

Q And had to cross over from where you fired the second shot?
A Yes sir.

Q Were you above or below him ? A Above him

Q How many feet were you from him ? A Probably ten or fifteen feet.

Q At the time you fired that third shot what was Hussey doing, what was his position ? A He was running.

Q How were his hands, what was he doing with his hands ? A. His hands were swinging as a man would running.

Q Nothing in them ? A Not that I could see.

Q Then you had no fear of any weapon from him ? ? A Yes.

A I didn't see him have any.

Q Therefore, as far as he was concerned you had no fear of any weapon at all ? A. I won't swear that I didn't.

Q You didn't see any weapon ? A. No. He might have had a weapon.

Q But he hadn't many clothes on, only a shirt and pants ?

A. He had a pants on, but big enough to keep a weapon in.

Q Did it run in your mind that he had a weapon in his pocket

A. It ran in my mind, knowing ~~what~~ I know of this man.

Q Did it run in your mind that he had a weapon ? A. Yes, sir ; I thought he might have a weapon.

Q He made no demonstration as if to use a weapon ?

A. No, sir.

Q And then you say you were about 15 feet from him when you fired the third shot ? A. From 10 to 15 feet.

Q How old are you ? A. 26.

Q Do you know how old Hussey was ? A. 59 I hear.

Q Pretty near 60 ? A. Yes, sir.

Q You did not feel that you could keep away from him if you kept on running ? A I feared to be obstructed by the crowd coming towards me from Munroe street.

Q Was there no other direction in which you could run ?

A. No, sir ; there was a crowd both front and back.

Q If there was a crowd coming towards you, why didn't you keep on? A. After the third shot was fired everybody seemed to stand still.

Q Did they present arms or stand still? A. They stood straight still. They stood there in all positions.

Q They didn't move? A. They didn't advance.

Q At that time you were the master of the situation?

A. Yes, sir.

Q Those who were coming had stopped? A. I suppose the shots frightened them.

Q Then being between two crowds coming from every direction, after you fired the shot, you walked to where Hussey was and said: "Take him to the hospital; I shot him?"

A. I walked along the street.

Q Then you had no fear of the crowd? A. Not immediately.

Q All fear had immediately vanished? A. They were circled around him, and seemed to have all stayed by him.

Q So that all fear had immediately left you? A. Yes, sir.

Q You hadn't a particle of fear a minute after you fired the shot? A. No, sir.

Q You were 15 feet away when you fired it? A. Just

about how much, between 10 and 15.

I Q Why did you single out Hussey to shoot at ? A. He was the leader.

Q He was not the leader of those below, was he ? How did you know they were not coming to help you ? A. They were not making any demonstration.

Q How do you know that those below were not there out of curiosity ? A. They might have been and might not. Knowing from the crowds in that neighborhood, I knew I would not have much chance when a man like Hussey was concerned.

Q You mean you were afraid personally of Hussey ? A. Yes, sir

Q You would be if you met him singly and alone ? A. Yes, sir.

Q You with a pistol, and he with no weapons at all ? A. Well, if I had a pistol I wouldn't be afraid of him.

Q If he was unarmed, 59 years old, and you ~~are~~ as you are now, with a weapon, you would still have been afraid of him, he having no arms at all ? A In certain respects I can say I would.

Q Would you have been afraid of him if you met him singly and alone neither one with any weapons ? A. I would.

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Q You thought him your superior in strength ? A. Yes, sir ; I did.

BY COL. FELLOWS :

Q Do you know any saloon known as Dick Finckel's, or some such name as that ? A I don't know no name of Finckels

Q A saloon at the corner of Munroe and Jackson ?

A. Yes, sir.

Q Whose is it ? A. Fincken, I think.

Q Were you there that night ? A. No, sir.

Q Do you know a person by the name of John F. McCarthy ?

A. I can't recollect.

Q You don't recollect whether you know such a person or not?

A. I have a recollection of some man named McCarthy.

I think he works for Ward B. Smith. Is that the young man you mean ?

Q Did you see him that night ? A. I don't recollect.

Q Do you remember anybody coming into Fincken's saloon that night when you were present, and saying that Jack Hussey was out on a drunk and you had better go and see him, and your saying, "Yes, I will go out and see him ; I am not afraid of that son of a bitch." A. No, sir.

Q That is not true ? A No, sir.

Q That is not true ? A No, sir.

Q And you were not in that saloon that night ? A. No, sir

BY MR. HOWE :

Q Now, the learned Judge asked you if you would be afraid of Hussey if you met him without any pistol or weapon, and you with one, and you stated that you would not be afraid of him if you had a pistol. I will follow that up by asking you if Hussey was a strong and powerful man ?

A. Yes, sir.

Q You heard the post mortem examination given here by the Dr. ? A. Yes, sir.

Q That Hussey was 60 inches around the chest ? A. Yes, sir.

Q And was strong and muscular ? A. Yes, sir.

Q You have heard of plenty of athletes of 60 knocking out young men of 21 ? A. Oh yes.

Q You honestly believed at the time he fired the third shot that you were in danger from Hussey and from the crowd ? A. I did, sir.

Q In danger of either by weapon or something ? That was, you believed, whether you had grounds for it or not is another matter. You honestly believed so, that you were in danger of great personal injury ? A. I was, sir.

Q Now, when you answered the learned Judge that fear had left you after you fired the shot and saw Hussey stop. You say the crowd that gathered around Hussey was following you ? A. Yes, sir.

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Q Afterwards you went and told Dugan to take him to the hospital, and then you determined to go to the hospital instead of the station house ? A. Yes, sir ; I did, sir.

Q You suggested that he should be taken to the hospital ? A. Yes, sir.

Q Col. Fellows said to you, "Don't you think that by going to the station house you could have got all the information as to the wounded man ?" I follow that up by asking you, didn't you think Hussey was to be taken to the hospital, and not to the station house ? A. Yes, sir.

Q And he was so taken to the hospital ? A. Yes, sir.

Q And not to the station house ? A. Yes, sir.

Q And then you, knowing that you had shot him, went to the hospital, didn't you ? A. I did, sir.

Q Was that before you had been to Sergeant Lancer's house, or not ? A. Before.

Q You went to the hospital to find out his condition ? A. Yes, sir.

Q And then, avoiding every opportunity to run away, you went to Sergeant Lancer's house at night ? A. Yes, sir ; I did.

Q You told him what had happened as near as you could re-

collect ? A. Yes, sir.

Q My friend asked you if you told Lancer that you had been struck in the back with a stone. Did you tell Lancer, as near as you could remember--I presume you were more or less excited at the time--everything that occurred to the best of your recollection ? A. I gave him a pretty good idea of what happened.

Q And you think you told him that you were struck in the back with a stone ? A. I do.

Q Were you interviewed by a reporter of one of the newspapers the day Hussey died ? A. Before I believe.

Q Did you express to him your deep regret ?

Col. Fellows : I object.

The Court ; I will rule that out.

Exception.

Q Are you sorry, and do you to-day regret, and have you ever since the time of the shooting, deeply regreted it ?

A. I have, sir.

Q Where were you sent to school ? What school did you go to ? A No. 2 Allen street Grammar School.

Q You have two brothers on the police force have you not ?

A. Yes, sir.

Q And you were recommended by reputable citizens ?

Col. Fellows : I object.

Q Were you not recommended by reputable citizens to obtain your position on the Police force ?

Col. Fellows : I object .

The Court : I will rule that out.

Exception.

BY A JUROR

Q You stated to the Judge that after the third shot was fired the crowd was running after you. Why did you get those cartridges in your pistol ? A. Well, after I left this crowd, and ran through Cherry street, the crowd got sight of me and followed me again.

Q After they had stopped running ? A Yes, they stopped and gathered around Hussey and I got on the outskirts of the crowd, and went through Cherry street, and the crowd catching sight of me followed me still further.

Q Did you have your police shield on that night ? A. Yes.

Q Did you consider that the possession of that shield entitled you on that night to arrest any person that you saw for disorderly conduct who was disorderly ?

A. It compels me to do so.

Q The same as if you were on post ? A. Yes, sir ; I was. My business in the Police Department is that a man is always a policeman. He is supposed always to do po-

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lice duty from the time he is appointed until he turns in his shield, while he is in the city limits, whether off duty or on duty.

BY COL. FELLOWS :

Q You know that the same duty attaches to any citizen ?

A. Well, I guess it does.

Q Any citizen in New York has the right to arrest anybody else he finds committing a crime ? A. Yes, but I am obliged to do so..

BY A JUROR :

Q If you hadn't done so, a charge could be made against you before the Police Commissioners ? A. Yes, sir.

BY COL. FELLOWS :

Q You didn't arrest anybody that night ? A. No, sir.

Q Now, you say that this crowd followed you after you fired the third shot. How far did they follow you ?

A. To near Corlear street. I couldn't say how far but near Corlear street.

Q A single question further in relation to this hospital business. You understand the police duty, do you not, with regard to a wounded man ? A. Yes, sir.

Q You knew then when you left that place that night that Officer Dugan had charge of the woundedman and was taking

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him to, a hospital ? A. Yes, sir.

Q You knew that the duty of Officer Dugan was to report at the station house just what he had done ? A. Yes, sir.

Q And to do that just as soon as he could ? A Yes, sir..

Q And that therefore you could get at the station house all the information about the taking of this man to the hospital disclosed right from the blotter on the Sergeant's desk ? A Yes, sir.

BY MR. HOWE :

Q You also knew that he had been taken to the hospital, and you went to the hospital immediately ? A. Yes, sir.

Q And thence to Lancer's house to surrender yourself ?
A. Yes, sir.

Q My learned friend asked you one question. He asked you when you were at Hussey's ^{bed} side in the hospital, and Hussey identified you as the man who shot him, why you didn't tell Hussey the reason that you had for shooting him ? Didn't you tell Sergeant Lancer, your superior officer, when you surrendered yourself, all about it ?

A. Yes, sir .

Q Hussey was then wounded and in bed ? A. Yes, sir.

Q And you didn't make any statement before Hussey ?

A. No, sir.

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Q Lancer was your Captain then ? A. Yes, sir.

Q You have never been arrested in your life before ?

A. Yes, sir.

Q For any offence ? A No, sir.

Q And you are 26 years of age ? A. Yes.

BY COL. FELLOWS :

Q You don't quite mean that. Have you been arrested for any offence ? A I have never been arrested for any offence committed that I know of.

Q You are under arrest now ? A I mean outside of this.

Q You mean anterior to this ? A. Yes, sir.

Q Mr. Hahn, when you went to the hospital that night, what did you do the first time ? A I went inside. Dr. O'Hanlon was there, and he asked me to come up stairs with Officer Deevy to Hussey and have me identified. They asked Hussey the question, and he says I was the man that shot him.

Q And Hussey reached out his hand and says : "What did you shoot me for," and you didn't say yes or no ?

(No answer.)

Q You knew that Hussey was shot ? A Yes, sir.

Q You knew you had shot him ? A I surmised so.

Q You knew it ? A I was pretty sure of it.

Q It was not at all necessary for you to go to the hospital to find that out? A No, sir.

Q To find out either that he was shot or that he was injured
A. No, sir.

BY MR. HOWE :

Q You went to the hospital to find out his condition?
A. Yes.

BY THE COURT :

Q Do you remember a man coming up towards you, and your telling him to stand back? A I don't remember passing those words; I remember telling somebody to get out of the way.

Q That you were going to shoot? A. Yes, sir.

Q Do you remember who it was? A. No, sir; I couldn't identify the man.

Q Was he one of this crowd that you were afraid of?

A. No, sir; he was coming toward me. He was coming from Munroe street, and the crowd was coming in the other direction.

Q Wasn't the crowd coming from Munroe street? A. No, sir; that crowd was not aggressive to me.

Q Why didn't you go up to them? A They might have interfered with me.

Q You said the crowd coming from Munree street was not aggressive. Why didn't you go that way? A. The crowd would have stopped me most likely.

Q You said they were not aggressive? A I didn't know who they were.

Q How did you know they were not aggressive?

Objected to by Mr. Howe:

Objection overruled. Exception.

A. That is a pretty hard question to answer.

Q You have stated it as a matter of fact, and I ask you how you know it? A. Well, I didn't think they were aggressive to me; maybe they didn't know me.

Q Why didn't you ~~th~~ go that way? A. I was running in that direction; they were still coming towards me.

Q Why didn't you still continue to run in that direction instead of shooting Hussey?

Objected to. Objection overruled. Exception.

A. They blockaded my passage.

Q They were not enemies of yours. You say they were not aggressive? A. Whether they were enemies or not, I didn't know.

Q One of the number had come from there, and you had warned him to get out of the way. He came from this party who

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you say were not aggressive ? A Yes, sir.

Q You knew that he was not in any way threatening you ?

I A. I will tell you. Seeing the crowd coming towards me, and the crowd hooting and yelling and throwing stones behind me, I may have fired through an act of cowardice quicker than I ought to.

BY A JUROR :

Q From your knowledge of the neighborhood, did you think this crowd which was gathered at half-past 11 o'clock, coming from Munroe street, was a pretty tough lot ?

A. I did, sir. From the several gangs spread over that hook, one from Madison street, called the "Java Beds" and two from Cherry street.

BY COL. FELLOWS :

Q That was a young man you say came, and you told him to get out of the way, that you were going to shoot ?

A. Yes, sir.

Q That young man was running in the direction of Hussey ?

A. He was.

Q Well, at that time you were not running ? A I had stopped at that moment to fire.

Q You had stopped and were deliberating about the shooting ?

A. I didn't stop to deliberate.

Q You did deliberate because you informed him that you were about to shoot ? A. I says : "Look out, I am going to fire."

Q Then you had formed an idea that you would fire, and you retained that idea long enough to tell this young man that you were going to fire and to get out of the way ?

A. Yes, sir.

Q And he was running by you towards this crowd ?

A. Running towards me ?

Q At that time you were facing the crowd facing Hussey ?

A. I was running and he was coming towards me. I kind of faced half way around in his direction, and I said : "Look out I am going to fire." I raised the revolver and fired.

Q Did you hear the story of this man who was passing down, and says he saw a young man in light clothes, afterward identified as you standing upon the sidewalk, and as he got to you, you said : "Get out of the way, young man, I am about to fire ; I am going to shoot." A. I think he testified that way.

Q Is that true ? A. Well, that is a question, how long I was standing.

Q Were you standing ? A For an instant I stopped to fire that shot.

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Q This man was not running as you said at that moment, he wasn't running towards me? A He was just coming towards me; he was going to pass me. I says, "Look out, I am going to shoot," and he stepped over to the other side of the street.

Q Suppose you stood that night as you are sitting now with reference to me, and let me represent Hussey. This man came from that direction (indicating)? A. Yes, sir.

Q Runnning by and toward Hussey? A Yes, sir.

Q He passed you, didn't he? A Not quite. He got right opposite me.

Q He was running in the direction of this crowd that was with Hussey? A Yes, sir.

Q And that you thought was a dangerous crowd?
A. Yes, sir.

Q He had the same opportunity of seeing that crowd that you did? A. I think he did.

BY MR. HOWE:

Q There was one called the "Hussey Crowd", that is the crowd following Hussey? A. Yes, sir.

Q After the second shot was fired there was quite a crowd there? A. Yes, sir.

Q You were running? A. Yes, sir.

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Q You turned and stood long enough to fire ? A Yes, sir.

Q And then you ran on again, and you saw Officer Dugan, and you said, "Take him to the hospital"? A. Yes, sir.

Q Then there were crowds from other directions at that time ?
A. Yes, sir.

Q You got away from them ? A. Yes, sir.

Q And then you reloaded the pistol with three cartridges in it because you were apprehensive that they might come to you again ? A. Yes, sir.

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STENOGRAPHER'S MINUTES.

The Grand Jury

The People

Jahr 1861

BEFORE

John C Mills

Chorizan

Chas. W. Allen

Reay

The People v. Joseph O'Stil - Perjury
The People v. Lomel - "

Oct 27th 1884

WITNESSES.

Direct.	Cross.	Re-Direct.	Re-Cross.
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5	6	7	8
9	10	11	12
13	14	15	16
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A. Pearson

John Lyman

Charles Heckel

Matthew Cozart

James Kennedy

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THE PEOPLE

vs.

John Doe.

Before The Grand Jury.

New York, Nov. 27th, 1887.

John F. Ahearn, sworn:

Examined by Mr Parker:

Q. Where do you reside?

A. 41 Gouverneur street.

Q. What is your business?

A. Third District police Court officer.

Q. During the month of ~~July~~ ^{June July} last, was there a picnic
held by an association in your neighborhood, bearing your name?

A. Yes sir.

Q. What day in ~~July~~ ^{June July} was that?

A. The 25th day of July.

Q. You are positive about that?

A. Yes sir.

John Lyman sworn:

Examined by Mr Parker.

Q. Where do you live?

A. I live now in 398 Front street.

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Q. What is your business?

A. Watchman.

Q. What was your business on the 6th day of June last?

A. Watching.

Q. Where?

A. Same place, corner of Cherry and Jackson streets.

Q. On the place where Hussey was shot?

A. Yes; but I did not see the shooting.

Q. Upon the day Hussey was shot was there any building being torn down on that corner?

A. No sir.

Q. What time did the buildings commence to be torn down there?

A. I can not say whether on the 15th of June--L can not say.

Q. It was long after the shooting of Hussey?

A. Yes sir; long after.

Charles Heckel sworn:

Examined by Mr Parker:

Q. Where do you live?

A. 635 East 17th street.

Q. What is your business?

A. Second handed lumber dealer.

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Q. Upon the 6th of June last were you engaged in tearing down a building on the corner of Cherry and Jackson streets?

A. Yes sir.

Q. On this corner where Hussey was shot?

A. The corner of Jackson and Cherry.

Q. What time did you commence tearing this building down?

A. I think the 6th of June.

Q. The shooting took place on the second: When did you complete that work--about?

A. About the 16th, I think.

Q. You did not commence until the 6th?

A. No sir.

Q. You had no material there on the 6th?

A. No sir.

Q. You did not notice anything about that corner of the street--any lumber?

A. No sir.

Matthew Coogan sworn:

Examined by Mr Parker:

Q. Where do you reside?

No 422 East 115th street.

Q. What is your business?

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A. Builder.

Q. Was that your business on the 2nd of June last?

A. Yes sir; and prior to that.

Q. Upon the 2nd of June did you have any material on the corner of Jackson and Cherry streets?

A. No sir.

Q. You built some houses there during that month?

A. Yes sir.

Q. When?

A. We commenced the 6th of June.

Q. Was Mr Heckel associated with you?

A. He had been down ^{living} to the other buildings.

Q. When did you commence the building?

A. After the 30th of June.

Q. Did you have any material on the corner of Cherry and Jackson streets on the 2nd of June?

A. None at all.

By Foreman Mills:

Q. Did you go to that place prior to the 6th of June at all?

A. I was there on and off from the 20th of May.

Q. Did you see anything like building material on the street prior to the 6th of June?

A. Nothing I can recollect.

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James Kennedy sworn:

By Mr Mills, Foreman:

Q. Where do you reside?

A. No 72 Jackson street.

Q. What is your business?

A. Laborer in the Department of Public Works.

By Mr Parker:

Q. Are you familiar with the condition of the street at the corner of Jackson and Cherry streets on the 2nd of June last?

A. Yes sir.

Q. What was the condition of the street at that corner as to building material and stones.

A. There was no building material there at all.

Q. When was the building on the corner of Cherry and Jackson Streets torn down?

A. To the best of my knowledge around the 6th or 10th of June.

Q. When were building operations commenced there?

A. I can not state the day.

Q. Later than that?

A. Yes sir.

Q. On the 2nd of June, however, there was no material on this corner?

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A. No sir.

Q. It was part of your duty to look out ^{after} ~~for~~ that?

A. Yes sir.

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The Grand Jury.

The People

vs.

John Doe.

Stenographer's Transcript.

Dec 27th 1887.

James Brady

Stenographer

The People vs. John Doe
the People vs. Counsel

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COURT OF GENERAL SESSIONS OF THE PEACE.

Of the City and County of New York.

-----X

The People of the State of New York

A g a i n s t

P H I L I P L O M E L

-----X

THE GRAND JURY OF THE CITY AND COUNTY OF NEW YORK,
by this indictment accuse Philip Lomel of the crime of
perjury, committed as follows:

Heretofore, to wit: at a Court of General Sessions of
the Peace begun and holden in and for the City and County
of New York, at the City Hall in said city on the first
Monday of October, in the year of our Lord one thousand
eight hundred and eighty-seven, before the Honorable
Rufus B. Cowing, City Judge of the said City of New York,
and Justice of the said Court, a certain issue in due
manner joined in the said court between The People of
the State of New York aforesaid, plaintiffs, and one Ed-
ward Hahn defendant, upon a certain indictment then and
there in the said Court, depending against the said Edward
Hahn for a felony, to wit: murder in the first degree, for
that he the said Edward Hahn on the second day of June
in the year aforesaid at the City and County aforesaid,
did wilfully, feloniously and of his malice aforethought
kill and murder one John Hussey, came on to be tried, and

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was then and there in due form of law tried, by a certain jury of the said county of New York in due manner returned, impaneled and sworn for that purpose.

And at and upon the trial of the said issue, the said Philip Lomel late of the City and County aforesaid, to wit: on the twelfth day of October in the year aforesaid, at the City and County aforesaid, did then and there appear and was produced as a witness for and on behalf of the said ~~plaintiffs~~ ^{defendant} and against the said ~~defendant~~ ^{plaintiff} upon the trial of the said issue; and the said Philip Lomel was then and there duly sworn as such witness as aforesaid, before the said the Honorable Rufus B. Cowing, justice as aforesaid, that the evidence which he should give to the said court and jury between the said plaintiffs and the said defendant, on the issue then depending should be the truth, the whole truth and nothing but the truth, he the said the Honorable Rufus B. Cowing, Justice as aforesaid, having then and there sufficient and competent power and authority to administer the said oath to the said Philip Lomel in that behalf.

And the said Philip Lomel being so sworn as aforesaid, it then and there upon the trial of the said issue became and was a material inquiry whether at the time of the transaction in which the said John Hussey received a wound of which he thereafter died, and for the giving of which said wound and occasioning the death of the said John Hussey in consequence thereof, the said indictment

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so as aforesaid charging^{ed} the said Edward Hahn with murder as aforesaid, he the said Philip Lomel saw bricks, stones and missiles flying through the air, and whether these bricks, stones and missiles were thrown at the said Edward Hahn by a crowd of people then and there collected, and whether these bricks, stones and missiles were obtained by the said crowd of people from certain buildings then in course of erection in the neighborhood.

And the said Philip Lomel, being so sworn as aforesaid, and being then and there lawfully required to depose the truth in ~~the~~^a proceeding in the course of justice then and there ~~in~~^{at and upon} the trial aforesaid, before the said ~~to wit: on the said twelfth day of October in the year aforesaid, at the City & County aforesaid,~~ the Honorable Rufus B. Cowing justice as aforesaid, feloniously, wickedly, knowingly, wilfully and corruptly, did falsely swear, depose, say and give evidence to the said Court and jury, amongst other things in substance and to the effect following, that is to say:

That at the time of the said transaction there were bricks, stones and missiles flying through the air and thrown by a crowd of people at the said Edward Hahn; that the said Philip Lomel could not tell where this crowd of people got the said bricks, stones and missiles from, but if he was not mistaken, he thought there were a good many buildings at the time being erected in that neighborhood (meaning thereby to insinuate and cause the said Court and jury to believe that the said crowd of people obtained the said stones, bricks and missiles from certain new buildings at the said time then in course of erection in

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the neighborhood, and that at the said time there were a good many new buildings then in course of erection in the neighborhood).

Whereas in truth and in fact, at the said last mentioned time there were not bricks, stones and missiles flying through the air, and bricks, stones and missiles were not being then thrown at the said Edward Hahn by the said crowd of people, and the said bricks, stones and missiles were not obtained by the said crowd from any new buildings then at the said time being erected in the neighborhood, and there were not at the said time a good many new buildings then in course of erection in the neighborhood, as he the said Philip Lomel then and there well knew.

And so the Grand Jury aforesaid do say, that the said Philip Lomel in manner and form aforesaid, wilfully, feloniously, knowingly, corruptly and falsely did commit wilful and corrupt perjury: 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.

Richard J. Berman

District Attorney.