

0008

BOX:

429

FOLDER:

3955

DESCRIPTION:

Simonson, Melville

DATE:

02/27/91



3955

W. H. A. B.
~~Section~~

Counsel,
Filed *July 17* 1891
Pleas *Abey*
Abey

THE PEOPLE
vs.
MICHAEL SIMONSON

Grand Larceny, *with Degree.*
[Sections 528, 580
(From the Person.)
Penal Code.]
DE LANCEY NICOLL
~~JOHN T. BROWN~~
District Attorney

Part II
March 25
witnesses not found voff. Sects
Apr. 1/91
A TRUE BILL
April 3, 1891. WMD
Chas. S. Roberts

Part 2 - April 24/91
Foreman
Mr. Brantley of District Attorney
defendant discharged voff
This man recognized
100 days

Witnesses:
Michael Simonson
Isabella Sanderson
Offin Coyle
Mr Vandevork

After repeated efforts to find
the complainant the people
are unable to produce
her. (See return of subpoena
return)
I recommend the defendant
discharge upon his own
recognizance.

Apr 3/91
V. M. Davis
Cant.

0010

Police Court 4 District.

Affidavit—Larceny.

City and County } ss:
of New York, }

Isabella Vanderpoort
of No. 214 1/2 West 61st Street, aged 30 years,
occupation Keep House being duly sworn,

deposes and says, that on the 18th day of February 1891 at the City of New York,
in the County of New York, was feloniously taken, stolen and carried away from the possession of deponent, in
the night time, the following property, viz:

Good and lawful money of
the United States of the
amount and value of one
dollar and sixty cents

the property of Deponent

and that this deponent
has a probable cause to suspect, and does suspect, that the said property was feloniously taken, stolen and
carried away by Melville Simonson (now free)

from the fact that deponent's husband
gave this defendant permission to sleep
in her apartment and he stayed
there all night about the hour of
11.30 P M deponent went to bed in a
room adjoining the room where this
defendant slept. The said sum of
money was in a pocketbook, which
deponent put in her stockings and
went to bed with her stockings on.
Deponent woke up about the hour
of 11.30 O'clock A M and took her pocket-
book out of the stockings and the money
was missing, and the defendant

1891
Police Court

As there was no one else in
Meyers apartments but this defendant
and Meyers husband and children
Department charges the defendant with
feloniously taking, stealing and carrying
away the said sum of money and
that he be held and dealt with as
the law directs

Shown before me }
the 18th Day of February 1941 } Isabelle Vanderbot

W. J. ...
Police Justice

0012

Sec. 198-200.

H District Police Court.

CITY AND COUNTY }
OF NEW YORK } ss.

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

Question. What is your name?

Answer. Melville Simonson

Question. How old are you?

Answer. 27 years old

Question. Where were you born?

Answer. New York City

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

Answer. New York City

Question. What is your business or profession?

Answer. Driver

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

Answer. I am not guilty

M. Simonson

Taken before me this

day of April 1899

H. M. Jackson

Police Justice.

0013

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

[Signature]
guilty thereof, I order that he be held to answer the same and he be admitted to bail in the sum of 100 Hundred Dollars, and be committed to the Warden and Keeper of the City Prison, of the City of New York, until he give such bail.

Dated Sept 29 1891 *[Signature]* Police Justice.

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

Dated..... 18..... Police Justice.

There being no sufficient cause to believe the within named.....

..... guilty of the offence within mentioned. I order he to be discharged.

Dated..... 18..... Police Justice.

0014

241

Police Court---

District

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Isabella Vandermont
249 1/2 West 47 St
Melville, Minn

Offence
Swamy Sam. Ch. P. 11

1 _____
2 _____
3 _____
4 _____

Dated *Feb 18* 18*91*
W. Mahan Magistrate.

Coyler Officer.
2nd Precinct Precinct.

Witnesses *W. Vandermont*
No. *868 Pleasant Ave* Street.



No. _____ Street.

No. _____ Street.

to answer *W. S.*

Com

971
Person

BAILED,

No. 1, by _____

Residence _____ Street.

No. 2, by _____

Residence _____ Street.

No. 3, by _____

Residence _____ Street.

No. 4, by _____

Residence _____ Street.

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

Melville Simonson

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

Melville Simonson of the CRIME OF GRAND LARCENY in the first degree, committed as follows:

The said Melville Simonson

late of the City of New York, in the County of New York aforesaid, on the eighteenth day of February in the year of our Lord one thousand eight hundred and eighty-nine, in the eighth-time of the said day, at the City and County aforesaid, with force and arms,

\$ 1.60

one promissory note for the payment of money, of the kind commonly called United States Treasury Notes, of the denomination and value of one dollar; one promissory note for the payment of money of the kind commonly called Bank Notes, of the denomination and value of one dollar; one United States Gold Certificate, of the denomination and value of one dollar; one United States Silver Certificate, of the denomination and value of one dollar;

divers coins of a number, kind and denomination to the Grand Jury aforesaid unknown, of the value of one dollar and sixty cents

of the goods, chattels and personal property of one Isabella Vanderwoort on the person of the said Isabella Vanderwoort then and there being found, from the person of the said Isabella Vanderwoort then and there feloniously, did steal, take and carry away, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York, and their dignity.

De Laurey Nicoll, District Attorney.

00 16

BOX:

429

FOLDER:

3955

DESCRIPTION:

Simpson, Joseph R.

DATE:

02/05/91



3955

0017

POOR QUALITY ORIGINAL

Witnesses;

S. D. Alexander

P. T. Fisher

D. C. Webb

H. Stumpf

Officer McGinnis

I, J. L. ... from an investigation of this case & any of the ... furthered by purchasing ... the succession ... the company's papers, the ... let a flawless life for a period thereafter he seems to have suffered from some ... he put on a number of ... the ... Restitution ... the ...

W. B. ...

Counsel, Filed 5 day of July 1896 Pleads Guilty

THE PEOPLE

Joseph R. Simpson (accused)

Forgery in the Second Degree. (Sections 611 and 621, Penal Code.)

DE LANCEY NICOLL, JOHN R. FELLOWS, District Attorney

A True Bill.

Chas. B. ... Foreman.

Part 2 - July 11, 1896 Pleads Guilty. J. M. ...

00 18

POOR QUALITY ORIGINAL

W. O. Keenan & Co.
Counsel,

Filed *5* day of *July* 18*91*
Pleads *Guilty*

35
Electrician
148 W. 10th St. vs.
THE PEOPLE
Joseph R. Simpson
(accused)

Forgery in the Second Degree,
(Sections 511 and 521, Penal Code.)

~~DE LANCEY NICOLL.~~
~~JOHN R. FELLOWS.~~
District Attorney.

A True Bill.

Charles B. DeLoach

Part 2 - *John 11, 1891* Foreman.
Pleads *Guilty*.

Joseph R. Simpson
accused

Witnesses:

S. D. Alexander
W. J. Fisher
W. C. Webb
John J. ...
Officer M. ...

From an investigation of the case & view of the opinion that justice will be furthered by suspending the license until the decision of the hearing board & until a companying papers the defendant has furnished. For a period thereafter he seems to have suffered from some mental aberration during which he put out a number of fictitious checks for which he has been arrested. Restitution has been made to all of the aggrieved parties, and the defendant has promised to leave the country & to make a new start in life elsewhere. From all the circumstances

COURT OF SESSIONS,
Richmond County.

-----" :
 The People of the State of New York, " :
 --against-- " :
 Joseph R. Simpson. " :
 -----"

The Complainants against the defendant, Joseph R. Simpson in the County of Richmond, have received restitution and signed a recommendation to me as District Attorney that such clemency be shown him as I regard consistent with my duty, except as to one complainant, who, although he had received restitution, refused to execute a request in writing, but orally agreed to such clemency as I thought consistent.

Dated N. Y. 20th March, 1891.

Thos. W. Fitzgerald,
 Dist. Atty-
 Rich. Co.

0021

facturing Company in the City of New York, which he accepted. In the capacity of salesman for this Company he was so successful that he was tendered and accepted the position of Agent in the City of Philadelphia. That he remained with the said Company until its failure; that he was immediately offered a position with the American Electric Construction Company, (Limited) of New York, and remained with the said Company until about a year ago.

From that time until May, 1890, your petitioner was selling Electric Light Apparatus on commission.

In May, 1890, your petitioner was taken sick successively with Lumbago, Diphtheria and Rheumatic Fever and was treated by Doctor J. T. Johnson, of Brooklyn, for the period of one month. When your petitioner was convalescent, he spoke to Dr. Johnson with reference to leaving Brooklyn for the benefit of his health. Your petitioner went to West New Brighton, Staten Island, Whilst he was returning from New York City in July, 1890, he received a sunstroke at Fort Richmond, Staten Island, which rendered him unconscious for some hours. He was attended by Dr. Hooper and was confined to the house for about a week.

Your petitioner did not realize the enormity of the offences with which he stands charged and to which he has plead guilty; at the time of the commission of the same. Only since his arrest has he fully realized his position. He could have obtained money from his family had he communicated with them. Immediately upon being notified of the arrest of your petitioner, his family made unconditional restitution to every one.

0022

Your petitioner is married. From August last until the time of his arrest, your petitioner was in a confused and wandering state and was not in communication with his wife during that time.

Your petitioner has eight sisters and one brother, who are all married, have large families and are respected members of the communities in which they reside.

Your petitioner prays that sentence in this case may be suspended and if suspended, his family will make provision for himself and wife, so that he may embark in a new enterprise in another country.

And your petitioner will ever pray, &c.

CITY AND COUNTY OF NEW YORK, ss:

Joseph R. Simpson

Joseph R. Simpson, being duly sworn according to law, says that the facts set forth in the foregoing petition are true.

Sworn to before me this 14th day of February, 1891.)

Joseph R. Simpson

John B. Jones
Notary Public
N.Y.C.

COURT OF GENERAL SESSIONS.

-----"
T H E P E O P L E, &c., "

-- vs -- "

Joseph R. Simpson. "
-----"

T O

THE HONORABLE FREDERICK SMYTHE,

Recorder.

The petition of ELLA R. SIMPSON respectfully shows:

That she is 34 years of age, and is the wife of Joseph R. Simpson, the above named defendant.

That she has a daughter thirteen years of age. That since her marriage to him and until September 1890, he had always been a devoted husband and had provided a comfortable home for his family.

That in May 1890, he was taken sick with lumbago, diptheria and rheumatic fever and in July of the same year he suffered from sunstroke.

That after his recovery, she noticed that a change had come over him; that he was nervous and confused. She frequently asked him what was the nature of his ailment, and he invariably replied that his head troubled him. That she lost sight of him in September 8th ¹⁸⁹⁰ and did not hear from him again until his arrest.

0024

Your petitioner further states that she is suffering from lung trouble and that on Friday February 6th 1891, while visiting her husband at the Tombs, she bled violently from the mouth.

That her husband is at present suffering from a very severe attack of rheumatism. That she will be entirely dependent on her own energies for her support.

She prays your Honorable Court to suspend sentence in this case and states that she is willing to accompany her husband to another country and assist him in a new enterprise which his family would embark him in.

That she cannot account for the misdeeds of her husband; he had always been very successful in business and had always provided very handsomely for his family.

And your petitioner will ever pray, &c.

Ella R. Simpson

P e t i t i o n e r .

CITY AND COUNTY OF NEW YORK, ss:-

E l l a R. S i m p s o n being duly sworn, according to law, says that the facts set forth in the foregoing Petition are true.

SWORN to before me this 14th
day of February, 1891.

J. W. Jones
Notary Public
N. Y. C.

Ella R. Simpson

0025

Notice of Entry.

The within is a copy of
this day duly entered and
filed herein in the office of the clerk of

of New York.

Dated N. Y.

188

Donohue, Newcombe & Cardoso,

Attys for

SCHERMERHORN BUILDING,

96 BROADWAY,

N. Y. CITY.

Court of General Sessions

The People

Joseph R. Donohue

Proced

*Anthony Joseph
R. E. R. Simpson*

DONOHUE, NEWCOMBE & CARDOZO,

Attys for

SCHERMERHORN BUILDING,

No. 96 BROADWAY,

NEW YORK.

Due service of a copy of within is hereby admitted this
day of 188

0026

NO 123

New York, December 13 1890

UNION SQUARE BANK

UNION SQUARE EAST.

Pay to the order of

Wolfe & Co. Cashier

One hundred

Twenty Six

Philadelphia

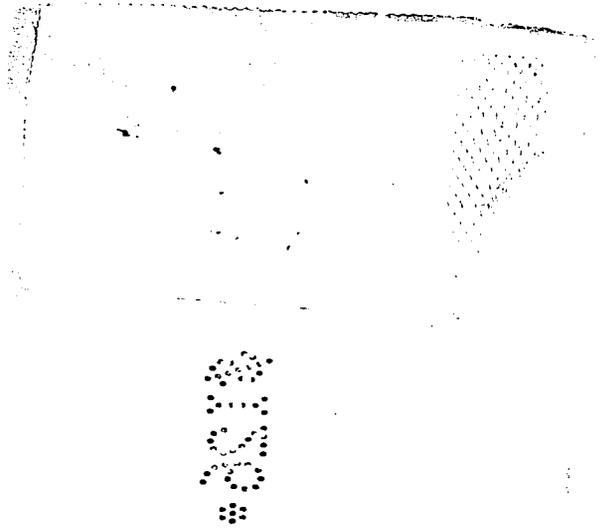
Dollars

\$126

John P. Windolph Co

J. G. Ottum Lith. Co. N.Y.

0027



W. J. ...
per ...

0028

Police Court 2 District.

Affidavit—Larceny.

City and County } ss:
of New York, }

Horace Drake

of No. Montevau House Street, aged 70 years,
occupation Cashier being duly sworn,

deposes and says, that on the 19 day of December 1899 at the City of New York,
in the County of New York, was feloniously taken, stolen and carried away from the possession of deponent, in
the Day time, the following property, viz:

gold and silver
money of the United States to the
amount and value of thirty five
dollars.

the property of Deponent

and that this deponent
has a probable cause to suspect, and does suspect that the said property was feloniously taken, stolen and
carried away by Joseph R. Simpson (now

here) under the following circumstances. The
deponent was on said date a guest at
the Montevau House and on said date
he asked deponent to cash the annexed
check which he said was a certified
check drawn by John D. Woodruff in
to the order of Wells & Sons for
one hundred and twenty six dollars.

Sworn to before me, this

1899

day
Police Justice.

0029

on the Main Square Bank, and the
defendant said the said check was good
and relying on said false representations
and believing the same to be true defendant
gave the defendant on account of
the said check, the sum of thirty five dollars.
and defendant has learned upon investigation
that the said check is worthless; that there
was no account of John P. Woodcock & Co
in said bank and that the pretended
certification of the Cashier was false and
fraudulent; defendant therefore charges
defendant with the larceny of the
said thirty five dollars by false
pretences in writing for the reason
that defendant endorsed said
check and received said money
from defendant by means of said
false representations.

SWORN TO BEFORE ME

THIS 10 DAY OF

July 1891
W. M. B. Justice
POLICE JUSTICE.

Howard Nash

0030

Sec. 198-200.

2 District Police Court.

CITY AND COUNTY }
OF NEW YORK, } ss

Joseph R. Armpson being duly examined before the undersigned according to law, on the annexed charge; and being informed that it is his right to make a statement in relation to the charge against him; that the statement is designed to enable him if he see fit to answer the charge and explain the facts alleged against him that he is at liberty to waive making a statement, and that his waiver cannot be used against him on the trial.

Question. What is your name?

Answer.

Joseph R. Armpson

Question. How old are you?

Answer.

25 years

Question. Where were you born?

Answer.

N.S.

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

Answer.

Refused

Question. What is your business or profession?

Answer.

Refused

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

Answer.

Refused

Taken before me this

10

day of Jan

1891

Wm. Anderson

Police Justice.

0031

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

Joseph R. Simpson

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

Dated *Jan 10* 18*91* *W. M. ...* Police Justice.

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

Dated _____ 18 _____ Police Justice.

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

Dated _____ 18 _____ Police Justice.

0032

Police Court 2 District 66

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Horace Drake
Westmost Avenue
West 12th Street

Police
Station
Offence

2
3
4

Dated Jan 10 1897

Mc Nelson Magistrate.

Paul & Mc Quinn Officer.

C. O. Precinct.

Witnesses Gen F. Alsov

No. 948 Broadway Street.

Samuel C Webb

No. Wynn St Hotel Street.

Sanford W. Alexander

No. 194 Street.

3500

2000 Jan 15 1897

J. C. ...



BAILED,

No. 1, by _____

Residence _____ Street.

No. 2, by _____

Residence _____ Street.

No. 3, by _____

Residence _____ Street.

No. 4, by _____

Residence _____ Street.

0033

No. 542

NEW YORK, Dec 20th 1890

THE TWELFTH WARD BANK

153 EAST 125th ST.

PAY TO THE ORDER OF

Mrs. J. R. Simpson

× DOLLARS

\$25^{xx}

Manhattan Electric Co.
Hart, N.Y.

See List A. Price Stationery Co. 141 Nassau St. N.Y.

0034

20. Co. 1st Regt.

J. R. Simpson
Geo. B. De Zeeuw



0035

No 572

New York, Dec 18 1890

FIFTH NATIONAL BANK,
Cor. 3d Ave. and 23d St.

Pay to the order of

Twenty Five

Beaver

Dollars.

\$25.00

Waterhouse Clerk

FIFTH NATIONAL BANK
CASHER.

0036

H. Hunt
MS E 1402

J. K. Simpson

0037

485 & 487 Eighth Ave.

No. 721

NEW YORK, *Jan'y 2nd* 189*1*

Grand
of the
CERTIFIED
to the order of

EAST SIDE BANK

PAY TO THE ORDER OF

Deener

Twenty Five

DOLLARS.

\$ *25.00*

SAFE DEPOSIT
VAULTS.

THE STANDARD ELECTRIC TIME CO.

W. Wilson

STYLES & CASH, PRINTERS, 77 EIGHTH AVF., N. Y.

0038

Sanford Alexander



R. P. Adams

Embossed

0039

No 428

New York, December 6th 1890

UNION SQUARE BANK
8 UNION SQUARE EAST.

Pay to the order of J. R. Shultz

Fifteen

Dollars

\$15.00

Brush Electric Co.
Hart.

J. Ottmann Lith. Co. N.Y.

0040

Morton House

Sierrama

Mr. Robert
W. B. Sierrama



W. B. Sierrama

0041

29 Union Square	<p> No 431 New York December 31 1890 Bank of the Metropolis Pay to the order of Twenty Five ^{ONE} Dollars \$25.00 Edison Electric Light Co. <small>Stewart, Warren & Co 29 Howard St N.Y.</small> </p>
-----------------	---

0042

2-18

James Lynch
145-3-102

H. A. Irvine

J. R. Simpson

Ed Lynch
245-1-11

FIRST TELLER.

100
100

118

0043

23RD STREET & AVENUE

Wm. M. ...
247
...

New York Dec. 29 1890

GARFIELD NATIONAL BANK

Pay to the order of *Bearer* _____ Dollars

Twenty Dollars

20⁰⁰

Lewis M. ... Co.
Alexander

0044

W. C. Stabb

John S. Beggs.
Geo B. DeWaters

1871
Baltimore

0045

COR. BOWERY & GRAND ST.

No. 467

New York, Dec. 15th 1890

National Butchers' & Grocers' Bank,

OF THE CITY OF NEW YORK,

Pay to the order of Beaver Twenty Dollars.

20⁰⁰

United States Electric Co.
Hudson River

0046

Erw Zahn

116478-2-14

~~Erw Zahn~~

14 2/4

P. J. Simon

Zahn ^{Waffen} Messer



0047

Mrs. [unclear]

FIFTH NATIONAL BANK

New York, Dec. 19, 1890

3d Ave. and 23d St.

NATIONAL BANK

Pay to the order of *[unclear]*

[unclear]

\$25.00

FIFTH NATIONAL BANK

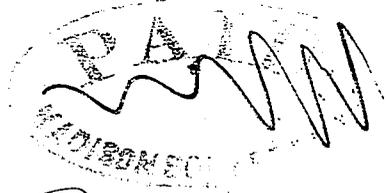
CASH

\$25.00

[unclear] Dollars,

[unclear]

0048



R. J. Linnem
Geo. F. Gosson

948 Barron
St. Louis

0049

NO

New York, December 3 1890

UNION SQUARE BANK

8 UNION SQUARE EAST.

Pay to the order of *Beaver*

Ten Dollars

H. G. Irvine

\$10.00

J. Ottmann Lith. Co. N.Y.

0050

R. C. Hunt

0051

Police Court

2 District.

Affidavit—Larceny.

City and County } ss:
of New York,

of No. 23 East 17 Street, aged 41 years,
occupation Hotel Keeper

deposes and says, that on the 3 day of December 1899 at the City of New York,
in the County of New York, was feloniously taken, stolen and carried away from the possession of deponent, in
the Hotel, the following property, viz:

Gold and lawful money
of the United States to the
amount of ten dollars
10.00

the property of deponent

and that this deponent
has a probable cause to suspect, and does suspect, that the said property was feloniously taken, stolen and
carried away by R. C. Stout

from the fact that upon said date
the said Stout came deponent's
place of business at the said
address and requested
deponent to cash a check
here to annexed and for the
above said sum representing
to deponent that said check
was true and good, and that
he had been given the same by
one R. C. Stout.

That deponent relies upon
the statements of the said Stout
giving the said property

Sworn to before me this

day

Police Justice

Deponent says that said check was presented at the said Bank where it was drawn and that he was informed by the paying teller that there was no funds or had the maker of said check any account in said bank and that the said check was worthless.

SWORN TO BEFORE ME

THIS 12 DAY OF

December

[Signature]
NOTARY PUBLIC

Peter J. Fisher

[Faint handwritten marks]

0053

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

Peter J. Fisher

of No. *22 East 17* Street, being duly sworn, deposes and says,

that *Joseph R. Simpson* (now present) is the person of the name of

R. S. Stohl mentioned in deponent's affidavit of the *deponent*

on the *12* day of *December* 18*81*, hereunto annexed.

Sworn to before me, this *90*
day of *January* 18*81* }

Peter J. Fisher

W. M. ...
POLICE JUSTICE.

0054

Sec. 189-200.

District Police Court.

CITY AND COUNTY }
OF NEW YORK, } ss.

Joseph R. Simpson being duly examined before the undersigned according to law, on the annexed charge; and being informed that it is his right to make a statement in relation to the charge against him; that the statement is designed to enable him if he see fit to answer the charge and explain the facts alleged against him that he is at liberty to waive making a statement, and that his waiver cannot be used against him on the trial.

Question. What is your name?

Answer.

Refrused

Question. How old are you?

Answer.

Refrused

Question. Where were you born?

Answer.

Refrused

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

Answer.

Refrused

Question. What is your business or profession?

Answer.

Refrused

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

Answer.

Refrused

Taken before me this

16

day of *Jan*

1884

J. J. [Signature]

Police Justice

0055

Sec. 151.

Police Court 2 District.

CITY AND COUNTY }
OF NEW YORK. } ss.

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

Whereas, Complaint in writing (and upon oath) has been made before the undersigned, one of the Police Justices for the City of New York, by

of No. 23 E. 17 Street, that on the 5 day of December

1889 at the City of New York, in the County of New York, the following article to wit:

20 Good and lawful money
of the value of ten Dollars,
the property of complainant
w. as taken, stolen and carried away, and as the said complainant has cause to suspect, and does suspect and believe, by R. C. Stout

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

These are Therefore, in the name of the PEOPLE of the State of New York, to command you the said Sheriff, Marshals and Policemen, and every of you, to apprehend the body of the said Defendant and forthwith bring him before me, at the 2 DISTRICT POLICE COURT, in the said City, or in case of my absence or inability to act, before the nearest or most accessible Police Justice in this City, to answer the said charge, and to be dealt with according to law.

Dated at the City of New York, this 12 day of Dec 1889

Pa. J. Robert POLICE JUSTICE.

0056

Police Court District.

THE PEOPLE, & c.,
ON THE COMPLAINT OF

vs.

Warrant-Larceny.

Dated 188

Magistrate

Officer.

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

Officer.

Dated 188

This Warrant may be executed on Sunday or at
night.

D. J. C. Hall Police-Justice.

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

Dated 188

Police Justice.

The within named

0057

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

R. E. Stod alias *Joseph R. Amerson*

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

Dated *Jan 10* 18*91* *A. T. M. M. M.* Police Justice.

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

Dated 18 Police Justice.

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

Dated 18 Police Justice.

0058

Police Court District. 61

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Edw J. H. ...
23 E 117 St
G Stout
alias
Joseph R. Simpson
7 cases

Shawnee
Offence

BAILED,
No. 1, by _____
Residence _____ Street.
No. 2, by _____
Residence _____ Street.
No. 3, by _____
Residence _____ Street.
No. 4, by _____
Residence _____ Street.

Dated *Jan 10* 188*9*
F. B. ... Magistrate.

Will. F. ... Officer.
Precinct.

Witnesses *A. E. Datz*
No. *538 Jersey Ave Jersey City*
Herby Hauf
No. *Olando Horen* Street.
115 & 117 ...
No. *George ...* Street.
116 ...
1800
1155 - ...



500 box 5, Jan 12, 3 P.M.
T. Com

The People
 vs.
 Joseph R. Simpson } Court of General
 Sessions

City and County of New York ss:-

Henry E. Irvine being duly sworn deposes and says: I am the President of the "American Electric Construction Company Limited" and the Treasurer of the "Water Paper Construction Company" the offices of these companies are at 115 Broadway - I reside at 101 West Fifty-sixth Street. I am forty-four years of age and have known Joseph R. Simpson for the past five years. He was in the employ of the "American Electric Manufacturing Company" (of which I was Treasurer) for the period of two years (from 1886 to 1888) - From the beginning of the year 1888 until about a year ago he was in the employ of the "American Electric Construction Company". I know him to have been a man of great industry and possessed of salesmanship abilities of the most superior order. He was a man of good moral character and until the happening of these present

present proceedings I never heard his character questioned by any one - The capacity in which he represented the above named Companies brought him in contact with a large number of prominent persons and I have heard them speak of him in the highest terms of approbation -

Sworn to before me this
Twenty eighth day of Janu-
ary 1891

Chas Egan Mills
Notary Public for New York County
in New York

Henry C. Irvine

The People
 vs.
 Joseph R. Simpson } Court of General
 Sessions

City and County of New York ss:-

Edwin M. Stalker being duly sworn deposes and says: I am the Cashier of the "American Electric Construction Company Limited". The offices of the company are at 115 Broadway. I reside at 101 West Fifty Sixth Street. I am thirty two years of age and have known Joseph R. Simpson for the past five years. Joseph R. Simpson was in the employ of the "American Electric Manufacturing Company" (of which I was Cashier) for the period of two years (from 1886 to 1888). From the beginning of the year 1888 until about a year ago he was in the employ of the "American Electric Construction Company". In the capacity of Cashier of the above named companies I had entire supervision of the books and accounts. The said Joseph R. Simpson frequently made collections amounting to thousands of dollars of which he made correct returns. All accounts of expenses & rendered by him were found by me to be correct.

0062

in every particular. I know him to have been a
man of steady habits and of good moral char-
acter and until the happening of these present
proceedings I never heard his character ques-
tioned by anyone -
Sworn to before me this
Twenty eighth day of
January 1891.

Chas. Edwards
Notary Public for New York County
in City

Edwin M. Stalker

0063

The People } Court of General
vs. } Sessions
Joseph R. Simpson }

City and County of Philadelphia:-

Ambrose C. Kamaker being duly sworn deposes and says: I am Freight Agent of the "West Shore Rail Road Company" and of three other companies and General Agent of the "Iron Line Company of New York". My office is at 537 Chestnut Street in the City of Philadelphia. I reside at 1308 Walnut Street. I am thirty-two years of age and have known Joseph R. Simpson for the past five years. He said Joseph R. Simpson had desk-room in my office for the period of two years during which time he represented The American Electric Manufacturing Company of New York in the capacity of Agent. I am acquainted with a number of persons who know the said Joseph R. Simpson and have heard them speak of him in the highest terms of approbation. The said Joseph R. Simpson was a man of good moral character and until the happening of these present

0064

present proceedings I never heard his character questioned by any one.

Sworn and subscribed
before me this 5th day
of February 1891

Alfred J. Fisher
Notary Public

Aubrose C. Hamaker

The People
 vs
 Joseph R. Simpson } Court of General
 Sessions

City and County of New York ss:-

Franklin Mungar being duly sworn deposes and says: I am a member of the firm of Eiche, Jackson and Mungar - my office is at 45 Murray Street - I reside at 875 Lafayette Avenue, Brooklyn. I am twenty-nine years of age and have known Joseph R. Simpson for the past six years. I am acquainted with a number of persons who know the said Joseph R. Simpson and have heard them speak of him in the highest terms of approbation. The said Joseph R. Simpson was a man of good moral character and until the happening of these present proceedings I never heard his character questioned by any one.

Sworn to before me this
 Twenty-ninth day of Janu-
 ary 1891

Wm. J. Sullivan
 Notary Public & C. & C.

Franklin Mungar

The People } Court of General
 vs. } Sessions
 Joseph R. Simpson }

City and County of New York ss:-

Robert Offerbach being duly sworn deposes and says: I am a practicing Physician. My office and residence at 25 Lexington Avenue in the City of New York. I am thirty-three years of age and have known Joseph R. Simpson for the past five years. I am acquainted with a number of persons who know the said Joseph R. Simpson and have heard them speak of him in the highest terms of approbation. The said Joseph R. Simpson was a man of good moral character and until the happening of these present proceedings I never heard his character questioned by any one.

Sworn to before me this
 ninth day of Febru-
 ary 1891.

Robt. Offerbach

W. A. C. Beck
 Notary Public
 N.Y.C.

0067

New York July 24-1891

Received of Benjamin Alexander
Ten dollars which amount I gave
to Joseph Simpson for a check
of \$10. on the Union Square Bank
Peter Fisher

New York January 22/91

1
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12

0068

SINCLAIR HOUSE,

ON THE EUROPEAN PLAN.

BROADWAY AND EIGHTH STREET.

A. L. ASHMAN, Proprietor.

NEW YORK, *Jan 22nd* 1891

Mr B Alexander Dr. Room.....

ALL BILLS PAYABLE WEEKLY.

Jan 22 J Slans 25
Room 1

\$ 26

*Recd Payment
a Lashman*

*d
or
e
o*

0069

New York January 22/91

Recd. of Benjamin Alexander Twenty Five Dollars \$25.00
which amount I gave to Joseph Dunham for a check
of \$25.00 twenty five Dollars on the Fifth National Bank

Wm. H. H. H.

0070

New York - January 23rd 191.
Received of Benjamin (Herald), fifteen dollars
which amount I gave to Joseph Simpson for
a check of \$15 on the Union Square Bank

J. M. Freeman

0071

M. Jamis 24, 40

Rec'd of Benjamin

Alexander Twenty Five Dollars,
(\$25) which amount I gave to
Joseph Simpson for a check of
\$25- on the west side Bank.

Jno. T. Materna
Clerk for E. A. Hunt
1945

0072



New York
Mrs. H. J. Lewis

To UNION SQUARE HOTEL & HOTEL DAM

Union Square & 15th St.

Bills payable weekly.

CONNECTING.

Room	3	Days		\$
Restaurant	1	Check Cash for	25 ⁰⁰	25 ⁰⁰
Bar	1	"	20 ⁰⁰	20 ⁰⁰
Laundry				48 ⁰⁰
Fires				
Livery				
Sundries				
Baggage				
No Charge for Bath				

PAID

UNION SQUARE HOTEL

JAN 23 8 29 AM 1891

NEW YORK

0073

STURTEVANT HOUSE
 BROADWAY,
 Cor. 29TH ST., NEW YORK.
 Fort Griswold House
 [EASTERN POINT]
 NEW LONDON, CONN.
 OPEN FROM JUNE TO SEPT. 20TH.

New York Jan 1st 1881
Mr W. C. Kelly *407*

To Matthews & Pierson, Dr.

ALL BILLS PAYABLE WEEKLY

Room 6 days (Dec. 9-15) 6.00

Received Payment for Matthews & Pierson.

W. C. Kelly

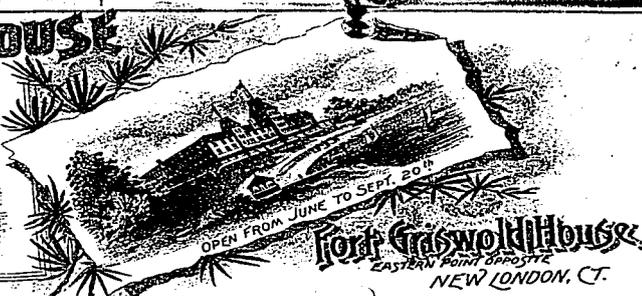
0074

STURTEVANT HOUSE



BROADWAY 28th & 29th STS.

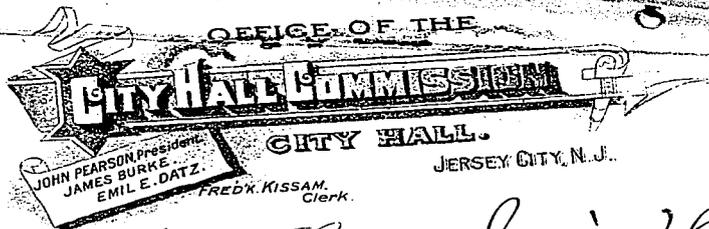
American & European Plan.
MATTHEWS & PIERSON.
prop's.



New York July 24 1891

Recd from Benj. Alexander
Thirty five dollars (\$35.00)
being account I paid W. E. Wolf
also Joseph R. Simpson on
check of \$126.00
Horace Drake

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Jersey City, June 2th 1891
Received of Benjamin Alexander
thirty seven and 50/100 dollars
which amount I gave to
Joseph Simpson for a check
of thirty seven and 50/100 dollars
on the Banks of the metropolis

McCurry & Datz

188

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Handwritten notes on lined paper, including the phrase "the number of" at the top right.

CITY HALL COMMISSION
CITY HALL.
JERSEY CITY, N. J.
JOHN PEARSON, President
JAMES BURKE
EMIL E. DATZ
FRED X. KISSAM, Clerk

Jersey City Jan'y 21st 1891
Received of Benjamin Retander
Thirty seven and 50/100 Dollars
which amount I gave to
Joseph Simpson for a check
of Thirty seven and 50/100 Dollars
on the Banks of the Metropolis

Murray & Datz

188

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0077

GEO. F. SLOSSON'S

CAFÉ (GROUND FLOOR.)

AND
BILLIARD HALL,

(21 TABLES.)

948 BROADWAY.

New York, Jan 27 1891
Received of Benjamin Alexander,
Twenty five dollars which amount
I gave to Joseph Simpson on a
check for Twenty five dollars
on the Fifth National Bank

G. F. Slosson
Per J. J. Johnson

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0078

New York - Jan'y. 27-1891.
Received of Benjamin Alexander
Twenty five dollars which amount
I gave to Joseph Simpson for a
check of Twenty five dollars
on the Bank of the Metropolis.

Jas Lynch

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or
ee
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Notice of Entry.

The within is a copy of
this day duly entered and
filed herein in the office of the clerk of

of New York.
Dated N. Y. 188

Donohue, Newcombe & Cardoso,

Att'ys for
SCHERMERHORN BUILDING,
96 BROADWAY,
N. Y. CITY.

Court of
General Sessions.

The People

vs.

Joseph R. Simpson.

affidants as to character
& receipt of.

DONOHUE, NEWCOMBE & CARDOZO,
Att'ys for defendant.

SCHERMERHORN BUILDING,
No. 96 BROADWAY,
NEW YORK.

Due service of a copy of within is hereby admitted this
day of 188

0079

0080



Office of the
District Attorney, Richmond County.

Port Richmond, Jan 7th 1891

Hon DeLancey Nicol

District Attorney, New York County.

Dear Sir:-

In regard to the case of the
People against Simpson whom you have indicted in
New York and who also stands indicted in this
County — I desire to say that Mr Simpson
has made restitution to the parties in this County and
they are all willing to recommend him to the leniency and
clemency of the Court — Any disposition which you make
of Simpson in New York City I will also agree to
make in this County — As I understand from people
that Mr Simpson is a member of a good family and has
always heretofore borne a good reputation.

12
Simpson

Yours truly
Wm. H. H. H. H.
Dist. Atty.

Dick

Court of Sessions

Richmond County

The People of the State of New York

— vs —

Joseph R. Simpson

The complaints against the defendant Joseph R. Simpson in the County of Richmond have received restitution and signed a recommendation to me as District Attorney that such clemency be shown him as I regard consistent with my duty - except as to one complainant who although he had received restitution refused to execute a request in writing but orally agreed to the such clemency as I thought consistent -

Dated May 20th March 1891.

J. M. Fitzgerald
 - Dist Atty -
 New York

The People of the State

- vs -

Joseph M. Simpson

=

Attorney for Plaintiff
County of Richmond

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

Joseph B. Simpson

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

Joseph B. Simpson

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

The said Joseph B. Simpson,

late of the City of New York, in the County of New York aforesaid, on the 13th day of December, in the year of our Lord one thousand eight hundred and eighty nine, at the City and County aforesaid, having in his custody a certain instrument and writing, to wit: an order for the payment of money of the said Union Square Bank as Bank Cheque which said Bank Cheque is as follows, that is to say:

"No. 123 New York, December 13 1890
Union Square Bank
Pay to the order of Wm. W. Davis, Cashier.
One hundred & Twenty Six Dollars
\$126.00 John P. Windolph & Co"

the said Joseph B. Simpson

afterwards, to wit: on the day and in the year aforesaid, with force and arms, at the City and County aforesaid, feloniously did forge, and cause and procure to be forged, and willingly act and assist in forging on the face of the said Bank Cheque, a certain instrument and writing commonly called a check which said forged instrument and writing commonly called a check is as follows, that is to say:

"Union Square Bank
Pay to the order of Wm. W. Davis, Cashier"

with intent to defraud, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

SECOND COUNT—

And the Grand Jury aforesaid, by this indictment, further accuse the said *Joseph B. Simpson* of the CRIME OF FORGERY IN THE SECOND DEGREE, committed as follows:

The said *Joseph B. Simpson*.

late of the City and County aforesaid, afterwards, to wit: on the day and in the year aforesaid, at the City and County aforesaid having in *his* possession a certain instrument and writing, *purporting to be an order for the payment of money of the kind known as bank checks* —

which said *bank check* is as follows, that is to say:

"No. 123 New York December 13 1890
Union Square Bank
Union Square East
Pay to the order of *Wells & Sons Phila*
One hundred & Twenty Six — Dollars
\$126⁰⁰ *John P. Windolph & Co*"

on the *face* of which said *bank check* there was then and there written a certain forged instrument and writing commonly called a *certification* of the said last-mentioned *bank check* which said forged instrument and writing, commonly called a *certification* is as follows, that is to say:

"Union Square Bank
Certified
addnl
cashier"

with force and arms, the said forged *certification* then and there feloniously did utter, dispose of and put off as true, with intent to defraud, *he* the said *Joseph B. Simpson* then and there well knowing the premises, and that the said *certification* was forged, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

DE LANCEY NICOLL,
~~JOHN B. FELLOWS,~~

District Attorney.

7030.

Witnesses;

Anna Drake

Counsel,

J. C. [Signature]
Filed *5* day of *July* 1897
Pleads *Not guilty*

THE PEOPLE

vs.

F

Forgery in the Second Degree,
[Sections 511 and 521, Penal Code.]
(Indorsement, etc)

Joseph R. Simpson
(2 cases)

DE-LANCEY NICOLL,
JOHN R. [Signature]

District Attorney.

A True Bill.

Chas. S. [Signature]

Foreman.

0086

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,

against

Joseph R. Simpson

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

Joseph R. Simpson of the CRIME OF FORGERY IN THE SECOND DEGREE, committed as follows:

The said

Joseph R. Simpson

late of the City of New York, in the County of New York aforesaid, on the third day of December in the year of our Lord one thousand eight hundred and ninety, with force and arms, at the City and County aforesaid, feloniously did forge, and cause and procure to be forged, and willingly act and assist in the forging a certain instrument and writing, to wit: an

order for the payment of money, of the kind called bank cheques, which said forged bank cheque is as follows, that is to say:

New York, December 3 1890

Union Square Bank & Union Square East.

Pay to the order of Beaver

Ten

\$10 ⁰⁰/₁₀₀

x Dollars

H. E. Irvine

with intent to defraud, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

SECOND COUNT—

And the Grand Jury aforesaid, by this indictment, further accuse the said

Joseph R. Simpson
of the CRIME OF FORGERY IN THE SECOND DEGREE, committed as follows:

The said

Joseph R. Simpson

late of the City and County aforesaid, afterwards, to wit: on the day and in the year aforesaid, at the City and County aforesaid, with force and arms, did feloniously utter, dispose of and put off as true, a certain forged instrument and writing, *to wit:* an order for the payment of money, of the kind called bank cheques, which said forged bank cheque is as follows, that is to say:

New York, December 3 1890

*Union Square Bank
& Union Square East*

Pay to the order of Bearer

Ten _____ *x Dollars*

\$10. 00

H. E. Irvine

with intent to defraud,

Simpson

the said

Joseph R. Simpson

then and there well knowing the same to be forged, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

De Rancey Nicoll
~~JOHN R. FELLOWS,~~

District Attorney.

0088

BOX:

429

FOLDER:

3955

DESCRIPTION:

Smith, Edward

DATE:

02/13/91



3955

0089

BOX:

429

FOLDER:

3955

DESCRIPTION:

Albert, James

DATE:

02/13/91



3955

X M.B. per Arnold

Witnesses:

W. B. Powell

John Wade

Deputy Sheriff
Ch. Good, Jr.

Counsel,

Filed

day of July

1897

Pleas,

Not Guilty (cont.)

THE PEOPLE

vs.

Edward Smith

and

James Albert

Grand Larceny
Second Degree

[Sections 528, 531, 532 Penal Code.]

DE LANCEY NICOLL,
District Attorney.

A True Bill.

Chas. B. Bosworth

Sent 2 - July 14th 1897

Foreman.

Both plead Not Guilty

6 Mrs. E. A. Pen

July 20

0091

Police Court

2

District.

Affidavit—Larceny.

City and County }
of New York, } ss:

William B Roe

of No. 64 West 23d Street, aged 49 years,
occupation Reporter of Workers, being duly sworn,

deposes and says, that on the 16 day of August 1890 at the City of New York,
in the County of New York, was feloniously taken, stolen and carried away from the possession of deponent, in
the day time, the following property, viz:

One piece of
Woolen Cloth of the value of
about forty dollars
\$ 40

the property of Deponent

and that this deponent
has a probable cause to suspect, and does suspect, that the said property was feloniously taken, stolen and
carried away by Edward Smith and James

Albert (now here) the said James Albert was in the
employ of deponent and had access to said
property, and had the keys of the premises, and
after said property was stolen deponent admitted
to Detective Charles J. Wade, that he the
deponent had stolen said property
and that he had given the said
property to deponent Edward Smith.

Sworn to before me, this

1890

Police Justice.

0092

who had pawned the same, as
deponent is informed by said Wade
and the Defendant Smith
was identified by the pawnbroker,
as the man who pawned said
stolen property

Subscribed and sworn to before me this

10

of February, 1871

[Signature]

Notary Public

Wm B. Roe

0093

CITY AND COUNTY }
OF NEW YORK, } ss.

aged 38 years, occupation Charles J. Wade
Detective of No. Central Office Police Street, being duly sworn deposes and

says, that he has heard read the foregoing affidavit of William B. Roe
and that the facts stated therein on information of deponent are true of deponents' own
knowledge.

Sworn to before me, this 10th
day of February 1891

Charles J. Wade

W. A. McDonald
Police Justice.

0094

Sec. 198-200.

District Police Court.

CITY AND COUNTY } ss.
OF NEW YORK.

Edward Smith

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

Question. What is your name?

Answer.

Edward Smith

Question. How old are you?

Answer.

18 years

Question. Where were you born?

Answer.

Wis.

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

Answer.

360 3d Av. 7 years

Question. What is your business or profession?

Answer.

Horses

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

Answer.

I sawed them but I did not steal them.

*E. Smith
Edward Smith*

Taken before me this

10

day of February 1889

H. J. ...

Police Justice.

0095

Sec. 138-200.

2

District Police Court.

CITY AND COUNTY }
OF NEW YORK, } ss.

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

Question. What is your name?

Answer. *James Albert*

Question. How old are you?

Answer. *17 years*

Question. Where were you born?

Answer. *New York City*

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

Answer. *251 East 30th Street. 8 months*

Question. What is your business or profession?

Answer. *Work in a woolen House.*

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

Answer. *I am guilty*

James Albert

Taken before me this

day of *February*

1891

H. M. ...

Police Justice.

0096

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

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

Dated July 10 1891, W. M. ... Police Justice.

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

Dated _____ 18 _____ Police Justice.

There being no sufficient cause to believe the within named _____
_____ guilty of the offence within mentioned. I order he to be discharged.

Dated _____ 18 _____ Police Justice.

0097

182

Police Court--- 2 District.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Williams, B. Roe
vs. *64-7-23*

1 *Edward Smith*
2 *James Albert*
3
4

Offence Larceny

Dated *February 10th* 1891
W. E. Melon Magistrate.
Wade and Reef Officer.
C. O. Precinct.

Witnesses *Charles J. Wade*
No. *Central Office* Street.

Michael J. Reef
No. *Central Office* Street.

No. _____ Street.

\$ *1000*



4 2 2
from 941 201

BAILED.

No. 1, by _____

Residence _____ Street.

No. 2, by _____

Residence _____ Street.

No. 3, by _____

Residence _____ Street.

No. 4, by _____

Residence _____ Street.

0098

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

THE PEOPLE OF THE STATE OF NEW YORK,

against

Edward Smith
and
James Albert

THE GRAND JURY OF THE CITY AND COUNTY OF NEW YORK, by this
indictment, accuse *Edward Smith and James Albert*

of the CRIME OF GRAND LARCENY in the *second* degree committed as follows:

The said *Edward Smith and James Albert, both*

late of the City of New York, in the County of New York aforesaid, on the *sixteenth*
day of *August* in the year of our Lord one thousand eight hundred and
ninety — at the City and County aforesaid, with force and arms,

*one piece of cloth of the value
of forty dollars and forty yards
of cloth of the value of one dollar
each yard*

of the goods, chattels and personal property of one

William B. Roe

then and there being found, then and there feloniously did steal, take and carry away, against
the form of the statute in such case made and provided, and against the peace of the People
of the State of New York and their dignity.

SECOND COUNT—

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

Edward Smith
of the CRIME OF RECEIVING STOLEN GOODS, committed as follows:

The said

Edward Smith,

late of the City and County aforesaid, afterwards to wit: on the day and in the year aforesaid, at the City and County aforesaid, with force and arms,

one piece of cloth of the value of forty dollars and forty yards of cloth of the value of one dollar each yard

of the goods, chattels and personal property of one

William B. Roe
by one James Albert and to

by a certain ^{other} person or persons to the Grand Jury aforesaid unknown, then lately before feloniously stolen, taken and carried away from the said William B. Roe

unlawfully and unjustly, did feloniously receive and have; the said

Edward Smith
then and there well knowing the said goods, chattels and personal property to have been feloniously stolen, taken and carried away, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

DE LANCEY NICOLL,

District Attorney.

0100

BOX:

429

FOLDER:

3955

DESCRIPTION:

Smith, George

DATE:

02/06/91



3955

Witnesses:

H. A. Stickney
Em. Graham

W. H. H. A. P. Mellen

subscribed
Counsel,
Filed *6* day of *Feb* 1891
Plead, *Not guilty*

THE PEOPLE

vs.

George Smith

Attorney for A. P. H. K.
(Sections 278 and 218, Penna. Code.)

DE LANCEY NICOLL,
~~*JOHN R. FELLOWS*~~

District Attorney.

Feb 1891 at City of Wash.

A True Bill.

Chas. B. Obear
Jan 2 - Feb. 18 1891
Foreman.
 Tried and acquitted

0102

Sec. 198-200.

CITY AND COUNTY OF NEW YORK, ss.

4. District Police Court.

George Smith being duly examined before the undersigned according to law, on the annexed charge; and being informed that it is his right to make a statement in relation to the charge against him; that the statement is designed to enable him if he see fit to answer the charge and explain the facts alleged against him that he is at liberty to waive making a statement, and that his waiver cannot be used against him on the trial.

Question. What is your name?

Answer. *George Smith*

Question. How old are you?

Answer. *66 years old*

Question. Where were you born?

Answer. *Germany*

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

Answer. *636 West 14th St. Lower Manhattan*

Question. What is your business or profession?

Answer. *Tiler*

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

Answer. *I am not guilty*
G. Schmitt

Taken before me this
day of *Sept* 1931
John H. Ryan

Police Justice

0103

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

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

Dated Jan 20 91 18..... John Ryan Police Justice.

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

Dated..... 18..... Police Justice.

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

Dated..... 18..... Police Justice.

0104

735

Police Court--- District.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Asa J. Graham
George Smith

Attempt
at Rape
Offences

2
3
4

Dated *Jan 30* 1891

Wm H. King Magistrate.

Parcell Officer.

Wm H. King Precinct.

Witnesses *Wm H. King*

No. *100* Street.

No. *6* Street.

No. *11* Street.

No. *11* Street.

No. *11* Street.

\$ *1000* to *Wm H. King*

1000 to Wm H. King

1000 to Wm H. King



BAILED.

No. 1, by _____

Residence _____ Street.

No. 2, by _____

Residence _____ Street.

No. 3, by _____

Residence _____ Street.

No. 4, by _____

Residence _____ Street.

The preceding Justice will have been determined the within case in coming of the Justice of the Peace

0105

No 405 H. 27 St.
N. Y. June 31/1911

This is to certify that
on the morning of the 30 inst.
I examined the privates of
Samuel Graham and found
evidence that they had
been tampered with.

The parts were intensely
red and congested and
quite irritable.

J. M. M. M. D.

0106

Police Department of the City of New York.

Precinct No. _____

New York, Jan. 30th 1891

This is to certify that
I have carefully examined
Annie Graham, (an infant
and in my opinion there
is no medical evidence
of assault -

Respectfully

Geo. H. Nesbit M.D.
Surgeon 13th Dist.

0107

CITY AND COUNTY OF NEW YORK, ss:

POLICE COURT, 14 DISTRICT.

of No. 336 East 49 Street, aged 36 years,
 occupation Keyp House being duly sworn deposes and says,
 that on the 30 day of January 1891
 at the City of New York, in the County of New York, he saw
George Smith (now here), with his
 female infant, Annie, aged 13
 months, lying upon a table in
 his room, with its naked person
 exposed and her feet on his breast.
 That the defendant at the time was
 standing in front of said child with
 his ~~hands~~ ^{hands in front of his trousers}
 examined said child and found
 its private parts inflamed and
 swollen Ossie Graham
 made

Sworn to before me, this

day

of January 1891

[Signature]

Police Justice

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

THE PEOPLE OF THE STATE OF NEW YORK, against

George Smith

THE GRAND JURY OF THE CITY AND COUNTY OF NEW YORK, by this indictment, accuse George Smith of the CRIME OF RAPE, committed as follows:

The said George Smith, late of the City of New York, in the County of New York aforesaid, on the 12th day of January, in the year of our Lord one thousand eight hundred and nine, at the City and County aforesaid, with force and arms, in and upon a certain female not his wife, to wit: one Annie Fagan, then and there being, wilfully and feloniously did make an assault, and her the said Annie Fagan, then and there, by force and with violence to her the said Annie Fagan, against her will and without her consent, did wilfully and feloniously ravish and carnally know, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

SECOND COUNT—

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said George Smith of the CRIME OF ASSAULT IN THE SECOND DEGREE, committed as follows:

The said George Smith, late of the City and County aforesaid, afterwards, to wit: on the day and in the year aforesaid, at the City and County aforesaid, with force and arms, in and upon a certain female not his wife, to wit: her the said Annie Fagan, then and there being, wilfully and feloniously did make another assault, with intent her the said Annie Fagan, against her will and without her consent, by force and violence, to then and there wilfully and feloniously ravish and carnally know, 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 the dignity.

THIRD COUNT.—

AND THE GRAND JURY AFORESAID, by this indictment, further
accuse the said George Smith —
~~of the CRIME OF RAPE~~
of the CRIME OF RAPE, committed as follows:

The said George Smith, —
late of the City and County aforesaid, afterwards, to wit: on the day and in the year
aforesaid, at the City and County aforesaid, with ~~force and arms~~, in and upon a certain
female not his wife, to wit: her the said Amie Graham, then
and there being, wilfully and feloniously did make another assault, and an act of sexual
intercourse with her the said Amie Graham, —
then and there wilfully and feloniously did commit and perpetrate, against the will of the
said Amie Graham, and without her consent; 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.

FOURTH COUNT.—

AND THE GRAND JURY AFORESAID, by this indictment, further
accuse the said George Smith —
of the CRIME OF ASSAULT IN THE SECOND DEGREE, committed
as follows:

The said George Smith, —
late of the City and County aforesaid, afterwards, to wit: on the day and in the year
aforesaid, at the City and County aforesaid, with force and arms, in and upon a certain
female not his wife, to wit: her the said Amie Graham, —
then and there being, wilfully and feloniously did make another assault, with intent, an
act of sexual intercourse with her the said Amie Graham, —
against her will and without her consent, then and there wilfully and feloniously to commit
and perpetrate, 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.

~~JOHN R. FELLOWS,~~
~~District Attorney.~~

George Smith COUNT:—

AND THE GRAND JURY AFORESAID, by this indictment, further
accuse the said *George Smith* ~~of~~
attempting to commit
~~of~~ the CRIME OF PERPETRATING AN ACT OF SEXUAL INTER-
COURSE WITH A FEMALE UNDER THE AGE OF SIXTEEN YEARS,
NOT HIS WIFE, committed as follows :

The said *George Smith*,

late of the City and County aforesaid, afterwards to wit: on the day and in the year
aforesaid, at the City and County aforesaid, with force and arms, in and upon a certain
female not his wife, to wit: her, the said *Annie Graham*,
then and there being, wilfully and feloniously did make another assault, she, the said
Annie Graham, being then and there a female under the
age of sixteen years, to wit: of the age of *one* year; and the said
George Smith, then and there
wilfully and feloniously did perpetrate an act of sexual intercourse with her, the said
Annie Graham, against the form of the
Statute in such case made and provided, and against the peace of the people of the
State of New York and their dignity.

DE LANCEY NICOLL,
~~JOHN R. FELLOWS~~ District Attorney.

0111

BOX:

429

FOLDER:

3955

DESCRIPTION:

Smith, William

DATE:

02/16/91



3955

0112

POOR QUALITY ORIGINAL

Witnesses:

Capt. M. T. ...
James Smith
Wm. G. ...
Dr. Phillips

Counsel,

Filed

day of

189

Pleas,

Wm. G. ...
16 Feb /
Not guilty /

THE PEOPLE

vs.

24
6/11/136

William Smith

MANSLAUGHTER.
[Section 184 of Penal Code.]

DE LANCEY NICOLL,

~~JOHN R. FELLOWS~~

District Attorney.

A True Bill.

May 20/91
Sentence to State Prison
11 years 6 months

Chas. B. ...

Ordered by the Court

of Superior and Superior

April 17, 1891

Tried and convicted

Manslaughter 1st deg.

22

0113

POOR QUALITY ORIGINAL

Witnesses:

Capl. M. T. ...
James Smith
Wm. J. Gillispie
Dr. Phillips

Counsel,

Filed

day of

189

Pleads,

Wm. H. Grant

16 Feb 1891

Not guilty

THE PEOPLE

vs.

34
6 W. 136

William Smith

MANSLAUGHTER.
[Section 197, of Penal Code.]

DE LANCEY NICOLL,
JOHN R. FELLOWS,

District Attorney.

~~...~~
A True Bill.

May 20/91
Sentence to State Prison
11 years 6 months

Chas. B. ...

Ordered by the Court
ofayer and ...
April 17, 1891
Tried and convicted
Manslaughter 1st deg.

22

0114

CORONERS OFFICE, New York County.

INQUEST INTO THE DEATH

- of -

MARY SMITH, deceased.

) Before
) HON. FERDINAND LEVY,
) and a Jury.

New York, January 13th, 1891,
2 o'clock, P. M.

Appearances: Wauhope Lynn, Esq., appears for the people,
representing the District Attorney's Office; Mr.
Louis J. Grant, appears for the prisoner.

-----oOo-----

CAPTAIN JOSIAH A. WESTERVELT, duly sworn, testified:

By the Coroner:-

Q Captain, you are in command of the 29th Police Precinct
of this City? A. Yes, sir.

Q State to the Jury all that you know in reference to the
case that we are about to investigate, namely, the cause
of death of Mary Smith? A. I don't know that I can
state anything about the cause of death.

Q State the circumstances under which you arrested Of-
ficer Smith? A. Last Friday afternoon, after twelve
o'clock.

Q What date? A. It will be the 8th, I think.

A Juror: It is the ninth.

The Coroner: The ninth instant.

Q Now proceed? A. The doctors, Drs. Phillips and Snagge,
the doctors reported to me that they were in attendance upon

Mrs. Smith No. 6 West 126th Street, she was at that time suffering from lockjaw, which was the result of some injuries she had received some days prior; they stated that in their opinion she would not live only a few hours at the most, and if you desire to get any statement from her we must do so forthwith; I immediately telegraphed for the Coroner to come and take her ante mortem statement; I then went to the house and arrived there about twenty minutes before one o'clock; on examination I believed the woman to be dead. On my way back to the station house I met Officer Smith, who had just been relieved from duty; I placed him under arrest and then took him before the Superintendent.

Q State what time you met me at the station? A. The Coroner arrived there about shortly after -- Coroner Levy arrived there shortly before two o'clock; I stated to him that the woman was then dead and the Coroner took charge of the case; then I arraigned the officer before the Superintendent and he suspended him from duty.

Q What did you next do? A. The next day after the autopsy?

Q You brought him here on Saturday? A. Yes, sir; and he was committed by your Honor in five thousand dollars bail and in default of the bail he was committed to the Tombs; I also brought Mrs. Stewart as a witness; she was committed to the House of Detention.

Q That is all you had to do with the case so far? A. Yes.

By Mr. Lynn :-

Q Did you make any inquiry or investigation into the

rumored report that the defendant assaulted or clubbed his wife? A. Yes, sir.

Mr. Grant, on behalf of the prisoner objects to the question.

A. Yes; I investigated and caused an investigation to be made.

Q State what you did in detail leading towards that investigation? A. I learned that on the night of this alleged assault there was in company with officer Smith, a woman named Mary Stewart, a man named William H. Gillespie; Mrs. Stewart is here now; she stated that she was with the officer in the saloon at the corner of 135th Street and 5th Avenue and that officer Smith's wife came there looking for him, that officer Smith left, he returned in a few minutes and said that he had been out and given his wife hell; she would know better than to follow him on post in the future; the same statement was made to me by Mr. Gillespie and detective Price interviewed his son for half an hour, a little boy seven or eight years of age and stated he went there with his mother and his father came out the saloon and had some words with his mother and walked as far as 132nd Street and 5th Avenue with them and there he struck his mother; I am not positive, but I think he said, with a club.

Q What date was that that this alleged investigation developed? A On a Saturday.

Q What month? This present month - the 10th.

Q The 10th of January? A. Yes, sir.

Q You are now narrating the instance of the boy speaking

of this assault upon his mother? A. Yes, sir.

Q On the night of the 31st? A. Yes, sir.

Q That is when the boy speaks of his father having struck his mother corner of 132nd Street? A. Yes, sir.

Q December 31st? A. Yes, sir; it was made to detective Price.

Q What else did you learn? A. Nothing else.

Q When did you arrest him? A. Last Friday.

Q She died, when? A. Last Friday.

Q What day of the month? A. The ninth.

By Mr. Grant:

Q Personally you know nothing about these facts that you have testified to?

A No, sir.

-----000-----

WILLIAM M. GILLRSPIE, duly sworn testified.

By The Coroner:

Q Where do you live? A. 224 East 112th Street.

Q What is your occupation? A. I - at the present I live of my income, Mr. Coroner.

Q Were you formerly a member of the police force?

A Yes, sir.

Q What do you know in reference to this case?

A On the night of December 31st, I met officer Smith, the prisoner here; I considered him an intimate friend of mine, and in fact I met him very often and on December 31st I met him and we had several drinks together and we met Mrs.

Stewart.

Q Where was that? A. At 135th Street and 5th Avenue, a saloon kept by a man named Lewis and while we were in drinking a door - an entrance at 135th Street into this saloon - the door opened rather slowly - and this Mrs. Stewart said that probably - that it was probably Officer Smith's wife.

Q Was she in the place? A. Yes, sir; she was in the place.

Q Drinking with you? A. Yes, sir, and the door opened probably two or three times and when she made that remark that it was Smith's wife she called to the proprietor of the saloon and said is officer Smith here and he said no, and she said yes, he is, the proprietor said no he is not, so anyhow she said yes, he is and I want him to come out here and she went out past the door. A. Mrs. Smith and when she was gone, officer Smith went out the other entrance - there are two entrances leading into this box.

Q You do not mean to say that Mrs. Smith looked through the door two or three times? A. I heard those remarks that I have testified to.

Q ~~Was~~ He was there all the same? A. Yes, sir.

Q In uniform? A. Yes, sir.

Q Then she went out? A. Yes, sir, she went out and officer Smith went out to the door leading into the bar-room and he went out alone through the other door leading in the alley way; the box is like this and there is a door here and another door there and he went out that door and there

is another entrance leading into the street into the alley-
way, and what transpired after ^{that} I do not know.

Q What time of the day was this? A. Probably about nine o'clock in the evening.

Q Who came into the saloon first you or Smith?

A We came in together.

Q How long had you been in the saloon before Mrs. Smith made her appearance? A. Probably twenty minutes.

Q You had been drinking? A. Yes, sir.

Q What ^{time} did Mrs. Stewart come in?

A We came in together.

Q Where had you been prior to the time ~~she came in~~ - that you came to the saloon? A. At 134th Street we met her.

Q With whom, officer Smith? A. Smith and I were together and met her.

Q Did you agree to meet her? A. I knew no more about her than you did.

Q Did he say he expected her? A. Yes, sir.

Q You and Mr. Smith went into that saloon?

A Yes, sir.

Q Did you have a drink? A. Yes, sir.

Q And were you seated? A. Yes, sir.

Q What did he drink? A. Whiskey.

Q You also? A. Yes, sir.

Q How many rounds did you consume before Mrs. Smith made her appearance? A. Probably two or three rounds - maybe three.

Q Maybe three? A. Yes.

Q You remained in the saloon with Mrs. Stewart when he went out, A. Yes, sir

- Q He went out? A. Yes.
- Q Did you hear any loud words? A. No, sir; no words.
- Q Did Mr. Smith come back? A. Yes, sir.
- Q Excited? A. Not apparently, no, sir.
- Q What did he say about his wife? A. He said she would 'nt bother him any more, he gave her a slap in the jaw.
- Q That is what he said in your presence? A. Yes, sir.
- Q He sat down again in your presence and Mrs. Stewart?
- A We had one drink.
- Q One more round? A. Yes, sir.
- Q Whiskey again? A. Yes, sir.
- Q Hot or cold? A. It was cold rye whiskey.
- Q There is such a thing as hot whiskey? A. We had plain whiskey.
- Q Now, what time was it then after Smith returned - how long did he remain with you and Mrs. Stewart? A. Probably half an hour or three quarters.
- Q It got to be after 10 o'clock? A. Yes, sir.
- Q Perhaps later? A. Half past ten.
- Q What became of the party then? A. We went out together and I took the Madison Avenue car with the lady and brought her down to 110th Street and left her at 110th Street and left her home.
- Q What became of Mr. Smith? A. He was on his post.
- Q It was about half past ten, you think?
- A Yes, sir.

Q Is that all that Smith said of his wife - she wouldn't bother him again very soon? A. He slapped her in the jaw and that she wouldn't bother him no more, that is the only remark he made to me.

Q Did you hear a female voice outside, at that time?

A No, sir.

Q Did you see Mrs. Smith when you came out of the saloon?

A No, sir.

Q She was not around then? A. No, sir.

Q Did you know Mrs. Smith? A. Yes, sir.

Q Did you speak to her that evening? A. No, sir.

Q Was Smith sober, you think, that night? A. Yes, sir.

Q Both times? A. Yes, sir; to my knowledge he was.

Q Before the first round and after the additional round?

A Yes, sir; he was sober.

Q You and Smith had known each other for some time?

A Yes, sir.

Q Good friends up to to-day? A. Yes, sir.

Q Who else was in the saloon besides your party - anybody besides the bar-keeper? A. A half a dozen people in the back room.

Q Did they have anything to say to your party?

A No, sir.

Q Did you know any of this party who were there at the time? A. No, sir.

Q Males and females, both? A. No, sir; only males.

Q Was the proprietor of the saloon there Lewis?

A Yes, sir.

Q Was he there when Smith made that remark to you that he skapped her in the jaw? A. I could'nt say; I don't know - I don't really know.

Q Was Mrs. Stewart - was she under the influence of liquor

A No, sir.

Q Were you sober? A. Yes, sir.

By Mr. Lynn:

Q You say he was in uniform? A. Yes, sir.

Q When he sat in this private room, did he unbuckle his belt? A. No, sir, he had his uniform on.

Q He had a club, did he? A. Yes, sir.

Q It was hanging on the outside? A. Yes, sir.

Q Did you notice whether he had the club in his hand going out or whether it was in his belt? A. It was in his belt.

Q You say you saw him when he came back? A. Yes, sir.

Q Was his club in the same position? A. He didn't have it in his hand - it must have been in the same position.

Q I ask you whether he had it in his belt or in his hand when he came back? A. He had *his* belt on - I know him and he very seldom carries a stick in his hand at all - he carries it in his belt.

Q That is the usual place for policeman to carry it?

A Yes, sir.

Q He said that she would'nt trouble him again?

A Yes, sir.

Q You made some remark about his wife following him?

A I don't know that as I remember it; I heard her voice - I didn't see the lady - -

- Q You heard her ask for him? A. Yes, sir.
- Q You heard the bar-keeper *deny* that he was there?
- A Yes.
- Q And you saw him go out? A. Yes, sir.
- Q Did you say something when he came back afterwards?
- A No, sir.
- Q He spoke first, did he? A. He spoke first.
- Q He said she would not trouble - he said "she will not trouble me any more"? A. Yes, sir, *in the* *that* remark he made.
- Q "She will not bother me any more.
- Q Neither you nor Mrs. Stewart had said anything - neither you nor Mrs. Stewart had said anything - did Mrs. Stewart say anything? A. Not that I remember.
- Q How long had he been gone? A. Probably about fifteen minutes.
- Q Fifteen minutes? A. Yes, sir.
- Q You and Mrs. Stewart sat in the room, the same room?
- A Yes, sir.
- Q While he was away? A. Yes, sir.
- Q Mrs. Stewart knew Mrs. Smith? A. I don't know.
- Q It was she that saw her when she opened the door?
- A She didn't say Mrs. Smith, at all, she couldn't see her.
- Q All you three persons were in the room talking at the time? A. Yes, sir.
- Q And the bar-keeper saying he was not there?
- A Yes, sir.
- Q What did Smith say when he heard that? A. He didn't

say a word.

Q But after the door had closed he got up? A. Yes, sir.

Q Did he say anything going out? A. Not a word.

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

Q Did Mrs. Stewart say anything to her? A. Not that I remember.

Q There was nothing said but "That is your wife, Smith, looking for you." A. No, sir.

Q He got up and put his hat on and he walked out?

A Yes, sir.

Q And was gone about fifteen minutes? A. Yes, sir.

Q He came into the same box where he had left?

A Yes, sir.

Q Both sat there - you both sat there? A. Yes.

Q Did he sit down? A. Yes.

Q And the first words that were exchanged between you and him or either of you and him was his remarks, "She will bother me no more?" A. Yes, sir.

Q That is correct? A. Yes, sir.

Q You are sure that the language is substantially that?

A Yes, sir.

By Mr. Grant:

Q He said, " I gave her a slap in the jaw.

Mr. LYNN: She will bother me no more, I gave her a slap in the face or jaw - it was one or the other.

A Either one.

Q Did you say anything then after he said that - did

Q Did you say anything? A. Oh, yes, I says to him, Smith, I said, now, there is no law in the world ^{compelling a man} to live with a woman, there is only a law which compels you to support her; if you cannot get along what is the use of fighting and growling.

By the Coroner:

Q What did he say to that? A. He didn't say anything at all.

Q Did Mrs. Stewart say anything to that? A. No, sir. Not that I remember.

By Mr. Lynn:-

Q Smith had expressed himself he couldn't get along with his wife, didn't he? A. No, sir.

Q What remark led you to make that statement -- what remark led you to make that statement to him? A. After him saying he slapped his wife in the jaw -- or face, I don't remember which.

Q He made this statement entirely voluntarily -- it had not been elicited from him by any remark of yours?

A. No, sir.

Q How long had you known Mrs. Smith? A. Well, I know her -- I was on post on Pleasant Avenue four years ago and Officer Smith was there -- I considered him a friend of mine and I visited him.

Q How long have you known Mrs. Stewart? A. Since last November.

Q This saloon that you were in that day was not on Officer Smith's post? A. Yes, sir; that night.

Q And it was while on post that he came into that private box? A. Yes, sir.

Q Had you preceded him in there? A. We went in together.

Q All three of you? A. Yes, sir.

Q Did you see Mrs. Stewart or him first that night?

A. We both met her together.

Q You and Mrs. Stewart visited him very often?

A. I visited him -- I met her with him.

Q And she was his friend and not yours? A. Yes, sir.

Q And you knew her through him? A. Yes, sir.

Q And as you met her you found her frequently in his company? A. Yes, sir.

Q And this night was one of the nights in question when she was with him? A. Yes, sir.

Q Do you remember having seen a little boy that night?

A. No, sir; I didn't see nobody that night.

By the Coroner:-

Q Are you positive as to the date that this happened?

A. Yes, sir; I am positive, December 31st.

Q New Years Eve? A. Yes, sir.

Q Sure as to that? A. Positive.

Q When Smith came back and said what you have testified to that his wife wouldn't bother him again that he slapped her in the jaw or face, what did Mrs. Stewart say, if anything? A. I don't believe the woman said a word.

Q Refresh your memory as to that? A. I am testifying to the truth here, I am trying to.

Q I expect that, you need not emphasize that; did she say anything at all? A. No, sir; I cannot recollect now.

Q Did she take part in the conversation at all -- who ordered the round of drinks after Smith came back? A. Smith did.

Q Smith did? A. Yes, sir.

Q Did he make that remark before he ordered the drinks? A. Before he ordered the drinks.

Q Nothing led him to make that remark -- no remark from yourself or Mrs. Stewart, -- nothing that you had said or Mrs. Stewart that he had struck his wife in the face?

A. No, sir; that he said voluntarily.

By Mr. Grant:-

Q You have now stated everything that you can remember of that occurrence? A. Yes, sir; everything.

Q And on this occasion in question you did not see Mrs. Smith at all, did you? A. No, sir.

Q You don't know -- you cannot say that it was Mrs. Smith that opened the door of your own knowledge? A. No, sir.

Q There was no one in the box on that occasion except your party? A. Yes, sir.

Q Officer Smith and Mrs. Stewart and yourself? A. Yes; us three.

Q After you went out of the box did you see where he went? A. No, sir.

Q You couldn't see, the box is all enclosed -- it was an ordinary box in a saloon? A. Yes, sir.

Q And you were inside of this, and didn't go out, did you? A. No, sir.

Q You couldn't see where he went? A. No, sir.

Q After he had left the box and went out, did you hear any disturbance, any screams, or any violence of any kind?

A. No, sir.

Q Everything was perfectly quiet as far as you could see? or hear? A. Yes, sir.

Q Or hear? A. Yes, sir.

Q He was out of the box about fifteen minutes -- you don't mean to be positive that it was as long as that -- when you say fifteen minutes you did not at that ^{time} time it?

A. As near as I could judge it was probably that time. It may have been less -- I didn't time the man when he went out of the place at all.

Q Were you led to believe from Officer Smith's manner when he came back into the box that he had perpetrated any violence -- did his manner indicate it.

Objected to.

The Coroner: You may ask him was he excited.

Q Was he excited? A. He appeared to be cool and collected, the same as always.

Q You say there were some other people in some other part of the saloon? A. Yes, sir.

Q From the tone of the conversation and from the way he was talking, -- all of you at that time, you think what you said could have been heard outside of that enclosed box?

Objected to.

A. We talked in an ordinary tone of voice, we didn't keep quiet in any way at all.

Q It was not any louder when he made that remark, when he came in that he had slapped her in the face, -- was that said in a loud tone of voice? A. Ordinary tone.

Q I mean not excited? A. Nothing boisterous.

Q You say that on that evening this saloon was on Officer Smith's post -- now, you don't know really what his post was that night?

A. Yes, sir; I know; I have been on the police and I know how it was regulated.

By Mr. Lynn:-

Q Of course you know that Mrs. Smith was there that night from the conversation and voice and from Mr. Smith's conversation?

A. I don't know really because I was in this enclosed box there.

Q But he spoke of it in that way that you knew his wife had been there and seen him?

Objected to, question excluded.

By the Coroner:-

Q I will ask the question once more. You are positive that after Smith came back into the saloon he made the remark that you testified to, namely, my wife will not bother me again, I have slapped her in the face or in the jaw, he made that remark, either in the face or in the jaw?

A. Yes, sir.

Q Upon that you added -- what did you say?

A. I said to him, Now, Bill, now, there is no law -- there is no use of abusing a woman, there is no law in the world compelling you to live with a woman -- the law compels

you to support her.

Q You said that in the presence of Mrs. Stewart?

A. Yes, sir.

By Mr. Grant:-

Q Is not the testimony that he said, she will not bother me again? A. Yes.

Q Had anything been said by his wife before? A. No, sir; not before.

By the Coroner:-

Q Did he use the words my wife? A. No, sir, he said she.

By a Juror:-

Q You frequently visited Mr. Smith? A. Yes, sir.

Q Did you ever have conversation with Mrs. Smith during those visits? A. One night, after Officer Smith moved up there, - he went out -- I did -- I went up with him to get some supper, and I went up with him.

Q Did you ever have any conversation with her? A. No, sir, only the night I met her and her husband.

Q Any length of time? A. Probably fifteen minutes, I was not conversing with her -- I was conversing with the children in the house.

Q Mrs. Smith was in the box -- did you know her voice?

A. No, sir; I didn't know her voice, only the words she said, she wanted to know if the officer was there and the proprietor said no, and I ~~saw~~ understood that that was his wife.

Q You were laboring under the impression that it was his wife? A. Yes, sir.

DR. PHILIP E. DONLIN, duly sworn, testified:

On January 10th at No. 6 West 131st Street I made a post mortem examination of the body of Mary Smith, in the presence of Dr. Leibinger and Dr. Snag, and found the following conditions which I shall describe.

I found at the back of the head about two inches above the occipital protuberance an irregularly shaped suppurating wound three quarters of an inch in length; there was edchymosis under the left eye; there was a discoloration of a greenish yellow extending over the left cheek, the result evidently of traumatism or injury ^{to the scalp.} On removing the scalp I found an extravasation of blood beneath the scalp, the size of a silver dollar; I found a small extravasation the size of a three cent piece and another as large as a cent three inches above the left ear. No injury to the tables of the skull were found. On removing the top of the skull the dura mater or lining membrane was found adhering intimately to the inside of the skull and showed signs of inflammation; the vessels were all filled with blood, making it or giving it an arborescent appearance - the vessels were all engorged, the Pia Mater or covering membrane of the brain was found to be opaque and thickened, an evidence of inflammation. The brain tissue was normal; I cut down to the spinal cord and removed the brain, placing it to one side. On examination of the base of the skull I found an aneurism of the bassilar artery of the left side. Its front and back sticks up like a Turkish saddle because alongside of the Turcica so named - it is recognized under

either name. There was a small amount of blood around this ruptured vessel; and on the comparing the point of rupture with the base of the brain we found a clot of blood there about half an inch in length and between half and a quarter in breadth, it was firm and solid. On taking out this vessel the left basilar artery which was discolored and disorganized, we found it friable and much enlarged. Comparing it with the artery on the right side of the cella Turcica, this artery, the basilar is a sort of a breaker or dam and offers resistance to the too forcible propulsion of blood to the brain - it acts as a sort of sea wall that prevents the sea coming into the harbor too forcibly. The tortuous shape of this vessel enables it naturally to resist the large quantities of blood that at times surge to the brain. It offers points of resistance; we examined very closely all of the brain structure and found no inflammation of the medulla oblongata, neither did we find any in the spinal cord, a section of which we examined. I could find no directly transmitted injury from the wounds on the skull or from the meningitis which in my judgment was the result of the wound of the skull to the ruptured artery. The tissues surrounding this ruptured artery immediately were in a normal condition and exhibited no signs of directly transmitted force or violence. The other organs as examined were normal, but congested. From the autopsy I formed the opinion that death was due to cerebral hemorrhage, or cerebral apoplexy, and from the autopsy alone could not connect the meningitis which was the result

of the injury of the head with the rupture of the artery. One of the physicians who was present at the autopsy informed me that prior to the death of the patient she suffered from a tetanic spasm; that of course being a statement outside of the inquest I could not permit it to enter into my decision founded upon observed facts as to what was or what was not the cause of death. I had to found it solely upon what I saw. But it has been the usage of this office for Coroners physicians to form an opinion as to the cause of death from the history of the case and the death appearances at the inquest and whilst I am not aware from observation that this woman had tetanic spasms before her death ~~the coroner's decision~~ - for tetanic spasms are merely an action and not a disease and leave no trace behind; if the evidence of honorable physicians show that this woman had violent tetanic contraction of some muscles of the back or neck such as occur in cerebral spinal meningitis which is similar to tetanus in many of its symptoms and due to the same cause we could easily accept their statement; and judging from the testimony offered here that there were tetanic spasms I could connect the cause of death with the injury.

The injury produced meningitis that produced convulsions - a convulsion ruptured a diseased blood vessel causing death by shock from cerebral hemorrhage.

By the Coroner:-

Q If we discovered from the evidence that is presented to this Jury this afternoon that this woman was beaten and assaulted, if such knowledge and testimony was to be given or

presented to this Jury would the result of the injuries of that character have anything to do with the cause of death in conjunction with that which you have already stated?

A. The connecting link is missing in the post mortem; that must be furnished by the testimony of medical attendants, who can or will certify that this woman had tetanic spasms or persistent convulsions, by these spasms large quantities of blood may be forced to the brain and through a disorganized blood vessel.

Q You state here that the woman might have died --

A. She might have died from meningitis, traumatic, if she had not died by the rupture of this vessel. Naturally, if this Jury is to ask what caused this apoplexy from the post mortem I don't know; theoretically I do know, but what caused it directly I don't know. If I am to form an opinion from the testimony that this woman had a tetanic spasm I could show that the enlargement of the blood vessel and that disorganized condition permitted its rupture.

Q In other words you mean to tell the Jury if there is to be any connection shown between the cause of death as you discovered at the autopsy and that of the old injuries received, it must be supplied by some additional evidence in this investigation? A. By some physicians in attendance who could show that there were spasms which if tetanic were due to the meningitis and that these caused the rupture of those enfeebled vessels.

Q You have been serving a number of years as deputy coroner, have you had occasion during that time where persons have been assaulted and beaten or struck with a stick or club and at the same time when you were called upon in your official capacity, you did not discover any special traces which would show that any marks of violence or any fracture of the skull or serious injuries had been inflicted and undoubtedly such injuries had been sustained? A. Yes, sir. The external trace as in sand bagging may disappear after a while, its effects may remain and be slow in causing death.

Q Who was present at the autopsy? A. Dr. Leibinger whom I took there at your request and Dr. Snag, one of the attending physicians.

Q Did they assist? A. They witnessed it from the beginning to the end and we conversed together upon every condition we found; I did the work.

Q Anybody else present? A. There was an undertaker.

Q Any other physician? A. No, sir.

By Mr. Lynn:-

Q The blow struck on the back of the head such as you describe may produce meningitis? A. Yes, sir.

Q Will meningitis at times develop lock-jaw? A. Yes, sir.

Q Will lock-jaw with all its symptoms at any time ever develop apoplexy? A. No, sir; not alone; lock-jaw is a symptom - a tetanic spasm.

Q To what is it due? A. It is due to the irritation of the brain, and you cannot recognize it after death; it is merely an action.

Q It is an effect of a cause - it is due to a cause?

A. Yes, sir.

Q So known as meningitis? A. Yes, in tetanus it is due to the irritation of the medulla oblongata and the spinal cord.

Q The one follows the other? A. Yes, sir.

Q Now, then, after we have those symptoms of lockjaw following from meningitis, is it possible that apoplexy may develop? A. Not unless there is an abnormal condition of some of the vessels and blood is propelled with undue force to the brain.

Q ~~Are~~ ^{Are} spasms of such a character violent and strong?

A. They might probably rupture a diseased vessel.

Q And then would follow apoplexy? A. Yes, sir.

Q Then it is possible that the chain is perfect under those conditions I have proposed? A. That the tetanic spasms were present before ^{death} took place and caused the flow of blood in abnormal quantities to the brain and ruptured this enfeebled vessel.

Q Where was this spot? A. Two inches above the occipital protuberance.

Q That is where the spinal column runs to? A. Yes, sir; it runs up under there.

Q This contusion was there? A. This lacerated wound, an extravasation under the scalp was there.

Q The skull was not fractured? A. No, sir.

Q The skull does not need to be fractured to produce meningitis? A. No, sir.

Q This discoloration of the eye was simply a black eye?

A. That is all it was.

Q And on the cheek? A. Traumatic.

Q On the same side with the eye? A. Yes, sir.

By Mr. Grant.

Q Did you see at the time all the injury of the skull of the deceased? A. Yes, sir.

Q Were those injuries serious or otherwise? A. The injuries of the skull.

Q The wound? A. Only through its results.

Q When you say as to what you saw was it such an injury as you would consider a serious injury because of a severe blow? A. Not of itself alone.

Q There was no fracture of the skull? A. No, sir.

Q And that was the most serious external wound that you saw? A. Yes, sir.

Q Now, after this time you removed portions of the spinal cord? A. When we removed the brain, we cut down past in the obdula oblongata to the spinal cord.

Q And the portions that you removed were perfectly normal?

A. Normal as far as the tissue and construction was concerned, but the dura mater also down and around the medulla and spinal cord which it sheaths the inflammation could extend along the membrane. So far as the spinal cord itself was concerned we found no changes in it.

Q Assuming that the deceased had died of lock-jaw it would be - it would be from here, the spinal cord and those portions here? A. We might find a lesion of it.

Q . Wouldn't that be most likely? A. It would be likely, but as an inflammation of the meninges of the brain extends to and embraces at times the spinal cord its inflammation would produce tetanic spasms. I use this term to distinguish from lock-jaw; lock-jaw is tetanus. It is due to ~~septic~~ septic poison with strychnine you can have nearly the same symptoms. In any case where the body is drawn to one side or the other by involuntary contractions of the muscles it is due to the same cause, irritation of the medulla oblongata and the spinal cord or an extended meningitis.

Q . Is it not a fact that if the rupture had been occasioned by violence or beating or any violence perpetrated by anybody upon the deceased, is it not a fact that if that rupture had been occasioned in that way that the deceased would have been unconscious a long time before death? A. I understood the injuries were received January 2nd; such a clot could not appear without producing all the evidences of apoplexy; I infer from the statement I heard that such symptoms were not prevalent prior to the death. From the autopsy alone I cannot trace the relations between the meningitis and the rupture of this disorganized vessel, but with the testimony of the attending physicians and the statement that she had tetanic spasms I could at once form an

opinion that death was probably due to the forcible propulsion of blood to that weakened part of the brain; but that is probable only and I do not state it as a fact.

Q Is it not a fact that the pressure of this clot you have mentioned caused apoplexy? A. Any extravasation of blood into the brain is apoplexy.

Q Would that produce death immediately after the rupture?

A. It depends on the location of the rupture and the size of the clot; a clot the size of a pins head will in the medulla oblongata cause death; a clot the size of half an inch located as this was would cause death very quickly.

Q As far as your own individual opinion was concerned, from what you saw you personally can trace no connection between the injuries that you found and the cause of death?

A. From the post mortem changes alone?

Q Yes? A. No, sir.

By Mr. Lynn:-

Q No trace is between the one and the other because one or the other may not have operated? A. Yes.

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DR. D. *Palmer* SNAGG, duly sworn, testified:

By the Coroner:-

Q You are a practicing physician in good standing?

A. Yes, sir.

Q Where do you live? A. 2203 Fifth Avenue.

Q State in your own way or language all that you know in reference to the case of Mary Smith from the time you were sent for. Were you her family physician? A. Not before this time.

Q When were you called in to attend her? A. I was called in Thursday night, the 8th.

Q You were not the first physician -- you were called in the 8th? A. Yes, sir.

Q Was Dr. Phillips there ahead of you? A. No, sir.

Q You were called in Thursday, 8th of January?

A. Yes, sir, if Thursday was the eighth, I was called in, by her husband.

Q What time of the day did you go there? A. It was about eight o'clock, I think, or half past eight.

Q When you got there did you find Dr. Phillips?

A. No, sir.

Q You were there alone that night? A. Yes, sir.

Q Tell the Jury what you found and what you did?

A. I went in and found Mrs. Smith in bed, she had a handkerchief tied around her forehead; I tried to get her history; I couldn't get much of a history from her.

Q Was she in a feeble condition? A. She must, or concealed her history; what little I got out of her and from

her pain - she complained of she might have mialgya or peretonitis or mumps, or she might have the enlargement of the glands. The light was poor, I thought I would prescribe for her, I did prescribe and I left word I would come in early in the morning and look her over carefully.

Q How long did you stay there Thursday evening?

A. I don't know.

Q About half an hour? A. Maybe twenty minutes, possibly

Q Did you try to discover the cause of her illness or ailment? A. I tried to get some history from her.

Q Was Smith present when you spoke to her? A. No, sir.

Q Who was there? A. There was a lady there and a child, a baby.

Q Did you examine her there? A. I examined her neck.

Q Her head and face? A. I felt of the back portion of her head here.

Q Did you remove the handkerchief? A. I pushed it up and felt of her forehead.

Q Did she say anything to you at all? A. I asked her some question, I asked her if she was suffering from headache, she said her head did ache a little, and I asked her to see her tongue and she protruded it partially only, I asked her why and she said she couldn't and she said she couldn't get her mouth open; I said why, she said it hurt her right here, the articulation of the jaw bone.

Q That evening you left -- you were not satisfied exactly as to the condition of your patient? A. I thought she was a pretty sick woman.

Q Did you return the next morning? A. I was to return but I got a call from her brother before I got there.

Q Did you return there on Friday? A. Yes, sir; he came into the office.

Q Her brother? A. Yes, sir; I don't know his first name; he came to my office, I think, ~~about~~ I cannot tell -- it must have been about nine o'clock; I had been up all night, I was sleeping pretty late, I had not arisen, -- I think it was pretty nearly nine, maybe half past eight, ~~he~~ came in and ~~asked~~ me if I would come in and see Mrs. Smith; I said how does she feel this morning? He said, "Doctor, she is no better." I said I will come up and see her. He said, "Did you know she had been hurt?" I said, no; he said, "She has been hit with a club." I said, "Why in thunder didn't she tell me so last night -- that makes a very great difference. I will be up there in a very few minutes." I got up and dressed myself; I don't know whether I stayed for breakfast or not. I don't think I did; I think I went right up there. When I got up there Mrs. Smith was sitting on the side of the bed; I went in and another party was there -- I don't know whether it was her sister or not, a young girl maybe eighteen, seventeen or eighteen or twenty, and I went right into her and I said, "How are you feeling this morning?" She said, she was not feeling well. I said, how long have you been sitting up?" She didn't just know. I said, why don't you lie down; she said, "I get so stopped up - I cannot breathe well. I said, your brother tells me you had an injury;

I would like to find it -- and I did find it.

Q What did she say to that? A. She made no reply to it then. I found the injury such as has been described very faithfully by Dr. Donlin; a wound three quarters of an inch long on the parital bone; when I found that then I got a light in there to see the wound and I saw her face then I first discovered that she had Tetanus, lockjaw. That was my first discovery of it. Says I, "Mrs. Smith, you are in a bad condition; you ought to go into the hospital; and you ought to go immediately." The brother said, she wouldn't go into the hospital, she had enough sisters to come in and take care of her. I said, all right, she must have care and care immediately, and I said, I want counsel.

Q An associate physician? A. Yes, sir. He said, all right, if you want counsel you can call him; I went down to my office and I think I sent my brother-in-law for Dr. Phillips, Dr. Phillips came to my office; he came there after eleven o'clock and I told him what I had learned about the situation and what they told me, except I didn't go into all the history. He said we will go up to see it; Dr. Phillips and I went up there; when we got there Dr. Phillips went into the room and I asked her if she could walk into the other room; she said she could, and she got into a chair out there and he looked over her and he said there is an edema of the lungs; he said it is evidently due to this injury; he found the injury, I showed it to him. He spoke to me more than to her; the brother was

there; the brother seemed to be spokesman for her, then the brother acknowledged that, calling her by the name of Mary, you were hit by your husband - he put it to us "The fact is, her husband hit her with a club and gave her that wound new Year's eve, and then he said, "Isn't that so, Mary?" And she said, "Yes;" that he had clubbed her. Then Dr. Phillips and I talked it over with the brother in the other room and told him about what the result would be -- that she had Tetanus then, and before he stepped in the other room she had a Tetanic convulsion and we went into the other room and we talked to the brother a few minutes and we told him the case would have to be reported to the Coroners office or Police Headquarters. When we came back she cried for water; she couldn't open her mouth. She told me in the morning she couldn't take her medicine -- she could not get her mouth open. She cried for us to do something and she put up her hands and she had another convulsion; we got out before that convulsion fully stopped and Dr. Phillips and I went out and reported it to the Coroners Office and we reported it to the 126th Street station house - reported it to Captain Westervelt and I returned home and Dr. Phillips went his way.

Q What time was that? A. About twelve o'clock, I guess.

Q Did you go back to the house after that? A. After that, yes, I did, when I was called back.

Q But not the same day? A. No, sir.

Q What directions did you leave there before you left the house, you left some directions there at the house?

A. I told them when they asked for help and relief I said, you will get some help here in a very short time; that is what I told him when I left them.

Q You then considered the case as a fatal one?

A. Yes, sir.

Q You were present at the autopsy? A. Yes.

Q You have heard the testimony of Dr. Donlin?

A. Yes, sir.

Q You know anything different than that which he has testified to - in other words you corroborate his testimony with reference to the autopsy? A. I found everything as Dr. Donlin has told the Jury here; there was a clot of blood there and a scar of the wound, I found those and I formed my conclusion at that time that she died of apoplexy or by Tetanus brought on by the injury and I left it to the medical profession to decide whether this Tetanus ruptured this blood vessel or not.

By Mr. Lynn:-

Q The doctor has testified that some testimony was to be given about the convulsions and if that was a fact that other conclusions could be drawn -- your conclusion as to the cause of death knowing about these convulsions - what is it? A. I testified that she had convulsions in the first place she had convulsions and at the same time

a diseased artery, a disorganized artery, it is possible that in convulsions that artery would rupture, and if it did there would be a clot and there would be pressure here produced on the brain and death would follow.

Q Meningitis would produce symptoms of lock-jaw?

A. Well, possibly it would, but I think lockjaw was produced by the separating wound; I think Tetanus was produced by that; that separating wound on the back of the head.

By Mr. Grant:-

Q You say that the defendart first came to you to come and see his wife? A. Yes, sir.

Q He came to you as a doctor to go and attend her professionally? A. Yes, sir.

Q At the time he came did he seem anxious that you should go? A. He asked me if I would go soon and I told him I would if that can be construed as anxious I would say yes.

Q He asked you to go soon? A. Yes, sir; he asked me to go soon.

Q When you first saw her didn't you see the wound?

A. I did not find the wound the first time, no, sir.

Q You did not make a careful examination at the time?

A. I was careful as far as I went; but I didn't feel of that portion of the head.

Q Was that a serious wound? A. When I saw it, ~~he~~,

~~he~~, it was *superficial*.

Q Was it a deep wound or only a flesh wound? A. It was not through to the scalp.

Q Only a flesh wound? A. That is all.

Q No fracture of the skull? A. No, sir.

Q You are really in doubt as to whether the cause of death was apoplexy or lockjaw, are you not? A. Well, there is a chain of circumstances there.

Q Answer my question? A. No, Tetanus was the cause of death, it produced the apoplexy.

Q Apoplexy was the cause of death? A. Yes, sir; but it was produced by Tetanus.

Q Is it not a fact that apoplexy was the cause of death? A. There was a sufficient clot of blood there to produce death.

Q Didn't you say in answer to a question of the District Attorney, it was possible that such and such state of affairs existed -- I did not exactly catch that -- I would like Mr. Coroner -- it was from the doctors answer --

Q Is it possible that meningitis would produce symptoms of lockjaw -- is it possible that it would? A. Yes, sir; it is possible that it would.

Q Did you see any portion of the spinal cord at the autopsy? A. A little of it.

Q You heard Dr. Donlin testify as to that? A. Yes.

Q And those portions were entirely normal? A. Yes.

Q How would that be assuming that she had died of lockjaw -- what result would that have on the spinal cord?

A. It might have some result, and it might have no result.

Q Will you give us in your own way the definition of lock

jaw? A. The definition of lock-jaw?

Q Yes? A. There are different views in regard to that. My definition of it in this *country* is almost always due to traumatism, I hold that in this country it is the result almost of some accident in some portion of the body.

Q Is not the definition of lock-jaw that it is partial or complete spasmodic contraction of the muscles? A. That is lock-jaw.

Q And that is more or less produced, is it not?

A. Yes, sir, it comes and goes.

Q Now, what is that due to? A. Well, blood poisonings perhaps.

Q Not due to the *excitation* of the spinal cord?

A. It may be due to *excitation* -- an injury received.

Q Does it not have that result usually on the spinal cord? A. I cannot say that it does; I cannot say that you can find a change in the post mortem to discover a change in the spinal cord.

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DR. CHARLES E. PHILLIPS, duly sworn:

By the Coroner:-

Q Are you a practicing physician in good standing?

A. Yes.

Q Where is your office?

A. No. 82 East 121st Street.

Q Were you called in by Dr. Snagg to visit Mrs. Mary Smith at No. 6 West 125th Street? A. Yes.

Q On a Friday? A. The 9th, yes, sir.

Q State it to the Jury? A. As soon as I reported this case I came home and gave -- made out a statement, and if you will let me read that -

Q That is proper? A. On Friday, January 9th, about quarter to twelve o'clock I was called by Dr. Snagg to see Mrs. Smith of 136th Street; I found her suffering from lock-jaw; I inquired as to the history of the lock-jaw, a man who said he was her brother said that she had been choked and clubbed by her husband, on January 2nd, by her husband, -- on the eve - that portion of it I am not positive about. I understood him to say the night previous or night after New Years eve. The reason was because she had gone to a saloon near by where her husband was to get money to buy food.

Q That is what he said in her presence? A. Yes; she found him in company with a woman.

Objected to by Mr. Grant.

The Coroner: If this statement by her brother was made in her presence and she confirmed the same I will

admit it.

Q Now, Doctor, those remarks were made by Mrs. Smith's brother, in her presence? A. Yes.

Q In your presence? A. Yes.

Q And Dr. Snagg's presence? A. Yes, and a lady who I understood was her sister.

Q And as far as you know Mrs. Smith was rational at the time? A. She certainly was.

Q Did she say anything or confirm or corroborate the remarks of her brother? A. She did to a certain extent; there were certain questions she corroborated.

Q Just tell us what he asked her -- did she say whether she had been assaulted or beaten? A. I asked her if she was *well* previous to the assault, and she said yes.

Q And as to the assault? A. I asked her if her husband clubbed her, she at first refused to answer and under close questioning she admitted he had. And that she had suffered fearfully from pain since the clubbing and she placed her hand on the back of her head.

Q Did she say where it took place? A. I asked her.

Q That simply was made by the brother? A. And then I took hold of her and asked her questions.

Q You asked her whether her husband clubbed her?

A. Yes, sir.

Q And on being closely questioned she admitted that her husband clubbed her? A. Yes, sir.

Q Did you ask her any other questions? A. Well, -- *Those were the principal ones.*

Q You asked her where she had been hit? A. She placed her hand on the back of her head and said she suffered fearful pain since.

The Coroner: That is sufficient for the Jury except the medical testimony.

Mr. Grant objects to the testimony as given by this witness.

Witness continuing: I found her pupils widely dilated and her teeth clenched tightly and the bloody froth oozing from her lips; I also found within a few minutes she had a Tetanic convulsion; I also saw her have one other Tetanic convulsion before I left; she asked me for water; I endeavored to pry open her teeth, but found I could not, then I told her brother that it was too late. The brother asked me what I was going to do and I told him that I should report it to the police and that they would undoubtedly send an ambulance and take her to a hospital. He asked me how long I thought she would live; I answered not longer than twelve hours, and she may die at any time. I then left the house in company with Dr. Snagg and reported the case to Captain Westervelt.

Q Were you present at the autopsy? A. I may state in addition to that I found a cut on top of her head, a separating wound.

Q Describe that? A. It was from examination, it was matted and filled in with hair, it looked as if it had been a ragged cut and it was filled in with hair and separated; I saw it was a Coroner's case and immediately repor-

ted it as soon as possible.

Q Were you at the autopsy? A. No, sir; I was not.

By Mr. Lynn:-

Q Were you present at any time when she was in convulsions? A. Yes, sir.

Q Were they of a mild or violent character? A. Violent character.

Q How many convulsions did she go into in your presence?

A. I only saw two.

Q In a short space of time? A. I was in the house longer than eight or ten minutes.

Q And during those eight or ten minutes she had two convulsions? A. Yes, sir.

Q Lasting how long, each? A. The first I should judge lasted in the neighborhood of three minutes, and I left her in the second one; I don't know how long it lasted.

Q They were caused by what cause? A. In my opinion they were produced by the lock-jaw and the lock-jaw was produced by the lacerated wound on top of her head.

Q If she had died of apoplexy would apoplexy be produced by those violent convulsions? A. They could.

Q The primary cause then assuming what you say to be correct would be the wounds on top or on the back of the head?

A. Yes, sir.

By Mr. Grant:-

Q That is your best opinion? A. Yes, sir.

Q But all these symptoms that you have stated could have been caused from other causes besides that wound on the back of the head? A. They could have been caused by lock-jaw.

Q You mean to say the lock-jaw could not have been caused by anything else?

A. Always, when we see usually lock-jaw we look for a wound.

Q Was it a serious wound on the head? A. Inasmuch as it didn't have any attention - it was filled with septic matter of some sort, I considered it a dangerous wound.

Q Did you hear Dr. Donlin testify to that? A. I simply say what I found; that I considered it a dangerous wound.

Q Would that make the size of the wound and ^{the} appearance of it ^{different} seeing her alive or dead? A. No, sir; not a particle.

Q If a person dies of lockjaw does it not affect the spinal cord? A. It may or it may not.

Q You say it as likely one way as the other? A. Yes, it is as likely one way as the other.

Q You did not see portions of the spinal cord that were extracted? A. No, sir.

By the Coroner:-

Q Are the words Tetanus and lock-jaw synonymous terms?

A. In this case, they are.

Q Can a person have Tetanus or Tetanic spasms without having lock-jaw? A. They may have Tetanus or a mild form

of Tetanus without lock-jaw called Tetani.

Q Is Tetanus or Tetanic spasms or convulsions or lock-jaw a symptom or a disease? A. It is a symptom of a disease.

Q If a disease where would you find the pathological change? A. If you found any at all, you could find it in the spinal cord, but you ~~are~~ just as likely not to find it as to find it according to the best pathologists.

Q Would meningitis ever produce ~~xxx~~ tetanic spasms?

A. It might.

Q Did she have meningitis? A. She didn't have any when I saw her.

By Mr. Grant:-

Q On which side of the base of the head was the wound that you saw? A. I couldn't tell you that.

Q You cannot tell on which side of the head? A. No, sir; I discovered it was that sort of a wound -

Q Can you tell us what generally causes a clod of blood to rest on the brain? A. A rupture.

Q A rupture? A. Of some artery.

Q Is it not generally on the same side of the rupture?

A. Not necessarily.

Q What is the name of the brother of Mrs. Smith?

A. I don't know.

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DR. HUGO LEIBINGER, duly sworn:

By the Coroner:-

Q You are a practicing physician in this city? A. Yes.

Q And in good standing? A. Yes.

Q Where is your office? A. 1055 Lexington Avenue.

Q Did you attend the autopsy on the body of Mrs. Smith on the 10th? A. Yes, sir.

Q In the presence of Dr. Donlin? A. Yes, sir.

Q In your presence and in the presence of Dr. Snagg?

A. Yes.

Q You have heard the testimony of Dr. Donlin?

A. Yes, sir.

Q Have you anything to add? A. I say the same as Dr. Donlin.

Q In other words you corroborate his result that he arrives at? A. Yes.

Q As to the autopsy? A. Yes.

Q You never saw this woman alive, did you? A. No, sir.

By Mr. Grant:-

Q From your examination at that time could you trace any connection between the wound that you found on the deceased's head and apoplexy? A. No, I cannot find any connection at all.

Q In your opinion what was the cause of this woman's death? A. I think the cause of death was apoplexy.

Q And that apoplexy had no connection with the wound?

A. No, sir.

By the Coroner:-

Q. That opinion is only formed on the result arrived at at the autopsy? A. I only was present at the autopsy; I saw the ruptured vessel on the base of the brain on a very important place.

By Mr. Grant:-

Q In your opinion what caused that? A. The rupture of the vessel?

Q Yes? A. I don't know, I only saw the rupture.

By Mr. Lynn:-

If it is a fact that as has been testified to that she had two violent convulsions caused by lock-jaw it would lead you to think ~~as to~~ ^{the formation} the cause of ~~death~~ of the clod of blood on the brain? A. I believe that Tetanus may be produced ^{by either} between the meningitis ^{or} and the wound --

Q You were merely there as a spectator? A. Yes.

By Mr. Grant:-

Q You went there professionally? A. Yes, sir.

-----oOo-----

EDWARD B. HAGAN, recalled:

By the Coroner:-

Q Where do you live? A. 303 East 111th Street.

Q What is your occupation? A. Bricklayer.

Q Are you a married man? A. No, sir.

Q What is your age? A. Twenty-five.

Q Are you the brother of Mrs. Smith? A. Yes, sir.

Q She is your sister? A. Yes.

Q How old was she? A. 33 years of age.

Q Do you know anything as to any alleged injuries she received at the hands of your brother-in-law, or officer Smith?

A. On the morning of January, last Friday, the ninth, while looking for work I was stopped into my sister's house; when I got there there was a young girl there minding the baby and of course she said come inside, Mary is very sick; I didn't know it before that; I went into the bed room and her mouth was half shut so, she said Ed, please run and get the doctor; I ran down and got Dr. Snagg; he said I will be right up after you. He said, what do you think is the matter with her. When he came there he said she's got a sore throat, he said. I said, did you look at her head, I said: he said no.

Q Who was present when he examined her, Dr. Phillips?

A. No, sir; this young lady, my sister and I and the doctor were the only persons in the house outside of the baby; he said it is a very bad case, I will have to call in consultation and he went away and come back in about an hour and a half with Dr. Phillips.

Q Were you there again? A. Yes, sir, and during the time that the doctor went away first I was talking to my sister, and she said, "Ed, hold me I will fall over;" she was sitting on a trunk at the back of the bed at the time; I had her up for minutes before and she had four

convulsions; I had to keep clapping her hands, and keep at it and then she would be all right for half an hour and swoon off again.

Q You ~~made~~ heard the statement of Dr. Snagg? A. Yes, sir.

Q Who testified to the remark that your sister had been injured or clubbed? A. Yes, sir.

Q That remark was that the result of a conversation had with your sister? A. No, sir.

Q How did you come to make that remark? A. Because my sister told my mother.

Q You made that remark in the absence of Dr. Snagg and Dr. Phillips? A. Yes, sir.

Q What did she say to that? A. She said, yes.

Q In the absence of the doctors? A. Yes.

Q Did she at once say yes? A. No, sir; at first no; I said, "Mary, shield him no more, tell the doctors right out -- you are so near the end," and of course she said, "Yes, it is so;" and after that they got a couple of more questions like that out of her. I said, "Mary, where did he hit you with the club?" And she pointed up to the back of her head and at that time the teeth were clenched and she couldn't open them and Dr. Phillips called me into one of the bed rooms and he said it is a bad case. I said what are you going to do about it?" He said, "I will have to report it to the police. I asked him how long will she live; he said about twelve hours. I went down to the house to let my folks know about it and then I went down to my

sisters in 114th Street and I came up again to the house and she was dead; she died in the meantime.

Q What time did you get back to the house? A. About half past eleven -- between half past eleven and half past twelve.

Q Did she die about half past twelve? A. She died about one o'clock, I understand; I am not positive as to that.

Q I suppose you were excited at the time?

A. I was excited, yes.

Q Did you evertalk with Smith? A. Yes.

Q I mean the defendant? A. Yes.

Q Concerning your sister? A. Yes.

Q What was said between you and him? A. I said -- I heard that he had beaten her one time before this, I said "Billy, you ought not do that, let it go the best way you can, a big brute like you, it is a shame to club a poor woman like that." He said that is nothing. All the ~~xxx~~ black eyes she ever carried it was something outrageous.

Q Did you say that? A. Yes, I did, but I didn't see him give it to her.

Q She was seldom without black eyes? A. Very seldom.

Q How long had they been married? A. About eleven years or over.

Q How old is that boy - that eldest boy? A. As far as I can understand between 8 and 9 years old.

By Mr. Grant:-

Q Did you tell anybody before you went on the stand that

you had that conversation with the deferdant before?

A. What do you mean?

Q Have you told anybody before you went into that chair?

A. No, sir; I did not.

Q How was it you did not mention that to anybody if it was a fact that you have had it? A. Why wouldn't I?

Q Yes, why didn't you.

Q (repeated) A. I thought it would be just as good minding my business.

Q Didn't you think it was any of your business when you had heard that your sister was being clubbed by the deferdant -- was it not your business to mention it to anybody?

A. But she was shielding him, she was afraid he would be broken off the police.

Q But you did not, did you? A. No, sir.

Q When did that take place? A. About two months ago, two months and a half.

Q Where? A. On Second Avenue and 116th Street.

Q 116th Street and Second Avenue? A. Yes, sir.

Q How did you happen to see him? A. I went there to see him.

Q What was the object in going tere to see him?

A. Because his wife was going to be put out for non-payment of rent.

Q Where were they living then? A. 343 East 113th St., I think it is 343.

Q In what part of the street was it? A. Between 1st and Second Avenue, nearer first.

Q And you say at that time your object in going to see him was that they were getting put out for not paying the rent? A. Yes, sir.

Q Who was the landlord? A. As far as I can understand, the name is Weber.

Q State any other portion of the conversation you had with him at that time? A. I went up to him and says, "It is a shame, you ought to go down to the house and go down after you get off, after eight o'clock; he said he would. I said, you might as well move as to get your things on the sidewalk, but he didn't come down.

Q What else did you say? A. That is all.

Q That is all the conversation? A. Yes.

Q You know what you are saying? A. Yes.

Q You know perfectly what you said? A. Yes.

Q That is all the conversation you had at that time?

A. Yes, sir.

Q If that was all the conversation you had how did you happen to have the conversation about the clubbing?

A. This sister of mine told my mother that Billy gave her a severe beating, and I asked little Johnnie about it; me mother ~~stated~~ related it to me about it and I asked Johnnie if it was so.

Q I ask you when you had the conversation -- when you had the conversation with him in which you alleged there was something said about clouting - when did you have that conversation? A. Two or three nights after the alleged clubbing she came down to the house.

Q Didn't I ask you a few moments ago and didn't you say it was down at 116th Street and at the corner of Second Avenue?

A. This was long before -- it was two months ago that I had this other conversation.

By the Coroner:-

Q Which conversation? A. Speaking to him on 116th Street corner.

By Mr. Grant:-

Q Did I ask you of any single conversation except the conversation that you say you had in answer to the District Attorney when you said something about clouting; is not that the only conversation --

By the Coroner:-

Q When did you have the first conversation?

A. Two months ago.

Q In reference to what? A. In reference to him being put out.

By Mr. Grant:-

Q When did you have the conversation about the alleged clouting? A. Two nights after the New Years eve.

Q Where was that? A. In my own house No. 303 East 111th Street; his wife came down and told my mother and I inquired into it.

Q Where did you meet him then? A. I had the conversation with Mrs. Smith.

By the Coroner:-

Q Did you ever have any conversation with the defendant here, sitting right here, Mr. Smith, with reference to any

clubbing or alleged clouting; did you or did you not, with him direct? A. With him, direct, no.

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MARY STEWART, duly sworn, testified:

By the Coroner:

Q Where do you live? A. 1888 Third Avenue, between 109th and 110th Streets.

Q Is your husband living? A. Yes.

Q Have you a family? A. No, sir.

Q Are you acquainted with the defendant Officer Smith?

A. Yes, sir.

Q How long have you known him? A. About a year and a half.

Q Do you know his family? A. No, sir.

Q Ever been to his house? A. No, sir.

Q Were you present on the 31st of December? A. Yes.

Q Last month? A. Yes.

Q At the saloon at 135th Street and Fifth Avenue?

A. Yes, sir.

Q With officer Smith? A. Yes.

Q And Mr. Gillespie? A. Yes.

Q You heard the testimony of Mr. Gillespie in which he says you came there together and had several rounds of

drinks? A. Yes.

- Q Whiskey I believe? A. Yes.
- Q About half past nine o'clock? A. Yes, sir.
- Q You recollect a lady calling there? A. Yes, sir.
- Q Tell us what took place? A. A lady came in and asked for the officer - was the officer there and a gentleman -- the bar-tender, said no, he was there but he has gone.
- Q Did she say who? A. She said the officer.
- Q She insisted he was there? A. Yes.
- Q And the bartender insisted he was not?
- A Yes, she went out and he went out after her.
- Q She went out and he went out after her? A. Yes.
- Q Did he say anything to you and Gillespie before he went out? A. No, sir, and he came back and he said he gave her fits.
- Q In what manner? A. No, sir.
- Q Did he say anything about slapping her in the face or in the jaw? A. I didn't hear him.
- Q Will you swear he did not say so? A. I didn't hear him.
- Q Simply said he gave her fits? A. Yes.
- Q How long was he out? A. 10 or 15 minutes.
- Q While he was out did you and Gillespie take a drink?
- A. We drank what we had in the glass.
- Q When he came back who ordered the drinks? A. I couldn't tell, I think it was Mr. Smith.
- Q When he came back did he appear to be cool or excited?
- A. Cool.
- Q Was he excited when he said he gave her fits?

A. No, sir;

Q After he came back when he said about giving her fits?

A. I couldn't say; I asked him was that your wife, he said yes, I think I said, what is the matter, he said, I gave her fits for coming around to my post to see me.

Q Coming around to see him? A. Hunting him up in a saloon.

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

Q Said nothing at all? A. No, sir.

Q How many drinks had you been taking before this woman called at the saloon? A. I don't know; about a couple, I guess.

Q It might have been more? A. It might be more or it might be less.

Q Can you recollect the quantity of whiskey you took each time? A. No, sir.

Q Pretty fair quantities I suppose? A. No, sir, not ver much.

Q Mrs. Stewart, I wish you would try and possibly refresh your memory and tell us exactly what took place?

A. That is all that took place; Mr. Gillespie was in there --

Q What time was that? A. Between half past ten and 11 o'clock.

Q Did you ever see Smith and his wife together?

A. No, sir.

Q Did Mrs. Smith ever call at your house? A. No, sir.

Q Or you at her house? A. No, sir.

- Q You never met her? A. No, sir.
- Q Never saw her in your life? A. No, sir.
- Q You knew Smith was married? A. Yes.
- Q And had a family? A. Yes, sir.
- Q How many children were you told he had? A. Five, I understand.
- Q And that is all that took place that evening, as far as you can recollect? A. That is all I know about it.

By Mr. Lynn:-

- Q Did you go there to see Mr. Smith? A. No, I was taking a walk.
- Q You had met him before? A. Yes, sir.
- Q You had been in that saloon there before? A. Yes.
- Q You came there alone to see him? A. No, sir, not exactly, I came there to wish him a happy New Year.
- Q In the saloon? A. I met him on the Avenue.
- Q This was continued in the saloon? A. Yes.
- Q Was your husband with you? A. No, sir.
- Q You and Mr. Smith have been acquainted for about a year and a half? A. Yes, sir.
- Q You have met him originally on post? A. Yes, occasionally.
- Q Therelations were friendly? A. Yes, sir.
- Q Quite friendly? A. Not quite friendly.
- Q So much so that you drank together? A. Yes.
- Q And chatted together? A. Yes.
- Q Gillespie you had known before that? A. I have seen him with Mr. Smith.

Q Mr. Smith introduced him to you? A. Yes.

Q Had you an appointment that day with Mr. Smith?

A. No, sir.

Q You just ran out? A. Yes, I took a walk up the Avenue.

Q About how many blocks did you walk? A. I was at -- I was up to Wilson's --

Q Where do you live? A. I live between 109th and 110th Streets.

Q And you went to the saloon on Fifth Avenue - you walked the 25 blocks up A. I went up the Avenue.

Q When you went in there that day you heard this woman's voice? A. Yes, sir.

Q Just try and think, did you look over at the time when you heard this remark? A. No, I didn't notice -- no, I don't think I did.

Q You knew he was the officer, didn't you? A. Why, certainly.

Q How long did you stay there after the remark was made?

A. About twenty minutes or half an hour, I couldn't exactly tell you.

Q Fifteen or twenty minutes after he made the remark?

A. No, he went right out and came back again.

Q And you and Mr. Gillespie? A. We stayed there until he came back.

Q When he came back you have testified that he said something to you about his wife? A. He said he gave her fits.

Q Do you remember what Gillespie said? A. No, sir.

- Q You didn't notice it? A. No, sir.
- Q It was a round table? A. Yes.
- Q The centre of a small room? A. Yes.
- Q You were each sitting on chairs? A. Yes.
- Q He said he had given her fits? A. Yes.
- Q You asked him if that was his wife? A. Yes; I said what is the matter; he said, "I gave her fits."
- Q Do you know whether Gillespie said anything about whether the law did not compel a man to live with her? A. Yes, I remember that.
- Q You remember that now? A. Yes.
- Q What did Smith say? A. He said nothing.
- Q How long did you remain in there after she came in?
A. About fifteen minutes.
- Q Tell us something what was said between you?
A. Nothing particular; joking about New Years and so, forth -- I couldn't tell you.
- Q You do not recall anything that was said after that?
A. We were talking about different other things.
- Q You did not say to him you were sorry he was married?
A. No, sir; I knew he was married.
- Q Nothing was said in particular for fifteen or twenty minutes; the Jury will find out whether it was particular or not; I want to know what was said if possible.
A. I cannot say what was said; I couldn't tell you - we were talking about New Years.

By Mr. Grant:-

- Q After the defendant had left the box and gone out did

you hear any disturbance or screams or any noise? A. No, sir; not a bit.

Q And when he returned his manner was ~~xxxxxxx~~ cool?

A. Yes., just the same as when he left.

Q Cool? A. Yes.

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JOHN SMITH, called by the Coroner was interrogated as follows:-

By the Coroner:-

Q This lady that is dead was your mother? A. Yes.

Q This gentleman here is your father? A. Yes.

Q How many children are you? A. Five.

Q Are you the eldest? A. No, sir; the big sister.

Q How old is she? A. Ten years.

Q You are the next oldest? A. Yes.

Q You *recalled* going out one evening with your mother within one or two weeks ago? A. Yes.

Q Do you know when that was? Was it the day before New Years? A. New Years night.

Q The night before New Years or after? A. It was ladies New Years.

Q That is the second of January? A. Yes.

Q You think it was then? A. Yes.

Q Where did you go with your mother? A. Down 135th Street.

Q What Avenue? A. Fifth Avenue.

Q What time was that? A. After supper.

Q Did your mother tell you where she was going?

A. Yes, sir.

Q What did she say? A. She wanted to go down to meet Papa to get some money off him.

Q For what? A. For meat and everything.

Q She asked you to go along? A. Yes.

Q You went with her? A. Yes.

Q Where did she meet him? A. 135th Street corner.

Q Out on the street? A. No, in the liquor store.

Q How do you know? A. Because Mama caught him in the hall -- because he was in the hallway with a woman.

Q Did you see them? A. I didn't see the woman.

Q You heard your Mama call him? A. Yes, sir.

Q Did he come out? A. Yes, sir.

Q Right away? A. Yes, sir.

Q He came right out? A. Yes, sir.

Q Then you were standing on the sidewalk? A. Yes, sir.

Q In front of the saloon? A. No, up at the corner.

Q Near the saloon? A. Yes.

Q Then you saw your father come out, did you? A. Yes.

Q Now, be very careful what you tell me now. Now, what did he say when he came out? A. He came out and mama said she wanted some money *and* he didn't give her any and he punched her in the nose and in the eye.

Q Do you know that -- do you know that yourself? A. Yes.

Q Or did somebody else tell you that? A. I seen it myself.

- Q Was it dark? A. Yes.
- Q How did you see it? A. I seen him come out and hit my mother.
- Q You saw him - you are positive of that? A. Yes, sir.
- Q Hit your mother in the face and in the nose? A. Yes, sir.
- Q Didn't he say anything before he hit her? A. Mama said she would go down to the station house with him.
- Q She said she would go down to the station house with him?
- A. Mama said she would go down to the station house with papa.
- Q And then she walked down? A. Yes, sir.
- Q And he walked with her? A. Yes.
- Q And up to 132nd Street and Fifth Avenue? A. Yes, sir.
- Q What happened there? A. Papa pulled out his night-stick and hit Mama over the head with it.
- Q Did he say anything before he did that - did they have any words? (No answer.)
- Q Did he quarrel with her before? A. I don't know.
- Q Did you see him pull out his stick? A. I seen him hit mama.
- Q With his stick? A. Yes.
- Q You saw that? A. Yes.
- Q What did mama do? A. When he hit her she went home.
- Q Did she scream or did she holler? A. No, sir.
- Q Did your mama go away? A. Yes, sir.
- Q And you went home with her? A. Yes, sir.
- Q Did your father go away? A. He stayed at the corner.

- Q He remained at the corner? A. Yes.
- Q Are you sure that you saw your papa take his stick and hit your mama? A. Yes, sir.
- Q Sure of that? A. Yes, sir.
- Q Did you ever state that to anybody else? A. Yes, sir.
- Q Whom did you tell it to? A. To two detectives.
- Q You told them that, did you? A. Yes.
- Q Did you tell your uncle? A. Yes, sir.
- Q Or your aunt? A. Yes.
- Q You did? A. Yes, sir.
- Q Did anybody ever tell you to state that? A. My aunt told me to tell him.
- Q Did you tell her? A. She asked me.
- Q She asked you and then you told her? A. Yes, sir.
- Q Your mama went home then? A. Yes.
- Q Could she walk well? A. Yes.
- Q And when she came home did she lie down? A. She put a rag around her head.
- Q And lie down? A. Yes.

By Mr. Grant:-

- Q When your mama put the rag around her head when she got home was there anyone there but you? A. My little sister and the baby.
- Q Anybody except your little brother and sister?
A. No, sir.
- Q None of the aunts or uncles? A. No, sir; only my little sister.

Q At the time that you say your papa struck your mama over the head with the night stick which side of your mama were you walking on, on the same side as your papa - was your papa walking on the same side with mama as you were?

A. He was walking on that side and I was on this.

Q Your mama was between you? A. Yes, sir.

Q Did he say anything just before he took his night stick?

A. No, sir; he didn't say anything at all.

Q You don't know what they were talking about just before you saw him take out the night stick -- did you hear it?

A. No, sir.

Q They were just walking along on the sidewalk?

A. Yes, sir.

Q And he pulled out his night-stick without anything being said? A. Yes, sir, and then he hit her.

By the Coroner:-

Q Since that time or since your mother died where have you been living? A. With me grand-mother.

Q Where does she live? A. In 111th Street.

Q Are you still living there, are you? A. Yes.

By Mr. Grant:-

Q There has been a good deal of talk there, about your papa and mama's troubles? A. No, sir.

By the Coroner:-

Q Have you spoken anything about these troubles?

A. Only to the two detectives and grandmother.

Q Did you say anything different to ~~them~~ them than what you said to-day? A. I told the same thing that I told the detectives.

Q Did you tell the detectives the same thing that you said here to-day? A. Yes, sir.

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The Coroner (to Mr. Grant) Do you desire to call your client?

Mr. Grant: No, sir I will not call my client.

The Coroner: Unless the District Attorney or the counsel for the prisoner or the Jury desire to any of the witnesses recalled I will close the testimony.

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The Coroner: Gentlemen of the Jury - The testimony given here this afternoon in this case has been given thoroughly and it now becomes your duty from the evidence produced to say by your verdict or to state therein the time, place and the manner in which this deceased came to her death. You have a right to consider all the circumstances connected with that death and it becomes your duty to say whether any person or persons had anything to do with that death; in other words whether that death was accidental or from natural causes or whether it was caused through criminal means or violence. The code provides that the Coroners Jury should ascertain and look into the cause of death; it must be caused

either from accidental, natural or criminal causes, or suicidal causes. It becomes therefore your duty after carefully weighing the evidence to say in the first place, whether you are satisfied from the *medical* and other evidence whether this woman died from natural causes or not. If you come to the conclusion that death was caused simply from apoplexy and you believe or feel justified in believing that there was nothing else irrespective of the evidence that caused that death of course your verdict would be simply that death was caused from cerebral apoplexy; but, if on the other hand, you believe that that apoplexy was more or less the result of injuries sustained at the hands of any person or persons --whether lock-jaw produced apoplexy or any other cause - then it becomes your duty to say that this woman died from other than natural causes and then you arrive at that stage of your deliberation where you must say or you ought to say if you can, who is responsible for those injuries. Therefore if you conclude that this woman died from other than natural causes or if you please that she died from the causes of apoplexy or other medical reasons given here today during this investigation, if you believe aside of that that any injury no matter of what degree accelerated that death or hastened death, then it becomes your duty to say who is responsible for having hastened that death.

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Now, gentlemen, I do not think it necessary to go into any review of the testimony because I believe you understand the case thoroughly; but I simply want to tell you your duty as far as the verdict is concerned. I take it for granted that you gentlemen understand that the verdict must be *based* upon the evidence, not upon any feeling upon the matter, one way or the other. It must not make any difference to you whether the prisoner or the person accused here is a member of the police force - that has nothing to do with the case; you must try this prisoner as any ordinary individual would come before you and examine the case simply upon the facts presented to you and nothing else. Now, since I have a right to assume that that is the way you must consider the surrounding circumstances I therefore again say to you that in your verdict, if you are satisfied that this woman ^{from natural causes,} did not die, then she must have died from something additional, *and* if she died from the result of criminal violence or if you believe that anything was ~~done~~ to her which produced that no matter whether it was two weeks or a month ago, so far as that is concerned, if she died from the result of those injuries or had any connection with it at all then it becomes your duty to state in your verdict who if anybody is responsible for those injuries. The evidence I think is complete enough for you to form

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a verdict without much difficulty. I now leave the case in your hands, and I desire, gentlemen, no matter how late the hour is, you must be just as conscientious about the arriving at your conclusion and deliberations as if it was ten o'clock in the morning. You will now retire and consider the facts carefully and bring in a verdict in accordance with them.

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District Attorney's Office,
City & County of
New York.

These Checks are
not identified

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W. H. S. S. S.
S. S. S.

COURT OF OYER AND TERMINER.

----- x
 The People :
 against :
 William Smith. :
 ----- x

Before Judge Barrett and a Jury.

New York, April 14th, 1881.

EXTRACTS FROM MINUTES.

CHARLES E. PHILLIPS, called for the prosecution,
sworn.

DIRECT EXAMINATION by Mr. Stapler:

- Q What is your occupation? A Physician and Surgeon.
- Q Where is your office? A 32 East 121st Street.
- Q How long have you been in practice? A Since the
Spring of 1884.
- Q In this City? A Yes, sir.
- Q Continuously during all that time? A Continuously.
- Q Of what Institution are you a graduate? A New York
University Medical College.

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Q Were you called upon by Dr. Smagg on the 9th of January last ? A I was.

Q What was the request he made of you when he called upon you ?

Objected to as immaterial.

Q Where did you go with him ? A I went to 136th Street, I think No. 3, West, to see a patient.

Q You went upstairs, where did you go to, what floor ?

A I don't just remember what floor, one or two flights up, I can't tell which.

Q Whom did you find there ? A I found a lady who I was told was Mrs. Smith.

Q Where was she when you went into the room ? A I found her in a bed-room off from the kitchen.

Q Was she in bed ? A She was not; she was sitting on a box or stool, bent over.

Q At the head of the bed ? A At the head of the bed.

Q Please tell the Jury what examination you made of her there ? A As I saw her there I told the parties that were there to bring her out to the kitchen where it was light, so I could see what was wrong, and she walked from the bed room to the kitchen and sat in a chair.

Q Who helped her out ? A Dr. Smagg and a gentleman that

I was told was her brother.

Q Her brother on one side and Dr. Smagg on the other?

A Yes, sir.

Q Please describe to the Jury the condition of her body as she came out? A It was considerably bent and she walked with considerable difficulty.

Q Where was she placed? A She was placed in a chair very nearly facing the kitchen window; the kitchen window faced West -- no, South; I am not positive about that, South I think.

Q Please state to the Jury what examination you made of her and what you found? A I saw as soon as I looked at her, from the facial contortions and expression of her face that she was suffering undoubtedly from lockjaw, and to make my diagnosis more perfect I asked the question whether --

Mr. Grant: I object, that he cannot testify to anything that was said to him; he can testify as a physician to what he did.

Objection sustained.

Q Please state to the Jury what her condition was at that time? A Well, I saw a wound on the top of her head, that was I should judge a wound in the neighborhood of an inch or an inch and a quarter in length, and was matted --

- Q Will you fix on that skull about the position of that wound (handing skull to witness) A It was about here (indicating). The location on that skull would be similar to this; the location would be in this direction, just on the parietal, near the neighborhood of where the straight bones join the bones in the rear.
- Q Does that mark show the location of the wound? A It does, as near as I can remember.
- Q About what was the size of it? A As I have said before, from an inch to an inch and a quarter; it might have been a little larger, or a little smaller, I didn't measure it.
- Q How far did the cut extend in depth? A I would judge through to the bone; I did not probe, but from the looks of it and the character of the wound, it looked as though it went through to the bone.
- Q Was the hair matted in the wound? A Yes, sir.
- Objected to.
- Q Please describe particularly just what you saw as to the nature of the wound? A I saw that it was a suppurating wound, one in which there was pus which had matted the hair into the wound. I did not examine her any further in regard to the wound. I saw some discoloration of her face, and she was at that time in a semi-unconscious con-

dition; her features were discolored or flushed; the dark colored blood seemed to be filled in, as if there had been an interference with her respiration or breathing, and just as I had finished my examination of her head, she had a spasm, which was a spasm of lockjaw; it was a peculiar spasm. She began with her arms, throwing them up, and leaned back; and the spasm I should judge lasted for almost a moment.

Mr. Grant: I had intended when the Dr. went on the stand, that while one doctor was giving his testimony in regard to what he saw, that the other physicians would kindly step in the other room, so that they could give their own opinion without regard to the testimony of one another.

The District Attorney consented that Dr. Smagg retire, but asked that Dr. Donnelly remain in the room, as he did not see the woman before her death, having only made the autopsy. Dr. Smagg then retired from the Court Room.

Q Please describe that spasm again, that you saw after you had examined that wound? A Well, it began with a convulsion of the arms and of the whole upper extremities, face and head, and she threw herself gradually back, and that lasted perhaps a minute: and then straightened out into the condition she was in when I first saw her, slight-

ly stooping .

- Q As to the expression of her face, just tell the jury what was the expression of her face ? A The muscles of the face were contorted, the angles of the mouth were drawn, and the eyes were sunken. She had a peculiarly funny expression, a dirty expression.
- Q Is that one of the features of the disease ? A It is one of the features of lockjaw.
- Q What is the technical name of lockjaw ? A It is a disease that is characterized by partial or complete contraction of the voluntary muscles, the muscles of the neck.
- Q What is the name ? A Tetanus.
- Q And this convulsion you say was a tetanic convulsion ? A Yes, sir.
- Q And this expression of the face, has that a name ? A It is called a demoniacal expression .
- Q And that always accompanies lockjaw ? A Yes, sir.
- Q That is one of the infallible signs of lockjaw, is it not ? A Yes, sir.
- Q Was this convulsion a violent convulsion ? A Yes, sir.
- Q Please describe the condition of her jaws. A The jaws were tightly set, so much so that in answering my questions she had to hiss out the answers through her teeth, and there was a bloody saliva running down her jaw and some

on her chin; at that time she was begging for water.

Mr. Grant: I object and I move to strike out what she said.

Objection overruled.

Q Please state to the jury just what she said ?

Objected to. Objection sustained.

Q Did she say anything else in relation -- not the cause of the injury, but did she say anything in relation to her feelings, anything which gave you information as to her condition ?

Objected to, in that form.

Q She asked you for water, you say ? A Yes, sir.

Q Did you make any effort to find whether you could give her water or not ? A I did.

Q Tell the jury what you did. A I had a pencil in my pocket similar to this one, and I inserted that under the teeth and tried to pry those teeth open, to get water through her teeth; I found it was impossible, and stated the fact to her then and there.

Q What, in your opinion, was her condition at that time in reference to her future life, as to her ability to live longer ? A I had no doubt at that time but what she would die within four hours.

Q Was she or not in the last stage of lockjaw ? A She certainly was in the last stages of lockjaw.

- Q And you knew nothing that medical science could do at that time to relieve her or save her life ? A Not at that time, to relieve her or to save her life.
- Q Did you see her subsequently, when she was dead ? A I did not .
- Q Assuming that she died within two hours after you saw her, what, in your opinion, was the cause of her death ?
A Well, I don't know as to that; of course she could die of two or three different things; she could die from the interference of respiration.
- Q What was the primal cause ? A Lockjaw.
- Q And that was produced by what ? A By the wound on her head.
- Q Will you please tell the jury in what way such a wound as that produces lockjaw ? A Well, it could produce it in different ways; one would be by the entering into the system through the wound of some poisonous substance, or from meningitis developing from the wound.
- Q Meningitis developing from the wound ? A Yes, it could come from that or it could come from taking into the system this septic poison, this outside matter.
- Q The matter that comes from such a wound as you saw ?
A Yes, sir.
- Q The wound as you saw it was in such a condition as led you

to believe that from that lockjaw could be developed ?

A It did.

Q How long after a wound is received by a person do the authorities state that this disease is developed ? A From three to fifteen days.

Q What is one of the attendant conditions of the mind of the patient ? A The mind is clear up to death.

Q These spasms are the infallible indications of the disease?

A They are.

Q Did you so inform the people that were there, that this woman could not live ? A I did.

Q And you went immediately to what place ? A The Police Precinct on 126th Street.

Q For the purpose of what ? A Reporting it to the Captain, and for the purpose of sending for a Coroner.

CROSS-EXAMINATION by Mr. Grant:

Q If this wound which you say you found at that time with septic matter in it, had been properly attended to and properly washed out prior to the time you saw it, the poison which you say got in could not have got in ? A It would not have been near as apt to.

Q And it would not have been near as apt to cause lockjaw ?

A No, it would not.

Q You testified at the Coroner's inquest ? A I did.

- Q And your opinions in regard to this case have not changed at all in regard to the facts of this case since then ?
- A No, sir.
- Q Dr. Smagg was with you when you went there the second time?
- A Yes, sir; the first time I went there.
- Q And you understood that he had been there to attend the patient before that, didn't you ? A I did.
- Q Twice before ? A I don't know how many times; I knew he had been there.
- Q Dr. Smagg pointed out the wound on the head to you, didn't he ? A He did not.
- Q Are you sure ? A I am sure.
- Q Positive about that ? A Well, no, I wont be positive about that.
- Q Try and refresh your recollection about it; did he, or did he not ? A I couldn't say; I know that my attention was drawn to it, and whether from my own examination or from a remark he made, I can't remember; I know I found it.
- Q You saw a wound on the head just on the occipital protuberance ? A It was higher up; it was not there.
- Q By the parietal bone ? A Very near the junction of the parietal and occipital.
- Q About how far above the occipital protuberance was it,

or below ? A It was above, I should presume an inch or an inch and a half.

Q That would bring it on top of the head ? A No, very nearly on top of the head.

Q In addition to that wound how many other wounds did you find ? A I didn't find any.

Q You did not ? A No.

Q You are sure of that ? A As I remember now, I did not notice any.

Q I want you to remember now as well as you can ? A I don't remember seeing any others.

Q If you at the Coroner's inquest stated that you did find another wound in addition, does that recall anything to your recollection ? A It does not recall anything to my recollection -- I might and might not; I remember that was the principal wound.

Q Did you at the Coroner's inquest, in answer to a question that was put to you, after stating about the other wound, did you say "I may state in addition to that I found a cut on the top of the head, a suppurating wound" ? A That is the wound I refer to.

Q What was that in addition to ? A I don't know; that refers to the wound on top of the head.

Q Then when you say in addition to another wound that you

found a suppurating wound on top of the head, you did not mean that ? A I meant the same wound.

Q You did not find two wounds ? A I did not, not that I remember.

Q And the next question was "Describe that." and you go on and describe the other wound on top of the head. Does that recall the facts that there was more than one wound ?

A It does not, to me; that is, I remember one wound -- it refers to the same wound.

Q Was this question put to you by Mr. Linn, the Assistant District Attorney, and did you make this answer at the Coroner's inquest: "By Mr. Linn: Q The primary cause then, assuming what you say to be correct, would be the wounds (in the plural number) on the top^{or on the back} of her head"?

A If it so states I did not understand it as wounds -- it was wound; it would be very easy to add an "s".

Q But it makes a singular plural; was that question put to you and did you make that answer ? A Not understanding that it was wounds, I did not.

Q Was the wound you referred to on top of the head ?

A Very nearly, as I have described it.

Q I am asking you whether you swore to it at the Coroner's inquest as being on top of the head, pointing at the same time -- was it or not on top of the head ? A It was

right where I described it.

Q Was it on top of the head? A It was as I described it.

Q Will you answer my question, please? A It is just between -- about an inch and a half above the occipital protuberance; it was not square on the top of the head.

Q Was it on top of the head? A It was partially so; it was not clear on top.

Q When you stated that in addition you discovered a suppurating wound on top of the head, you didn't mean that it was on top of the head? A I meant just what I said.

Q Didn't you also say at the Coroner's inquest that when you asked the deceased if she had been hit, or if anything had happened to her, she put her hand on the back of her head -- didn't you so state? A I couldn't say whether I did or not.

Q If it is down here in the evidence will you admit it?

A I shall have to admit it if it is in evidence.

Q I will ask you now whether you are willing to say as a positive fact to this jury that the death of the deceased in this case was caused by reason of the wound or wounds -- whatever it may be -- on her head, and from nothing else?

A I am.

Q Nothing else? A From the diseases that followed from that wound.

- Q O, there are certain formulas and changes that had to be followed along and if every one of them connected you will say then that you think the death of the deceased was caused by that wound ? A The lockjaw was caused by the wound and the lockjaw caused the death.
- Q Was there meningitis there ? A I can't say; I know nothing about the autopsy. She showed no evidence of it at that time, other than lockjaw.
- Q Did you examine this deceased anywhere except on her head ? A I felt of her pulse and saw it was a foregone conclusion.
- Q You went up to that house having in mind the fact that she had some injuries in her head, and your attention was directed to her head almost entirely; isn't that the fact - was it or not ? A I can't remember whether it was or not.
- Q It is only three or four months ago; can't you remember, particularly a person at the point of death and past all medical skill, as you say -- that you cannot remember when you went in to see a patient in such a case, whether or not your attention was directed to her head, where you understood she had some wound ? A I can't remember whether my attention was called to it when I went in the house or not.
- Q I ask you whether your attention was simply directed to

her head ? A That was one of the symptoms that I looked for; I think my attention was drawn to it.

Q Are you willing to swear that the deceased had no other injuries on her body except on her head ? A I don't know anything about that; I didn't see them.

Q When you say now that you are willing to swear that it was the injuries on her head, in your opinion, and nothing else that caused her death, you mean that by a chain of circumstances, provided certain things followed, that caused her death -- do you still wish to swear that nothing else caused her death ? A Yes, sir.

Q Do you know that she had other bruises on her body ?

A I saw enough in the lockjaw to cause death.

Q And you say nothing else except what you saw on the head could have caused lockjaw ? A I didn't look for other troubles.

Q You didn't look for any other cuts ? A No, sir.

Q Would it be possible for any other wounds on any other part of her body to cause lockjaw ? A That wound alone would cause it.

Q Are you willing to swear that it was impossible for lockjaw to follow from cuts on any other part of the body ?

A It would follow if there were cuts on any other part of her body.

- Q But you didn't look to see whether there were any other cuts ? A No, sir.
- Q And therefore, when you say that the cause of death was from, as you say, the wounds on the head and nothing else, you are willing to modify that ? A A No, sir; my attention was not drawn to any other wounds.
- Q If your attention had been called to them and you had found them, what would you say then ? A If I had found them it might modify it.
- Q I ask you if your attention had been directed to cuts on other parts of her body, whether you would still be willing to swear that it was only the wounds on her head that caused the lockjaw ? A As I have said, that is what I looked for and I found sufficient cause there for lockjaw.
- Q I ask you if your attention had been directed and you had found other cuts on other portions of her body, would you still be willing to swear that it was the bruises on the head, the wounds on the head and those alone that caused it ? A It would depend on the character of the wounds.
- Q In cases of meningitis following an injury, traumatic meningitis -- will you explain what traumatic means ?
- A Traumatic meningitis is meningitis caused from some outward cause, like a blow.
- Q In cases of traumatic meningitis are there not some posi-

tive symptoms which would direct your attention to the meningitis? A I don't say it is meningitis; I say it is lockjaw.

Q In cases of that, will you state what your opinion about that is? A Has that anything to do with this case?

Q Will you answer my question? A Well, yes.

Q At the Coroner's inquest you stated that when you saw Mrs. Smith she did not have meningitis. Suppose there had been an acute meningitis, or traumatic, do you not think you would have recognized it? A If there had been an acute meningitis -- yes, sir.

Q You heard Dr. Donlin's testimony at the Coroner's inquest? A Yes, sir.

Q You think you would recall it if there had been an acute meningitis? A Yes, sir.

Q Did you ever have under your own observation another case in which there was an aneurism of the basilar artery? A Well, I couldn't say.

Q You don't know whether you ever had under your personal observation? A Well, I have had a good many cases that might be that, but they didn't live long enough to tell.

Q You know, you can tell probably theoretically, if there existed an aneurism of the basilar artery and this aneurism was ruptured, causing a considerable hemorrhage into the

surrounding tissues, would not this of itself be sufficient to cause death? A Yes, sir, if it was there.

Q If there was a basilar artery -- if this artery was diseased and blood went through that onto the brain, that in itself would be sufficient to cause death? A It would.

Q Isn't it a fact that a rupture of a diseased artery does not necessarily appear during a violent convulsion?

A No, it might not.

Q Isn't it a fact that a rupture of a diseased basilar artery might have occurred during sleep, while the patient was sleeping -- isn't that a fact? A Yes, sir.

Q Can you distinguish between a tetanus that results from traumatism and that which is idiopathic? A Not without I had some of the previous symptoms to guide me; we are not guided altogether by the condition of the wound, but by other symptoms, previous symptoms.

Q May you not have an idiopathic tetanus and at the same time have a wound on some part of the body? A It is not very probable; I never knew of such a case.

Q But may it not be? A I think not.

Q Might not tetanus or tetanic spasms such as you say you found the deceased suffering from, might not these occur from injuries to other portions of the body than the head?

A Yes.

Q Isn't it a fact that a very slight wound on the foot often results in lockjaw ? A Yes, .

Q And if you should be called in as attending physician and you should find a wound on the sensitive portion of the foot, for instance, and a simple contused wound on the scalp such as you have described here, existing at the same time and in the same patient, and the patient died of tetanus, either directly or from some affection that follows that tetanus, could you state, either from personal observation of the case during life, or from examination after death, which one, the wound on the foot or that on the head, was the cause of the tetanus ? A I could not, not from observation.

Q I am asking you the question whether you could under those conditions, when you were called in as a physician and found those conditions existing, whether you as a medical man, could say which was the cause of death ? A It would depend on which one was was suppurating; if one was suppurating and the other was not, I should naturally infer that the suppurating one was the one that caused death.

Q Don't you think it would be much more likely for a wound on the sensitive part of the foot to cause lockjaw, than one on the scalp ? A More are caused by scalp wounds.

Q Suppose they were both found in the same patient at the

same time, suppose there were two wounds, one a scalp wound and the other a cut on the sensitive part of the foot which would be most likely to cause lockjaw? A If one was suppurating and the other was not, the one that was suppurating.

Q Do you mean to say that you can state positively that a scalp wound on the head, suppurating, causes lockjaw as a matter of course? A Not always.

Q Do you remember any case within your own knowledge that any such wounds ever caused lockjaw? A Yes, plenty of them.

Q Can you name any one? A I cannot name one; if I had my books here I could.

Q I ask you whether in your medical experience in this City you can name any patient that you personally had that ever died of lockjaw from a slight wound on the scalp?

A No, I never had.

Q And this particular case is the only case that ever came to your attention? A Of dying from lockjaw from a wound on the head? Yes, sir; that is the only one that I have ever had.

Q Isn't it a very unusual thing for a contusion of the scalp to produce tetanus? A Well, yes, it is rather an unusual occurrence.

Q Or for tetanus to result from a blow on the face or head?

A Yes, sir; it is very unusual, this was.-- Tetanus is anyway.

Q Suppose a person suffering from meningitis produced by traumatism, a blow or something like that, the injury having been inflicted on December 31st, could that person suffering from meningitis so serious as to indirectly cause death on January 9th, walk from 136th Street to 111th Street four days before death, that is on January 5th ?

A If the meningitis were there at that time to any great extent, they would not be very apt to walk that distance.

Q They would not ? A No.

Q Are you willing to state positively that the rupture of this diseased blood vessel, this aneurism of the basilar artery, was actually caused by the tetanus or tetanic spasms, which were actually caused by the meningitis, which resulted from the wound on the scalp ? A That will have to be separated; I will have to answer it in sections

Q Then assuming that there was an aneurism of the basilar artery, will you answer the question, whether you will positively state that the rupture of this diseased blood vessel was actually caused by tetanus or tetanic spasms, which were actually caused by meningitis, which resulted from a wound on the scalp ? A I don't see how I can

answer that question; I know nothing about that case; it was the lockjaw.

Q But coming from the lockjaw, or from the wound to the head to the lockjaw; I am not asking for the lockjaw now -- will you kindly answer my question? A I don't see how I can, because I don't know anything about that. I know the woman was dying, and what particular thing, whether that was caused by the aneurism, I don't know that; the Coroner can tell.

Q I am assuming this to be a hypothetical question. Assuming there was an aneurism of the basilar artery, I will ask you then if you will answer the question?

A I will answer that question. I have no doubt that would be the case.

Q But you are not willing positively to swear to it?

A I am swearing to an assumption; I will swear to that as an assumption.

Q In other words, you are swearing theoretically?

A It would be all theory.

Q In other words, you are getting at the death of this woman theoretically? A I cannot; that is simply a theoretical question.

RE-DIRECT EXAMINATION by Mr. Stapler:

Q Please tell this jury whether in your opinion, first whether you found any other than one wound on the top of that woman's head? A There is only one that I remember

Q On page 38 of the testimony before the Coroner you used the words, "according to Mr. Grant, "I may state in addition" in a way which lead me to think there was some wound in addition. You used it in describing the physical condition of the woman, and in the next answer you go on to state what was her condition. I will ask you, did you intend to testify, or whether as matter of fact you did testify at the Coroner's inquest to having seen any other but one wound? A There is only one wound.

Q That is the only one you refer to before the jury, situated on the scalp of the head of that woman? A Yes, sir.

Mr. Stapler: I ask you to permit me to read the testimony of this witness immediately preceding the words "in addition to" on page 38.

Mr. Grant: I cannot consent to that, because there is a good deal about what the brother said.

Mr. Stapler: I will leave out what the brother said.
(reading) "I found her pupils widely dilated and her teeth clenched tightly and the bloody froth oozing from her lips; I also found within a few minutes she had a

tetanic convulsion; I also saw her have one other tetanic convulsion before I left; she asked me for water; I endeavored to pry open her teeth, but found I could not; then I told her brother that it was too late. He asked me how long I thought she would live; I answered not longer than twelve hours, and she may die at any time. I then left the house in company with Dr. Smagg and reported the case to Captain Westervelt. I may state in addition to that I found a cut on the top of her head, a suppurating wound."

Q And you did not testify that you found any other wound ?

A Not that I remember; no, sir.

Q This question appears to have been asked you: "The primary cause, then, assuming what you say to be correct, would be the wounds on top or on the back of the head? A Yes, sir." What do you tell the jury as to that ? A I can distinctly state that I understood that to be "wound". It would be very easy to say "wounds" and I would not catch that; I referred to that one wound in particular and none others.

Q Wont you please tell the jury whether the medical authorities do not refer to many cases of lockjaw being produced from blows on the head ? A A great many cases.

Q And is it not a well known fact in medical science that

- lockjaw is produced from blows in the head? A Yes, sir
- Q Will you explain to the jury what you mean by a suppurating wound? A A wound that is throwing out matter, pus.
- Q And was that the condition you found this wound in?
- A It was.
- Q Mr. Grant has asked you whether a person who died from this disease on the 9th of January, whether four days previous he could have walked some distance, and your answer was that if they had meningitis you thought it would not be probable; is that right? A Yes, sir.
- Q When you say if they had meningitis, what did you mean to say? A I meant a general meningitis, not a localized one.
- Q You did not mean to tell the jury that a person who dies on the 8th or 9th of January of lockjaw might not walk some distance several days before? A They would not be apt to if they had a very extensive meningitis.
- Q But if the lockjaw was produced by a septic element, would that prevent their walking? A Not at all.
- Q In other words, there are two causes for lockjaw, coming from meningitis, and in another case it comes from a septic element, in other words, the poison through the blood. Take the case of a person who runs a nail in the foot,

such a person can walk some distance several days before the disease develops into its final form? A Yes, sir.

Q That is true, is it not, as a matter of medical history?

A Yes, sir; it is medical history.

Q Could this wound which you found on this woman's head, have been produced by a blow from a club? A It could.

Q (Hands club to witness) Could it have been produced by such a club as that? A Very easily.

Mr. Stapler: I wish to withdraw this witness for the present.

RE-CROSS EXAMINATION by Mr. Grant:

Q Assuming that this wound which you saw at this time, with the hair matted, on the 9th of January about twelve o'clock in the day -- assuming that that wound had been washed out, cleaned thoroughly on the 8th of January, and a fresh rag put over it and vaseline put on, would it have been likely to have been in that condition, matted, and in the condition you found it on the next day, the 9th?

A It would make a great difference who dressed the wound.

Q I didn't ask you that; assuming that it had been washed out with warm water and clean vaseline put on and a clean rag put over the head on the night of the 8th of January or during the afternoon or evening, and you saw it on the 9th, as you say, about noon-time, would it have been likely

probably, to have been matted ? A Yes, sir; it would very readily, because it would throw out pus in twelve hours, a great quantity of it; it would be very apt to be matted.

Q You stated that that wound was very probably or likely to have been caused by a stick such as has been shown you. Do you think it could have been caused by a person falling on a stone or gas pipe or any hard substance ? A It would depend on how they fell.

Q But it could ? A It could.

Q When the District Attorney asked you whether it could have been caused by that club, you did not answer that it depended on how it was struck ? A No; I will say it could.

Q Why did you make a distinction between the answer to the question I put to you and the answer to the question the District Attorney put to you ? A It was simply for this reason, that a policeman in using his club don't usually hit sideways, and in falling your head strikes sideways.

Q Did you ever see a policeman use his club ? A Yes, sir.

By Mr. Stapler:

Q A person simply falling would not necessarily inflict that wound on the skull in that place ? A Not in that position; they would not be apt to .

Q They would have to fall in a very peculiar way ?

A They would have to strike on top of their head, nearly.

Q Would or would not one of the tetanic convulsions be sufficient to rupture the basilar artery to which Mr. Grant has referred ? A It would, if it was diseased.

By Mr. Grant :

Q Assuming that the basilar artery was diseased, could not that basilar artery have been ruptured without convulsion?

A Yes,

Q And it could have been ruptured if the person was asleep, couldn't it ? A There would have to be something back of it, some heart disease, or something.

Q Isn't it possible that if the basilar artery is diseased that it could be ruptured while the patient was asleep ?

A Yes, it could.

Q If there was no disease back of it ? A Yes, sir, it could then, but it would not be very apt to be; it would be a very unusual thing to occur.

Q If there was a disease back of it it would be more liable to be ruptured ? A It certainly would.

Witness withdrawn for the present.

C H A R L E S E . P H I L L I P S , r e c a l l e d .

DIRECT EXAMINATION by Mr. Stapler:

Mr. Stapler: I now desire to offer the dying declaration of Mrs. Smith made to this physician. My foundation are statements already in evidence, the fact that she had called for the priest and asked for holy water and said she was dying at 3 o'clock in the morning, and at half past eight following she repeated the statement and asked for the priest, and the fact of her condition and the impossibility of receiving water, and the statements Dr. Phillips makes, I submit brings this case clearly within the authorities.

The following testimony was then taken in the hearing of the court only, not in the hearing of the jury, but addressed to the court, solely on the question as to whether the dying declaration should be admitted:

Q Will you please tell the jury now, after this woman, the defendant's wife, was brought out into that outer room, when she was presented to you as you have testified already in the case, just tell the jury first the exact hour?

A Well, it was between eleven and twelve -- between half past eleven and twelve -- it must have been between half past eleven and twelve.

Q You observed her condition closely ? A. I did.

Q Will you state as to whether she was or not in your opinion then dying ?

A She certainly was dying.

Q (By the Court) Hopeless ? A. Hopeless.

Q What did you hear her say when she came out ?

Mr. Grant: I object on the ground that he is offering it in the form of a dying declaration of the deceased, and I object on the ground that there is no foundation laid yet, even admitting that it is admissible on that ground, because it does not yet appear in evidence that the deceased had been informed of the fact that she was about to die and that she could not recover, and that it is necessary before declarations of a deceased person can be admitted in evidence as a dying declaration, that they shall be so informed and be notified at the time they make them that it is a dying declaration and that they cannot recover.

The Court: Have you given all the evidence you can as to whether she had been informed that she was dying ?

Mr. Stapler: The testimony which would appear in answer to my question now, goes to strengthen that position. My contention is that the woman realized her condition.

The Court: If the answer to this question bears upon the question of her knowledge of death, then I will admit it.

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I will take that evidence for myself.

Q When she was brought there what did you hear her say to you ? A. It must have been 11:30 or 12 -- it was quite likely 12 before I left my office; the call never came to me until nearly half past 11. The reason I know this is because I finished my calls about dinner time and came home and found this call waiting for me. It was without doubt between half past 11 and 12, nearer 12. As she came from the room, just as she was sitting in the chair, and turned around and was looking towards the window -- she was walking slowly -- just as she sat in the chair I turned around and asked her what she wanted, and she hissed through her teeth "water," and it was very indistinct; I had to listen closely to catch her words; and then was the time when I tried to pry open her teeth to give her some water -- I thought she could answer my questions better. In cases of this kind we always have to depend on the answers that are given by the sick person, and as I intended questioning her, and as she had called for water, I told someone that was in there to give her water. Then I tried to open her teeth with a led pencil, but I could not do it. Then I says to her "It is no use; I can't do anything for you." Then I questioned her after that. She kept constantly calling for water all the time and begged us to do

something for her. Then after that I got the declaration.

Q Did you say anything more to her ? A. Then I began to question her about the assault.

Q Was there anything in that statement between you and her about the assault, as to whether she made any statement as to whether she had any hope of living or dying ?

A She made no statement other than to simply answer the questions the best she could that I asked her after that. She was dying then without any doubt.

Q You testified you thought she could not live more than a certain length of time ? A. I told the brother within three minutes of that time that she was liable to die any moment, but might possibly hang on for six or seven hours.

Q And you told her you could not open her mouth or give her water, and could not do anything for her ? A. I said it was no use.

Q She did die within an hour and a half ? A. Within an hour.

By Mr. Grant:

Q You did not tell her she was going to die ? A. Certainly, I don't ever tell people that.

Q You did not say a word to her that she was going to die ?

A No, I didn't use those words. I think that was enough; she would infer it from what I said. She knew it was a serious case.

By the Court:

Q She had asked for a priest ? A. Yes, sir.

The Court: On all the testimony, including this last, I will overrule the objection and admit the declaration as the dying declaration.

Exception taken by defendant's counsel.

The examination of the witness was then regularly proceeded with, as follows:

By Mr. Stapler:

Q Please tell the jury now, just after you had brought this woman out into the outer room at the time specified above, what inquiries you made of her as to the cause of the injury on her head, and what reply she made to you ?

Objected to, on the ground that it does not appear from any testimony in the case that the doctor had informed the deceased that she was about to die; also in the ground that in no event can the attending physician reveal any statements made to him by the patient, or any inquiries he made in regard to the case; it is a privileged communication and cannot be revealed afterwards.

Objection overruled; exception taken.

Q State to the jury just what you asked her -- describe her

manner in answering that, and just what she said ?

A I asked her if her husband had clubbed her. At first she refused to answer, or did not answer. Then I pressed her to answer it and she hissed through her teeth as best she could, "Yes."

Q And did you ask her where he had struck her ? A. I asked her where --

Objected to as leading; question withdrawn.

Q Please say what else was said ? A. I asked her where her husband had hit her, and she put her hand near the top of her head, the best she could.

Q Just show the jury what she did ? A. She made a motion and placed her hand on top of her head, in response to the question where her husband had hit her. I asked her if she had been well previous to the assault and she answered yes. I asked her if she had suffered much pain since and she said "Yes, suffered terrible pains." That is about all I remember of questioning her.

Q And then you went away, and where did you go ? A. From there I went into the other room, from the kitchen, and called her brother and Dr. Smagg.

Q Where did you go after you left the house ? A. Directly to the Police Precinct.

Q And made this report ? A. Yes, sir.

CROSS EXAMINATION by Mr. Grant:

Q Is your memory any better about what you have now testified to than it was at the Coroner's inquest ?

A I don't suppose it is.

Q Do you know whether it is or not ? A. I don't think it is.

Q Which is it ? I would like to know whether your memory is fresher now or was fresher at the time of the Coroner's inquest. A. Very likely fresher at the time of the inquest.

Q You remember you were asked about this ? A. I remember I was asked about the case.

Q Don't you remember you testified about the statement she made to you and that you made to her ? A. Yes, sir.

Q Can you say whether your testimony now is the same as what you testified to before ? A. I couldn't say.

Q Before her statement was made to you and you asked her the questions, had you informed her she was about to die ?

A I had not stated it in so many words.

Q Had you informed her she was about to die ?

A The way I informed her --

Q I ask yes or no; answer, please, yes or no? A. I did not tell her in so many words she was going to die, but from what I told her as near as I could I wanted her to understand so.

Q I want you to say yes or no, whether you had told her at the time you say she made certain statements to you, whether you had previously told her she was going to die ?

A I had not.

Q I think you said just now that you asked her if she had any other trouble except the assault and she said no ?

A I didn't ask any such question.

Q What was it ? A I might not be able to repeat it.

Q Didn't you say in answer to some question by the District Attorney, that you asked her some question about whether she had been well previous to the assault ? A. Yes, sir; she said she had been.

Q See what you said at the Coroner's inquest; did you make this answer: "Did she say whether she had been assaulted or beaten ? A. I asked her if she was hurt previous to the assault and she said yes." A. I never asked her that question.

Q Did you make that answer ? A. I made the answer, yes, but I don't believe the question was so put to me.

Q You remember now positively you did answer it in that form ?

A I remember it just as I have given it; I asked her if she had been well previous to the assault.

Q Just state again what you said in regard to asking her about where she had been clubbed ? A. I asked her if

her husband had clubbed her and she said yes. Then I asked her where and she placed her hand on top of her head.

- Q See if you made this statement -- you asked her where she had been hit, "and she placed her hand on the back of her head and said she suffered fearful pain there." Did you so testify at the Coroner's inquest? A. I can't say; I suppose I did if it is there.
- Q If you so testified there, why have you stated to-day that she put her hand on the top of her head? A. For the simple reason that the location was so near the top and so near the back, that I stated it without forethought of the location.
- Q You have been taking a good deal of interest in this case personally? A. No, sir; I have not.
- Q Haven't taken any interest at all? A. Slight.
- Q Have you talked with Dr. Smagg about it? A. I have.
- Q You and he have talked a good deal about it? A. Not much, perhaps five minutes since the accident; it might not be that.
- Q I would like you to now tell the jury where she put her hand when she said she was clubbed? A. If I stated before--
- Q I ask you a direct question, to put your hand now or tell the jury where she put her hand when you asked her where she had been clubbed? A. She put her hand on the back

or top of her head; it was in the location of the cut, as near as anyone in her condition could get there.

Q Did you say this, in answer to a question: "A man who said he was her brother said she had been choked and clubbed by her husband on January 2d, by her husband." Was that said?

A I think it was.

Q Was any one else present at the time? A. Of the conversation?

Q While you were there? A. Yes, sir; Dr. Smagg and this patient and the young lady.

Q Did you see that young lady on the stand to-day?

A Yes, sir.

Q (By the Court) Do you mean they were present at the time she made this declaration to you? A. Yes, they were present, all of them.

Q How long were you in the house, the whole time, from the time you went in until you came out? A. Possibly ten minutes, it might not have been that; it might have been five or ten minutes.

Q But it certainly was not over ten minutes? A. No, sir.

Q And when you went in at that time didn't you examine her before you asked any questions? A. I looked at her as she sat on the box and said "Bring her out in the other room."

- Q Then you did examine her ? A. No, I looked at her.
- Q Did you or not examine her ? A. No, sir.
- Q Did you examine her at all when you were there ? A.. I did.
- Q When did you commence to examine ? A. I commenced when they brought her out in the other room; that was my object in having her brought out.
- Q When did you examine her ? A. When they brought her out in the other room.
- Q And you made a thorough examination ? A. As much as I thought necessary.
- Q How long did it take you to make that thorough examination ?
A Possibly three to five minutes.
- Q And after that what did you do ? A. I didn't state I made a thorough examination; I stated I made an examination so as to give her a more thorough examination, and then I examined her.
- Q Did you or not make a thorough examination ? A. As much as I considered necessary.
- Q Then it took from three to five minutes to make the examination which you considered necessary ? A. It did.
- Q Then after you had made this examination, which took three to five minutes, it was within the next five minutes that you had this other conversation with her ? A. It was while I was examining her; that was part of her examination.

- Q You say her teeth were tightly clenched so you could not get a pencil in ? A. Yes, sir.
- Q And she was suffering from these spasms ? A. Yes, sir.
- Q How long was she in the spasms ? A. Perhaps a minute and a half.
- Q And with her teeth tightly clenched she made these answers ?
A Yes, sir; through her teeth.
- Q But you could understand them ? A. With the greatest of trouble, getting my ear close to her mouth I caught the answers.
- Q Was Dr. Smagg present ? A. Dr. Smagg was present.
- Dr. Smagg being in the court room, was requested to retire.
- Q Have you now stated everything you asked her ?
A Well, as near as I can remember.
- Q You left her when she was in a spasm, before she had got through it ? A. No, not when I left her in the chair; she was then out of a spasm. Then I went into the other room with the brother and as I passed out of the door I looked at her and saw her in a spasm.
- Q And you went right out ? A. I went right out.
- Q As a matter of fact, both of you physicians left her at that time while she was in a spasm ? A. Yes, sir.
- Q Did you try at all at any time to wash out the wound ?

A I did not.

Q Can you state why it was that either of you physicians did not stay there at that time ? A. I can.

Q Why ? A. Simply because the woman was dying and we wanted a coroner and I started as soon as I could to get one.

Q Was it necessary for both to go ? A. I thought it necessary that both of us should go; I considered the case hopeless then, and left her in a spasm.

Q Did Dr. Smagg tell you he had been there the night before ?

A He did.

Q Was this question put to you and did you make these answers: "Q. How many convulsions did she go into in your presence ? A. I only saw two. Q. In a short space of time ? A. I was in the house longer than eight or ten minutes. Q. And during those eight or ten minutes she had two convulsions ? A. Yes, sir. Q. Lasting how long, each ? A. The first I should judge lasted in the neighborhood of three minutes, and I left her in the second one; I don't know how long it lasted." Did you so testify?

A I did.

Q How is it that to-day you state one minute and a half ?

A I had no way of timing it; the difference is very small.

Q The second one, you don't know how long it lasted ?

A No, sir.

Q Didn't you say to-day the second one lasted a minute and a half ? A. I said the first one.

Q If you did say so you were mistaken ? A. I didn't see the second spasm until it was closed, I left; she had others in between, I fancy.

Q Don't you consider that a suppurating wound on the scalp should be treated in any event, with the possibility of preventing tetanus or lockjaw ? A. Certainly.

Q There is always a possibility ? A. There always is.

Q But as far as you know this was not treated at all ?

A As far as I know it was not treated at all.

RE-DIRECT EXAMINATION by Mr. Stapler.

Q Do you mean there was a possibility when you were there that morning by treatment of that wound that she could have been saved ? A. Not by any means; she could not have been saved.

Q And was it for that reason that nothing was done ?

A It was for that reason; we considered the case hopeless; we could not do anything.

Q You state from your experience that nothing could have been done to relieve her at that time ? A. I can state that nothing could have been done to relieve her at that time.

Q So that any treatment of the wound would have to be made

at some time previous to have had any effect ?

A Before the suppuration.

Q Is Pepper considered an authority, a standard authority ?

A It is one of the best.

Q Can you tell the jury whether or not it is not a fact in the course of this disease it is preceded usually by a variety of premonitory symptoms and illness ?

A It is.

Q And what are the indications of that ? A. The commencement of tetanus would be pains in the back. of the neck, the throat.

Q And then reaching to the jaws ? A. Reaching to the jaws gradually.

Q And the authorities all agree that the mind remains clear until the last ? A. The authorities all agree on that point.

Q There has been some suggestion made by Mr. Grant in regard to your attitude here; are you retained in any way by the People ? A. I am not, in any way.

Q You have attended here on the subpoena served from this court from day to day ? A. Yes, sir.

RE-CROSS EXAMINATION by Mr. Grant:

Q Can you say of your personal knowledge of this case whether there was or was not some disease of the throat which might

have produced tetanus ? A. I can't say.

Q For instance, a suppurating tonsil, would not that produce tetanus ? A. It might.

E. P A L M E R S M A G G, called for the prosecution, sworn.

DIRECT EXAMINATION by Mr. Stapler:

Q What is your occupation A. Physician and Surgeon.

Q Where is your office ? A. 229 Fifth avenue.

Q Was that your office on the evening of the 8th of January last ? A. It has been my office for a year and six months.

Q Were you called upon to attend Mrs. Smith at No. 6 West 136th street on the evening of the 8th of January ?

A I think the 8th, Thursday evening.

Q Did you go there ? A. Yes, sir.

Q Where did you find her ? A. I found her in bed.

Q In an inner room ? A. In the next room to the kitchen.

Q Tell the jury how you found her, what was her situation ?

A She was lying in bed with a handkerchief or cloth tied around her head.

Q Anything around her neck ? A. I think there was a flannel around her neck.

Q Did you have any conversation with her ? A. I asked how long she had been sick.

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Q What did she say ? A. She said she had not been feeling well for a week, but she was up.

Mr. Grant : I object, and move to strike it out.

Objection sustained.

Q Did you prescribe for her ? A. Yes, sir.

Q And you left her in bed ? A. Yes, sir.

Q And then you went to your office, and when did you next see her ? A. No, sir; I did not go to my office.

Q Where did you go ? A. I went from there to the drug-store.

Q Then you got a prescription there, or got some medicine ?

A I can't tell whether I prescribed by writing or verbally -- I can't remember that. I told the druggist what I wanted him to send her, but whether I wrote a prescription and left it, or whether I told him and he put it up, I can't tell.

Q Then where did you go after that ? Did you go to your office then ? A. I can't swear; I don't know whether I made a call before I went to my office or afterwards.

Q When did you next see the woman ? A. The next morning.

Q At what time ? A. Well, I think about half past nine.

Q Did any one come to your office for you ? A. Yes, sir.

Q Who was it ? A. Mr. Hagan.

Q The witness who was on the stand this morning ?

- A Yes, sir.
- Q And in response to that call you went ? A. I went there; yes, sir.
- Q And how did you find the woman when you got there ?
A She was sitting on the edge of the bed.
- Q Was she in her night clothes ? A. Yes, sir; I think so; she had perhaps a shawl around her shoulders; I am not sure as to that.
- Q What was her condition ? A. I had received a little more of the history before I went there and I examined her head when I got there.
- Q What did you find on the head ? A. I found a scalp wound.
- Q What was the condition of it ? A. Well, it was an ugly looking, suppurating wound.
- Q And what was the condition of her face ? A. I remember she was a little black on one side, but I can't state which side, a little ecchymosis, or perhaps a slight black eye, but I can't tell which side.
- Q What was her trouble -- what did you diagnose the case ?
A I made a diagnosis then of tetanus, the beginning of tetanus.
- Q That is lockjaw ? A. Yes, sir.
- Q Did you go away at once ? A. Yes, I went away soon after

that.

Q Where did you go ? A. To my office.

Q What did you do there ? A. I waited until Dr. Phillips came to my office.

Q You sent for him ? A. Yes, sir.

Q And you went with him to the house ? A. I returned to the house; yes, sir.

Q And you were present when the examination was made to which he testified ? A. Yes, sir; I was there.

Q Were you present when Dr. Phillips examined her as to the cause ? A. Yes, we were both present.

Q And what did you hear her state to Dr. Phillips as to the cause of the wound on her head ? A. She acknowledged with a little pressing, that she had been hit by her husband.

Objected to; objection sustained.

By the Court: This was about 12 o'clock ? A. About half past 12, I think.

Q Was it after Dr. Phillips tried to insert a pencil into her mouth ? A. Yes, sir; at that time.

Q And was unable to give her any water ? A. Yes, sir.

By Mr. Stapler:

Q State what the woman Mary Smith stated to Dr. Phillips as to the cause of the wound on her head ?

Objected to on the ground that it does not ap-

pear that the deceased was informed at the time of making this declaration that she was about to die, and it cannot be admitted as a dying declaration; and furthermore, on the ground that in any event the evidence is not admissible, being a privileged communication. Objection overruled; exception taken.

A She said as well as she could "Yes, sir."

Q To what question put by Dr. Phillips ? A. If she had been clubbed; I think he said "Been hit" or clubbed, I can't remember which.

Q (By the Court) By whom ? A. By her husband.

Q And she answered "Yes" ? A. As well as she could, rather sissed it through her teeth; her teeth were closed then.

Q By Mr. Grant: What did she say ? A. She said "Yes".

Q Did she indicate by any motion or otherwise where it was ?
Objected to.

Q What did she do ? A. When she was asked she put her hand up to her head in the region of this scalp wound, that she was hurt there.

Q (By the Court) When she was asked what ? A. When she was asked where he hit her.

CROSS EXAMINATION by Mr. Grant:

- Q You were called in on the night of January 8th first ?
A Yes, sir.
- Q And you were called in by the defendant, he went to your house and told you to go there in a hurry to see her ?
A Yes, sir.
- Q And you went immediately when the defendant asked you to go and see his wife ? A. I did; I went in about five to ten minutes after, if you call that immediately.
- Q When you got there did you find out or try to find out what was the matter with her ? A. Yes, sir; I gave her a superficial examination.
- Q Rather superficial ? A. Not particularly so.
- Q Was it particularly so or not ? A. About half and half, I guess.
- Q Didn't you try to find out what was the matter with her then ? A. I tried to get her history some and find out what the trouble was.
- Q I don't mean any history; did you try to find out from personal examination of her, what was the matter of her ?
A Of her neck, yes.
- Q You say she had a rag on her head ? A. Yes, sir.
- Q Did you remove the rag ? A. I pushed it off.
- Q Did you remove it ? A. I removed it from the side of the

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head.

Q You didn't look for any cut on the head ? A. No, sir.

Q Why ? A. Because, when a person complains of headache I don't look down her back.

Q You said when a person complains of headache you don't think it is necessary to run your hand down her back ?

A No, sir.

Q I did not suggest anything of that kind ? A. No, sir.

Q I ask you whether you took the cloth off of her head ?

A No, sir I only pushed it up off the forehead.

Q Why didn't you take the rag off ? A. I was not directed to look for the wound; I knew nothing about the wound, and a physician would not look for a wound upon a person complaining about headache.

Q Was there any blood on the rag ? A. I don't remember.

Q Try and remember whether there was or not ? A. I can't recall any.

Q Then substantially you went in there and made a superficial examination and put your hand on her head; what did you say was the matter ? A. I didn't say.

Q Didn't you tell anybody there she had a cold or sore throat ?

A I told them she might have one of two or three things.

Q Didn't you say to somebody there she had a cold or sore throat ? A. I said she might have a cold or sore throat

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or three or four things.

Q I am asking you what your memory is; what did you say, as far as your memory goes? A. That I can't tell; I remember I didn't commit myself on any one thing.

Q You left a margin, you didn't commit yourself on anything?
A No, sir.

Q You said it might be something and might be something else?
A I may have stated two or three things.

Q Did you send any medicine to the house that night?
A I told the druggist to, yes, sir; he sent it.

Q Do you remember meeting the defendant afterwards, after you came out from the house? A. Yes, sir.

Q Do you remember telling him when he asked you what the matter was, that she had a cold? A. I told him the same as I had said at the house; I told him she was very sick.

Q He was waiting for you outside to find what was the matter?
A Yes, sir; he said he would wait to see me.

Q How long were you there that evening when you made this superficial examination? A. Well, ten minutes, may be.

Q Was it more than ten minutes? A. It may have been a little more and may have been a little less; about ten minutes.

Q At the Coroner's inquest do you remember being asked whether it was half an hour and you said may be twenty minutes?

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- A I don't realize now that I was there that long; possibly I could have been fifteen minutes there, but it don't seem as if I was now.
- I Q Did you say you would stop in the next morning to see what was the matter? A. I told him I would go in the next morning; yes, sir.
- Q Do you remember when you and Dr. Phillips arrived the next day there what was said by Dr. Phillips to you or by you to Dr. Phillips, about the cause of her sickness, when you and Dr. Phillips arrived there at the house? A. I don't remember that I said anything.
- Q Did he say anything? A. Yes, sir.
- Q What did he say? A. He told me this should be immediately reported.
- Q I am referring to long before that, when you first got there. A Well, I guess that was soon after we were there; I can't remember of anything.
- Q Do you remember Dr. Phillips saying to you when you got there, after looking her over, "There is an edema of the lungs"? A. I believe he did say that.
- Q And do you remember whether Dr. Phillips did most of the talking there to you or to her? A. No, I can't tell.
- Q Do you remember at the Coroner's inquest saying that Dr. Phillips "Spoke to me more than to her"? A. I don't remember.

follows: "I found everything as Dr. Donlin has told the jury here; there was a clot of blood there and a scar of the wound, I found those and I formed my conclusion at that time that she died of apoplexy or by tetanus brought on by the injury, and I leave it to the medical profession to decide whether this tetanus ruptured this blood vessel or not" ? A. I did.

Q And it is still your opinion ? A. It is my opinion she died --

Question repeated.

A That is my opinion; that is what I said at that time.

Q And that is your opinion still ? A. My opinion is that she died of tetanus.

Q Will you be kind enough to state if you so gave your testimony and your opinion at the time you testified before the Coroner's inquest ? A. That was my opinion -- yes, sir, at that time.

Q And isn't it still your opinion ? A. Well, it is my opinion in one respect, but the tetanus produced the convulsion, in my opinion.

Mr. Grant: I move to strike that out as not responsive.

Motion granted.

Question repeated.

A It is now ~~my~~ my opinion that she died of what ? In my

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- Q If you did say that at the Coroner's inquest, isn't that the fact? A. It may have been; yes, sir; but he was talking in her presence.
- Q Then Dr. Phillips and you and her brother left the room and went into the other room for quite a while? A. The second room -- yes, sir; for a short time.
- Q And talked the matter over in there? A. Yes, sir.
- Q Then what took place? A. Dr. Phillips and I left.
- Q While you were leaving, she was in a spasm, wasn't she?
A I guess she was just about passing out of one as we went out.
- Q And both of you went away? A. Yes, sir; both went away; we went away together.
- Q You were the attending physician? A. I was called to her first; yes, sir.
- Q Did you at any time dress or care for that wound on her head?
A Well, I cared for it as soon as I discovered it, but I did not dress it.
- Q You did not at any time clean it out or wash it out?
A No, sir; I examined it only the first time I discovered it, the next morning, the first I knew of the scalp wound.
- Q After the examination that you made, and after Dr. Phillips and you had made an examination and had known all the facts, both the history you had got and also by the personal examination, didn't you at the Coroner's inquest state as

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opinion that she died of apoplexy ? No, sir; I don't think so.

I Q In answer to a question that was put to you at the Coroner's inquest did you make this answer: "I found everything as xx Dr. Donlon has told the jury here; there was a clot of blood there and a scar of the wound, I found those and I formed my conclusion at that time that she died of apoplexy or by tetanus brought on by the injury, and I leave it to the medical profession to decide whether this tetanus ruptured this blood vessel or not." Did you so testify at the Coroner's inquest? A. Yes, sir.

Q That was your opinion at that time ? A. Yes, sir.

Q And that is your opinion still, is it not ? A. Why, yes.

Q This wound you found on the top of the head was only a very slight wound, was it ? A. Well, it may have been more, it may have been less; I don't know whether you would call it a slight wound; it was large enough to induce trouble.

Mr. Grant: I move to strike that out as not responsive.

Motion denied. Exception taken.

C Q Was this question put to you and did you make this answer:

"Q Was it a deep wound or only a flesh wound ? A. It was not through to the scalp" ? A. Yes, sir; it was not.

Q "Q Only a flesh wound ? A. That is all."

A Yes, sir.

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Q When you went to the druggist to get medicine for the deceased on that night when you went in there to see her first, what did you prescribe for her? A. I don't remember certainly.

Q You can't remember? A. Not surely: no, sir.

Q What druggist did you go to? A. 132d street and 5th avenue.

Q Do you mean to say you cannot remember what you ordered?

A I can tell you what I think I ordered.

Q Tell us to the best of your recollection what you ordered?

A I ordered some compound and quinine.

Q For what ailment was this medicine supposed to be?

A It was alterative and a tonic, and the quinine in it was to keep down the temperature; I thought she had a little temperature at the time.

Q At your first examination of her did she complain of her throat? A. A soreness on the side of her throat; yes, sir.

Q Was there at that time a poultice or anything on her throat?

A There was a flannel, I believe, I don't know that there was anything on the inside of it or not. It was a little dark in there and I didn't see anything and didn't feel anything.

Q Can you state positively there was not at that time a ton-

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silitis or quinsy ? A. No, sir; I wouldn't say there was not.

Q Isn't it a fact that tetanus can occur from absorption of septic matter from a diseased tonsil ? A. I don't know.

Q You don't know ? A. No, sir; I never heard of it; I suppose it is possible. That is an expert question; I am not here to answer that -- I am here as a witness only.

Q Isn't it a very unusual thing for a scalp wound which is only a flesh wound, as you say this was, on the scalp, to produce tetanus ? A. Not under the circumstances; an undressed scalp wound; it is not unusual when it has had no care, not looked after.

Q Did you ever have a case of that kind ? A. I have had a case of tetanus but not from a scalp wound.

Q Did you from your long experience ever know a case of tetanus to come under your personal knowledge resulting from a scalp wound ? A. I think I have.

Q Will you state what case it was ? A. It was a case in the hospital; I was only one of the others there -- I had not charge.

Q You could not give us any idea who it was ? A. No, sir.

Q How long ago was that ? A. Two years and a half ago, or two years ago.

Q What hospital was that in ? A. Ninety-ninth street.

- Q Suppose for a moment that a person suffering from meningitis produced by a traumatism, a blow, the injury having been inflicted on December 31st, could such a person suffering from meningitis so serious that it indirectly caused death on January 9th, walk from 136 street to 11th street four days before death, that is on January 5th ?
- A I think so.
- Q You think she could ? A. Yes, sir.
- Q Could you positively state that the rupture of a diseased blood vessel, an aneurism of the basilar artery, was actually caused by tetanus or tetanic spasms which were actually caused by meningitis which resulted from a wound to the scalp ? A. No, sir; it might occur at all times.
- Q Would not a clot of blood from the rupture of an aneurism of the basilar artery be sufficient in itself to produce death ? A. If large enough.
- Q Would not a very slight clot be sufficient to produce death ? A. We would have a paralysis probably first.
- Q Would not a very small clot be sufficient to produce death, the rupture of a basilar artery ? A. I don't think it would produce death if it was very small.
- Q Did you hear Dr. Donlin testify at the Coroner's inquest that a clot the size of a pin head would, if it was at a certain place ? A. Yes, sir.

- Q You agree with that ? A. Yes, sir; if it was in a certain place.
- Q Did you ever have under your personal observation another case in which there was an aneurism of the basilar artery ?
A I don't remember that I ever have.
- Q This was the first case you ever had ? A. Yes, sir.
- Q And this was the first case of tetanus you ever had resulting from a little scalp wound ? A. In private practice; yes, sir.
- Q Except the one in the hospital, about which your memory is a little indistinct ? A. Yes, sir.
- Q Not speaking from personal observation, but theoretically, if there did exist an aneurism of the basilar artery and this aneurism had ruptured, causing a considerable hemorrhage into the surrounding tissues, would not this of itself be sufficient to cause death ? A. Yes, sir; I suppose it would.
- Q You agree with what Dr. Phillips and Dr. Donlin said yesterday, that a rupture of a diseased artery does not necessarily occur during violent convulsion ? A. It may occur at other times.
- Q May it not occur if a person is fast asleep ? A. Yes, sir; it might occur at that time.
- Q Can you distinguish between a tetanus resulting from a

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traumatism and that which is idiopathic ? A. Only by the history of the case.

Q You cannot unless you get the history ? A. You have to get the history or see the wound.

Q And isn't it possible and may you not have an idiopathic tetanus and at the same time have a wound on some part of the body ? A. I suppose it is possible.

Q And may it not occur ? A. Yes, sir; you may have a tetanus and be struck by lightning.

Q And you may have tetanus when you are not struck by lightning ? A. Yes, sir.

Q Might not a tetanus or tetanic spasms occur from injuries to other portions of the body than the head ? A. Certainly, you get tetanus from injuries elsewhere.

Q This rag that was on the head that night, that was tied around the head this way (indicating) ? A. Yes, sir; around the crown of the head.

Q How far did it come down in the front ? A. It came over the forehead, right over the forehead.

Q Put your finger on your forehead where it was ?

A Right along there (indicating); I don't think it come below the eyebrows at all, about to the eyebrows.

Q How low behind did it come ? A. I don't know as I can tell.

Q As far as you saw ? A. Tied about straight around, I

should judge.

Re-DIRECT EXAMINATION by Mr. Stapler:

- Q Where did you go after you left Mrs. Smith on the 9th of January, when you and Dr. Phillipa went away from the house?
- A We went to the 126th street headquarters.
- Q Did you see this Captain Westervelt there? A. Yes, sir.
- Q And made a report of the case? A. Yes, sir.
- Q When you left that room what was the condition of that woman? A. Well, she was about dying, I thought; I didn't expect her to live long.
- Q And what you told the jury was the cause, in your opinion, -- what was she suffering with? A. With lockjaw, decidedly, tetanus.
- Q And you say these convulsions, what convulsions were they?
- A Tetanic convulsions.
- Q Were those convulsions sufficient to rupture a diseased artery? A. Certainly.
- Q And what in your opinion, will you tell the jury was the cause of that woman's death? A. The cause of the death was tetanus.
- Q And that tetanus was produced by what? A. Brought on by the injury to her head; that is what produced the tetanus.

- Q Was the death due to that wound ? A. Yes, sir; in tracing it back through the different stages.
- Q You observed that wound; was that wound such a wound as could have been made by the blow of a club like that (handing club to witness) ? A. Yes, sir.
- Q The authorities have collated the various kinds of causes which produce tetanus or lockjaw ? A. Yes, sir.
- Q Is it or is it not a fact that the authorities present a great many cases of tetanus from wounds on the head ?
A Most of the tetanus in this country are traumatic.
- Q Injuries received from blows; and does it make any difference in what portion of the body ? A. No, sir; in infants the tetanus is in the umbilium, the cord.
- Q But the injuries in adults are received in any part ?
A Yes, sir.
- Q Did you intend to state in your testimony before the Coroner's inquest -- what did you intend to state as to the cause of that woman's death ?
Objected to. Question withdrawn.
- Q Didn't you testify as follows: "Q Answer my question ?
A. No, tetanus was the cause of death, it produced the apoplexy" ? A. Yes, sir.
- Q You so testified at the Coroner's jury ? A. Yes, sir.
- Q And that was your opinion then ? A. Yes, sir.

Q And your opinion now is that death was produced by tetanus coming from the wound, and the presence of the clot of blood is in your opinion to be explained by the rupture of the basilar artery by the tetanic convulsion ?

A Yes, sir.

RE-CROSS EXAMINATION by Mr. Grant:

Q How can you state that apoplexy did not cause the tetanus ?

A Apoplexy cause tetanus ?

Q Yes. A. I don't see how it can.

Q Are you able to say that the apoplexy did not cause the tetanus ? A. I can swear so in my opinion.

Q But you would not swear that apoplexy will not cause tetanus ? A. That is an expert question; I am not here to answer expert questions.

Q Don't you consider yourself an expert ? A. I am not a specialist.

Q Don't you consider that you understand your business thoroughly ? nA. I think so.

Q If you understand your business thoroughly, don't you consider yourself an expert ? A. I am not here to answer expert questions.

Q Don't you consider yourself an expert ? A. Not to answer that question unless the court so directs.

Q I ask you to answer the question, please ? A. In my op-

inion I do not think an apoplexy can produce a tetanus.

Q But you would not go any further than simply to say in your opinion ? A. That is my opinion.

Q Could not apoplexy produce tetanic convulsions without true tetanus ? A. It could produce a convulsion, in my opinion.

Q A tetanic convulsion ? A. I don't think we could have a tetanic convulsion without tetanus.

Q You were asked by the District Attorney if the scalp wound you found could be caused by that formidable looking club; you said it could? A. I should say it could.

Q Could it also have been caused by a stone, by a fall on a stone or a lead pipe, or any other hard substance ?

A Well, I should say she would have to be precipitated almost head foremost to be wounded there.

Q When the District Attorney asked you if it could be caused by a club, you said it could, and you didn't put in any provisos ? A. No, sir; because I didn't expect she would fall on the club.

Q That the club would fall on her ? A. Yes, sir.

Q You did not, when you were asked the question by the District Attorney, if it could have been caused by the club, you did not make any provisos; you simply said yes ?

A Yes, sir.

- Q But when I asked you if it could be produced by any other hard substance, by a stone or falling on a pipe or something of that kind, why didn't you say in answer to my question "It could" ? A. It could if she fell right for it.
- Q Could it be caused by a club unless the club fell right ? A I guess the club would have to fall right.
- Q So it is the same condition, the club would have to fall right and she would have to fall right on the stone or other hard substance ? A. Yes, sir.
- Q You say that you think tetanus from the wound was the cause of death. In other words, that if the wound caused meningitis, and if the meningitis caused tetanus, and if the tetanus ruptured the basilar artery, and thereupon the blood went to the brain, then you could connect the wound with the cause of death; isn't that so ? A. Well, yes, sir.
- Q Therefore all those four conditions would have to go on regularly, and if there was a slip of any one of those four, then you could not trace the cause of death to the wound ? A. She would have died without any apoplexy there at all.
- Q Isn't it the fact that a ruptured bloodvessel or basilar artery, that a diseased basilar artery is liable to be

ruptured at any moment ? A. Yes, sir.

Q And isn't it the fact that sooner or later, with a diseased basilar artery, the person is bound to die ?

A Yes, sir; they are bound to die. It is also the fact that she would have died of tetanus if she had had no ruptured artery there; in fact she was dying.

Q If the deceased were to fall on any of the things I have mentioned a few moments ago and cut her head, and it had never been attended to, would not that cause tetanus ?

A It might.

Q Just as readily as if the wound had been made with the club

A It does not matter what the wound is made with, if it is undressed and uncared for.

Q Then the fact of the matter is, it is because the wound is uncared for; if all those four links come together, the reason is because the wound is not cared for ? A. It was the suppurating wound of the head, a wound which may have suppurated if it had been taken care of.

Q If you on the 8th of January, and before she had any tetanic spasms, if you had then washed out that wound and coated it and got all of the poison out of it, it would not have been very likely she would ever have had any of these spasms ? A. It was pretty late then.

Q Isn't it very likely she would not ? A. It was just

about as much on one side as the other.

- Q Then you think that even before she had any of these at all, that if the wound had been taken care of and had been properly attended to, that even if that had been done, her chances were simply about the same as if it had not been done? A. It would not make any difference at that time; it was too late. It ought to have been dressed within 12 or 14 hours after.
- Q Don't you agree with what Dr. Donlin said, that it would benefit the patient? A. Yes, sir.
- Q Dr. Donlin testified that it would have benefited the patient if it had been attended to? A. Undoubtedly it would benefit her.
- Q Then if it would have benefited her, how do you reconcile that with the answer you made a moment ago, that it would be just the same? A. I don't believe it would have entirely overcome tetanus.
- Q There was a possibility? A. There was a possibility.
- Q And a probability? A. Possibly a probability.
- FURTHER DIRECT EXAMINATION by Mr. Stapler:
- Q Did Mrs. Smith tell you that night when you saw her that she had been hurt? A. No, sir.
- Q When you go to see a patient you cannot find ~~out~~ what wounds they have unless they tell you? A. No, sir; I

must have some knowledge of it. The first intimation I had was the next morning.

I Q When you left her that morning and went with Dr. Phillips to Captain Westervelt, you say the woman was dying at that time, and was dying of what? A. Of tetanus.

Q And her condition was hopeless? A. I think so, yes -- I expected her to be dead in two or three hours.

By a Juror:

Q Did I understand that you did not know there was any bruise on the head the first time you went there, on the 8th?

A Yes, sir; no bruise, no scalp wound of any kind on the 8th, not before I learned it the next morning.

FURTHER CROSS EXAMINATION by Mr. Grant:

Q Weren't you told at the time you were called in that night that she was very sick, and were you not asked to go in a hurry to see her? A. I can't remember what the defendant said; he asked me if I would go, to hurry, that she was sick.

Q And isn't it the fact that you were told to hurry?

A Yes, sir; he asked me to go right off.

Q And didn't you learn that she was very sick and he wanted you to get there as quickly as possible? A. Yes, sir; I told them I would go in five to ten minutes.

Q And yet, although it was a pretty sudden call and you were

told to hurry, that she was very sick, you didn't think it necessary, although you say you were in her presence some twenty minutes or ten minutes examining her, and seeing a rag around her head, you didn't think it necessary or advisable for you to examine her head ? A. I asked her what she had the cloth there for.

Q And was any one else there except her ? A. Yes, sir.

Q Who was it ? A. I don't remember.

Q A young girl ? A. I think it was, and she held a light for her.

Q Was it her sister Mrs. Griffin, who was there ?

A I don't know.

Q Weren't there two there, Mrs. Griffen and another one ?

A I think not; I think only one was there at the time.

Q You are sure of that ? A. I am not sure; there may have been a woman in the other room, but I am not sure.

Q But you mean to say that neither of those ladies, if there were two, said anything to you about his having hit her on the head with a club ? A. No, they didn't tell me that on that evening.

Q On the 8th of January, although you were called in to attend her for being very sick ? A. Yes, sir.

Q And although, as matter of fact, if what they say is true, she had at that time on her head a serious wound which

caused her death next day, from being clubbed by her husband ? A. Yes, sir.

Q And you mean to say that Mrs. Griffen, her sister, if she was there, and this other young lady did not mention that fact to you ? A. No, sir; they did not.

By Mr. Stapler:

Q What did Mrs. Smith tell you about her head ?

Objected to on the ground that it is a statement made in the absence of the defendant and therefore cannot bind the defendant, and that it is immaterial.

The Court: Counsel for the defendant having brought out from the evidence of the physician that she had a cloth around her head, I will permit counsel to ask what the answer was.

Objected to on the ground that the answer was not responsive to any question put, but was volunteered by the witness. Objection overruled; exception taken by defendant's counsel.

Q What was her answer ? A. Suffering from headache; she said her head was aching.

Q She said nothing about any wound ? A. No, sir.

Mr. Grant: I ask to strike out the answer volunteered by the doctor to the question put by myself to him in regard to

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seeing a rag around her head and whether he did not think it advisable, seeing that rag around her head, to examine her head, the answer being to that question "I asked her what she had the cloth around her head for," as not responsive to the question.

The court denied the motion, upon the ground that counsel should have moved to strike out the answer at the time it was given, but having accepted the answer without moving to strike it out, and closing his examination, he cannot now be heard to make the motion.

B E L L A S I M P S O N, called for the Prosecution, sworn.
DIRECT EXAMINATION by Mr. Stapler:

- Q Where do you reside ? A. 2262 Second avenue.
- Q Did you know Mary Smith in her lifetime ? A. Yes, sir.
- Q Did you go to her house at any time between the 31st of December and the 9th of January ? A. Yes, sir.
- Q How often did you go there ? A. I only went there twice.
- Q What was the first day you went there ? A. It was the Sunday before the 8th of January; I don't know the date.
- Q How long did you stay ? A. About an hour.
- Q With whom were you when you went there ? A. With Mrs. Griffen.
- Q Who is Mrs. Griffen ? A. A sister of Mrs. Smith.
- Q Then you went again when ? A. On the 8th of January.
- Q What time of the evening did you go there ? A. About half past seven, a little over.
- Q With whom were you when you went there ? A. Mrs. Griffen.
- Q You went there about half past seven ? A. About that.
- Q And you remained there until what time ? A. Well, very near ten o'clock.
- Q During that time did Mrs. Griffen go out ? A. No, sir.
- Q At 10 o'clock you left ? A. Yes, sir.
- Q Where did you go when you left ? A. To the corner of

135th street.

- Q And from there where did you go ? A. From there we went for Mr. Smith.
- Q From there where did you go ? A. To Madison avenue with Mr. Smith.
- Q Then where did you go ? A. To the saloon in 135th street.
- Q Where did you go after that ? A. Down home.
- Q What did you do after that ? A. Went to my father and asked him if I could go and stay with Mrs. Smith.
- Q Did you then return to Mrs. Smith ? A. Yes, sir.
- Q What time did you get there ? A. A little after 11 ~~xxxxx~~ o'clock.
- Q Will you please tell the jury when you first went there where was Mrs. Smith ? A. She was sitting up in her chair.
- Q What did she have about her throat ? A. A cloth about her throat.
- Q What about her head ? A. I didn't notice anything about her head.
- Q What time did you get back there ? A. I got there a little after 11¹/₆ o'clock.
- Q Did the doctor come while you were there ? A. Yes, sir.
- Q When the doctor came where was Mrs. Smith ? A. I don't recollect where she was.

- Q You remained there during the night ? A. Yes, sir.
- Q Did you observe Mrs. Smith during the night ?
- A I can't understand what you mean.
- Q Did you see her during the night ? A. Yes.
- Q Did you go across the street about the middle of the night to Mrs. Harris ? A. Yes, sir.
- Q Why did you go there ? A. To get holy water.
- Q Did you go anywhere else that night ? A. Yes, sir.
- Q Where did you go ? A. Through all the neighbors in the house.
- Q About what time was that ?
- Objected to as immaterial; objection overruled; exception taken.
- A I don't know.
- Q What should you think about midnight ? A. It was after Mr. Smith had come home.
- Q It was after 12 o'clock, you think.
- A Oh, yes.
- Q It was about 1 o'clock ? A. It was way past one, it was somewhere around two or three.
- Q Did or did not Mrs. Smith ask for the priest ?
- A Yes, sir.
- Q Did or did not you hear her say she was dying ?
- A Yes, sir.

Objected to as leading. Objection sustained; last two questions and answers stricken out by consent.

- Q Will you please state what next you remember that Mrs. Smith did after you went there for the holy water ?
- A Mrs. Smith went back to bed again and laid there about ten minutes and then got up with one of those terrible fits.
- Q Tell the jury what it was ? A. Getting up in a terrible way, and grinding the teeth together and turning purple.
- Q After one of those did you hear her say anything ?
- A She said nothing but sat down ~~her~~ a chair.
- Q After that did you hear her say anything ? A. She got up and wanted a drink of water; I gave her a drink of water with a spoon.
- Q After that did you hear her say anything ? A. After that she went back to bed again.
- Q After that did you hear her say anything ? A. Nothing, only she asked again to go out and get the doctor.
- Q Did she ask for anybody else besides the doctor ?
- A For the priest and the neighbors in the house.
- Q Did she say anything as to her condition, as to herself ?
- A No, sir; only saying that she was going to die.
- Q And that was about 3 o'clock in the morning ?

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Somewheres between half past three and four in the morning.
Q. Court: What time did she die ?

A. Stapler: At 12 o'clock the same day.

Q. You went there on the evening of the 8th ? A. Yes, sir.

Q. And this was in the early morning of the 9th ?

A. Yes, sir.

Q. Did she ask for the priest -- how many times ?

A. Twice.

Q. Did anybody go for the priest ? A. It was so cold that

I didn't feel willing to run out for the priest, so I didn't go.

Q. Did you go to bed that night ? A. No, sir.

Q. Did or did not Mrs. Smith continue to have these fits, these spasms, to which you have referred ? A. She had them twice that night.

Q. In the early morning of the day she died ? A. It was the early morning of the 9th of January.

Q. Do you remember anybody coming there about 8 o'clock in the morning ? A. Yes, sir; Eddie Hagan.

Q. And you were there when Dr. Phillips came ? A. Yes, sir.

Q. What did you do as to the children in the morning when they woke up ? A. I had their breakfast ready for them

and washed them and told them then to be quiet, that their mother was very sick. In the meanwhile Dr. Smagg coming,

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I had the breakfast dishes to wash, and after that when he had gone out, Eddie Hagan came in, the brother of Mrs. Smith.

Q Did you observe any of these spasms after that, or were you with the children ? A. No, I took care of her and the children too.

Q Did you see another one of those spasms after that ?

A Yes, she had one while Dr. Smagg and Dr. Phillips were in the house.

Q Do you remember what time Dr. Phillips left that morning ?

A No, sir.

Q After they had made the examination where was Mrs. Smith taken ? A. Taken and laid in the bed.

Q And you don't know what time in the morning that was ?

A No, sir; somewhere about 10 o'clock.

Q After that did you see her ? A. Yes, sir.

Q Did she remain in bed ? A. No, sir.

Q When was the last time you saw her lying in bed ?

A Half past eleven.

Q Had she been sitting on the side of the bed ? A. No, that was the time I laid her into the bed after getting up.

Q You laid her into bed at half past eleven ? A. Yes, sir.

Q And that was the last time you saw her alive ?

A Yes, sir.

Q Please tell the jury when was the next time you saw her after that ? A. The last time I saw her was when Captain Westervelt came in.

Q Then you went in with the Captain ? A. Yes, sir.

Q And you found her dead ? A. I found her dead.

Q You don't know how long she had been dead ? A. No, sir.

Q You left her at half past eleven and after that --

A I discovered her dead.

Q Did you remain in charge of the house there ?

A Yes, sir; until the burial.

CROSS EXAMINATION by Mr. Grant.

Q As far as you know, there was no one with Mrs. Smith when she died ? A. No, sir.

Q The doctors had been there ? A. Yes, sir.

Q And they left when she was in one of these spasms ?

A They were just going out of the door as she was getting over it.

Q Had she finished the spasm before they left ?

A Well, she was just about.

Q And they went away ? A. Yes, sir.

Q Neither one of these doctors remained with her ?

A No, sir.

Q She did not die immediately after the spasm ? A. No, sir.

- Q But the doctors left her in that condition, when she was just about getting over the spasm? A. Well, I thought maybe she would have another right away.
- Q But the doctors went away? A. Yes, sir.
- Q You were at the house of Mrs. Smith on the 7th?
- A No, sir; on the 8th.
- Q Then you were there on the 8th? A. Yes, sir.
- Q In the evening of the 8th? A. Yes, sir.
- Q And you went there with whom? A. With Mrs. Griffin.
- Q After you were in the house sometime do you remember the defendant coming in there, Mr. Smith coming in the house after you had been there a little while? A. Yes, sir.
- Q I understood you to say that from the time Mrs. Griffin came there that night with you first until you left, she did not go out of the house? A. No, sir.
- Q You are positive of that? A. Yes, sir.
- Q So that if Mrs. Griffin has testified here that she did go out to 5th avenue and see the defendant to tell him to go for the doctor, that his wife was very sick, she was mistaken? A. Yes, sir; she was.
- Q Well, the defendant came in, and do you remember his telling Mrs. Griffin or you to put better covering over the bed? A. No, sir; I do not.
- Q You don't remember whether he did or not? A. No, sir.

- Q Do you remeber the fact that the covering of the bed was changed just after he went out ? A. I didn't notice.
- Q Do you remember that immediately after or within ten minutes after his going out, that the doctor came, Dr. Smagg ?
- A Yes, sir.
- Q And that was before she had these spasms ? A- That was before she had the spasms.
- Q And do you remember after Dr. Smagg had prescribed for her that the defendant again came into the house and asked you and Mrs. Griffin, or there was some conversation about the time you were to go home that night ? A. I don't remember that; he may have, but I don't remember.
- Q As a matter of fact you did subsequently to that go home and meet the defendant at the corner of 135th street ?
- A Yes, sir.
- Q Do you remember the defendant then asked if the doctor had been there ? A. He didn't ask me.
- Q Mrs. Griffin ? A. I don't know whether he did or not.
- Q Do you remember his asking Mrs. Griffin what the doctor said was the matter with her ? A. No, sir; I do not.
- Q You don't remember whether he did or not ? A. No, sir.
- Q Don't you remember Mrs. Griffin saying that the doctor said she had a bad cold ? A. I didn't notice it; I didn't hear a word she said to him.

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- Q The little boy was with you ? A. Yes.
- Q And you and Johnnie were going on ahead ? A. Yes, sir.
- Q And Mrs. Griffin and the defendant were walking together ?
A Yes, sir.
- Q You went down Madison avenue ? A. Yes, sir.
- Q And you took the Madison avenue cars home ? A. Yes, sir.
- Q Do you remember of her stopping at a saloon, and going in
and taking Mrs. Griffin, and taking a drink with the defend-
ant ? A. Yes, sir.
- Q This was the night before his wife died ? A. The 8th of
January.
- Q And you all went in there, to that saloon ? A. Yes, sir.
- Q Do you remember at that time Mr. Smith giving Mrs. Griffin
some two dollars she had asked for ? A. I see him hand
her a bill.
- Q Do you remember after giving that, Mr. Smith gave some money
for the car fare for all of you ? A. Yes, sir; car fare
for the whole of us.
- Q Fifty cents, to go down and come back again that night ?
A Yes, sir.
- Q Wasn't that for the purpose of paying the car fare and
bringing you back that night ? A. Yes, sir.
- Q Then you came back later on ? A. Yes, sir.
- Q Mrs. Griffin didn't come back, did she ? A. No, sir.

- Q You didn't hear much of the conversation between Mrs. Griffin and the defendant ? A. No conversation at all.
- Q You didn't hear it at all ? A. No, sir.
- Q When you came back, or before you went, I understood you to say you didn't notice anything about her head ?
- A No, sir.
- Q There was nothing on her head that night ? A. I didn't take notice; it may have been there.
- Q You were there only a little time ? A. Yes, sir; the whole night.
- Q And as your memory now brings you back you didn't see anything on her head that night ? A. I didn't take notice of it.
- Q You saw Mrs. Smith quite often in her life time ?
- A Yes, sir; quite often.
- Q Let me ask you -- did you ever see her under the influence of liquor ? A. Yes, sir.
- Q About how often, that you remember ? A. Once I remember, that she was really intoxicated.
- Q Did you at any other time see her when she was not really intoxicated, but yet under the influence of liquor ?
- A Well, she had just taken a social drink.
- Q But you had seen her very often drink ? A. Yes, only drink a glass of lager, that was all.

- Q Didn't you say yesterday that you had seen her a great many times under the influence of liquor -- right here in this court room ? A. No, sir.
- Q What do you remember you did say about it ? A. I was not on the stand before to say it.
- Q I was speaking in the court room ? A. That I saw her a great many times intoxicated ?
- Q That you had seen her a great many times under the influence of liquor ? A. Not to say that she was real drunk, but really under the influence of it -- not to be really drunk.
- Q How long ago is it since the time you say you were satisfied she really was intoxicated, under the influence of liquor ? A. That was when the baby was about shortened; I can't remember.
- Q Some time ago ? A. Yes, sir; somewhere about six months ago.
- Q Then if it was about six months ago that would be a few months before her death ? A. Yes, sir.
- Q That is the time you remember seeing her actually under the influence of liquor and intoxicated ? A. Yes, sir.
- Q Do you remember who was with you at the time you saw her under the influence of liquor ? A. It was in Mrs. Griffin's house.

- Q Her own sister ? A. Yes, sir; her own sister's house.
- Q Who was there at the time ? A. Mr. Griffin and Mrs. Griffin, herself and I.
- Q Then Mrs. Griffin at that time was present when she was under the influence of liquor ? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Stapler:

- Q When was this occasion you refer to when you say Mrs. Smith was under the influence of liquor ? A. The date I met her at Mrs. Griffin's house.
- Q When was that ? A. Just about six months ago.
- Q What time of day -- in the evening ? A. In the afternoon.
- Q Did you drink anything on that occasion ? A. No, sir.
- Q You drink too, don't you ? A. Yes, sir.
- Objected to as being a cross examination of counsel's own witness. Objection overruled.
- Q You take a glass of ale occasionally, don't you ?
A No, sir.
- Q You never do ? A. Well, once in a while, but it will be a great while between.
- Q And you say you took nothing on this special occasion ?
A Yes, sir.
- Q Mr. Smith was in the room with you that night after he came in, at the house where Mrs. Smith died ? A. Oh, yes, sir.

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Q He was there all the rest of the morning ? A. Yes, sir.

Q What time did he leave there ? A. He left somewhere around 6 o'clock.

Q Did you have any conversation with him yesterday in the court room here, or with Mr. Grant ?

Objected to as immaterial; objection overruled

Q Did you have any conversation here ? A. Yes, sir; about his baby.

By Mr. Grant:

Q You have his baby now in your care ? A. Yes, sir.

Q And you went to speak to him about his baby ? A. Yes, sir; on account of its being so sick.

E D W A R D B. H A G E N, called for the Prosecution, sworn.

DIRECT EXAMINATION by Mr. Stapler:

Q What is your occupation ? A. Brick layer.

Q Where do you work ? A. I am not engaged at present anywhere.

Q You are a journeyman bricklayer ? A. Yes, sir.

Q Where do you live ? A. 303 East 111th street.

Q Does your mother live there ? A. Yes, sir.

Q Do you know the defendant, William Smith ? A. I do.

Q How long have you known him ? A. I have known him about fifteen years.

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- Q He was the husband of your sister Mary ? A. He was.
- Q How long had they been married ? A. Between 11 and 12 years.
- Q Were you present at the wedding ? A. I was.
- Q Will you please tell the jury when you saw your sister, Mary Smith, in the interval between December 31st and January 9th ? A. I saw her on the 3d of January.
- Q Where did you see her ? A. At my house.
- Q What time of day was it ? A. A fine day.
- Q What time of day ? A. Oh, it was about 5 o'clock.
- Q Had you seen her before that day ? A. Not to the best of my knowledge.
- Q When did you see her at her house between December 31st and January 9th ? A. On January 3d.
- Q When was the occasion to which you have just referred -- what day was that ? A. On the 3d of January, on a Saturday.
- Q That was the day you went to see her at her house ?
A Yes, sir.
- Q When was the occasion you saw her that you before referred to at your house about 5 o'clock-- was that the same occasion ? A. Yes, sir.
- Q The same day ? A. Yes, sir.
- Q Will you please tell the jury what you saw, if anything,

about her which attracted your attention when you saw her in the morning at her house ? A. When I went to her house she was cooking dinner, and of course she had her head tied up.

Mr. Grant: I move to strike out the words "Of course."

Stricken out by consent.

- Q Just tell what you saw ? A. I saw her cooking, preparing dinner, and a handkerchief tied around her head.
- Q Did you observe any mark in her face ? A. There was; she had a blue mark around her left eye.
- Q How long did you stay there at that time ? A. About one hour.
- Q Then did you go away ? A. I did.
- Q Did you see her again -- you saw her in the afternoon then ?
A I saw her in the afternoon.
- Q What day of the week was this ? A. On a Saturday.
- Q You saw her again in the afternoon at your mother's house ?
A Yes, she came down.
- Q How long did she stay there ? A. Well, I wouldn't say; I only staid in the house -- she was there a half an hour, anyhow, and I went out.
- Q When did you see her again ? A. I saw her in the morning of the 9th of January.
- Q Where did you see her ? A. No. 6 East 136th. street.

- Q You went there for what purpose ? A. Nothing, no purpose whatever, any more than a brotherly visit.
- Q Just tell the jury where you found your sister and what was her condition ? A. On the morning of the 9th of January, while I was looking for employment in the neighborhood of my sister's, and I thought I would go in and see her. I went up-stairs, not knowing she was sick in any way and of course the first thing I seen was my sister in the bedroom, and she called me as best she could to tell me to get the priest and the doctor.
- Q Where was she sitting ? A. At the back of the bed on a sort of a trunk.
- Q Was she dressed ? A. She had her night gown on.
- Q Tell the jury how she spoke -- between what time was this ?
A Between 8 and 9.
- Q In the morning ? A. Yes, sir.
- Q Tell the jury how her jaws appeared ? A. Her jaws were kind of closed, but I gathered she said "Get the priest and the doctor."
- Q What else did she say ? A. She said "I am dying."
Right away I went for the doctor, for Dr. Smagg.
- Q Before you went for the doctor did you observe any action of hers, anything she did ? A. She had one convulsion then .

- Q Explain that convulsion ? A. Like that(illustrating).
- Q Was it to bend back in that way, was her body bent back in that way ? A. Yes, sir. I held her hands for a time while they were up. After she got over that spasm I went down for Dr. Smagg. His wife came to the door, or a lady.
- Q Then what did you do ? A. I asked him to please --
- Q Tell what you did; you left there and went there ?
A Yes, sir.
- Q And then what did you do after that ? A. I went straight back again.
- Q And how did you find your sister when you got back ?
A She was just on the verge of another convulsion.
- Q Such as you described to the jury ? A. Yes, sir.
- Q And did you stay with her ? A. I stayed until Dr. Smagg came.
- Q What did you do to her ? A. I lifted her from the trunk onto the side of the bed, right at the foot, and of course there it kept me busy all the time holding her hands, on and off with these convulsions.
- Q She had them right along then until the doctor came ?
A Yes, sir.
- Q And then when the doctor came what was done to her ?
A The doctor went into the bedroom to where she was, the first room off the kitchen, and examined her head and

says to me "This is a very bad case."

Objected to, and last part of the answer stricken out by consent.

- Q Was that Dr. Smagg ? A. Yes, sir.
- Q Then Dr. Smagg went away ? A. Yes, sir.
- Q And you still remained with your sister ? A. Yes, sir.
- Q And saw her jaws; what was the condition of these jaws during that time ? A. They were closing gradually.
- Q And who next came there that morning ? A. Dr. Phillips.
- Q Then after Dr. Phillips came what did you do as to your sister ? A. I brought her from the bed out and put her in a chair in the middle of the kitchen so we could get a thorough examination.
- Q What time was this ? A. About three-quarters of an hour after Dr. Smagg's first visit.
- Q What time in the morning. was it, should you say ?
A I should say between half past nine and ten, as near as I can come to it.
- Q How long did you remain there then ? A. I left shortly after the doctors.
- Q Then where did you go ? A I came over to 135th street and Madison avenue, and came down on a Madison avenue car to 116th street, crossed over to 2d avenue. and came down 2d avenue. Coming down 2d avenue I met officer Smith, be-

tween 114th and 115th street.

- Q What did you say to Officer Smith ? A. I says "Billy, you have a pretty hard case up in the house." "What," he said, "an't she dead yet ?"
- Q What did you say ? A. I says "You ought to be ashamed of yourself for talking that way ."
- Q What did you do after that ? A. I came straight home.
- Q To where your mother was ? A. Yes sir?
- Q And your sisters ? A. Yes, sir.
- Q Had Officer Smith been at the house while you were there that morning ? A. No , sir.
- Q You didn't see him there while you were there ?
- A No, sir.

CROSS EXAMINATION by Mr. Grant.

- Q You appeared before the Coroner's inquest ? A. Yes, sir.
- Q And you gave your testimom ? A. Yes, sir.
- Q You told them everything you knew, didn't you ? A. Yes, as far as I am concerned.
- Q You didn't say anything about this last performance, at the Coroner's inquest ? A. I did not.
- Q You say you are at present in no work ? A. No, sir.
- Q You are a brick layer ? A. Yes, sir.
- Q How long have you been in the occupation that you are at present, out of work ? A. Ten years.

Q Did you understand that last question I put to you ?

A Yes, sir.

Q Since the death of your sister you have taken a good deal of interest in running around in this case, haven't you, seeing witnesses, getting witnesses ?

A Yes, sir.

Q The most of your time has been occupied in that direction ?

A No, sir; not the most of it.

Q What else have you been doing besides that ?

A I have been working.

Q Then you evidently did not understand my first question. You have been working since your sister's death ?

A Yes, sir.

Q Where ?

A I have been working in 105th street, between 4th and Madison avenue.

Q With whom ?

A Mr. Hammer.

Q What business ?

A Brick laying.

Q How many days have you been working there with that gentleman ?

A That I can't say.

Q Try and remember now:

A I could not, without referring to the time book.

Q I don't want the exact days and minutes you have been working there; give the jury an idea of how many days you have been working for that gentleman since your sister's death ?

A Well, I would say twenty days for that gentleman.

- Q Steadily ? A. An hour now and an hour again, according to the weather.
- Q Have you worked any whole days steadily there ?
A Yes, sir.
- Q How many whole days steadily have you worked there ?
A It couldn't be any more than three or four.
- Q Will you give me that gentleman's name again ?
A Ernest Hammer.
- Q And where is his office or place of business ? A. I don't know of any office.
- Q Where is this place ? A. 105th street, between 4th and Madison avenue.
- Q What is he doing there ? A. Building three flats.
- Q Are they finished ? A. Yes, sir; the brick is finished.
- Q But he is still engaged on the work ? A. On that one certain job ?
- Q The work he was doing there on that job ? A. That I don't know.
- Q Did he employ you himself or did somebody else employ you ?
A His father.
- Q Where does he live ? In Springhurst; his father lives in Springhurst.
- Q Where did his father employ you to go to work there ?
A He employed me on the work at 112th street and Lexington avenue. ~~on the other job.~~

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- Q What other job ? A. A job of Hammer's.
- Q And then Mr. Hammer's father employed you afterwards there ?
A Mr. Hammer's father employed me on the corner of 112th street and Lexington avenue.
- Q To do work there ? A. Yes, sir.
- Q And between Mr. Hammer and Mr. Hammer's father you have done about three days steady work, worked the whole day ?
A Yes, sir; according as the weather would permit.
- Q Other times you would work an hour at a time ?
A Probably.
- Q Did you make any New Years calls New Years day ?
A Yes, sir.
- Q Didn't you go to your sister's house ? A. Yes--not this Mrs. Smith.
- Q You didn't go to Mrs. Smith's house ? A. No, sir.
- Q You are positive of that ? A. Yes, sir.
- Q Do you know what day New Years was on ? A. On Thursday, to the best of my opinion.
- Q And you are positive you didn't go to Mrs. Smith's house ?
A No, sir.
- Q Where did you go ? A. To Mrs. Griffin's, another sister.
- Q And where else ? A. Down to my brothers.
- Q Any conversation with your sister with regard to any violence perpetrated by the defendant on your other sister,

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- Q Do you ever drink ? A. I take a glass of beer.
- Q Anything else besides beer ? A. I will take a glass of wine.
- Q Anything else besides a glass of wine ? A. I will take a glass of whiskey.
- Q And you take that regularly, don't you ? A. No, sir.
- Q Which of them do you take regularly, beer, wine or whiskey ?
A When I want a drink I will have a drink of ale.
- Q And when you drink you sometimes take a glass of whiskey ?
A Very seldom.
- Q Of course you never saw Mrs. Smith drink anything ?
A I did not, only a glass of ale.
- Q Do you remember when you saw her drink that glass of ale ?
A I do not.
- Q How many times have you seen her drink a glass of ale ?
A Well, any time she would come to the house we would have a glass of ale.
- Q And so on the 3d of January when she went to your house she took a glass of ale ? A. She did not, in my presence
- Q Have you very often seen her take a glass of ale ?
A No, sir; not very often.
- Q Were you at Mrs. Griffin's house at any time about six months ago when she was there ? A? No, sir.
- Q Last week you went up to 162d street ? A. Yes, sir.

Mrs. Smith ? A. No, sir.

Q Were you present at Mrs. Griffin's on New Years day when the defendant went there and had a conversation with Mrs. Griffin ? A. No, sir.

Q Weren't you present when he went in and told Mrs. Griffin he had been out buying things for the children ?

A No, sir.

Q Shoes and clothing for his children ? A. No, sir.

Q You were not there ? A. No, sir.

Q Did you hear of that ? A. No, sir.

Q Did Mrs. Griffin tell you about that ? A. No, sir.

Q Did you see her the 3d of January ? A. Yes, the 3d of January.

Q Then you didn't see her from the 3d of January until the 9th ? A. No, sir.

Q And then you went there simply to make a brotherly visit ?

A Yes, sir.

Q And that was the day she died ? A. yes, sir.

Q And that was the first you knew she was sick ? A. Yes, sir.

Q So that if she had been sick, been hurt on the 31st of December, up to the 9th of January that was the first you heard of it ? A. The first I heard of it was on the 3d of January.

- Q To Mr. Smith's father's house ? A. Yes, sir.
- Q To measure a hole there right by the railroad track ?
A Yes, sir.
- Q Near Mr. Smith's father's house ? A. Yes, sir.
- Q And you asked Mr. Smith's father to point out the location where she had fallen into the hole ? A. Yes, sir.
- Q Whom did you go up there for to measure that hole ?
A For the simple reason that I wanted to have an idea about it.
- Q That is the only reason you went up ? A. Yes, sir; certainly.
- Q Had you consulted with Mr. Stapler about going up there ?
A No, sir.
- Q Never said a word to him about it ? A. No, sir.
- Q It was your own idea ? A. Yes, sir.
- Q How deep was the hole when you measured it ? A. Six feet deep.
- Q Exactly ? A. Yes, sir.
- Q Last week ? A. Yes, sir.
- Q Right alongside of a big wall ? A. Yes, sir.
- Q You could see where they had been building up that wall ?
A On the west side of the track is the wall.
- Q It is all finished now, the wall ? A. Yes.
- Q And you saw that the wall was composed of pretty large

stones ? A. Yes, sir.

Q Can't you tell why you waited until last week to go up there and measure that hole ? A. Well, it didn't give me a great deal of bother; as long as I was doing nothing last week, and the trial was coming on, I thought I would go and find out how deep it was anyhow, in case it was brought up.

Q I want you to repeat where you went, and once more to state what took place after, as you say, you left the house of Mrs. Smith on the 9th of January and walked down somewhere towards 2d avenue ? A. I left her house and went over to 135th street.

Q What time did you leave the house ? A. I left there about -- I would say about half past ten, between half past ten and 11 in the morning; came down on the Madison avenue car as far as 116th street.

Q Go on. A. I came across from Madison avenue to 2d avenue so as I could see Officer Smith. I came down 2d avenue and met Officer Smith between 114th and 115th street, on 2d avenue, on the east side of 2d avenue.

Q Go on. A. I says "Billy, you have got a pretty hard case up at the house." He said "What, an't she dead yet?" I says " You ought to be ashamed of yourself for talking

that way." I came home.

Q You left him there ? A. Yes.

Q Will you tell the jury and his Honor why at the Coroner's inquest when you were asked by the Coroner, and by Mr. Linn, and by myself, everything you knew about this case, why you did not mention that ? A. For the simple reason that I was so nervous I didn't remember everything in detail.

Q Were you any more nervous than you are now ? A. Yes, far

Q Was this question put to you by the Coroner and did you make this answer : "Did you ever have any conversation with the defendant here, sitting right here, Mr. Smith, with reference to any clubbing or alleged clouting; did you or did you not, with him direct ? A. With him, direct, ~~direct~~ no." A. No, sir; I never did, about that clubbing.

Q You had previously to that question being put to you sworn that you had, didn't you ? A. That was another case.

Q Had you previous to the time the Coroner put that question to you sworn that you had had a conversation with him ?

A I did, but it did not relate to this certain thing.

Q Was this question put to you: "Q. Did you ever talk with Smith ? A. Yes. Q. I mean the defendant ? A. Yes.

Q. Concerning the sister ? A. Yes. Q. What was said

between you and him ? A. I said -- I heard that he had beaten her one time before this, I said "Billy, you ought not to do that, let it go the best way you can, a big brute like you, it is a shame to club a poor woman like that." He said that is nothing." Did you say that ?

A Yes sir.

Q Did you subsequently swear you didn't have such a conversation ? A. Yes, my mind had got around.

Q You never did have such a conversation as that ?

A No, sir.

Q Why did you swear to the exact language you alleged to have used between you and the defendant, using the exact language if as matter of fact you never had such a conversation with him -- why did you so swear at the Coroner's inquest ? A. It must have been I didn't know what I was speaking about.

Q Do you know what you are speaking about to-day ?

A I do.

Q Very well ? A. Yes, sir.

Q Then do you remember these questions being put to you :

"Q. Have you told anybody before you went into that chair ?

A. No, sir; I did not. Q. How was it you did not mention that to anybody if it was a fact that you have had it ?

A Why wouldn't I ? Q. Yes, why didn't you ? Question repeated. A. I thought it would be just as good minding

my business. Q. Didn't you think it as any of your business when you had heard that your sister was being clubbed by the defendant -- was it not your business to mention it to anybody? A. But she was shielding him, she was afraid he would be broken off the police.

Q. But you did not, did you? A. No, sir. Q. When did that take place? A. About two months ago, two

months and a half. Q. Where? A. On 2d avenue and

116th street. Q. 116th street and 2d avenue? A. Yes,

sir. Q. How did you happen to see him? A. I went

there to see him. Q. What was the object in going there

to see him? A. Because his wife was going to be put

out for non-payment of rent. Q. Where were they living

then? A. 343 East 113th street! Those questions were

put to you, weren't they? A. Yes, sir.

Q "State any other portion of the conversation you had with him at that time? A. I went up to him and says, "It is a shame, you ought to go down to the house and go down after you get off, after eight o'clock;" he said he would.

I said "You might as well move as to get your things on the sidewalk," but he didn't come down." Do you remember that? A. Yes, sir.

Q "Q That is all the conversation? A. Yes. Q. You know what you are saying? A. Yes. Q. You know perfectly what you said? A. Yes. Q. That is all the

conversation you had at that time ? A. Yes, sir.

Q. I ask you when you had the conversation-- when you had the conversation with him in which you alleged there was something said about clouting -- when did you have that conversation ?

A. Two or three nights after the alleged clubbing she came down to the house.

Q. When did you have the conversation about the alleged clouting ?

A. Two nights after the New Years eve. By the Coroner:

Q. Did you have any conversation with the defendant here, sitting right here, Mr. Smith, with reference to any clubbing or alleged clouting; did you or did you not, with him direct ?

A. With him, direct, no." You gave that testimony at the Coroner's inquest ?

A. Yes, sir.
Q. And the reason, you say, you said nothing about having gone on the night of the 9th to see him is that you were excited and didn't remember. A. The main point about it is, I suppose, he was speaking to me two months previous, before this assault case altogether.

Q. But what I want you to explain to the jury is why it is you swore that you had had a conversation with him in which you said to him "You big brute, you shouldn't club a woman so" and he said "That is nothing" -- why did you swear you had had such a conversation, when as matter of fact you didn't have it ?

A. I will state that I have no recollection of ever saying that to him.

- Q Why didn't you swear positively you had ? A. I didn't exactly know what I was saying at that time.
- Q But you are a good deal more positive now about the other conversation ? A. Yes, sir.
- Q Have you spoken to anybody about this case and about the testimony you had given at the Coroner's inquest ? xxx
A. No, sir.
- Q Not a soul ? A. Except in my own family.
- Q Wasn't it suggested that it would be a good idea to have some evidence to connect the defendant in some way, by some remark he had made, by saying something bad about his wife ? A. No, sir.
- Q Have you stated to anybody since the Coroner's inquest about the conversation you say you had with him ?
A. No, sir.
- Q Not a soul ? A. No, sir.
- Q You know what you are saying now ? A. Yes, sir.
- Q You understand you haven't opened your lips to anybody^{about} that conversation you swore you had with him on the 9th, until you got in that chair ? A. No, sir.
- Q Will you explain to the jury how it was that Mr. Stapler had any knowledge of your having any such conversation on that day, and how he knew how to put a question to you calling for such a conversation on the 9th of January, if you never mentioned it to anybody ? A. I came down to

his office one day on a subpoena and I told him I had this conversation.

Q You did ? A. Yes, sir.

Q Why did you say a moment ago when I asked you, that you had never repeated it, to ~~any~~^{any} body on the face of the earth ?

A. That is the only man.

Q Do you understand ~~by~~ the English language ? A. Yes, sir.

Q And you understood my question ? A. Yes, sir.

Q And you understood what I said to you at the time ?

A Yes, sir.

Q And understanding what I said to you, you swore you had not mentioned it to a person on the face of the earth ?

A I did; yes, sir.

Q And now you want to take that back and say you have mentioned it to somebody ? A. I mentioned it to Mr. Stapler.

Q If I had not put that last question to you as to how Mr. Stapler understood it, would you have said you mentioned it to him, or would you have rested on the answer you made before ? A. I would not.

Q You would not have stated it. Did you have such a conversation with the defendant, with Smith ? A. I did not.

RE-DIRECT EXAMINATION by Mr. Stapler.

Q If I had asked you the question whether or not you had not told me, and how I knew you were going to testify to it, would you have told the jury whether you had or not ?

A. I would.

Q Mr. Grant has just asked you this question, whether or not you ever had such a conversation with the defendant; to what do you refer in your answer ? A. I had no reference to that person at all; no idea as to ever talking with the defendant on that case.

Q You testified a moment ago that you went down after you left your sister's house and met the defendant and had a conversation with him A. Yes, sir.

Q Is that true ? A. That is true.

Q Did you have such a conversation with him ? A. Yes, sir; I did, on that day.

Q Before you left the witness stand at the Coroner's inquest, did you correct your testimony and say you had not had such a conversation ?

Objected to, that the best proof is the evidence itself, which is in writing.

A No, sir.

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MEMORANDA.

AGE			PLACE OF NATIVITY	WHERE FOUND	Date When Reported	
33	Years	Months	Days	924	8 W 136 St	Jan 10 79

Recd Jan 7 1 1879

Echymosis of under left-eye, and discoloration of left cheek and an irregular separating wound $\frac{3}{4}$ inches length, and two inches above the occipital bone, extravasation of blood under the scalp immediately under the wound size of a silver dollar, & the wound goes down near to the skull. A small spot of extravasation size silver three cent-piece left side of wound and another as large as a cent-two inches above the right-ear.

The duralamata was found adhering to the skull. Disorganization of the ~~part of~~ internal on the left side of the Turkish saddle.

Cerebral apoplexy following but unconnected with cerebral meningitis following injuries to head or hands of husband W. Smith Jan 2^d 1879 at 135th St + 5th Ave

F.L. *[Signature]*

On the View of the BODY of
AN INQUISITION
Jan 1879

[Signature]
Mary Smith

whenever it is found that he came to death by

Of report taken on the day
1879 before
FERDINAND LEVY, Doctor.

107

5820

MEMORANDA.

AGE	PLACE OF NATIVITY	WHERE FOUND	Date When Reported
33 Years Months Days	9241	B.W. 1865	Jan 10 99

Jan 9 1 pm

Examination of under left-eye, and description of left cheek and an irregular reparatory wound $\frac{3}{4}$ inches length, and two inches above the occipital bone, extrusion of blood under the scalp immediately under the wound ridge of a other laceration, the wound gave down near to the skull. A small part of extrusion ridge other three cent - pres. left side of wound and another a large as a cent - two inches above the right ear.

The disarrangement was found adhering to the skull. Disorganization of the ~~parietal~~ ^{parietal} lobe on the left side of the back part.

From Coroner's office, following first interment will be made near night following, in house at 1858 45th St near 1858 45th St

F. L. *[Signature]*

City of New York
189

AN INQUISITION
On the VIEW of the BODY of

Mary Smith

whereby it is found that he came to death by

Inquest taken on the *day* of *189* before
FERDINAND LEVY, Coroner.

104

AN INQUIRY,

Taken at the home of
Coroner O'Keefe
Street, in the
City of New York, on the
13th day of January
1889, before
me, the undersigned
Judge of the County of New York,
in the presence of our
Sheriff, one thousand eight hundred and ninety
one.

of the City and County aforesaid, on view of the Body of Mary Smith
Coroner

lying dead at
Upon the Oaths and affirmations of
good and lawful men of the State of New York, duly chosen and
sworn, as affirmed and charged to enquire, on behalf of said people, how and in what manner the said
Mary Smith
came to her death, do
swear, as affirmed and charged to enquire, on behalf of said people, how and in what manner the said
Mary Smith
came to her death, do
swear, as affirmed and charged to enquire, on behalf of said people, how and in what manner the said
Mary Smith
came to her death, do

from injuries received by being struck
on the head with a lead in the hands of
her father and William Smith or other
+ Fifth Avenue, December 31st 1889.

JURORS.

In witness whereof, We, the said Jurors, as well as the CORONER, have to this Inquisition,
set our hands and seals, on the day and place aforesaid.

Dean Baker 332 16th St
Booker T. Weston 186 St
George Kelly 1127 Park Ave
Jesse H. Brown 501 E 83rd St
Alfred Dickert 169 Avenue A
Lawrence 343 E 10 St
John S. Smith 166 W. B

CORONER, R. S.

Francis J. O'Keefe

9820

0287

Coroner's Office,

CITY AND COUNTY }
OF NEW YORK, } ss.

William Smith

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

Question—What is your name?

Answer—

William Smith

Question—How old are you?

Answer—

Twenty four years old

Question—Where were you born

Answer—

New York City

Question—Where do you live?

Answer—

6 W. 136th St

Question—What is your occupation?

Answer—

Policeman

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

I am not guilty
William Smith

Taken before me, this *13th* day of *January* 188*7*
Ferdinand Levy CORONER.

0288

MEMORANDA.

AGE			PLACE OF NATIVITY	WHERE FOUND	DATE When Reported
Years	Months	Days			
33			N.Y.	676 136 St.	Jan 10/91

1882
1891
1576-1891
HOMICIDE.

AN INQUISTION.

On the VIEW of the BODY of

Mary Smith

whenever it is found that she came to

her Death by the hands of

William Smith

filed
Jan 10/91

Request taken on the 13th day

of January - 1891

Richard Long
Coroner.

Committed

Obtained

Discharged

Date of death



POOR QUALITY ORIGINAL

0289

166
1891
156-1891
HOMICIDE.

AN INQUISITION.

On the VIEW of the BODY of

Mary Smith

whereby it is found that she came to

her Death by the hands of

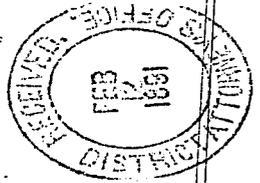
William Smith

Filed
Jan 16/91

Inquest taken on the 13th day

of January - 1891
before

Andrew Long
Coroner.



Committed

Bailed

Discharged

Date of death

MEMORANDA.

AGE	33 Years	Months	Days
PLACE OF NATIVITY	N.Y.		
WHERE FOUND	674 136 St.		
DATE When Reported	Jan 10/91		

COURT OF OYER & TERMINER.

-----X
The People &c.

vs.

William Smith.
-----X

This is an application on the part of the defendant for a certificate of reasonable doubt under Section 527 of the Code of Criminal Procedure.

The application is based upon the single contention that there was error in the admission of the dying declaration of Mary Smith, the deceased, for whose death the jury held the defendant responsible.

It is respectfully submitted that the evidence in this case as to the condition of the deceased at and about the time of the declaration and in the twelve hours immediately preceding her death showed that she recognized that she was about to die and had an entire appreciation of the hoplessness of her condition.

It will be recalled that the testimony showed that the injury to her was inflicted by a blow in the head on the 31st of December 1890; that the wound became sore and matted and festered, and that through the week immediately succeeding the injury the disease crept gradually upon her which was to end her life; that on the 7th, she was found with her throat tied up; that on the evening of the 8th swelling had set in about her jaws and throat; that her condition became so serious, in the opinion of those about her, that a doctor was

2.

called in; that in the night her jaws began to close and that tetanic convulsions set in. (Pages 74-75 Stenographer's Minutes) That Bella Simpson testified, her condition was such that during the night she tried to arouse the neighbors, and went out to try to get holy water. (Page 74) This was about two or three o'clock when the deceased called for the priest, and said she was dying. (Page 75) Witness testified that after she went out for the holy water, she got up again in one of these terrible fits, got up in a terrible way, grinding her teeth together and turning purple; that she asked for the priest and the doctor, and said that she was going to die; this was between half-past three and four in the morning. (Pages 75 & 76). She asked for the priest twice.

It will be recalled that the evidence showed that she died about twelve o'clock noon of the same day. At between eight and nine o'clock in the morning the deceased was found by her brother at the back of the bed with jaws partially closed, when she asked for the priest and the doctor, and said she was dying, (Page 88) and passed into a convulsion. (Page 89) She had these convulsions continuously until Dr. Smagg's came; and, arriving at the conclusion that the deceased was suffering from lock-jaw, hastened out to obtain other medical assistance. When Dr. Phillips arrived he found her in the last stage of lockjaw; (pages 8, 9 & 10) that her condition was hopeless; that she was dying, and that she might go at any

3.

moment, but certainly within a few hours; there was nothing that medical science could do to save her life. (page 8) The condition in which he found her is described at pages 5, 6 & 7. Her teeth were so closely locked that they could not be forced open. She asked pitiously for water, but her jaws were so tightly locked that no water could be forced between her teeth. Such ^{was} ~~being~~ ^{done} shown to be the condition of the patient, which, from its very nature must have brought to her a realizing sense of the hopelessness of her case; and that such is the case is clearly shown by undisputed evidence, not denied or questioned, that on three separate occasions within a few hours prior to the time of her statement, she declared her belief that she was dying, and sought to obtain holy water, and asked for the priest. These facts makes this case far stronger than many in the books in which dying declarations have been admitted on much less evidence of recognition of the approach of death upon the part of the declarant. But when in view of this evidence showing the appreciation of her condition there is added the testimony of Dr. Phillips, who fixes the time between half-past eleven and twelve o'clock; whose presence there was for the purpose, if possible, of affording her medical aid; and when he after an effort to pry open her jaws, which failed, informs the deceased that he could not do anything for her. ^(p. 31) can there be any doubt but that the case presents every element required even by the strictest rule to show that she was fully aware of her condition.

✓

The statement made by the physician under the circumstances of the case, was a deliberate declaration that medical skill could do nothing for her. This would seem to be as complete and full knowledge as could be afforded to her. That the belief entertained by her own mind as shown by her previous declaration was corroborated by the authoritative announcement of the medical attendant who had been called upon to aid her in her said condition, the fatal character of which was fully recognized by her as shown by her previous declarations. The deceased died within an hour after making the declarations admitted in evidence.

An examination of the cases will, it is respectfully submitted, show that the action of the learned Court in admitting the declarations of the deceased, is in an entire accord with the authorities.

Says Greenleaf on evidence, Section 158

"It is essential to the admissibility of these declarations, and is a preliminary fact to be proved by the party offering them in evidence, that they were made under a sense of impending death, but it is not necessary that they should be stated at the time to be so made. It is enough if it satisfactorily appears in any mode that they were made under that sanction, whether it be directly proved by the express language of

5.

the declarant or be inferred from his evident danger
or the opinion of the medical or other attendants
stated to him, or from his conduct, or other circumstances
of the case, all of which are resorted to in order to
ascertain the state of declarant's mind."

(Greenleaf on Evidence, Section 158)

v. Tichler's Case I Easts Crown Law PP. 353, 354-355

In Rex ~~Against~~ ^{vs} Mosley I ~~Lenon~~ ^{Lenon} Crown Cases p.79, they ^{stated}
were made eleven days before death, and were all received
In the last case it appeared that the surgeon did not
think the case hopeless, but that the patient thought
otherwise.

In the People against Knickerbocker, Ist Parker's
Criminal Reports, 305, the People offered in evidence the
declaration of Harkner made the evening before his
death, as to the person who killed him. The prisoner's
counsel objected, which was overruled and exception taken
The witness testified that he said to Harkner the even-
ing before his death "I guess you will get over it again"
Harkner replied: "I never can get over it; I can't live."
This was held sufficient foundation in connection with
his condition to admit his dying declaration as to the
person who inflicted the injury from which he died.
Says Marvin J.

"After a careful examination of this case as disclosed
in the bill of exceptions, I am of the opinion that the
evidence of the dying declaration of Harkner was proper-

6.

ly admitted. The declarations were certainly made in extremity, and when the declarant was at the point of death. X X X X. But they are only admissible when the party making them knows or thinks he is in a dying state. Positive evidence however, of that knowledge, or belief is not required. It may be inferred from the general conduct or deportment of the party, nor is it necessary to prove expressions of apprehension of immediate danger, if it be clear that the party does not expect to survive the injury.*

Ross Cr.E. 29-30, and cases there cited."

In Maine against the People, 8 9 Hun., 816, says the learned Court:

"Mrs. Head was in extremis on that Monday and died that day. The Doctor knew it and told the friends. The fact of her physical condition is beyond controversy. It was such as is required for the admission of her declarations if she either knew the truth or realized her actual situation. She knew she was very sick on the 19th and as she had been sinking and growing worse day by day. When the doctor day by day spoke words of encouragement she did not believe him. But while hoping to get well she did not expect it. On this Monday the doctor gave her no hope and she had none. she expected to die. She did not believe the doctor could save her. Her expectations were justified by the event. I do not think the Court could upon the facts believe that she hoped to survive."

Maine vs People 9 of Hun. p116.

Brotherton, vs People 75, N.Y. p. 161

7.

In People vs. Sweeney, 41 Hun, 334, Hannon, who died on the 11th made statements to his mother and sister on the 8th, 9th and 10th that he was going to die, and this was held by Judge Daniels to be a sufficient foundation for the admission of the dying declaration, in which the Court at General Term agreed with him. Judge Daniels examined the cases on this question and holds, that the evidence showed that Hannon's mind was impressed with the fact that he was about to die.

(See the cases cited by Judge Daniels, in People vs. Sweeney, 41 Hun, p. 335)

It is submitted that the facts in the case at bar are much stronger than those in the case of Sweeney, supra.

The same declarations which were held admissible in People vs. Sweeney were held admissible in People vs. Smith 104 N.Y. 491. Smith was indicted jointly with Sweeney, and the same evidence was presented as to dying declarations, and they were held clearly admissible, Judge Andrews who dissented on other grounds, concurred that the declarations were clearly admissible, saying:

(p. 502) "The circumstances bring it within the rule

according to the best considered authorities; ~~and~~
 Citing Reg. vs. Howel, 26 Law J. M.C. 43;
 Reg v. Jenkins, 11 Cox Cr.C. 250;
 Reg vs. Peel, 2 Post and F. 21 &c.

The case of People vs. Evans, 40th Hun 492, ~~it~~ is to be distinguished from the above cases since there it affirmatively appeared that the deceased was not clear that she had no hope of recovery. The learned Court must have taken this view since otherwise it is clearly not in harmony with the People vs. Sweeney and People vs.

8.

Smith supra, and the other authorities.

In the case at bar the circumstances preclude the Court from assuming that the deceased had any hope of recovery since her declarations and her condition as above pointed out, as well as the statement to her by the physician show that there was no such hope. The cases of the people vs Sweeney and People vs. Smith are later decisions than People vs. Evans, and it is submitted must be regarded as declaring the rule to be followed on the question under discussion.

It is submitted that the circumstances of the case at bar bring it clearly within the line of People vs. Sweeney and People vs. Smith. Here there are three separate declarations of her conviction that she was dying, accompanied by a request for the attendance of a priest. These declarations show the conviction of approaching death which had settled upon her mind, and the statement of the physician that he could do nothing for her followed almost immediately afterwards by her death show that she was in extremis at the time the statements were made and fully realized the hopelessness of her condition.

It is therefore submitted that there is no ground for entertaining a reasonable doubt as to the propriety of admitting the declarations of the deceased in evidence, and that the application for the certificate of reasonable doubt should be denied.

Henry B.B. Stapler,
Assistant.
June 12, 1891.

DeLancey Nicoll,
District Attorney .

0298

David Greer & James

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THE PEOPLE OF THE STATE OF
NEW YORK

against

William Smith

*Memorandum on
Application for Court-
fixed fees Reasonable doubt.*

DE LANCEY NICOLL,

DISTRICT ATTORNEY,

No. 32 CHAMBERS STREET,

NEW YORK CITY.

0299

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

William Smith

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

William Smith

of the CRIME OF Manslaughter in the first Degree, committed as follows:

The said William Smith,

on the 1st day of December, in the year of our Lord one thousand eight hundred and ninety, — at the City of New York, in the County of New York, aforesaid, in and upon one Mary Smith, — then and there being, wilfully and feloniously did make an assault, and — her, — the said

Mary Smith, with a certain club which she the said William Smith, then and there had and held in his hand, in and upon the head of her the said Mary Smith

then and there wilfully and feloniously did strike, beat, bruise, and wound, giving unto her the said Mary Smith, then and there, with the club

aforesaid, in and upon the head — of her, — the said Mary Smith, — one mortal wound, bruise & contusion, of which said

she died.

Witness my hand and seal of the said Court, this 1st day of December, 1890.

0300

and contusion,
mortal wound, *knife*, the said *Mary Smith*.

at the City and County aforesaid, from the day first aforesaid, in the year aforesaid, until the
ninth day of January in the year aforesaid,
day of *in the same year aforesaid,*
and, one thousand eight hundred and ninety-one,
did languish, and languishing did live, and on which said *ninth* day of

last
in the year aforesaid, *she* the said *Mary Smith*,
at the City and County aforesaid, of the said mortal wound, *knife and contusion* did die.

And so the Grand Jury aforesaid do say: That the said
William Smith, her
the said *Mary Smith*, in the manner and form, and by
the means aforesaid, wilfully and feloniously did kill and slay, 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.

~~JOHN R. FELLOWS,~~
~~District Attorney.~~

0301

Second Count, And the Grand Jury aforesaid, by this indictment, further accuse the said William Smith

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

The said William Smith

late of the City and County of New York, on the Twenty first day of December, in the year of our Lord one thousand eight hundred and eighty nine, with force and arms, at the City and County aforesaid, in and upon one

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

with a certain club which he the said

William Smith
in his right hand then and there had and held, the same being then and there ~~a weapon~~ and an instrument and weapon likely to produce grievous bodily harm, her, the said Mary Smith, then and there feloniously did wilfully and wrongfully strike, beat, bruise and wound, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

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~~First~~
SECOND COUNT—

And the Grand Jury aforesaid, by this indictment, further accuse the said

William Smith

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

The said William Smith,

late of the City and County aforesaid, afterwards, to wit: on the day and in the year aforesaid, at the City and County aforesaid, with force and arms, in and upon the said Mary Smith,

in the peace of the said People then and there being, feloniously did wilfully and wrongfully make another assault; and the said William Smith, the said Mary Smith, with a certain club

which he the said William Smith in his right hand then and there had held, in and upon the head of her the said Mary Smith,

then and there feloniously did wilfully and wrongfully strike, beat, bruise and wound, and did then and there and by the means aforesaid, feloniously, wilfully and wrongfully inflict grievous bodily harm upon the said Mary Smith, to the great damage of the said Mary Smith, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

DE LANCEY NICOLL,
~~JOHN R. FELLOWS,~~
District Attorney.