

**START**

42

**CASE**

CASE #42

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# 1812

COURT OF GENERAL SESSIONS OF THE PEACE---Part 2,

CITY & COUNTY OF NEW YORK.

\*\*\*\*\*

THE PEOPLE,

)  
) BEFORE

VS:

) HON. RUFUS B. COWING,

JAMES PURCELL.

) AND A JURY.  
)

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TRIED NEW YORK, JANUARY 22ND, 1894.

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INDICTED FOR MANSLAUGHTER IN THE SECOND DEGREE.

INDICTMENT FILED JULY 13TH, 1893.

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APPEARANCES:

ASSISTANT DISTRICT ATTORNEY JAMES W. OSBORNE,

FOR THE PEOPLE.

HUGH COLEMAN, ESQ.,

FOR THE DEFENSE.

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CASE # 42

THOMAS F. SKAHILL, called by THE PEOPLE, being duly sworn,  
testified as follows:

D i r e c t - E x a m i n a t i o n .

BY MR.OSBORNE:

Q Mr.Skahill, where do you live? A. 769 Washington  
Street.

Q 769 Washington Street, in the City of New York? A. Yes,  
sir.

Q And you were the bartender in Mulry's saloon, on the  
Northeast corner of 12th and Washington Streets, on the  
20th of June, 1893? A. Yes, sir.

Q And you know the defendant, Purcell? A. Yes, sir.

Q And you have had the pleasure of his acquaintance for  
how many months, about?

A. Since the Christmas previous.

Q From the Christmas previous? A. Yes, sir.

Q And you knew the deceased, John O'Brien or Michael  
O'Brien?

A. I knewhim, but not quite so long; three or four  
months.

Q Three or four months? A. Yes, sir.

Q Now, Mr.Skahill, you remember the 20th of June, 1893?

CASE #42

9293

A. Yes, sir.

Q Well, now, on that day, at about nine o'clock, did you see the defendant?

THE COURT: Nine o'clock in the morning or night?

MR. OSBORNE: Nine P.M., sir.

BY MR. OSBORNE:

Q Did you see the deceased, John O'Brien, or James Purcell, the defendant?

A. Yes, sir; I saw them; but it might be a little before that. I couldn't exactly say, whether it was nine o'clock or not.

Q Now, who came in first?

THE COURT: Do you mean, into this saloon?

MR. OSBORNE: Yes, sir.

THE WITNESS: This man, O'Brien, came in first.

BY MR. OSBORNE:

Q O'Brien came into your saloon, at the corner of Washington Street and Pearl Street, in this city? A. Yes, sir.

Q Is that right? A. Yes, sir.

Q Now, did you hear any conversation or talk between the two?

BY THE COURT:

Q

CASE #42

Q Between the defendant and the deceased?

A. Well, they were quite awhile in, before they said anything.

Q Keep up your voice, so that the jury can hear you. Talk as loudly as I do.

A. They were in sometime before they spoke.

BY MR. OSBORNE:

Q They were? A. Yes, sir.

Q Now, at about what time did they begin to quarrel with each other, if they did quarrel?

A. Well, about 10 minutes or so.

THE COURT: Well, that is about as definite as a piece of chalk.

THE WITNESS: Well, about 10 minutes after they came in.

BY MR. OSBORNE:

Q Well, how long had O'Brien been in before Purcell came in?

A. Well, about 15 or 20 minutes.

Q Well, Purcell came in first, and was there about 15 minutes and then O'Brien came in?

A. No, sir; O'Brien was first in.

Q Now, what were the first words that you heard from either side, from either of the men as far as you recollect?

CASE #42

m5

A. O'BRIEN was treating the other fellows, and he says--  
he spoke about he couldn't have a drink with him; that he  
wouldn't drink with a sucker, or something of the kind.

Q O'Brien said that he wouldn't drink with a sucker?

A. Yes, sir.

Q Those are the first words that you heard?

A. Yes, sir; that is the first words that I heard.

Q Now, what was O'Brien drinking? A. Lager.

Q And the defendant, what was he drinking?

A. He had been drinking whiskey.

Q Now, go on; go ahead.

A. Purcell come in, and, after a while---

Q I beg you pardon. Didn't Purcell make some remark before O'Brien said that to him, "I wouldn't treat a sucker"?

A. I don't recollect whether he did or not, sir.

Q You didn't hear it, if he did? A. No, sir.

Q Now, go on, please, go on.

A. Well, Purcell went over to him, and he asked him---

BY THE COURT:

Q The defendant went over to the deceased?

A. Yes, sir.

BY MR. OSBORNE:

CASE #42

Q And where was the deceased when the defendant went over to him?

A. He was right at the same place, at the time. He stood in the same place.

Q Well, was he at the bar or at the door?

A. He was at the bar. He went over to him, and asked him what the hell he had to say, and O'Brien said he didn't have anything to say; that he didn't care about falling out with any of the boys.

Q Purcell went up to him, and said, "What the hell have you to say?"

A. Yes, sir; and then O'Brien said that he didn't want to have anything to say; that he was going West in a couple of weeks, and didn't want to fall out with any of the boys; and then they talked among themselves for a little while, and they weren't talking very loud, and then they went over towards the door?

Q How far from the door did they get?

A. About six feet, I think.

Q And how far would that be, from the counter?

Q A. About six or seven feet.

Q About six or seven feet from the bar? A. Yes, sir.

Q

CASE #42

Q Or counter?

A. Yes, sir.

Q And about six feet from the door?  
six feet.

A. Yes, sir; five or

Q Yes. Well, go on.

A. And Purcell hauled out and hit him.

Q Where did he hit him?

A. In the face.

Q He hit O'Brien in the face?

A. Yes, sir; and O'Brien hit him back, and knocked him  
with the blow, and, when Purcell got up---

Q Well, you are going too fast. The jury will not hear a  
word that you say.

BY THE COURT:

Q The defendant hit the deceased in the face, and the deceased  
hit back?

A Yes, sir.

BY MR OSBORNE:

Q And did the deceased knock Purcell down? A. Yes, sir;  
and Purcell got up, and they clinched, and then both went  
down.

Q Both went down together? A. Yes, sir.

Q And which went down on top, if you know?

A. Well, I couldn't tell you which. I was going

around the corner of the bar to stop it. I saw Purcell just in the act of rolling him over, and O'Brien gathered up his feet and threw him off, and Purcell came around and kicked him.

Q Kicked C'Brien? A.Yes, sir.

Q While he was on the ground? A.Yes, sir.

BY THE COURT:

Q Now, let me get that. And then the deceased pushed C'Brien off? A.Yes, sir.

BY MR OSBORNE:

Q And then the deceased pushed Purcell off with his feet? A. Yes, sir.

BY THE COURT:

Q Yes. And then the defendant kicked C'Brien? A. Yes, sir.

Q While he was lying down? A. Yes, sir; on the back.

BY MR.OSBORNE:

Q He kicked him on the back several times while he was down? A. Yes, sir; four or five times.

Q And then what happened? A. Then Luke Morrissey pulled him off, and---

BY THE COURT:

Q Let me understand this. At the time the defendant kicked O'Brien several times on the back you say that O'Brien was lying down on the floor? A. Yes, sir.

Q And the defendant was standing up? A. Yes, sir.

MR COLEMAN: Your Honor, I have just been informed that there are several witnesses for the prosecution in the court room, and I ask that they go out while the witness is testifying.

MR.OSBORNE: Yes; sir; let all the witnesses on both sides retire.

THE COURT: As I have got it, at the time the defendant kicked the deceased, the defendant was standing up and the deceased was on the floor?

MR.OSBORNE: Yes, sir.

BY MR OSBORNE:

Q Now; you have got to that part of the story where you say Luke Morrissey pulled off the defendant?

A. Purcell then laid on him to strike him, and Morrissey pulled him off.

Q Well, go on, then.

A. And I got hold of him too, and pulled him off, and

CASE #42

O'Brien said that he was dead.

Q Well, you say that Purcell did what, before that? He struggled?

A. Yes, sir; and then John Langan---

Q Now, tell what Purcell did, to get at him. You started to do that?

A. Purcell was striking him down and Luke Morrissey pulled him off.

Q And three or four caught hold of him? A. Yes, sir.

Q And did he struggle with you? A. Yes, sir; to get at him again.

Q And what did he say during all that time?

A. I don't recollect.

Q Did he say, "Let me get at the son-of-a-bitch," or what did he say?

M. COLEMAN: Oh, Mr. Osborne, I know you want to be fair, but that is not fair, I think.

THE WITNESS: Well, I couldn't exactly remember; I could remember now.

BY THE COURT:

Q Well, you say that the defendant tried to get at the deceased again, but you prevented him? A. Yes, sir.

CASE #42

BY MR OSBORNE:

Q Now, what did O'Brien say? A. O'Brien said that he was dead.

Q O'Brien said that he was dead? A. Yes, sir.

BY MR. COLEMAN:

Q O'Brien said, "I am dead"? A. Yes, sir.

THE COURT: Yes; the deceased said, "I am dead."

MR. COLEMAN: I never knew a dead man to speak before.

BY MR OSBORNE:

Q Well, now, when O'Brien said, "I am dead," where was he?

A. He was lying on the floor, sir.

Q At that time? A. Yes, sir.

Q And then what did you do?

A. Well, we put Purcell out; Jack Langan and Jack Cullen put him out of the door, shoved him out of the door.

Q And what was Purcell doing up to the time he was shoved out?

A. He was trying to get at him.

Q He was trying to get at the deceased? Is that right?

A. Yes, sir.

Q Now, when you found O'Brien lying on the floor, after he

CASE #42

1002

12

said, "I am dead," what did you do?

A. Picked him up and put him on a chair in the back room, and sent for the officer.

Q Yes. Did you have to lift him up? A. Yes, sir.

Q And did you see the condition of his neck at the time?

A. Well, he couldn't very well move it. It seemed to be a little crooked.

Q His neck was a little crooked? A. Yes, sir.

Q And what did you do? Go on, and tell us all about it, please.

A. Officer McCabe came in and rang for an ambulance, and sent after the doctors in St Vincent Hospital, and they came there and took him away.

Q Dr. Cunnion?

A. I don't know his name, sir.

Q Well, at any rate, the ambulance surgeon came? A. Yes, sir.

Q And you put him in the ambulance? A. Yes, sir.

Q And that is all you know about it? A. Yes, sir.

Q Well, didn't you take off his shoes before that?

A. Well, I don't know, sir. There was a lot of fellows around.

CASE #42

Q And that is all you know about it? A. Yes, sir.

Q Now, tell us all the fellows that were in the saloon at the time?

A. Luke Morrissey--

Q No; I will withdraw that question. Tell us all the people that were in the saloon at the commencement of the fight..

A. There were seven.

Q Tell us their names.

A. Luke Morrissey, John C'Brien, James Purcell, Jack Cullen, John---I can't think of those other names.

Q John Dougherty?

A. Yes, sir; and Tom Farrell, I think, and myself.

Q And have you mentioned Michael Hannigan? A. And Michael Hannigan.

Q And that was everybody that was there? A. Yes, sir; when it started.

Q That was everybody that was there when C'Brien was kicked?

A. Yes, sir.

Q Was Mrs. Purcell there?

A. She come down about the time we were pulling him off.

Q About the time you were pulling Purcell off? A. Yes, sir.

Q Now, when Purcell---when O'Brien was lying on the ground after he was struck ---A.Yes, sir.

Q And at the time he was kicked---A.Yes, sir.

Q Will you tell the jury where his feet were pointing? A. yes, sir.

Q Were they pointing towards the door or the bar? A. They were pointing towards Washington Street.

Q His feet? A.Yes, sir; and his head was towards the bar.

Q His head was towards the bar? A. yes, sir.

Q Where were his feet? Where was his head lying? Give us an idea on that diagram.

BY THE COURT:

Q At the time he was kicked? A. There(indicating).

Q Put a little cross there?

A. His feet was towards ~~the~~ Washington Street.

Q And his head was towards the bar? A. Yes, sir.

Q Now, about how far away from the bar?

BY MR OSBORNE:

Q Now, there is the brass railing, at the bottom of the bar, and there is the lunch-counter.

CASE #42

A. Well, he was about in the middle of the floor. His head was here(indicating), and his feet was towards here.

Q Now, mark the place where his feet were.

A. His feet would be about there, I guess.

Q And his head? A. There(indicating).

Q And about how far from the railing of the bar?

A. Well, it must have been two feet and a half.

Q It must have been two feet and a half? A. Yes, sir.

Q And he was two feet and a half away from the railing of the bar?

A. Yes, sir; his face was turned towards that other room.

Q Yes. That is where ~~him~~ you say his head was(indicating)? A. Yes, sir.

Q And his feet were there? A. Yes, sir.

MR. O'PORNE: Now, I will mark F for feet and H for head.

BY THE COURT:

Q The deceased's head was two and a half feet away from the bar railing? A. Yes, sir.

MR. COLEMAN: I will state now that I have no objection to the diagram.

CASE #42

MR. OSBORNE: Well, I dont care to offer it yet. I have  
some little point to have explained about it yet.

MR. COLEMAN: Very well, then.

Cross - Examination:

BY MR COLEMAN:

Q What is your name, please? A. Thomas F. Skahill.

Q Now, were you tending bar at the time of this alleged  
difficulty? A. I was.

Q And were you waiting on customers in the place; yes or no?

A. Yes, sir; I was tending bar, but not at the time.

Q Well, I have got an answer, Mr Skahill.

MR OSBORNE: Well, you haven't got one that satisfies me.

MR COLEMAN: Well, I have one that satisfies me

MR OSBORNE: Well, he was qualifying that, Captain,  
and he ought to be allowed to finish his answer.

MR COLEMAN: Well, he can qualify it afterwards.

BY MR COLEMAN:

Q Now, how many persons were in the saloon at the time?

A. There were seven men altogether.

Q Well, what time of the day was it? A. Between 8 and 9

o'clock in the evening.

Q And where were you at the time of the alleged difficulty between the two men?

MR OSBORNE: At which period of the difficulty, Captain?

MR COLEMAN: Any time---when it first commenced.

A. I was at the far end of the bar.

Q At the far end of the bar? A. Yes, sir.

Q Can you see over there? A. Yes, sir; next to the 12th Street side.

Q Now, this is the far end of the bar on the diagram

A. Well, it was at the other end that I was at; right at that corner(indicating).

Q Well, this end is nearer to the entrance? A. Yes, sir.

Q And then you were at the lower end of the bar, the end near the door?

A. Well, I was at the end of the bar which is closed up; the other end is open, where you go in and out.

Q I mean you were at the end of the bar nearest the entrance from the street? A. yes, sir.

Q Now, when O'Brien came in did you see him when he came into the door? A. Yes, sir.

Q And what were you doing then, when he came in? A. I

suppose I was serving customers.

Q On whom were you waiting at the time? A. I don't know, sir.

Q An when O'Brien came into the store, from the door, where did he go to, from the door, after he came into the store?

A. He walked right in to the bar.

Q I know; but which portion of the bar did he go to?

A. This lower end.

Q This end here(indicating)?

A. Yes, sir.

Q Down where you were?

A. Yes, sir.

Q Now, how long was he in there before Pursell came in?

A. About 15 or 20 minutes.

Did you see Purcell coming in?

A. Yes, sir.

Q who came in with him?

A. Jack Cullen, and Patrick Nicholson.

Q Now, when Purcell came in to the store, to which part of the bar did he come to?

A. To the center.

Q This part over here?(indicating)

A. Yes, sir.

Q And did he have a drink?

A. Yes, sir.

Q And was he drinking with O'Brien, at the time. A. No, sir

Q Well, how long had he been in there before any words occurred between them?

A. Oh, about 10 or 15 minutes, I guess.

Q Well, didn't you remember that O'Brien walked over to where Purcell was, and said, "You son of a so and so, what have got to say to the boss?"?

A. No, sir; I didn't hear anything of the kind.

Q And didn't you know that O'Brien walked from the corner of the bar to where Purcell was?

A. I know nothing about.

Q You don't know?

A. No, sir.

Q Then, you won't say that he didn't walk over there; will you?

A. Well, he might have done it---but---

Q No, no. That is an answer. You don't recollect that, after he made use of expression, "You son of a so and so"?

A. I don't recollect---

Q Well, never mind. Wait until I finish my question. You don't recollect that, after he made use of the expression,

"You son of a so and so" that Purcell walked over to

1909

CASE #42

O'Brien, and asked O'Brien to shake hands with him, and said, "Let us have no quarrel," or something to that effect.

A. No, sir; I don't recollect.

Q Well, was it done or not?

A. No, sir; not to my knowledge.

Q Not to your knowledge? A. No, sir.

Q And during this time you didn't pay much or particular attention to what occurred between them, to the words?

A. Well, I heard---

Q What? A. well, I didn't pay such a great deal of attention.

Q No.

A. Because, I didn't think they would fall out.

Q simply because, while attending bar you hear such expression used at your bar?

A. Well, those men had been working together.

Q Now, answer my question.

MR. OSBORNE: You asked him why, and he has the right to tell you.

MR. COLEMAN: No. I asked him if he didn't hear very frequently such expression made use of while tending bar.

CASE # 42

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THE COURT: Well, suppose that he did. What has that to do with the case?

MR. COLEMAN: Well, being used to such remarks, he wouldn't pay so much attention to such words being used to them, as an outsider would, but it doesn't matter.

BY MR. COLEMAN:

Q Was O'Brien a customer of your place?

A. He used to come in once a day, or once in four days.

Q Well, did he live in the immediate vicinity?

A. Yes, sir; he lived in the same block.

Q Well, you and he were on very friendly terms?

A. Yes, sir; I never had a quarrel with him?

A. Well, how long had you known him?

A. Two or three months or so.

Q Two or three months or so?

A. Yes, sir; about that.

Q Why did you say, in your direct-examination, in answer to the District Attorney, when you were asked him how long you knew him, you said three or four months?

A. Well, perhaps I did know him that long. I didn't

CASE #42

Keep no date for it.

Q No. A. No.

R e - D i r e c t - E x a m i n a t i o n .

BY MR. OSBORNE:

Q Now, Mr. Skahill, did you say or did you know and I don't remember, and that is the reason I put it that way because I don't want to lead you or suggest any answer at all which one of them went over towards first?

A. They both went about together.

Q They walked over towards the door together?

A. Yes, sir; I thought they were going.

Q Yes. You thought they were going? A. Yes, sir.

R e - C r o s s - E x a m i n a t i o n

BY MR. COLEMAN.

Q Now, the first time---

MR. OSBORNE: I mean---

THE WITNESS: Just at the time they struck the  
blow?

BY MR. OSBORNE:

Q Yes. That is the time I am speaking of just before they struck the blow?

A. Yes, sir; just before they struck the blow.

CASE #42

LUKE MORRISSEY, called by The People, being duly sworn, testified as follows:

BY MR. OSBORNE:

Q your name is Luke Morrissey, and you live at 352 West 12th, Street, and in the City of New York? A. Yes, sir.

Q And on the 20th, day of June, 1893, you were in Mulry's saloon? A. yes, sir.

Q And you are a driver in the Street-cleaning department? A. Yes, sir.

Q And so were O'Brien and Purcell? A. Yes, sir.

Q Is that right? A. Yes, sir.

Q Now, who got into the saloon first? A. I and John O'Brien

Q You and John O'Brien were in there first? A. Yes, sir.

Q And you had several glasses of beer together?

A. Yes, sir.

Q And then after that the defendant, James Purcell came in?

A. Yes, sir.

Q Now, which one spoke first, and what did that one say?

Tell the jury.

A. Well, O'Brien treated, I and Cullen, and Cullen came in along with Purcell, along with James Purcell.

CASE #42

Q Well, go on. A. So, we had a couple of drinks MM, a drink or so, and O'Brien said, "I don't treat h suckers."

Q Well, before you get so far as that, was not there some remark made?

MR. COLEMAN: Oh, now, let him tell the story in his own way.

MR. OSBORNE: I would like him to tell it in my way.

BY THE COURT:

Q The deceased said, "I will treat no suckers"?

A. Yes, sir.

BY MR. OSBORNE:

Q Now,, what was said before that?

A. The words that passed between tyhem before that I couldn't undersatnd, I couldn't say.

Q But something passed between them before that?

A. Yes, sir; some words passed between them but I couldn't distinctly undersat i them; I didn't hear them.

Q And what did Purcell do? A. well, James Purcell walked out a while after that, and they had a few words, and he said, "I will let you know I am no sucker," and he went and he came back againg.

CASE #42

BY THE COURT:

Q He walked out of the saloon you mean ?

A. Yes, sir; and O'Brien said, " I don't want to fall out with nobody."

Q Did he say that to Purcell?

A. Guess Purcell was there at the time he said it. He said, "I am going out West after a couple of weeks, and I don't want to have hard feelings against no one. I want to part good friends with everyone." And then James Purcell, came back after a short while, and they were quarreling, and O'Brien stepped back from the bar.

Q Over towards the door?

A. Yes, sir; it wasn't far away from the door, and the two of them was quarreling with the other, and O'Brien put up his finger like that (illustrating), and Purcell put his finger ~~MMM~~ up like that (illustrating), and the next thing I see they had their fist up to each other, and Purcell hit him and then O'Brien hit him.

BY MR. OSBORNE:

Q Purcell hit him first? A. Yes, sir.

Q MR. COLEMAN: Now, now; that is leading.

MR. OSBORNE: So he said, Captain.

THE WITNESS. So the two of them got hold of each other. Purcell hit first.

BY MR. OSBORNE:

Q And the they clinched? A. Yes, sir; and the two of them fell, and O'Brien was overhead in the fall, and James Purcell rolled him over.

Do you mean that Purcell was at the bottom?

A. Yes, sir; in the first fall; and then Purcell rolled him over.

Q Then Purcell turned O'Brien over? A. Yes, sir; and so I caught James Purcell when he was on top and pulled him off; and, after that, after I lifted him off, he came behind me and gave him two kicks.

Q Where was it; in the back of the neck or where?

A. I know it was in the back, but I couldn't say it was in the back of the neck or not.

BY THE COURT:

Q When the defendant kicked the deceased twice I understood you to say that the deceased was lying down on the floor?

A. Yes, sir; he was laying down on the floor. So, I took O'Brien up then.

BY MR. OSBORNE:

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CASE #42

Q Well, what did Purcell do after he kicked him?

A. Well, I guess there were some people there that shoved Purcell. I didn't know the parties. I was quite a stranger around there then. Of course, it being a saloon, you can go in and have a drink and not know anybody so, I took John O'Brien into the back room, inside, and he said, "Will you take off my shoes?" And I says, "Yes;" and took off his shoes, and Officer McCabe came in. He didn't want to come in, first, he didn't like to come in a saloon at first, but, when he heard that it was a row, he came in.

Q Well, what did you do with O'Brien? A. I kept O'Brien there, and I kept bringing in ice-water, for him to drink, and the more I could give him the more he wanted.

BY THE COURT:

Q Did the deceased say that his neck was broken in the defendant's presence? Did Purcell hear him say that?

A. I don't know; I guess James Purcell wasn't there at the time.

(MR. COLEMAN moves to strike out the latter part of the preceding answer, as containing a remark made by the deceased, in the absence

CASE #42

of the defendant.)

(The motion is granted, and the latter part of the answer is stricken out, by order of the Court.)

BY MR. OSBORNE:

Q Well, did you hear O'Brien say anything when Purcell was there, and when O'Brien was lying on the ground?

A. No,; I heard O'Brien say that his neck was hurt, when Purcell was there; and then Purcell was shoved upstairs at the same time; I guess he was.

BY THE COURT:

Q Well, I don't guess. We can guess as well as you do. Guess at nothing. Give us the facts.

MR. OSBORNE: I will let that go out to, Your Honor.

THE COURT: Yes; what you saw and ~~MM~~ know is evidence. We don't want any guessing.

BY MR. OSBORNE:

Q well, was Purcell there at the time when O'Brien said, "My neck is broke or hurt"?

A. No, sir; I think was gone out at that time.

Q Well, I don't want any of that in the case then. Well, after the officer came, what did they do with O'Brien?

CASE #42

A. W<sub>h</sub> kept him in the back room, inside, and we gave him a few drinks or water.

Q And his neck; what about that?

Q. He said it was hurt.

Q No. Don't telss what he said. How was idid you see it?

A. Yes, sir; it was sideway; that way (illustrating)

Q It was over that way (illustrating.); was it?

A. Yes, sir;

Q Well, go on. A. So, then, they rang up for the ambulance, and I brought in the stranger along with surgeon doctor, and he said---

(MR. COLEMAN, moves to strike out the latter part of the answer, as containing a remark made in the absence of the defendant.)

(Motion granted, and the latter part of the answer is stricken out, by order of the court).

Q And then the doctor took him in t e ambulance after that?

A. Yes, sir.

Q And did you see him the next day when he was dead?

CASE #42

A. I didn't see him at all until I saw him in the undertaker's at Canal Street and South 5th Avenue. I went to his wake.

Y THE COURT:

Q When was that? A. The next night.

Q And then you saw the deceased's dead body? A. Yes, sir.

Q The next night? A. Yes, sir.

C r o s s - E x a m i n a t i o n.

BY MR COLEMAN:

Q When those two men---

MR OSBORNE: I beg your pardon. I am not quite through yet.

BY MR OSBORNE:

Q Now, will you---that is the lunch-counter and there is the bar(indicating), Now about how far over towards the lunch-counter were they standing, when they struck the first blow?

A. About there, I guess(indicating).

MR COLEMAN: Please mark that with a pencil, Mr Osborne.

MR OSBORNE: All, right; I will.

BY MR OSBORNE:

Q Now, what street is that over that way?

MR COLEMAN: Washington, I think.

BY MR OSBORNE:

Q Now, recollect. Over towards the end f the bar were they standing when they struck the first blow? A. It was right there(indicating).

Q There is 12th Street(indicating)? A. Yes, sir.

Q And there is Washington street? A. Yes, sir.

Q And that is Washington Street? A. Yes, sir.

Q And there is 12th Street? A. Yes, sir.

Q And there is the bar? A. Yes, sir.

Q And there is the brass railing at the foot of the bar? A. Yes, sir.

Q And there is the Family Entrance there? A. Yes, sir.  
other

Q And there is the entrance? A. Yes, sir.

Q And there is the counter? A. Yes, sir.

Q And were they standing about there(indicating), when they hit each other? A. They were standing about there(indicating).

Q About the middle of the floor? A. Yes, sir.

Q About there? A. Yes, sir.

BY THE COURT:

Q When they clinched? A. Yes, sir.

Q Between the bar and the lunch-counter? A. Yes, sir.

Q Just about the middle? A. Yes, sir.

BY MR OSBOR E:

Q And when they fell on the floor about how far was O'Brien's head from the bar, from the railing of the bar? A. Yes, sir.

Q In your opinion?

A. Well, they stood about a foot from the bar.

Q His head was a foot from the railing of the bar in your opinion?

A. Yes, sir.

Q You saw ~~them~~ them falling, did you? A. Yes, sir.

Q Now, did O'Brien's head hit the railing of the bar? A. Not that I seen.

Q His head fell and foot from the bar? A. Yes, sir; and foot from the bar.

C r o s s - E x a m i n a t i o n .

BY MR COLEMAN:

Q Now, did these two men clinch on the floor in the barroom?

A. They clinched---

BY THE COURT:

Q Did the defendant and the deceased clinch in the barroom?

A. Yes, sir; they clinched in falling down.

BY MR COLEMAN:

Q And the first thing you saw was that they both put their index finger up? A. Yes, sir.

Q And the next thing was they had their fists up? A. Yes, sir.

Q And they were sparring?

MR. OSBORNE: He didn't say that they were sparring.

A. They put up their fists to one another.

THE COURT: He swears that they put up their fists to one another.

BY MR COLEMAN:

Q In the attitude of going to strike? They were both in that attitude when you first saw them.

A. Yes, sir; and James Purcell put in the first flow.

Q I didn't ask you that question. You are very eager to get that in. You have seen a great many fist fights; haven't you? A. Yes, indeed/

1023

CASE #42

1024

Q How old a man are you? A. 23 years.

Q Well, you know when you see two men putting up their fists what it means; don't you? A. Well, sometimes.

Q Have you ever seen them spar for an opening? A. No, sir; very seldom I seen them sparing.

Q For an opening? A. Yes, sir.

Q And you say O'Brien got in the first blow? He succeeded in getting in the first blow?

THE COURT: No; he said the defendant did.

BY MR COLEMAN:

Q Well, the defendant. And, after that, they clinched? A. Yes, sir.

Q And then they both went down? A. Yes, sir.

Q And Purcell was underneath in the fall? A. Yes, sir.

Q And then Purcell succeed in turning O'Brien over? A. Yes, sir.

Q And getting on top? A. Yes, sir.

Q And then you and several others came and pulled Purcell off? A. Yes, sir.

Q And, while you were pulling Purcell off, did you notice the deceased, O'Brien kicking at Purcell while lying on the

CASE #42

floor ?

A. I didn't see him.

Q How many of you were around there at the time you were endeavoring to get Purcell away from O'Brien? A. Well, I couldn't tell how many.

Q Well, about how many?

A. That is more than I can tell.

Q How many were in the room at the time?

A. Four or five.

Q Did all hands participate in attempting to separate those two men?

A. Well, strangers came in.

Q Answer my question. A. Of course, they tried to separate them.

Q Did all parties try to separate them? A. Yes, sir.

Q Did all parties get hold of O'Brien at the time? A. ~~manana~~ No, sir.

Q Did they get hold of Purcell? A. No, sir; they got hold of Purcell to pull him off.

Q They got hold of Purcell to pull him off? A. Yes, sir.

Q Now, did you have hold of Purcell?

A. I caught him to lift him off the man; that is all.

1025

CASE #42

Q Who else had hold of Purcell? A. I could not tell their names.

Q Did you know any of the parties in the room at the time?

A. Well, I know John Cullen was there.

Q Well, who else was there at the time? A. The bar tender.

Q What is his name? A. Thomas Skahill.

Q Who else was in the room at the time? A. That is all I know.

Q Only three?

A. Except O'Brien and James Purcell.

Q Was there anybody else?

A. Well, of course, there might be, and I not know their names.

Q Do you know Luke Morrissey? A. Yes, sir.

Q Was he in the room at the time? A. Yes, sir; I was in the room..

Q Did he take hold of Purcell ?

A. Yes, sir; I did.

Q Do you know Jack Cullen? A. Yes, sir.

Q Was he in the room at the time? A. Yes, sir.

Q Did he take hold of Purcell? A. I don't know did he take hold of him or not?

Q You dont know? A. No, sir.

Q Do you know John Dougherty?

A. I don't know him more than to see him once.

Q Well, do you know any man by that name?

A. I know lots of Doughertys

Q Well, was he in the room at the time?

A. I don't know about that.

Q Answer my question. Do you know whether he was in the room at the time or not?

A. He was in the room.

Q Well, then, you did know him?

A. I heard tell he was there. Of course, I couldnt know a stranger that I never seen before.

Q Do you know Tom Farrell?

A. No; I dont know him.

Q Do you know him now? A. No.

Q At any time did you ever hear of him? A. I heard of him; that is all.

Q Did you ever see him; what? A. No.

Q Is he in court to-day? A. I don't know.

Q Who is in court to-day, do you know, in this case?

A. There is John Langan and Thomas Carr.

Q Was John Langan in the room at the time?

A. He might be in there, without my knowing his name.  
There were lots of men there that I didn't know at all.

Q Well, how many men were in there altogether?

A. Well, about five or six, I think, altogether.

Q How many took hold of Purcell? A. I saw one take hold  
of him, except some people that come downstairs, to shove  
him upstairs.

Q And how many were there? A. I couldn't say. I was too  
excited, trying to rise up the man from the floor.

Q Were you beside O'Brien and Purcell at the time they were  
pulled off?

A. At the time I lifted up Purcell I was.

Q And you were excited?

A. I was trying to lift up the man that was on the  
floor.

Q And you didn't notice whether O'Brien was trying to  
kick Purcell?

A. I didn't see him kicking Purcell.

Q Do you know whether he tried to kick him in the bottom of the stomach, while lying down?

A. I didn't see him doing it.

Q How long have you been acquainted with C'Brien??

A. About two years and a half.

Q Did you ever know him to get into any quarrel, before that?

A. Not that I seen.

Q Well, did yo ever tell of it?

A. Only one. It was only a scrapping match, just fooling, I guess.

Q Then, he didn't strike with his fist; did he?

A. Not that I saw, that time.

Q Now, where were you standing at the time that C'Brien and Purcell met in the barroom?

A. Near the West 12th Street door.

Q Who were you talking to? A. To C'Brien.

Q To C'Brien? A. Yes, sir.

Q That is all?

A. To C'Brien, I said.

Q No; that is all I want. You can go.

A. Thanks! I will go.

FRANK E. TOWLE, called by the people, being duly sworn, testified,  
as follows:

D i r e c t   E x a m i n a t i o n .

BY MR OSBORNE:

Q     Mr Towle, are you a City Surveyor? A. Yes, sir.

Q     Did you draw that diagram there? A. Yes, sir.

Q     Does that correctly represent the floor and the location  
of the bar, the brass foot rail, the lunch counter and  
the entrance to the saloon, at the corner of 12th  
Street and Washington Street, in the City of New York? A.  
Yes, sir.

Q     And that is drawn on what scale? A. Two feet to the inch.

Q     Two feet in the inch? A. Yes, sir.

Q     Did you make a cross-section---excuse me---what word  
should I use?

A. That is the elevation. It is a section. You are  
right.

Q     Well, just describe that? A. It is a section of the  
bar.

Q     Did you make a section of the bar? A. Yes, sir; repre-  
senting its elevation.

1030

CASE #42

Q Now, how far did you find a brass railing, at the foot of the bar, to be from the counter? A. About a foot.

Q That is, the centre of the brass railing was one foot from the depression on the counter? A. Yes, sir.

Q Well, how far is the centre of the brass railing from the bar or the counter?

A. Well, about 9 inches. One moment. About how far is the centre of the railing---the brass railing---

Q From the bottom of the floor? A. Eight inches.

Q About eight inches from the floor? A. Yes, sir.

C r o s s - E x a m i n a t i o n .

BY COLEMAN:

Q Now, but one question: This brass railing that you speak of is about nine inches from the floor?

A. About eight inches; the centre of the brass bar.

COLEMAN: Well, I will state now that the man was not killed by falling on the brass railing.

MR.OSBORNE: That is a good idea. That simplifies the case. I will offer the diagram in evidence.

MR. COLEMAN: I have no objection to it.

(The diagram is admitted in evidence,  
and marked People's Exhibit A.)

MR OSBORNE: Then you dont claim that he was killed  
on the railing of the bar---by  
falling on that railing?

MR COLEMAN: No, sir; not at all.

MR. OSBORNE: Well, that is a new defense. I hadn't  
heard of that before.

FRANK J. O'HARE, called by THE PEOPLE, being duly sworn,  
testified as follows:

D i r e c t - E x a m i n a t i o n .

BY MR OSBORNE:

Q Dr O'Hare, you are a medical practitioner?

A. I am; yes, sir.

Q A graduate of one of the medical colleges in this City?

A. The New York College of Physicians & Surgeons.

Q And you have been engaged in the practice of medicine for  
how many years? A. Thirteen.

Q And you are one of the Coroner's physicians? A. Yes, sir.

CASE #42

Q And, on the 21st day of June, 1893, you performed an autopsy upon the body of one John O'Brien? A. Yes, sir.

BY THE COURT:

Q The John O'Brien mentioned in the indictment? A. Yes, sir.

BY MR OSBORNE:

Q Whereabouts?

A. At St Vincent 's Hospital; about 5 o'clock in the afternoon.

Q And when did he die? A. He died about 11 hours and 40 minutes previous to that. That would be about 5:20 A. M.

BY THE COURT:

Q He had been dead about 11 hours before the autopsy? A. Yes, sir; 11 hours and 40 minutes.

BY MR OSBORNE:

Q Well, what did you discover at the autopsy?

A. Well, I discovered a contused wound of the back of the neck. I will say, for the benefit of the jury, that the contusion was merely a black and blue mark, extending the third cervical to the second dorsal, the two points were about there(illustrating).

THE COURT: Michael O'Brien is the deceased, instead of

John O'Brien. That is the name in the indictment,  
Michael O'Brien.

MR. OSBORNE: Very well, sir. It is the same. I mean the  
man mentioned in the indictment.

MR. COLEMAN: Yes; there is no objection to that.

BY THE COURT:

Q Well, then, it was the O'Brien mentioned in the indictment  
that you held the autopsy on? A. Yes, sir.

Q Then, it was the O'Brien mentioned in the indictment?

A. Yes, sir. It was irregular, the wound, extending,  
for an area of about an inch and a half, on each side  
of the median line. There were no other marks of violence  
on any other part of the body.

BY MR. OSBORNE:

Q It extended from there to there (illustrating)? A. Yes,  
sir.

Q Now, what else did you observe?

A. Well, on cutting through that I found considerable  
hemorrhage through the tissues; and, lower down, I found  
a dislocation of the sixth cervical vertebra; that is to  
say, the point between the prominent vertebra in the back  
of the neck here (illustrating), in the back, where the

CASE #42

neck and the back join. That was pushed forward, and the ligaments were torn, and there was effusion of blood into the spinal cord and canal, extending from the second cervical to the 8th dorsal. That was lower down.

Q The hemorrhage extended away down to the middle of the back?

A. Yes, sir; that was the cause of death.

Q Now, to use the plain, common, ordinary, every-day language Where was his neck broken?

A. Right at the prominent vertebrae there. The large bone there(illustrating).

BY THE COURT:

Q You found the neck broken; did you?

A. Yes, sir; the neck was broken.

BY MR OSBORNE:

Q Right where your collar-button hits?

A. Yes, sir; right there.

Q And the neck was broken about how far from the crown of the head?

A. Well, about 10 1/2 or 11 inches.

Q Now, was the neck broken? Could you tell from an examination where the blow was struck?

1035

CASE #42

A. Well, it must have been produced by direct violence, where the blow was struck, if it was a blow; whatever violence was used.

Q Well, whatever violence broke the neck, impinged at the sixth vertebra?

A. Yes, sir; the sixth cervical vertebra.

BY THE COURT:

Q Well, the cause of death was what?

A. The cause of death was shock from Hemorrhage and the dislocation of the vertebrae.

Q The broken neck caused death, then?

A. Yes, sir; the broken neck caused death.

MR.OSBORNE: Well, you do not claim, as I understand, that death was caused by striking the person where--

MR COLEMAN: Well, no; we do not claim that; we do not know what caused the breaking of the vertebrae of the neck.

THE WITNESS: Shall I go on?

MR.OSBORNE: Yes.

A. The other organs were examined, and there was some congestion of the brain.

CASE #42

1037

47

Q Never mind that. It is not necessary to go into that.

MR. COLEMAN: Oh, yes; let him bring that out.

THE WITNESS: AND, on the right side, were the remains of an old pleurisy, which hadn't been recent, at all, probably some months previous to his death; and the heart was somewhat enlarged and softened, and the kidneys were the beginning of disintegration and inflammation of the kidneys. The liver was large and the spleen was large, but the stomach and intestines showed no pathological change whatever. I mentioned the kidneys to show that there had been--it is a subject---a condition that you find in people who are addicted to alcohol, the condition of the kidneys, the liver and spleen. Do I make it plain?

BY MR. OSBORNE:

Q Perfectly, sir. But the cause of death was the broken neck?

Q A. Yes, sir; the cause of death was the broken neck

CASE #42

C r o s s - E x a m i n a t i o n .

BY MR. COLEMAN:

Q Now, doctor, is not a fact, well known to the medical profession, that more bones are dislocated, more injurious received, from wrestling matches and athletic games than there are from pugilistic encounters?

(Objected to.)

A. I couldn't tell. I am not an expert.

MR. OSBORNE: And I don't think any man living could answer that question.

MR. COLEMAN: You don't mean that?

MR. OSBORNE: I do mostly certainly . I couldn't answer it.

R e c - D i r e c t - E x a m i n a t i o n .

BY MR OSBORNE:

Q One minute, doctor. Was this dislocation caused by external violence?

A. It was. A considerable force must have been used to produce the dislocation.

Q It was not caused by a strain or sprain? A. No, sir; not at all; by direct violence.

1039

Q Some blow or other? A. Yes, sir; with some blunt instrument.

COLEMAN: I object to the form of the question and the answer.

BY THE COURT:

Q He said that the broken neck was caused by external violence.

THE WITNESS: Yes, sir; direct external violence.

BY MR CSBORNE:

Q And I understood you to say something about a blunt instrument?

A. It must have been produced by a blow with or a fall on some blunt instrument.

Re - C r m o s s - E x a m i n a t i o n .

BY MR COLEMAN:

Q Now, doctor, if a person gets a sudden jerk while in an athletic struggle, wouldnt that dislocate or break a bone?

A. Well, the bones are so many. Which one do you mean?

Q Any bone on which the force is manifested.

BY THE COURT:

Q Would a sudden jerk break any bone of the body? A. It

CASE #42

might, of course. That might be the case with the finger, for instance; but some bones are protected better than others from violence, and those of the neck are particularly so.

BY MR COLEMAN:

Q May not a man be tripped up, with his leg twisted up with another man's leg, and may not his leg be broken in that way in wrestling? A. Yes, sir.

Q And in the struggle or wrestle wouldnt a sudden jerk break the neck in the same way, by a violent or sudden jerk?

A. Well, I can't conceive that to be possible, Mr. Coleman.

Q You can't? A. No, sir.

MR OSBORNE: You consented to this paper being read in evidence, Captain Coleman?

MR COLEMAN: Is that the one you read to me?

MR OSBORNE: Yes.

MR. COLEMAN: Then, you can read it to the jury.

(Mr. Osborne reads):

"Statement of Dr Robert F. Cunnion:"

"I am House Surgeon of St. Vincent's Hospital.

"John C'Brien was brought to the Hospital on

CASE #42

1039

51

June 20th, 1893, by me, and I was present  
"when the post mortem autopsy was performed  
"on his body, the following evening. I  
"took O'Brien from the scene of the accident  
"to the Hospital in the ambulance. I was  
"present when the autopsy was performed by Dr.  
"O'Hare. I know that the autopsy was per-  
"formed on the body of the man whom I brought  
"the night before, to the Hospital, from Mul-  
"ry's saloon, corner of 12th Street and Wash-  
"ington, the Northeast corner."

MR. OSBORNE: The PEOPLE REST, Your Honor.

THE COURT: Mr. Coleman, I suppose it is conceded that  
Michael O'Brien, referred to in the indictment, is  
dead, and that the cause of death was a broken  
neck?

MRC. CLEMAN: Yes, sir. I am not going to offer any  
testimony as to that.

THE COURT: Well, if those two facts are conceded, then  
it comes down to the question as to who broke his  
neck. That is about the main point of the case.

CASE # 42

1040

MR. COLEMAN: Yes, sir; that is about it.

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THE DEFENSE.

MICHAEL J. FARRELL, called by the defense, being duly sworn,  
testified as follows:

D i r e c t - E x a m i n a t i o n .

BY MR. COLEMAN:

Q Mr. Farrell, where do you live? A. 321 East 13th Street.

Q And what business are you in? A. The metal ceiling  
business.

Q And how long have you been in business? A. About 15  
years.

Q Where? A. 4th Avenue and 13th Street.

Q Do you know the prisoner at the bar, William Purcell, or  
James Purcell?

A. James; yes, sir.

Q How long have you known him? A. 15 or 16 years.

Q Do you know him intimately? A. Yes, sir.

Q And have seen him frequently during that time? A. Pretty

CASE # 42

near every day. I live close to him.

Q And do you know whether or not he was employed in a tea store?

A. I do. My business is on the same block.

Q That is where you first became acquainted with him? A. Oh, no.

Q Now,---well, you know others who know him; do you not, Mr. Farrell? A. Yes, sir.

Q And what is his reputation for peace and quiet? Is it good or bad?

A. I always knew it to be good. I recommended him several times for employment.

THE COURT: Well, not as to employment. But is he a peaceable, quiet man, or a boisterous fighting man?

A. I always knew him to be a very industrious, peaceable man.

Q Well, is his reputation that of being a peaceable and quiet man in the community in which he lives? A. Yes, sir.

BY MR COLEMAN:

Q Then, his reputation for peace and quiet is good? A. Yes, sir.

CASE # 42

Cross - Examination.

BY MR OSBORNE:

Q Did you ever know of his having a fight? A. No, sir.

Q Never heard of it? A. No, sir.

Q He is quite a boxer, isn't her?

A. I never knew it.

Q Isn't he quite an athletic young man, fond of using his fists?

A. Well, I never heard of it.

Re - Direct - Examination.

BY MR. COLEMAN:

Q Don't you know of your own knowledge that there are many men who are good boxers, yet who are very peaceable and quiet men?

(Objected to.)

THE COURT: That is not material.

MR COLEMAN: Well, all right.

MR. OSBORNE: Well, I know plenty of them myself.

THE COURT: The evidence shows that his reputation for peace and quietness is good. That is all you want to prove is it not?

MR. COLEMAN: Yes, that is all.

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THOMAS P. COSTIGAN, called by the defense, being duly sworn,  
testified as follows:

D i r e c t - E x a m i n a t i o n .

BY MR COLEMAN:

Q Your name? A. Thomas P. Costigan.

Q What is your business? A. Horseshoeing.

Q And where do you live? A. 532 East 13th Street.

Q That is where your place of business is? A. Yes, sir.

Q You are in business for yourself? A. In business for myself, sir.

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

Q How long have you known him? A. For the last 15 or 16 years.

Q Do you know him intimately? A. Yes, sir.

Q And do you know others who know him? A. Yes, sir/ I do.

Q Is his general reputation for peace and quietness good or bad?

A. Good.

CASE # 42

1046

Cross - Examination.

(None.)

JOHN F. QUINN, called by the defense, being duly sworn, testified as follows:

Direct Examination.

BY MR COLEMAN:

Q Mr. Quinn, where do you live? A. 210 First Avenue.

Q And your business? A. City Marshall.

Q Do you know the prisoner at the bar, Mr. Purcell? A. Yes, sir; for about ten years.

Q Do you know other people who are acquainted with him? A. Yes, sir.

Q Do you know him intimately?

A. Oh, yes. I have been in the livery business for a number of years in that location, and met him pretty much every day ~~when~~ with a horse and cart.

Q What is his reputation for peace and quiet? A. Good; I know him to be a hard-working man.

Q Always a peaceable man? A. Yes, sir; always.

Cross - Examination.

CASE # 42

BY MR OSBORNE:

Q Did you ever hear of his having a fight with anybody? A. No sir.

JAMES PURCELL, THE DEFENDANT, being duly sworn, testified as follows.

D i r e c t - E x a m i n a t i o n .

BY MR COLEMAN:

Q Now, Purcell, I want you to speak out loud enough so that the farthest gentleman here can hear you. Every word that you say. Face towards them and speak to them. Take your time, and tell the actual facts, as you know them, and nothing else, and do not be in a hurry. Are you a married man?

A. Yes, sir.

Q A little louder?

A. Yes, sir.

Q Got a wife and how many children? A. Four.

Q Up to the time of your arrest, were you ever arrested before?

A. No, sir.

1046

Q And what do you do for a living?

A. I workdhard for this Department of Street-Cleaning, going on 14 years, off and on, and I worked for the Great Atlantic Tea Co.

Q Where did you live at the time of your arrest? A. 769 Washington Street.

Q On the evening of the 2<sup>nd</sup> of June, do you remember that day? A. Yes, sir.

Q Now, I wan you ~~trach~~ to tell the jury in your own way, without any suggestion from me whatever, the whole fight, from beginning to end, what ~~part~~ brought it about, and what was done. Now, go on.

A. Well, gentlemen of the jury, it was on the 20<sup>th</sup> of June, after coming from the bath with my wife and children. I met a young man, and he asked me to go to the bath with him, and I went down with him, and I left him---

Q No. We don't want all that. When you got into the saloon

A. Well, he asked me to have a drink, and we three went in, and we went to the other part of the bar, away from some men that were standing there, and I went to the lunch counter to get some cheese, and Mr. Cullen got into

CASE # 42

some conversation with the other men, with O'Brien and Morrissey, and I seen my boss standing there, and I said I would like to see him.

Q What is his name?

A. Mr. Verzel, and he said, "All right, Jim," and he came over to me, and I said, "I have a horse that I have driven for days, and he ain't eating anything, and I would like to get another one," and he said, "All right, Jim. I will see you in the morning," and he lit a segar and went out, and O'Brien came over to me, and he said, "What the hell right have you to speak to that man?" and I said, "You don't own him," and, "Yes; I do; and I can do what I please with him," and I said, "All right," and I went over to speak to Cullen, and he came over again and he said, "Mind your own business?" and I said, "I am," and I went over to the lunch-counter, and they had a few drinks, and I went over to O'Brien again, and I said, "Here, shake hands. Don't have any hard feelings towards me. I have ~~known~~ none towards you," and then he told me this expression.

Q Well, don't use that expression.

1048

60

A. And I said, "I could do better than that," and I walked away from him, and he followed me over, and he said, "You can do better than that?" And I said, "Yes; I can," and then he made a blow at me, and I hit him, and we clinched and fell down, and I got down under him, and he caught one of my hands between his teeth, and the other hand between his legs, and he kept kicking me in the chest and stomach with his knees, and then I was separated from him, and went upstairs, and then the officer came up and arrested me.

Q Now, Pu cell, did you at any time kick him while he was down?

A.No, sir; I never did.

Q Well, you wrestled very violently, didn't you?

A. Well, I don't understand that.

Q Each tried to throw the other down, when you clinched? A. Yes, sir.

Q And in that clinch you fell? A. Yes, sir.

Q And you fell underneath? A. Yes, sir.

Q And then you turned him over? A. I grabbed him, and, with my strength, I flung him off me, and he got hold of this part of my hand here in his mouth, and held the

CASE # 42

other with his two hands, between his legs, and kept kicking me from my stomach up.

Q At the time he struck at you, did you strike at him to save yourself? A. Yes, sir.

C r o s s - E x a m i n a t i o n .

BY OSBORNE:

Q Now, Mr. Purcell, will you tell the jury who were in the room at the time when this thing ~~took~~ took place, the assault took place, by O'Brien upon you?

A. Well, I believe it was Morrissey and Cullen.

Q Morrissey, Cullen, Dougherty and Farrell and Michael Hannigan?

A. I didn't see those gentlemen at all; only them three standing at the bar. O'Brien, Morrissey and Thomas Skahill, the bartender.

Q Did you see Luke Morrissey there? A. Yes, sir.

Q And John Dougherty; did you see him there? A. No, sir; I didn't.

Q Well, Cullen is here to-day; ain't he? A. I couldn't say.

THE COURT: Did not Cullen testify?

MR. OSBORNE: No, sir; that was Morrissey.

CASE # 42

Cullen is here. Call him out in the hall, please. Call Dougherty and Farrell and Hannigan.

BY MR OSBORNE:

Q Well, that is Cullen, is it? A. Yes, sir.

Q You can go out. Now, did you see either one of those two men there that night, those two over there, right there?

A. No, sir; I didn't.

Q You didn't see either one of them? A. No, sir.

Q Then, you three men can go out?

BY MR COLEMAN:

Q How is your eye sight? They are far off there.

MR OSBORNE: Well, come up to the bar the... Come right up to the bar. That is Thomas Farrel. Did you see him there? A. No, sir.

Q And didn't you see Dougherty there? A. No, sir; I didnt.

Q Now, while you were getting up from D'Brien, he caught your hand between his legs, you say?

A. Yes sir; that way(illustrating)m

Q Between his legs? A. He had his legs up, and had my hands down that way. That is the position I was in, gentlemen. He had my hand in his mouth.

Q And the other hand between his legs? A. Yes, sir; and him

kicking me.

Q And he kicked your body from the top down?

A. From my stomach up as far as he could. He had my head back, that way(illustrating).

Q And, in th same time, he was holding you in the way you have described? A. Yes, sir; until he let go.

Q And, while he was holding you in the manner you have described, he was kicking you?

A. He was tearing off my clothes and doing his best to kick me.

Q Now, will you answer that question, or not? I want to be perfectly fair to you. You say, when he was holding you in that way, he was kicking you? A. Yes, sir.

BY THE COURT:

Q One hand was in his mouth and the other between his legs?

A. Yes, sir.

Q So that you did not have the use of either hand? A. No, sir.

BY MR OSBORNE:

Q And he was kicking you? A. Yes, sir.

Q Now, can you describe to the jury how it was possible for a man to have one of your hands in his mouth and the other

1052

64

hand between his legs, and, at the same time, kick you in th stomach or body?

A . Well, that is the way he had hold of me, gentlemen, and these gentlemen on the seat here know that I craved and asked---

Q Now, we are not asking that. But that is the way he held you and kicked you?

A.Yes, sir.

Q Well, you didn't get your neck broken? ? A. No, sir.

Q And you didn't do any kicking? A. No, sir.

Q And yet he got his neck broken?

A. Yes, sir.

R e - D i r e c t - E x a m i n a t i o n .

BY MR.COLEMAN:

Q Now, when he had your hand between his legs, did he have hold of your hand withmone of his hands ?

A. Yes, sir; his two hands. One hand was between his legs. He had hold of one hand with both his legs and the other hand was in his mouth.

R e ) C r o s s - E x a m i n a t i o n .

CASE # 42

1053

BY MR. OSBORNE:

Q And that was until you were pulled away? A. Yes, sir.  
And then we separated.

Q And you were taken upstairs? A. Yes, sir; I went upstairs.

Q You went upstairs yourself?

A. Yes, sir; I wanted to have nothing to do with the man.

BY THE FOREMAN:

Q Well, how could he have the power of his legs, if he was holding your arms tight? \*

A. He was laying on his back, and kept kicking me up as far as he could.

BY THE COURT:

Q Well, the juryman wants to know how he could kick you if he had your hands down holding them with his legs and held your hand at the same time?

A. Well, I was bent over him.

Q Well, he was using his legs to hold your hands? A. No, sir. He held them with his two hands.

MR. OSBORNE: He said, Your Honor, that he held his hand between his legs.

CASE # 42

1054

66

COLEMAN: You have it wrong, Mr Osborne.

MR OSBORNE: No/ He said he had one hand in his mouth, and he had his other hand between his two legs.

THE WITNESS: This hand(indicating the right hand), he had with his two hands holding it, and then he had this hand in his mouth.

Q And you said he had one of your hands between his legs?

A. Yes, sir; holding it with his two hands; and he kept kicking me as far as he could, and holding this hand in his mouth(indicating the left hand).

MR OSBORNE: Well, then, there ain't any argument between us, 'aptain?

BY THE FOREMAN:

Q Well, then, he was holding your hand with his legs, in his hands?

A. No, sir; with his hands only.

Q But you said that he was holding your hand with his legs. You want to clear yourself

A. No. He was holding my hand with his two hands, and he kept kicking me, with this other hand in his mouth, and I begged him for God's sake not to be biting me.

CASE # 42

BY MR OSBORNE:

Q And then you were pulled away? A. Yes, sir.

BY MR C LEMAN:

Q Well, you mean to say that he had hold of one of your hands with his two hands? A. Yes, sir.

Q Between his legs? A. Yes, sir.

Q And was moving his legs? A. Yes, sir.

Q And held the other hand in his mouth? A. Yes, sir.

THE DEFENSE RESTS.

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1056

REBUTTAL.

JOHN DOUGHERTY called by THE PEOPLE being duly sworn testified as follows:

BY MR OSBORNE:

Q John, take a seat; will you? A. Yes, sir.

Q You live at 447 West 13th Street? A. Yes, sir.

Q And are you a driver in the Street-Cleaning Department?

A. No sir.

Q What is your business, now? A. I work 'longshore, sir.

Q You work 'longshore? A. Yes, sir.

Q Well, do you remember the evening of the 20th of June, 1893, being in Mulry's saloon, corner of 12th street? A. Yes, sir.

Q And you knew Michael or John O'Erien, the man that is dead? A. Yes, sir.

Q And you knew the defendant, James Purcell? A. Yes, sir.

Q And you had known both of them about the same length of time? A. Yes, sir.

CASE # 42

Pages 69-78  
not in original-  
misnumbered

79

Q

Now, will you tell the jury just exactly what the cause of the quarrel was? What was the fight about?

MR COLEMAN: Objected to, for this reason: It is not in rebuttal, and the District Attorney should exhaust all his testimony in the opening.

MR OSBORNE: It is in rebuttal, Your Honor.

MR COLEMAN: No; you are asking what the fight was about. That is not in rebuttal.

MR OSBORNE: Mr Dougherty---

(Objected to.)

MR OSBORNE: I have withdrawn the question. I will tell Your Honor, to make it brief, that I am going to dispute the conversations that the defendant has testified to. It is exactly in rebuttal. I wish to show what that conversations were. The other witnesses that I have put on the stand did not narrate the beginning of it; and, in order to save time, I took the course I did.

BY MR OSBORNE:

Q

Now John, will you tell what was the first thing said?

(Objected to. Allowed. Exception.)

MR OSBORNE: I think it is the practice to be encour-

CASE # 42

1058

80

80

aged, Your Honor, to save time.

A. Well, I couldn't exactly, say, Your Honor.

Q Well, go on and tell what you did hear?

A. Well, the first I seen , sir, was the two struck and fell.

Q Well, what was said about Nicholson, what was ~~man~~ it Purcell said to Nicholson.

A. I didn't hear him saying anything, sir, to him.

BY THE COURT:

Q You don't know much about this case, do you? A. No, sir.

MR.OSBORNE: Uh, yes. He does. Wait until he gets over the tremor that comes over a man in court.

BY MR OSBORNE:

Q John, did you hear Purcell say anything to Nicholson?

Go on. Be lively, John. Brace up.

A. Well, I don't mend to say ~~may~~ here the first thing he said to him.

Q Well, tell us if he said anything at all to him. Go on.

What did he say about Nicholson owing him money for board?

(Objected to, as leading. Allowed. Exception.)

CASE # 42

1059

81

THE COURT: Well, I will let the witness testify to what he heard there.

A. Well, there was some words about that. They did speak some words about that.

BY MR OSBORNE:

Q Yes. And what did O'Brien say when he heard that?

A. Well, O'Brien said ffor to let it go for a few days, and, when he got money, he would pay it.

Q That Nicholson would pay it?

A. Yes, sir. And then Purcell said, what had that got to do with him.

Q Go on, John. Go ahead. Go on. Brace up.

A. That is all. They had a drink, then. That is all I heard. I seen them have a drink.

BY THE COURT:

Q Did you see this fight between the defendant and the deceased?

MR OSBORNE: Well, Your Honor, I will get to it in a minute. John is a good safe witness, but is a little slow.

BY MR OSBORNE:

Q Now, what did O'Brien say when Purcell spoke to him in that

CASE # 42

1060

way? Did he say anything about going West?

A. Yes, sir; he said that he didn't want to have anything to say. He was going West in a few days, and didn't want any trouble with anybody.

Q Well go on, then, John.

A. So, I didnt hear any more words.

BY THE COURT:

Q Did you drive a horse and an ash cart, John? A. Yes, sir.

THE COURT: Well, I thought you did. They always go slow.

BY MR OSBORNE:

Q Well, tell us what you saw about the fight , John. Did you see either one of them hit the other?

A. Yes, sir; I seen the two strike and they fell on the floor.

Q Well, which struck first? A. I coulnt say which one. They both struck and fell.

Q Well, go on.

A. And then they got up again and struck.

BY THE COURT:

Q They got up again and struck? A. Yes sir.

CASE # 42

Q And then what did they do?

A. Well, O'Brien was underneath, and he wrought his feet and legs, and got Purcell off him, and then Purcell got him under again, and I seen Purcell giving some kicks at him.

Q Did you see Purcell kick O'Brien? A. Yes, sir.

Q When O'Brien was on the floor? A. Yes, sir.

Q And Purcell was standing up? A. Yes, sir.

Q You saw that did you? A. Yes, sir.

C r o s s - E x a m i n a t i o n .

BY MR COLEMAN:

Q Now, where were you at the time? A. I was standing at the bar.

Q What were you doing?

A. Drinking a glass of beer.

Q And were you facing the back bar or out towards Washington Street.

A. Well, I was facing out towards the door.

Q While you were drinking the beer? A. Well, I wasn't drinking the beer while I was facing out. The beer was resting on the bar.

CASE # 42

Q Well, did you notice that a number of men had hold of Purcell? A. No, sir.

Q Did anybody have hold of Purcell at all?

A. Yes, sir; there was some one had hold of him pushing him upstairs, and he was not willing to go up.

Q Well, did any one get hold of Purcell while C'Brien and Purcell were fighting?

A. Not that I seen, sir.

Q And no one got hold of them? A. Not that I seen.

BY THE COURT:

Q But you did see the defendant kick the deceased, while the deceased was lying on the floor? A. Yes, sir.

BY MR COLEMAN:

Q Well, you didn't see them have hold of each other; did you?

A. I didn't, sir.

Q And nobody held Purcell at the time? A. No, sir.

Q And if anybody states that they got hold of Purcell, they said that which is not true?

A. No; not that I seen.

Re - Direct Examination.

CASE # 42

1063

BY MR OSBORNE:

Q You say that you saw Purcell taken upstairs?

A. Yes, sir; he was pushed upstairs, but he didnt go there, I guess.

Q He didnt go?

A.No, sir.

Q Did he say anything while the boys had hold of him, trying to get him upstairs?

A. Well, he spoke some words, and he said he wanted to get back at him or something.

EDWARD DUFFY, called by THE DEFENSE, being duly sworn, testified as follows.

D i r e c t - E x a m i n a t i o n .

BY MR COLEMAN:

Q Major, where do you live? A. 231 East 18th Street.

Q And what is your business? A. Contractor.

Q Do you know the prisoner at the bar, Mr Purcell? A. I do.

Q How long have you known him? A. About ten years, I suppose.

CASE # 42

Q Do you know other people who know him intimately; do you know others who know him?

A. Well, I don't know, excepting those who work with him.

Q Well, ~~the~~ work for you?

A. Yes, sir.

Q For how long? A. Five years.

Q And then you knew his associates; you knew other people who worked with him? A. Yes, sir.

Q And what was his reputation for peace and quietness; good or bad?

A. Well, I consider---

Q Was it good or bad, as far as you know?

A. He was always quiet and industrious while he was with me.

Q Well, the question is, was his reputation for peace and quietness good or bad?

A. Oh, it was good, as far as I knew.

C r o s s - E x a m i n a t i o n .

BY MR OSBORNE:.

Q Major, you did not know ever of his getting into any

CASE # 42

scrapes or fights? A. No, sir.

Q You never had to go down and get him out of any trouble?

A. No, sir.

THE PEOPLE REST.

JOHN DOUGHERTY, being recalled for further cross-examination,  
testified as follows:

MR. COLEMAN: I want to recall the last witness,

Your Honor, Dougherty, for further cross-  
examination. My associate, Mr James D. Mc-  
Clelland, will examine the witness, because  
he was formerly in the case.

C r o s s - E x a m i n a t i o n (Continued):

BY MR MCCLELLAND:

Q What is your name? A. John Dougherty.

Q Now, Dougherty, did you know that Purcell was arrested  
on this charge after the deceased---after the man that he  
injured died? Do you know of Purcell's arrest?

A. I heard tell of he being arrested, of course.

Q How long afterwards.

A. But that I couldn't say, sir.

Q A week or two weeks.

MR OSBORNE: Well, what do you want to show?

MR.MCCLELLAND: Well, I will let you know as my question come out.

MR. OSBORNE: Perhaps. I will concede it.

BY THE COURT:

Q Give your best recollection as to how long Purcell was arrested after O'Brien's death. Give your best recollection.

A day or a month?

A. No, sir; to the best of my opinion, he was arrested within about a week.

BY MR MCCLELLAND:

Q About a week? A. Yes, sir.

Q And who spoke to you about it? Who told you that O'BRIEN was dead and that Purcell had been arrested?

A. Oh, I met so many that told me that I couldn't remember them all.

Q Yes. Well, did you know that the case was before the court's at that time?

A. No, sir; I didn't know it.

Q Well, you met people that you knew; friends of O'Brien?

A. Yes, sir.

Q Were you present at the Coroner's inquest?? A. No, sir.

Q No. Were you present at the examination that was held before the police justice? A. No..

Q Well, how did you come here? How was it that you came here on this hearing?

A. Well, because I was by the night that it occurred, I suppose.

Q Yes. Well, how did you come here; how did the People here happen to know that you were there on the night that it occurred?

A. Well, the chief policeman that has charge of the trial of the case, I suppose knew it.

Q The policeman that has charge of the case? A. Yes, sir.

Q And yet you were not before the police justice? A. No, sir.

Q And you were not before the Coroner's jury? A. No, sir.

Q Now, did you know C'Brien? A. Yes, sir.

Q How long had you known C'Brien?

1068

90

A. Well, I guess about three months.

Q And did you know Purcell?

A. Yes, sir.

Q How long had you known him?

A. Oh, about the same length of time.

Q Did you work together?

A. No, sir.

Q What is your business?

A. I worked 'longshore, sir.

Q Are you engaged in any public---you are nothing more than an ordinary laborer; what we call a 'longshoreman?

A. Yes, sir.

Q What have you got in your hind pocket now?

A. My hook, sir.

Q Your hook? A Yes, sir.

Q And you use that to make your living? A. yes, sir.

Q Now, who was the first person that you told after the arrest of Purcell that you had seen Purcell kick O'Brien?

A. Well, the fact of it is that I told nobody. I kept it to myself.

Q Well, will you be kind enough to tell the jury and the Court how it comes. if you kept it to yourself, how any-

CASE # 42

1069

body else found it out?

A. I couldn't tell you, sir.

Q Well, did you meet this gentleman(indicating Mr.Osborne)before you were questioned by him to-day, Mr Osborne?

BY MR OSBORNE:

Q Did you ever see me before?

A. Yes, sir; I seen you.

BY MR MCCLELLAND:

Q And you went to the District Attorney's office; did you not?

MR OSBORNE: That means downstairs in my office?

A. Yes, sir.

BY MR MCCLELLAND:

Q Who told you there?

A. The policeman , sir; the chief policeman.

Q Well, what did the "chief policeman" say to you, when he brought you there?

A. Well, he only came and took me from my work and brought me here, and that several months ago, and I had to come three or four times.

Q Well, what did he say to you when he took you to the District Attorney's office?

CASE # 42

1070

92

A . Oh, he said nothing, sir.

Q And, after you got to the District Attorney's office, what did you do?

A. Well, I told everything that I seen, everything that I could think of that I seen.

Q And did you tell the same thing that you have told here to-day?

A. Well, I guess so.

MR.OSBORNE: Here is his statement.

BY MR MCCLELLAND:

Q Wait. Did you tell the same thing that you have told to-day?

A. I may have made a mistake in a word or so.

Q Now, your mind is not very clear, as to what transpired that night; is it?

MR.OSBORNE: Well, use some other word than "transpire":

It is too big a word for him.

MR MCCLELLAND: Well, I ~~wahl~~ cross-examine in my own way, and I will ask for your help when I want it.

Q Now, is your mind perfectly clear as to what took place that night?

A. I hope it is.

CASE # 42

107

93

Q You hope it is? A. Yes, sir.

Q And what time did this fight or wrestle take place?

A. Well, to the best of my opinion, around 8 o'clock.

Q And what time did you get there to work that day?

A. At six.

Q And did you work down in that neighborhood? A. Yes, sir.

Q Right along there? A. Yes, sir.

Q And how long had you been in this place before the fight broke out?

A. About half an hour.

Q And where were you?

A. I was in and around there.

Q And did anybody ask you to take a drink in there?

A. No, sir; I just took it into my head to go in there for a drink.

Q And you had a "smile" in there?

A. Yes, sir; I had a glass of beer.

Q And more than once?

A. Well, I had two, I guess.

Q Now, you are ~~you~~ under oath to-day. Are you sure that there

CASE # 42

1072

wasn't more than two?           A. Well, I am sure of that.

Q    You are sure of that?       A. Yes, sir; I had only the  
second one at the time that this occurred.

Q    And there was quite a crowd in this place at the time;  
was there not?

A. Yes, sir; quite a few.

Q    And during the scrap, people were going between you  
and O'Brien and Purcell were not they?

A. Well, no, sir; no one appeared to interfere.

Q    No one seemed to interfere?   A. No, sir; not much.

Q    Now, did you see where Purcell kicked O'Brien; whether  
it was in the legs---

A. I didn't, sir.

Q    Well, you didn't see him kick him around the head or  
neck, did you?

A. No, sir; I seen him kick him in the back or side,

I think.

Q    In the side?

A. In the back and side.

Q    Now, was there not somebody passing between you and  
O'Brien at the time the fight was going on; wasn't  
there a crowd around them?

CASE #42

A. Yes, sir; there was a few going around.

Q And you did not see all that transpired; did you?

A. Well, I am telling you all that I seen, sir.

Q Now, is it not a fact that O'Brien kicked Purcell?

A. I didn't see O'Brien kick him, sir.

Q Well, isn't it a fact that O'Brien was on top of Purcell?

A. Yes, sir.

Q And is it not a fact that Purcell and O'Brien were struggling there, and that O'Brien threw Purcell and fell on him?

THE COURT: That is admitted. That is the testimony.

They clinched and O'Brien fell on top.

MR. OSBORNE: And all the witnesses have testified to that on both sides.

MR. MCCLELLAND: But, I wanted to know what this witness testifies to.

THE COURT: But, I thought you didn't know what the other witness had testified to.

MR. MCCLELLAND: ~~Answer~~ No, sir; I asked him what the fact was.

BY MR. MCCLELLAND:

Q Did O'Brien or Purcell?

1074

A. I couldn't tell you about that. I seen them clinch and they fell.

Q And you can't tell whether O'Brien fell on Purcell, or not, and yet you come here to testify positively that Purcell kicked O'Brien?

A. The last fall I seen I seen Purcell on top of O'Brien.

Q And was that before or after the kicking?

A. That was before the kick.

Q And then they got up?

A. No; this was the last time, sir.

Q Well, I want to get at the thing right. You say that O'Brien threw Purcell and fell on top of him. Did they get up then?

A. No, sir; not at the time I seen Purcell on top; they didn't get up.

Q Well, did the fight continue after you saw Purcell on top?

A. Well, only a few minute. There were some kicks then.

Q Now, what I want to get out is this; what was the last that you saw of this fight between O'Brien and Purcell?

CASE # 42

1075

97

A. Well, the last I seen was O'Brien lifted off the floor and taken into the back room.

Q Now, what was the last thing you saw before that? A. I told you that I seen Purcell ~~down~~ <sup>on top</sup> and using some kicks but I couldn't exactly say where he gave them.

Q Then, he was laying on top of O'Brien when he kicked him?

A. Yes, sir.

Q Is that it? A. Yes, sir.

Q So that at the time that Purcell kicked O'Brien, O'Brien was down and Purcell was on top of him?

A. Yes, sir.

Q That is true; is it?

A. Yes, sir.

R e - D i r e c t - E x a m i n a t i o n .

BY MR. OSBORNE:

Q Now, Dougherty, when you saw Purcell kick O'Brien was Purcell standing up at any time when he kicked O'Brien?

MR. MCCLELLAND: That is objected to. He has already testified to that.

A. Well I couldn't exactly say, sir. I guess he was partly---more standing than lying.

CASE # 42

1076

98

MR.OSBORNE: Now, I will call another witness---the  
office--to show how I got the witnesses.

MR.MCCEEILLAND: Oh, there is no imputation about the  
matter whatever, except as to the witnesses.  
There is no imputation as to the District  
Attorney at all.

MR OSBORNE: Oh, I didn't think there was, but I just  
want to show exactly how the witnesses came to  
me.

BERNARD F.MCCABE, called by THE PEOPLE, being duly sworn,  
testified as follows:

D i r e c t   E x a m i n a t i o n .

BY MR.OSBORNE:

Q     You are connected with the police force of this City?    A.  
Yes, sir.

Q     With what precinct?

A. The 9th.

Q     Do you remember the night when this assault took place  
in Mulry's saloon?

CASE # 42

1077

A. Yes, sir.

Q Did you go in there?

A. Yes, sir.

Q Did you find O'Brien there?

A. Yes, sir; he was

sitting in the rear room.

Q Did you notice anything about his head?

A. His head was inclined to one side.

Q Over that way (Illustrating)?

A. Yes, sir.

Q Did you call the ambulance?

A. Yes, sir.

Q Did you take the names of all the witnesses that you could find?

A. Yes, sir.

Q At my solicitation, did you have them brought down to the District Attorney's Office?

A. Yes, sir.

Cross-Examination.

(None.)

THE PEOPLE REST.

CASE # 42

THE COURT: Now, Mr. McClelland, how long do you  
want to address the Jury?

MR. MCCLELLAND: Well, a very short time.

THE COURT: We will take our recess now until a  
quarter past 2.

(Having admonished the Jury in accordance with Section 415 of the Code of Criminal Procedure, The Court took a recess for one hour.)

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CASE # 42