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January 6th, 1916.

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January 10th, 1916.

I N D E X.

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9301

COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York, Part V.

2636

THE PEOPLE OF THE STATE OF NEW YORK, :

-against- :

L U D W I G B R A I L . :

Before:

HON. THOMAS C. T. CRAIN, J.,

And a Jury.

New York, January 6th, 1916.

The defendant is indicted for manslaughter in the first degree.

Indictment filed November 12th, 1915.

A p p e a r a n c e s :

For the People: GEORGE N. BROTHERS, Esq., Assistant District Attorney.

For Defendant: MARK ALTER, ESQ., (Abraham Levy, of counsel.)

A jury is duly impaneled and sworn.

Mr. Brothers opens the case for the People to the Jury.

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PEOPLE'S CASE.

DR. OTTO H. SCHULTZE, a witness called on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Dr. Schultze, you are a physician and surgeon, are you?

A Yes, sir.

Q Graduated from what institution of learning? A From the college of Physicians and Surgeons, New York City.

Q And when was that? A June, 1889.

Q Since then you have been practicing your profession, and have been duly licensed, and so forth, in this State? A Yes.

Q You occupied for how many years the position of physician to the Coroner? A In 1896 and 1897, when it was a county office, and from December 1902 to April, 1915, when it was a Borough office.

MR. LEVY: Pardon me. I will take the Doctor's qualifications as to learning and ability.

Q Doctor, in last November you were the medical assistant of the District Attorney of this County, as you are today?

A Yes, sir.

Q Did you as such official make an autopsy upon the body of a Chinaman named chung Wing? A I did.

Q When was that, the exact date? A On the morning of November 2nd, 1915, at the Mortuary, foot of East 29th street, New York.

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Q Was there any police officer there who identified the body to you? A There was.

Q Who was he? A There were two police officers, George Peattie, and Cornelius J. McKenna.

MR. EDWARDS: Is Officer Peattie here?

(An officer stands up.)

Q Is that the officer standing up? (Indicating police officer) A Yes, Shield 7050, Officer Peattie.

Q This Chinaman was dead when you saw him? A Yes.

Q You examined his body? A Yes.

Q Will you tell the jury what you saw? A It was the body of a Chinaman.

MR. LEVY: Pardon me. What time, may I inquire, was it that the autopsy was performed? A The morning of November 2nd, 1915.

MR. LEVY: The point of the interruption is to ascertain whether the body of the deceased was in the same condition it was when he was lifted from the ground on Third avenue, on the 1st day of November. A day elapsed between the day of the autopsy and the day of the alleged assault, and I want to be sure that the condition of the man was the same when Dr. Schultze made his examination and autopsy, and as it was immediately after the assault.

BY MR. LEVY:

Q Are you able to tell us about that, Doctor? A Yes.

Q Whether it was or not? A It must have been the same. He

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died on the morning of November 1st, at 6:15 a. m., if my memory serves me correctly, and after being pronounced dead, was placed in cold storage, for the preservation of his body. He died in Bellevue Hospital. After death, after being pronounced dead, his body was taken to the Mortuary, and placed in the cold storage vault.

Q That was a period of more than twenty-four hours after his death? A The autopsy, yes. It was later than six in the morning. I presume it was somewhere between ten in the morning and twelve noon.

MR. LEVY: All right.

BY MR. BROTHERS:

Q You may answer, Doctor? A The body was that of a poorly nourished Chinaman. His height was five feet, eight and a half inches. That was measured. His weight was estimated to be about 140 pounds. His right elbow joint was fixed with the forearm at right angles to the elbow, and had upon the outer surface of the elbow the scar of a former operation, upon the elbow joint. (Indicating) A short distance from the wrist on the right arm, about three inches from the wrist, there was a bruise on the back surface of the right forearm (indicating), the measurement of which was one inch in length by a quarter of an inch in width. The forehead showed six small bruises. One was directly over the root of the nose and measured a quarter of an inch. Another was over the left brow, three quarters of an inch from the middle line of the forehead. That measured

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0.50

an eighth of an inch. Another bruise was located two inches to the left of the middle line and one inch above the left brow. That measured a quarter of an inch. Another bruise was located one inch to the right of the middle line, and one inch above the right brow, that measured three-eighths of an inch. Another bruise was located two inches to the right of the middle line, and one and a half inches above the brow; that measured a quarter of an inch. And another one nearly in the same line and about one inch from the brow, and measured one quarter of an inch also. There were six bruises in all on the forehead. On the back of the head was a lacerated and bruised scalp wound, the measurement of which was one and a half inches by a half inch. That was located over the outer angle of the occipital bone, on the right side. That would be here (indicating back of head). Underneath this scalp wound there was a blood tumor on the scalp as the result of the wound, and going downward from the wound, through the skull, there was a fracture that passed through the base of the skull on the right side, and crossed there to the base of the skull and went through the roof of the left orbit; that is the cavity containing the left eye. The front of the brain, back of the forehead was lacerated on both sides, chiefly on the left, and also the front of the two lobes of the brain that are located in the middle of the base of the skull, or the temporal lobes. There was a laceration of both of them, but more marked on the left side. From these

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lacerations of the brain hemorrhage had caused within his skull compression of the brain. The rest of his organs showed, the lungs showed adhesions at the top of the lungs from former tuberculosis.

The kidneys were not entirely healthy. The surface was granulated. He had the beginning of chronic Bright's Disease. His stomach contained food, partially digested rice and vegetables.

Q Did you form an opinion, Doctor, from your examination, as to the cause of his death? A I did.

Q What was that opinion, with reasonable certainty? A A fracture of the skull, laceration of the brain, compression of the brain with the blood resulting from the hemorrhage from the lacerated brain.

Q Assuming that the man had been struck a blow with a fist so that he fell heavily to the pavement, would that cause the condition you found, in your opinion?

MR. LEVY: That is objected to.

THE COURT: Objection sustained.

Q What would be a competent producing cause for such fracture of the skull as you found?

MR. LEVY: I object to that as incompetent, immaterial and irrelevant.

THE COURT: Allowed.

MR. LEVY: Exception.

A Violent contact of the back of the head with a hard substance.

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Q The condition of his right elbow that you describe, was that a stiffened condition? A It was what is termed ankylosis, absolutely stiff. It could neither be brought down or bent up, it was permanently fixed.

Q Was that the condition that existed during the lifetime of the individual? A Yes.

Q You could determine that from your examination? A Oh, certainly.

Q You say there was a scar there as though a surgical operation had been performed before that? A The scar was there as the result of an operation that had been done for a diseased joint; that is, taken out of a diseased arm, and in healing, the forebone healed at right angles to the arm.

Q These small contusions about the eye and nose, were they such as could have been caused by the breaking of spectacles or eye-glasses by a blow? A They were.

Q They were small? A They were small, as described.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. LEVY:

Q I want to know about the left arm: that was in good working order, wasn't it? A Yes, sir, as far as one could tell from a dead arm; presumably in good working order during life.

Q There was not anything to interfere during the lifetime of the deceased with the use and operation of his left hand and arm, and fore-arm and upper arm? A None whatever.

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Q Now, then, did you observe the man's legs and feet? A I did.

Q Were they, to use the expression, in good working order during his lifetime, do you believe? A Surely.

Q Nothing to interfere with the man kicking, if he wanted to? A Nothing whatever.

Q Or stamping upon any one? A Nothing whatever.

MR. LEVY: That is all.

GEORGE J. PEATTIE, (21st Precinct) called as a witness for the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Officer, you are a member of the Police Force of this City, are you? A Yes.

Q Your badge number is 7050? A 7050.

Q Are you the policeman who identified this body that Dr. Schultze spoke about? A Yes.

Q How long have you been a member of the police force? A Ten years and three months.

Q In November, more especially the 1st day of November, last year, you were in what precinct? A The 21st Precinct.

Q Does that take in Third avenue, between 15th and 14th streets? A Yes, sir.

Q Were you on duty on that day at that place? A Yes, sir.

Q On that occasion did you see the defendant? A Yes.

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Q What time was it when you saw him? A 2:25 a. m.

Q That was the early morning then of November 1st, 1915?

A Yes.

Q When you first caught sight of the defendant where were you yourself? A Standing at the corner of 14th street and Third avenue, the northwest corner.

Q How long had you been standing there? A I don't suppose I was there over a minute or two minutes at the most.

Q Where had you come from? A I came from 15th street.

Q Your post was what? A From 14th street to 16th street, taking in the side streets, half a block on 15th street and 16th street, on the south side of 16th street.

Q But you did not go either way on 14th street? A No, only to 14th street.

Q Do I understand then, you had a few moments before you saw the defendant, come south on the west side of Third avenue?

A Yes.

Q Do you know where the Chinese restaurant was that the deceased Chung Wing had? A Yes.

Q Whereabouts was that? A Located in 134 Third avenue, upstairs.

Q That was in what part of the block? A Just about in the middle of the block.

Q Between what streets? A Between 14th and 15th.

Q Had you come by there on your journey down to the corner?

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A Yes.

Q When you passed that place were there people upon the street? A No.

Q Was there any one on the sidewalk in front of that restaurant? A No one at all.

Q Did any one attract your attention as you passed the restaurant? A Nothing.

Q When you were upon the corner at the time you saw the defendant, were you alone? A No. I met Officer Siegel; just as I got to the corner he reached the corner.

Q Did you notice where he had come from? A I met him at the corner, just as I got there; I suppose he came from 14th street.

Q What attracted your attention as you stood on the corner, to the defendant? A There was a loud noise, loud talking up Third avenue. I turned and looked up Third avenue and observed three Chinamen on the sidewalk, and two white men.

Q Whereabouts on the sidewalk were they? A Right out in front of 134.

Q That would be the west side of the avenue? A The west side of the avenue.

Q As you looked toward them what were these five men doing?  
A As I first observed them they were all standing on the sidewalk, talking loudly. We started to walk up there when the two white men, and two of the Chinamen started in an altercation, started fighting with each other.

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MR. LEVY: That is objected to; let him describe it.

THE COURT: strike it out.

Q What did they do with their hands and feet? A They started to strike with their hands at each other; with their hands and feet at each other; with their hands at each other.

Q The two Chinamen and two white men? A Yes.

Q What did the third Chinamen do? A The third Chinamen was standing at the curbstone, about seven or eight feet from the other two Chinamen and two white men, and when they started to hit with their fists at each other, he started to holler.

Q Can you tell us anything that he hollered? A I could not distinguish just what he said, only he hollered.

Q Was he hollering in a low voice or loud? A Kind of a squeaky voice.

Q What were you doing at that time? A Running towards where the men were.

Q As you ran towards them what did you observe? A When I got about fifteen feet from them, the defendant, Ludwig Brall, turned from one of the Chinamen he was striking -- that is, they were mixed up together, -- he turned and struck him, stepped over and struck the chinaman standing at the curb yelling, struck him in the face, knocking him to the street.

Q You were then about fifteen feet away? A When he turned and struck at him.

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Q At the time the defendant struck this Chinaman by the curb, what was the Chinaman doing? A He was standing, yelling.

Q Did you see him make any move towards the defendant? A No.

Q Or strike the defendant? A I did not see him.

Q Or kick him? A I did not see him make any move at all.

Q Can you show the jury the manner in which the defendant struck that blow? A (The witness steps down from the witness stand) The Chinaman was standing on the curb there, and they were off this way (indicating). When this man was hollering, he left the Chinamen that he was striking at, the two of them together, and turned and struck like that (Witness swings his right arm from right to left), and hit the man in the face, knocking him to the street.

Q When the Chinaman landed on the street, whereabouts did he land in respect to the spot he had been standing on; how far away? A His head struck about ten feet from the curbstone.

Q That is, the blow carried him out? A Yes, so his head struck about ten feet from the curbstone.

Q How did he strike? A On the back of his head.

Q Did he get up? A No, he never moved.

Q What did the defendant do? A He started to run.

Q In which direction? A Right in my direction.

Q South? A He ran south.

Q What did you do? A I grabbed him; He ran right into me.

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Q Were you in uniform there? A Yes.

Q Did you have an opportunity to observe what the other defendant was doing at that time?

MR. LEVY: There is no other defendant.

Q I will amend that: the brother of the defendant? A The brother, he was fighting with the other Chinamen.

Q What became of him? A He started to run too. Officer Siegel ran after him and caught him.

Q Did Siegel accompany you up the avenue when you started up?

A Yes, we started up together.

Q What did you do with the defendant when you stopped him?

A When we got to the defendant Officer Siegel and I brought the two of them to where the Chinaman was lying in the street, and I turned him over. I said, "This man is badly hurt", to Officer Siegel.

Q As you looked at the Chinaman as he lay on the pavement, how did he look? A There was blood coming from his nose and his mouth, and there was blood streaming down the back of his head, and there was a gurgling sound from his throat.

Q Making a noise in his throat? A Gurgling his throat.

Q Did you pick him up? A No, just turned him over. I said to Officer Siegel, "Give me the other prisoner, you call an ambulance."

Q That was done; the ambulance came and he was taken to the hospital? A Yes.

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Q Did you see his body again? A Yes.

Q At the morgue? A Yes.

Q You identified it to Dr. Schultze? A Yes.

Q And the body you showed to Dr. Schultze was the same Chinaman you saw on the pavement at the time he was felled? A Yes.

Q He was dead when you saw him in the Morgue? A Yes.

Q Did you pick anything up there on the street? A Yes. I picked up a part of his glasses.

Q Have you brought them here? A Yes. (Producing articles).

Q Did you know the deceased? A I have seen him there a few times, going back and forth.

Q You were on post there? A Yes, I was on post there. I was transferred to the precinct on the 27th day of September, and I was on post there from the 28th.

Q In going up and down there you had known the deceased by sight? A Yes.

Q Was he a man that wore spectacles? A Yes, he wore glasses.

Q Did you observe anything else peculiar about him? A I noticed he was a very feeble kind of a man, crippled in the arm.

MR. LEVY: I move to strike it out.

THE COURT: strike it out.

Q Was there anything peculiar about his appearance? A One arm he carried stiff.

Q These articles that were picked up, the bridge and part

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of the ear-piece, you found those where? A I found those right alongside of the body.

Q Did you see any broken glass or lenses? A Yes, they all lay on the ground there.

MR. BROTHERS: I offer these articles in evidence.

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

THE COURT: Received.

MR. LEVY: Exception.

(Articles marked People's exhibit 1 in evidence.)

BY THE COURT:

Q Officer, what is the pavement on Third avenue, at the point where the deceased fell? A It is Belgian block.

Q That was so on the morning of November 1st last? A Yes.  
BY MR. BROTHERS:

Q Did you remain there until the ambulance came? A No. When patrolman Siegel returned a large crowd collected, and Officer McKenna, he came upon the scene. As the neighborhood is rather a bad neighborhood around there I said to Officer McKenna, "Siegel and I will take the prisoners to the station house."

Q Tell me where the station house is? A East 22nd street, between First and Second avenue.

Q So that you went away and left McKenna in charge? A Yes. To bring in the two Chinamen, and to get the ambulance report.

Q The other two Chinamen who were there in this fight, did

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they go to the station house? A They were brought in by Officer McKenna.

Q Do you see them in court? A Yes.

Q Where? A Those two men sitting there (indicating two Chinamen in the court room).

Q What are their names? A Lum Du and S. Lee.

BY THE COURT:

Q Did you have any talk with the defendant on the way to the station house? A I asked him what was the matter, what was the trouble. His brother said there was some trouble over a box of cigarettes, and the brother told him not to talk. He said, "We will talk when we get to the station house."

BY MR. BROTHERS:

Q After you arrived at the station house was there any talk had between you or between anybody and the defendant that you over-heard? A When they arrived at the station house, and we arraigned them at the desk, before the lieutenant, the defendant wanted to make a charge of assault against Lum Du.

Q That is one of those Chinamen in court? A Yes. He said he had hit <sup>him</sup> in the head. The lieutenant would not entertain it. He told him if he had any complaint to make, to make it in court next morning, as they were all held, as they were all going to court.

Q That is, to make it in the police court? A Yes.

Q Was anything else said before the desk? A Nothing else.

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Q What was the condition of the defendant at that time that you saw him, what was his condition as to sobriety? A Perfectly sober.

Q About how old a man was the deceased, Chung Wing? A Well, he was a man I should judge around --

MR. LEVY: This is only guess work and I object.

THE COURT: Objection sustained.

MR. BROTHERS: I think that is all.

CROSS EXAMINATION BY MR. LEVY:

Q Now, Officer you are thoroughly familiar with that neighborhood? A Yes.

Q What kind of a night was it, or, rather, morning? A The morning was a clear morning.

Q Dry? A The pavement was dry.

Q It was in November and day had not broke? A No, not yet.

Q The illumination on the street was still there? A Yes.

Q How is that part of the City, light or dark; particularly that block? A It is lit up pretty well around there. There are a number of lights outside of the buildings.

Q Arc lights? A Arc lights and signs across the street.

Q The light is contributed to by the different private lights?  
A Yes.

Q And the different business places along there? A Yes.

Q How far would you say, from the corner of 14th street, was the location of the Chinese restaurant? A I should judge it is

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about between 125 and 150 feet; probably 130.

Q Certainly a greater distance than the length of this court room? A Yes.

Q Perhaps twice as long? A Well, probably nearly twice as long.

Q In front of that Chinese restaurant there is a lamp or sign, an advertisement, or was there at the time? A The doorway of that place is lit; inside there was a large light.

Q A sort of vestibule door, and stairs to ascend? A Inside there are stairs going up.

Q You had been patrolling from 15th street down on the west side of the avenue? A Yes.

Q And you finally reached the corner? A Yes.

Q When you got to the corner, you got into conversation with your fellow officer? A Just met him at the corner.

Q You exchanged some words together, didn't you? You and he? A I just met him at the corner.

Q Then you heard the sounds of loud talking? A Yes.

Q Now, on Third avenue at that location there is the elevated road? A Yes.

Q There is a station of the elevated road, both up and down-town sides? A Yes.

Q And the station of the elevated road at 14th street and Third avenue runs partly up towards 15th street, doesn't it?

A Yes.

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Q And partly down towards 13th street? A Yes.

Q And at frequent intervals the trains would come, the elevated trains would pass up and down? A Oh, yes.

Q In addition to that, underneath the elevated structure, there is a surface line? A Yes, sir.

Q With an up and down-town track, is that right? A Yes.

Q Now, then, the intersection of Third avenue and 14th street is very busy, isn't it? A Yes, at certain times.

Q And there are cross town cars that run east and west through 14th street? A Yes.

Q Surface cars? A Yes.

Q Besides that, around that neighborhood there are some hack stations are there not? A No, not there.

Q Or automobile stations? A No, sir.

Q Or taxicab stations? A Not in that location.

Q Isn't there a station there for hacks or taxis? A There are stations over in Irving place.

Q Around 14th street? A One block over.

Q Now, then, of course, most of the jurors have passed there, but I am asking these questions so as to make a record and to show the condition as it existed there. QThe stairway that leads up to the elevated road on the west side of the avenue, that is the downtown stairway? A Yes.

Q Leading up to the downtown side of the station? A It leads from 14th street.

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Q Where does it start, on 14th street or on the avenue?

A On 14th street.

Q And likewise upon the other side of the street there is another stairway which leads up to cover the uptown track? A Yes.

Q 14th street and Third avenue is generally a pretty well congested neighborhood, isn't it? A At certain times in the day and early in the evening, up to probably midnight.

Q Even in the nighttime? A Till one o'clock or so.

Q Do you mean to say after one o'clock it "goes to sleep"?

A It does not go to sleep down there, but we have not very much excitement there now.

Q Not much excitement from a police standpoint, perhaps, but there are a good many pedestrians passing up and down the street? A Quite a number of people.

Q Some people forget to go to sleep down there? A Yes, we have numbers of them.

Q Now, upon that morning it was clear; there was the usual traffic on the street? A The usual traffic during the night.

Q It does not take long in that vicinity to have a crowd gather, does it? A No.

Q A crowd gathers very quickly from all sections around that neighborhood if there is anything unusual happens? A At that time of the morning, probably you can gather a crowd of fifty or a hundred people in a short time.

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Q In a couple of minutes? A In probably ten minutes, after they get out of the places that they hang out in, if it is exciting enough.

Q A man would not have to yell for ten minutes to gather a crowd, would he; any unusual excitement or noise would attract a crowd and bring them there almost immediately? A Not in that section; they don't go until they know there is something real bad going on. They are generally getting out of the way that time.

Q But a crowd did gather in that neighborhood? A Yes.

Q How soon after the loud talking was it that the crowd gathered? A The crowd did not gather until shortly before Patrolman Siegel came back from calling the ambulance, probably five minutes.

Q You don't mean to say, in that neighborhood around 2 o'clock in the morning, or 2:30 in the morning, that a man with a shrill voice, crying out, hollering, would not almost immediately attract a crowd of these people who are about the place, and pedestrians or other habitues around and about that place? A They would not attract much attention around there, except a police officer; he is the only one to take any notice of exceptional noises. They don't pay much attention to it.

Q Or even if there is any excitement or commotion? A Unless they see somebody running.

Q Are you able to say whether or not, on your way down on your patrol from 15th street to 14th street on the west side of

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the avenue, any surface cars passed either up or down the avenue?

A I would not say that there was any surface car passed.

Q What would you say about the passing of an elevated train?

A I don't remember of any elevated passing there.

Q You will not say that any did or did not? A I will not say either way, I did not take any notice.

Q Your eyes were upon the surface? A Mostly.

Q Are you able to tell his Honor and the jury how many stores or buildings there are intervening between the corner, the northwest corner of 14th street and Third avenue, and the location of that Chinese restaurant? A There are four, I believe.

Q Are you able to tell what those four buildings were occupied for at that time? A Yes.

Q Tell me. A The corner store is occupied as a saloon by O'Keefe & Cunningham. That is on the northwest corner.

Q That was on the west side of the avenue? A Yes.

Q That is the northwest corner? A Yes.

Q That corner store runs around the corner? A Yes.

Q And extends a distance of, I should say, about 25 feet on the avenue? A Yes, they have a little more than that on the avenue.

Q What do you say is the distance? A Probably their store front is probably about 30 feet.

Q Well, there is what is known as a family entrance from the avenue into that saloon? A Yes.

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Q With a sort of projecting doorway? A Well, the same as they usually have in saloons. It is just a little jog in their building, about probably one and a half or two feet out.

Q But there is a projection? A Yes, just a little.

Q Extending to what we call the stoop line? A Yes.

Q Now, at that time in the morning -- throw back your recollection to the morning of this occurrence; did they have any inside light burning in that saloon? A Yes.

Q Were they in the window or in the saloon proper? A In the saloon proper.

Q They were simply lights for the purpose of protection; it was after the closing hour? A Yes.

Q They had the lights to show that business was not being done in the place? A Yes.

Q And threw out no light on the sidewalk? A The light in the doorway is enough light.

Q What kind of light did they have in the door? A There is electric lights in the store.

Q They did not have the light around the windows outside?

A No, not outside.

Q But there was a doorway which people used when that place was lit up? A Yes.

Q So that there were shadows cast upon the sidewalk? A There is a light on the corner.

Q But shadows are cast upon the sidewalk there? A No, I

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would not say that, because it is quite light.

Q Is there an arc light on that northwest corner of Third avenue and 14th street? A There is a fire light.

Q You know what I mean by arc light? A Yes.

Q Is there such a light? A The light is on the other corner.

Q Where is the lamppost, or as we will call it, where is that electric light, located? A There is a lamppost right on the corner, on the Third avenue side, north of the crossing, on the 14th street corner.

Q That is the lamppost which has the red glass? A No. The red glass is out on the corner; on the corner is the red light, indicating a fire box, but there is an arc light just north of the crossing on the Third avenue side.

Q That is underneath the station, isn't it? A No, the station part does not come down that way. It goes the other way.

Q The station part extends over the sidewalk? A Not north of the corner. The stairway goes up on the outside, on the south side, that is, out at the curb side.

Q That was about 30 feet, you said; now, the next place, how was that occupied? A The next building is a building occupied as a gents' furnishing store.

Q Was that illuminated? A No.

Q It was dark? A Just light inside for protection.

Q But there was no light in the windows, or about the place?

A No.

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Q How wide was that? A I think that is about 20 feet, probably 22 feet.

Q Then, passing on from that, going to the next building, what was that occupied as? A The next building was occupied as a saloon, and they have cabaret and restaurant above it. It is a double building. It has two stores.

Q Two stores, with an entrance to the building proper between the two stores? A They have separate entrances. There is an entrance between the two going upstairs through the hall, but they have a separate entrance to the saloon. and a separate entrance to the cabaret.

Q I am only concerned in knowing whether or not the front of that building was in any way illuminated? A The only illumination at that hour is just lights for protection inside the building.

Q Not such light as would throw any illumination on the sidewalk at all? A No.

Q How wide would you say that building was? A That building, I should judge, would be about 60 feet, or probably 65 feet. That is about the frontage.

Q Now, the next building, what was that occupied as? A That building is a restaurant.

Q Is it open at that time of the morning? A No, that building was closed.

Q It was dark? A Yes. That is No. 134, where the entrance to the Chinese restaurant is.

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Q There are only three buildings, then, outside of the building in which the Chinese restaurant was located? A The entrance to the Chinese restaurant is in the upper part of this building.

Q Toward the north end, you mean? A Yes.

Q So that we have 60 feet and 30 feet, that is 90 feet, and 25, that is 115; and about how many more feet is it before you get to the entrance of the Chinese restaurant? A I should judge about 125 feet from where I was standing.

Q Are you able to remember exactly the location where you were standing? A Yes. I was standing right out in the middle of the sidewalk at the corner. I just met Officer Siegel at the corner.

Q Now, officer, frankly, were you able, from the position in which you were standing, to distinguish the features of the persons who were engaged in the altercation at the restaurant?

A Not at that distance.

Q That is what I want to develop. I want the exact truth. You could not distinguish the features, could you? A I could only distinguish they were Chinamen and white men. I could distinguish faces from that distance for a block. I could tell whether they were white, black or Chinese.

Q Could you distinguish those features with sufficient certainty to have identified them from the distance, -- from the position you stood? A When I turned and looked at them, I could. It was light enough.

Q What did you mean by answering a moment ago that you could

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not distinguish features; which will you have now? A I could distinguish, -- that is, the Chinamen; the difference; white men or black men.

Q In other words, you could distinguish a colored man from a white man? A Yes.

Q One to be light, the other dark? A Yes.

Q In other words, one looked to you to be white and the other yellow? A Yes.

Q They wore different kind of clothes, didn't they? A Yes.

Q In other words, <sup>the</sup> Chinamen wore blouses? A No.

Q How were they dressed? A Two of the Chinamen had aprons on them, the other Chinaman he had civilian clothes on, American clothes.

Q Well now, the first thing that attracted your attention was hearing the sound of loud voices? A Yes.

Q Now, Officer, possibly you can try to brush up your recollection; didn't you see the Chinamen strike any blow? A I saw two Chinamen.

Q Did either one of the two strike any blow? A They were in altercation with the other two; they were all mixed in together.

Q Did you see either one of the Chinamen, or both of them, strike any blow? A I could not say that I did. I saw the four of them all mixed together in a general mix-up.

Q By a mix-up, you mean coming together? A Yes, they came

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together.

Q Didn't you see the arms of any person extended back and forth? A I saw a general "come-together" of the men. The four men came together.

Q I want to know this. This is so simple you ought to be able to answer; did you see the extension or withdrawal of any arm of any person, white or yellow? A Just as I observed them, and started to walk up toward them, these men went right together, the two Chinamen and two white men came together. The white men turned and started to walk out and they turned back.

Q If you will only pay heed to my question; -- the first thing that attracted your attention when you turned about after hearing loud noises was what? A As I started to walk --

Q I am asking you --

THE COURT: Now, Mr. Witness, you will go on with your answer.

A First, the noise attracted my attention and I turned and started to walk toward where these men were. The white men started to walk away. As I started to walk up, they started to walk away, but they turned, and then whatever the Chinaman said, they went back and started to strike at the two Chinamen.

Q Did you see the Chinamen make any attempt to strike at the white men before you saw them turn and go back to the Chinamen? A No.

Q How far had they gone away? A Just turned; they were just starting away, and whatever they said, they turned and went back at them.

Q You say "started"; did they take a step? A They took a couple of steps and then went back.

Q As they turned back to the Chinamen, did you see the Chinamen do anything? A I saw the whitemen start --

Q Did you see the Chinamen do anything? A I did not see them do anything as I turned.

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Q Pay heed, please to the question: did you see any one other than the deceased at any time lying on the ground? A No.

Q At no time? A At no time.

Q Did you see any one at any time use a foot other than for the purpose of walking, such as for kicking or anything of that sort? A No.

Q Were you perfectly calm and cool? A Perfectly.

Q Do you mean to say you saw everything that happened there?

A I could not say I saw everything.

Q At what particular point was your vision fixed? Was it fixed at the upper part of the bodies or the lower part of the bodies of the men? A Mostly at the upper part of the bodies; one probably might have stepped out or kicked out that I may not have seen in the mix-up.

Q You don't mean to testify that you did not see a Chinaman there strike or attempt to strike any blow? A I would not say that I did see them strike or attempt to strike. I will not say they did not. I don't know whether they did attempt to strike or not, because they were right all mixed together.

Q Let me call your attention to something that may perhaps refresh your recollection; do you remember the appearance of this defendant after the altercation? A Yes.

Q Was he marked up? A He had a scratch on the side of his head (indicating left side of his head).

Q Can you describe that scratch? A He had a scratch on this left side of his head, looked like a fingernail scratch. It was about two inches long that way, and about two inches down

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that way (indicating).

Q Was it bleeding? A No, just a little light scratch.

Q Sure about that? A Yes.

Q Do you remember when this defendant was being arraigned in court, that the Magistrate before whom you arraigned the defendant attracted your attention to what seemed to be a wound upon the defendant's head? A Yes.

Q And the Magistrate said to you: "I want you to pay particular attention to the wound upon that man's head." didn't he?  
A Yes, he said it.

Q He asked you to measure the wound, didn't he? A Yes.

Q Did you know why? A Because the Magistrate told us that he wanted to be sure that there will be a fair and square deal given to the men, and to take and make good note, that I noticed the size of the injury to both of the men.

Q When you saw the scratch, as you call it, for the first time, was it bleeding? A Just the skin was off. It was red. No blood came.

Q Was it a recent wound? A Yes.

Q As though it had been inflicted at that same time and in the same altercation? A It might have been at that, or some time before, but it looked as if it was a fresh wound.

Q You took the measurement at the request of the Magistrate, is that right? A Yes.

Q What was the measurement? A It was about two inches long

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on the side and two inches down, I should judge. I measured with my eye; that was all.

Q What was the condition of the clothes of the defendant? Were they smooth, or were they upset or disordered? A He had his overcoat on. His clothes seemed to be all right, with the exception he did not have his cap on. His cap was lying on the ground when I arrested him.

Q His cap was on the ground? A Yes.

Q It seemed as if it had been knocked off his head? A Possibly.

Q Now, beside the defendant his brother was with him? A Yes. I believe his brother.

Q You found out afterwards it was his brother? A Yes.

Q And another white man? A No other white men.

Q Can you remember the condition and appearance of his brother when you got to the scene, right after that altercation? A His brother was in good condition.

Q Did you see his clothes disordered? A No.

Q Did you see any marks upon him? A No.

Q Upon his face? A No.

Q Did he have a hat on? A Yes.

Q That was knocked off? A His hat was on.

Q Were his clothes upset, dirty or muddy? A I didn't notice any particular thing on his clothes.

Q Did you notice anything at any time about the condition

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of the brother's shin? A Not until my attention was called to it by the Magistrate, in the Magistrate's court.

Q Haven't you told me you didn't see any mark on him? A Not at that time, at the time of his arrest.

Q Before the Magistrate this brother claimed he had been kicked in the shins? A He said something about that.

Q By the Chinaman -- did he say that? A He said he was kicked in the shin; that is all.

Q The Magistrate asked you to examine the man's shins? A Yes.

Q Did you look him over? A Yes.

Q What did you observe? A A small scratch on the shin.

Q Of one shin? A Yes.

Q Was the Magistrate there at the time? A No.

Q Any court officer there? A No.

Q Any other officer connected with the court there at that time? A Nobody.

Q You did not notice that the skin was torn and was black and blue or getting black and blue? A There was just a small bruise cut like on the shin (indicating left shin).

Q Was it black and blue? A No, just a little scab there, like the skin was knocked off.

Q Didn't you see the blood that had evidently oozed to the white socks or drawers? A No. He had on, I believe B. V. D's. It was just the sock.

Q You saw blood dry there? A Just a little bit of a scab like.

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Q Dry blood? A Yes.

Q Did you hear either this defendant or his brother make any outcry? A No.

Q Now, officer, the man who lost his life, he was standing there? A Yes.

Q At the time when the altercation was going on, when these men got together as you put it, at a distance, how far was he from the four participants in that row? A Probably five feet.

Q Now, indicate to the jury from where you are sitting, at what point would you say; how far away? A The man was standing at the curb.

Q How far? A From here over to the table (indicating).

MR. LEVY: About five feet, will you say?

MR. BROTHERS: Yes.

Q About five feet? A Yes.

Q It would not require more than about two easy steps to reach it? A About two steps.

Q Was the chinaman, the deceased, nearest to you when you approached, or was he furthest from you; in other words, was the body of the defendant between you and the deceased, or was the deceased nearest to you? Do I make myself clear to you?

BY THE COURT:

Q You started to go from 14th street in the uptown direction?

A Yes.

Q Now, the deceased, as he stood at the curb, was he as near

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to you when you started to go towards the five men as the other four, or was he further away from you? A Well, they were just about the same. I should not say there was over a foot difference.

Q In other words, so far as being up town or down town was concerned, they were all pretty nearly the same distance uptown?

A About the same distance.

Q The five feet that separated them was a separation caused by the deceased being about five feet further east? A Out at the edge of the curb, and they were on the inside.

BY MR. LEVY:

Q Did you get the impression, in looking at the four men in the altercation that there was an effort being made to separate them, or to get together? A They seemed to be getting together as we ran towards them.

Q What was it that seemed to cause the separation or division of the men? A The two Chinamen and two white men were in altercation there and the other man stood at the curb hollering, the other Chinaman, the deceased.

Q You did not then keep your eye on the four men; you kept your eye on the man at the curb? A My vision spread out as I ran.

Q How long did you say it took you to run from where you had been at 14th street, to the spot at which this altercation had taken place? A I started to walk, but as they started to

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mix-up together I ran. It probably did not take a minute from the time I started to run to get there.

Q Did your brother officer run with you? A Yes.

Q Now, when you got to the station house, you arraigned this defendant and his brother upon what charge? A Of felonious assault.

Q Did you do that, or didn't you charge him with disorderly conduct? A No, I arraigned the defendant on felonious assault, his brother acting in concert; I arraigned the two Chinamen for disorderly conduct to hold them as witnesses.

Q Didn't you say that the defendant said to the lieutenant in charge at the desk, that he wanted to prefer a complaint against the Chinaman? A Yes.

Q And the lieutenant said that would be settled in court?

A He said, "If you have any charge to make, make it in court, as you are going to court."

BY THE COURT:

Q So far as you know had you ever seen the defendant before that morning? A No, I never seen him. I might have seen his brother, but I didn't know him; he is a taxi man. As far as I know I never seen him.

BY MR. LEVY:

Q Did you see whether or not the defendant was searched that morning? A Yes.

Q Was anything found upon his person? A Nothing, only a

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penknife.

Q A small penknife? A Yes.

Q And the keys? A Yes.

Q Was there any weapon on him? A No.

Q The brother, was he searched? A Yes.

Q Was anything in the shape of a weapon found on him? A No

Q Are you able to tell me, Officer, what the condition of the brother of the defendant was? A Yes, the brother seemed to be all in good condition. There seemed to be nothing wrong with him.

Q One matter I want to have settled: both of these men were perfectly sober? A Yes.

Q As far as you could see? A As far as I could see.

MR. LEVY: That is all, your Honor.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q Officer, did I understand you correctly, that you were within fifteen feet of the defendant at the time he stepped over and struck at Chung Wing? A Yes.

Q At 2:30 a. m., traffic is not heavy at that point, is it?  
A No, very light.

Q When you started to run you ran quickly, didn't you?  
A Yes.

Q As you approached them, from the time you first caught sight of this group of men, until after you got there and arrested the defendant, did the deceased, Chung Wing, take any

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part at all in the mix-up? A No.

Q Did the defendant or his brother, when arraigned before the Magistrate, make any charge of assault? A No.

Q Against the Chinamen? A They did not.

MR. BROTHERS: That is all.

BY MR. LEVY:

Q Well, Officer, when the defendant was arraigned in court he had no opportunity to say anything, but he was immediately remanded to the coroner, isn't that so? A He had time to say anything he wished.

Q If he wanted to, but there was no complaint then made against him for disorderly conduct; the charge was homicide?

A Yes, next morning when I arraigned them in court.

Q I am talking about that morning in court. A They were not arraigned for homicide then, because the man was still alive.

Q I understood he died as early as six o'clock that same morning, so that he must have been dead, and you did not get to court until after nine? A I had no notification of it.

Q Didn't you immediately ask that the prisoner should be remanded until you could get your report from the hospital? A Until we could get our report. The man was unconscious when we were notified.

MR. LEVY: May it please your Honor, I am going to ask your Honor's kind indulgence to take a recess at this

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time on purely personal grounds. I made appointments and arrangements at my office after four o'clock. You know with what reluctance I went into this trial this afternoon, and I should be very grateful if you could find your way clear to take a recess, so that I can arrange these office affairs, and I promise I shall be as expeditious as I possibly can tomorrow.

THE COURT: I want to accommodate you, but of necessity I shall adjourn rather early tomorrow. I wanted to progress with this case so that we could conclude it by tomorrow.

MR. LEVY: I will do everything in my power to bring that about, and I am willing to start a little earlier even.

THE COURT: Suppose we start in tomorrow morning at 10 o'clock, Mr. Brothers.

MR. BROTHERS: I am perfectly agreeable.

THE COURT: Is that agreeable to you?

MR. LEVY: Yes, and I appreciate it very much indeed.

THE COURT: Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial, or form or express any opinion thereon until the same is submitted to you. The court will stand adjourned until 10 o'clock tomorrow morning.

(The Court takes a recess until Friday morning,

January 7th, 1916, at 10 a. m.)

(Defendant remanded.)

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New York, January 7th, 1916.

TRIAL CONTINUED, 10 a. m.

LOUIS SIEGEL, (an officer of the 21st Precinct)  
called as a witness on behalf of the People, being first duly  
sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q You have been a member of the police force of the City of  
New York for how long? A Going on three years.

Q Were you on duty as a police officer in the early morning  
of November 1st, last year? A Yes, sir.

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

Q At what hour was it you noticed him? A About 2:30 a. m.

Q And you at that time were where? A At the corner of 14th  
street and Third avenue, northwest corner.

Q At that time your post was what? A On 14th street, from  
Third avenue to Fourth avenue, on the north side of the street.

Q You did not patrol any of the avenue? A No, sir.

Q How long had you been upon the corner of Third avenue and  
14th street when you saw the defendant? A Standing there about  
a minute.

Q Were you alone? A Standing there with Officer Peattie.

Q What attracted your attention to the defendant? A Well,  
we heard some loud talking and we started to walk toward No. 134  
Third avenue.

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Q Was that where the loud talking came from? A Yes, sir.

Q When you looked in that direction, tell the jury what you saw? A We saw about; -- there were five men, three Chinamen and two white men. As we started to walk we seen the two white men walk away and all of a sudden turn back and start to punch the two Chinamen.

Q Tell us where abouts in the block these men were? A They were right in the centre of the sidewalk, in front of 134.

Q 134 is on the west side of the avenue? A Yes, sir.

Q About in the centre of the block? A Yes.

Q Tell the jury what you saw as you continued walking toward the men. A As we continued -- as we started to walk, they started fighting.

Q How many men were engaged in the fight? A Four men.

Q Who were they? A There was Ludwig Brall, Adolph Brall, and these two Chinamen, S. Lee and Lum Dew.

Q Ludwig Brall is the defendant on trial here? A Yes, sir.

Q And Adolph is his brother? A Yes.

Q What happened? A As we seen them fighting, we started to run.

Q That is, you yourself ran? A Yes.

Q How did you run, fast, or slow? A Fast.

Q Were you in uniform? A Yes.

Q Then what? A As we started running, we got within about 15 feet of this defendant and this fight, this other Chinaman, the deceased, was standing about 5 feet away on the curb stone.

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facing these people that were in this altercation, and shouting, I understood it as "Help".

Q You think you could make out the word "Help"? A Yes.

Q Was he taking any part in the fight? A No, sir. As we got within about 15 feet, why, this defendant here, all of a sudden turned around on this deceased and struck him full in the face, knocking him about 10 feet out in the gutter, and he landed on his head.

Q Where was the deceased standing at the time the blow was struck? A On the curbstone, about 5 feet away from the altercation.

Q Were the other four men that were fighting between him and the building? A Yes, sir.

Q When the deceased was struck, he fell out into the roadway?  
A Yes, sir.

Q What did you do? A This defendant and his brother started to run. His brother ran into my arms and held on to me, while this defendant ran into Officer Peattie's hands.

Q Did it take long from the time you heard the loud talking until you came into contact with the defendant's brother? A No, sir, about a minute.

Q What did the two Chinamen do when you grabbed the defendant's brother? A They ran towards their doorway. They didn't know who was coming. They ran towards their door.

Q Did they go in? A They stood in the doorway while we held

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the defendant, but I gave my prisoner to Officer Peattie while I ran out in the gutter and pulled the deceased towards the sidewalk.

Q What was his condition as you got to him? A He was lying stiff and moaning. The blood was streaming from his nose and mouth, and he was making a low moaning sound.

Q Did you see anything of any broken spectacles there?

A Not until I came back from telephoning for the ambulance.

Q Where did you go to telephone for the ambulance? A 16th street and Third avenue.

Q What place did you telephone from? A The police box on the building.

Q Did you have your eyes upon the deceased at the time that the defendant went toward him? A Yes, sir.

Q Tell the jury just what the deceased was doing at the time the defendant approached and struck him. A He was standing there with his back towards the gutter, shouting, when he seen these men in the altercation.

Q He was shouting? A Yes.

Q As the defendant came toward him, did he do anything in addition to shouting? A No, his hands were down. One hand was kind of in a broken condition. He had it hanging like.

Q Which hand was that? A I think it was the left hand.

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

Q You had been in that neighborhood as patrolman? A About two years.

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Q Did you see the deceased strike or kick at the defendant at any time? A No, sir.

Q When you came back did you take anybody to the station house? A Yes, sir.

Q Who was that? A Adolph Brall, I took.

Q Did you have a conversation with Ludwig Brall or with Adolph in Ludwig's hearing? A No, sir.

Q You did not have any talk with him at all? A No, sir.

Q At the station house did you talk with him? A No, sir; they would not talk.

Q Now, you may answer this question yes or no; did you have any conversation with the Chinamen? A Yes, sir.

Q They speak some English, do they? A Yes.

Q Broken English? A Yes. /

Q Did you know the defendant at that time, Ludwig? A I didn't know him, but I seen him.

Q You had seen him before? A Yes.

Q You knew the brother? A Yes.

Q You had known him how long? A About two years.

Q He is a taxicab driver, and had a stand on your beat?

A Yes, sir, 14th street and Irving Place.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. LEVY:

Q Now, Officer, you were in court yesterday, were you not?

A Yes, sir.

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Q Were you in court during the time that officer Peattie gave his testimony? A Yes.

Q You heard all that he testified to? A Yes.

Q You paid attention to his testimony? A Yes, sir.

Q And before coming to court you had spoken to Officer Peattie, had you? A I did.

Q About this case? A Yes, sir.

Q And about your recollection of the events of that morning, is that right? A I did.

Q You compared notes together? A Yes.

Q So that your testimony should agree, one with the other, is that right? A Yes, sir.

Q So that neither of you should make a break with regard to differing in your testimony, is that correct? A Yes.

Q How many times did you do that with Officer Peattie? A Just before we came to court, once.

Q Only once? A Yes.

Q How long before you came to court? A As we were sitting in court, in the back there.

Q You surely must have spoken about this case with your brother officer before yesterday? A No, sir.

Q Your posts continued to be in the same neighborhood, is that right? A Yes, sir.

Q You both attended at the coronor's inquest, didn't you, as witnesses? A Yes.

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Q You also attended while the case was being prepared for trial, you attended at the District Attorney's office together?

A Yes, sir.

Q You mean to say upon all these occasions you never spoke with your brother officer about the facts of the case? A No, sir. not between times; just at the time we were sent for, that is all.

Q I mean, upon the occasions when you were sent for, you knew you were sent for in connection with this case? A Yes.

Q Then you compared notes? A Yes, at the times we were sent for.

Q Each time you were sent for? A Yes.

Q And also upon attendance at the coronor's court? A Yes.

Q Officer, your sight is good, isn't it? A Yes.

Q And did you see quite distinctly what happened that morning? A Yes.

Q Will you say it was dark or light that morning? A Well, it was pretty light around that neighborhood.

Q Sufficiently light, -- it was illuminated enough for you to observe quite a distance? A Yes.

Q How far do you say the distance was from where you were standing talking to your brother officer, to the spot upon which the men were standing engaged in that altercation? A About 120 or 125 feet.

Q So that you agree with your brother officer as to the distance, is that right? A Yes.

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Q What part of the sidewalk were they standing on? A Right in the centre of the sidewalk.

Q Where was the deceased standing? A On the edge of the curb stone.

Q In which direction was he looking? A Looking towards the building.

Q Looking toward the men engaged in that altercation, is that right? A Yes.

Q You said in answer to the learned District Attorney, that he was knocked a distance of about 10 feet, is that your estimate? A From the altercation.

Q At the time you say that the blow was struck by the defendant, when he struck the deceased, that the deceased was knocked a distance of about 10 feet? A Yes.

Q Will you indicate what your conception of 10 feet is, and how far from where you are sitting, would you say? A Well, from about here to that white paper there.

Q The paper in front of Mr. Brothers? A Yes.

MR. LEVY: What do you say that distance is, Mr. Brothers, I will take your estimate.

MR. BROTHERS: About ten feet.

Q Now, in which direction was it that the deceased was knocked; was he knocked directly to the middle of the street, or sideways, or how? A Well, about, he was knocked straight, and he was lying lengthwise, the same way as the avenue.

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Q Let us get that clear, please. Was he knocked out into the street or into the gutter? A Into the gutter.

Q So that he was not knocked out on the pavement; I believe on the Belgian blocks? A Well, that is the street.

Q You will have to describe as well as you can, the position in which the man was lying? A I said he was lying the same way as the avenue, with his head towards 14th street and his feet towards 15th street.

Q Practically his whole body was in the gutter? A Yes, sir.  
BY THE COURT:

Q When you say "gutter" what do you mean by the gutter? You used the word gutter; what do you mean by gutter; tell the jury? A The gutter is outside of the curbstone, where the traffic, wagons and horses go.

Q Now, where the cartracks are, what do you call that? A That is the gutter too.

Q In other words, you call the gutter the entire roadway between curb and curb, is that so? A Yes, sir.

BY MR. LEVY:

Q The sidewalk is a little bit elevated above the roadway, isn't it? A Yes.

Q And there is what you call a curbstone? A Yes, sir.

Q Separating the roadway from the sidewalk? A Yes, sir.

Q How near that curbstone running along the sidewalk was the body knocked to? A About ten feet.

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Q Out into the street? A Yes, sir.

BY THE COURT:

Q How close to that curbstone -- now, you know what I mean by the curbstone? A Yes, sir.

Q Now how close to that were the feet of the Chinaman who was knocked into the street, as you say? A The feet were about eight or ten feet out.

Q How close was his head to that curbstone? A His head was about the same; he was lying lengthwise when I picked him up.

Q If you had had a tapemeasure, for example, and you wanted to measure from that curbstone to the nearest part of the body of the man lying there, about how many feet would it have been, do you think? A It would have been about eight feet.

BY MR. LEVY:

Q So that in being knocked down, his body must have turned so as to put his head towards 15th street ---

THE COURT: 14th street? A Towards 14th street.

Q Towards 14th street, is that right? A Yes, sir.

Q Did the defendant approach the deceased to strike the blow from the 15th street side or from the 14th street side? I want you to understand that question thoroughly.

Mr. Levy: Shall I illustrate it, your Honor, so as to get a clear answer?

THE COURT: I think I can explain to him.

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BY THE COURT:

Q When the defendant, as you say, started to go towards the Chinaman who was knocked down as you say, at that moment -- that is to say, when the defendant started towards that Chinaman, which of the two was nearer to 14th street; do you understand that question? A Which of what two?

THE COURT: You put the question, Mr. Levy. He does not understand.

BY MR. LEVY:

Q You have already testified that the deceased stood with his back toward the street way, facing the houses; is that correct? A Yes.

Q Or facing the men who were fighting? A Yes.

Q Was he standing immediately on the curbstone, or away from it? A On the curbstone.

Q Facing towards the houses? A Yes, sir.

Q Now, when the defendant approached him and struck him the blow, did the defendant approach from near the 14th street side or nearer the 15th street side? A Nearer the 14th street side.

Q So that he was nearer you, that is, this defendant was, than was the deceased? A Yes, sir, they were about even. The deceased was here (indicating), and defendant was about three or four or five feet away.

BY THE COURT:

Q In other words, the movement that the defendant made was

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in an easterly direction? A Yes, directly east.

Q He walked almost directly east; that is to say from the direction of the house on the West side of Third avenue, towards the east side of Third avenue? A Yes, sir.

BY MR. LEVY:

Q Now, then, did he strike the deceased with his right hand?

A Yes, sir.

Q What part of the body or face did he strike? A He struck him square in the face.

Q In the middle of the face? A About the middle.

Q Are you quite certain about that? A Yes.

Q Did not strike him on the side? A No.

Q Either on the right or left side, but square in the middle of the face? A Yes, sir.

Q Are you able to say whether it was a jab, or a swinging blow? A He swung around, right around (indicating). As he turned he swung right around.

Q As who turned? A The defendant.

Q He had been facing the other Chinaman? A Yes, sir.

Q And in which way did he turn his body; try to bring it back to your mind now. He was facing the Chinamen, and turned around and delivered a swinging blow? A Yes.

Q Did he turn towards the left, or did he turn towards the right? A Towards his right.

Q Now, I am supposed for the moment to be the defendant, and I am facing the other two men. I will turn around in the direc-

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tion that the defendant turned, this way or that way? This way is right and that way left? A Turned this way, towards 14th street.

Q This way (Mr. Levy illustrating towards the left)? A Yes.

Q If he did that he would have had to reach the right side of the deceased Chinaman, wouldn't he, or his face? A I don't know what side he would reach, but I know he struck him in the face. He is liable to reach any side.

BY THE COURT:

Q As the Chinaman stood there, before he was hit, the Chinaman's left side was towards 14th street, is that so? A Yes.

Q As the Chinaman stood before he was hit, his left side was towards 14th street? A Yes, sir.

Q He was facing west? A Yes.

Q His right side was towards 15th street? A Yes.

BY MR. LEVY:

Q Now, then, did you see the body of the Chinaman as it was propelled toward the pavement? A Yes, sir.

Q In what way did the body go? Did it go in a straight line out into the street, or was he turned around? A It went on a straight line, his head struck first.

Q Do you understand that question? A Yes.

Q In a straight line from the sidewalk, so the body then was propelled directly east, isn't that right? A Yes; then he rolled over.

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Q He rolled over? A Yes.

Q When you speak about his lying there with his head towards 14th street that was after his body had rolled over, is that correct? A Yes.

Q As a matter of fact, isn't it true that when the body of the deceased was picked up, one of his legs was on the sidewalk? A When he was picked up?

Q Yes. A I picked him up myself.

Q I am asking you was one of his legs on the sidewalk? A No.

Q Do you remember a chair being brought, and his being placed in a chair? A No.

Q When you returned from the signal box where was the deceased? A He was on the curbstone, on the sidewalk.

Q Lying on the sidewalk? A Yes, sir.

Q When you picked him up, did you carry him over the sidewalk? A Yes, sir.

Q Were you assisted by any one? A Yes.

Q By whom? A By officer McKenna.

Q Was it after you had returned from the signal box, or before you went there? A Before I went there I put him on the sidewalk.

Q So that other officers came along? A Yes.

Q Did you whistle or give any alarm? A No, sir.

Q Where was Officer's McKenna's post? A He just came from East 14th street.

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Q Any other policeman there? A An officer from the 15th came running down.

Q Do you remember his name? A No.

Q When the policeman came running was it due to any signal or alarm that was given by any person? A No, sir; he must have seen us run.

Q Now, Officer, are you able to swear that the deceased, when you saw him standing upon the curb, wore spectacles?

A Yes, sir.

Q You were near enough to him to see that? A Yes.

Q Before the blow was struck? A Yes.

Q You told the District Attorney that you picked up pieces of the spectacles upon your return from the signal box? A Yes.

Q Did you pick up these pieces, or were they picked up by your brother officer? A We each picked up part of them. He picked up part and I picked up part.

Q Now, you said that the brother of the defendant ran into your arms and held on to you? A Yes, sir.

Q Describe that; how did he hold on to you? A He locked his arms around me and held on.

Q He held on to you? A Yes.

Q He seemed to be thoroughly frightened? A No, sir.

Q His holding on to you was in the nature of a movement seeking protection for himself, do you say that? A No, sir.

Q Wasn't it due to fear that he held on to you? You wore your uniform? A He seen me and he held on to me.

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Q You said, however, he looked to be thoroughly frightened; how did he manifest that fear? A I didn't say that.

THE COURT: He answered that in the negative.

Q What was his condition; his condition as to his apparel, and as to his face? A Nothing the matter with him. He was all right as far as I could see.

Q Did you see his clothes disordered or disarranged at all?

A No.

Q Just as though he had just been out walking, without any ruffled condition? A Yes, sir.

Q Was he cool? A I don't know if he was cool.

Q Did he seem cool and collected to you? A His face was flushed up.

Q Did you see any marks on his face? A No.

Q Did he say anything to you about having received any injury?

A No, sir.

Q Either there or in the station house? A No, sir.

Q Sure about that? A Yes, sir.

Q Did you observe the face of the defendant? A Yes.

Q What would you say about that? A He had a scratch on his face.

Q What part of his face? A On the left side of his face.

Q Can you describe that scratch? A The scratch came down, down on the side, about two inches here (indicating), and came down about two inches. (indicating on right side of face, at

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about temple).

Q Crosswise two inches and down two inches? A Yes, it came down about like this (indicating).

Q Sort of a semi-circular shape? A Yes.

Q You did not see in your answer to make a distinction between the left and the right side. You say his left side, and you illustrated with your right hand; which was it? A Left side (indicating left side).

Q Did he have any other mark on his face? A No, sir.

Q You went to the station house with both these people?

A Yes, sir.

Q The Chinamen accompanied you? A The Chinamen came later.

Q In the station house was there anything said about the Chinaman having assaulted either one of those two brothers? A The defendant here wanted to make a charge against Lum Dew.

Q What did he say about that? A He said he wanted to make a charge of assault against him for assaulting him. He showed us a scratch on his face.

Q What was said or done? A The lieutenant said "If you have any complaints to make, make it up in court, because you are all going up to court tomorrow morning together.

Q When you got into court do you remember the Magistrate pointing out to you, and to your brother officer, what you call a scratch; I call it a wound; do you remember that? A Yes.

That was after forty-eight hours; the first time we took him

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to court we held him on a short affidavit.

Q Then he was remanded, and after he was remanded the Magistrate said something about this defendant, indicating that he had received some injuries? A Yes.

Q Do you remember what was said? A He said, "Take a good look at that scratch on this man's head and measure it and give him a square deal."

Q That is all he said? A That is all I can remember.

Q Was there anything said about any injury to the leg or shin of either one? A He said "Look the man over good; look all his bruises over carefully", and we did.

BY THE COURT:

Q When you say the man, was he speaking of the defendant?

A The defendant, yes, sir.

Q Now, did you notice the condition of the defendant's hand, his right hand? A No, sir.

Q Were there any scratches or cuts on his hand? A No, sir.

Q His hand was in good working condition, apparently? A I didn't take notice of his hand.

Q You know the brother of this defendant, don't you? A Yes, sir.

Q You told the district Attorney that you had seen this defendant before, but had never known him? A Yes, sir.

Q Where had you seen him? A I seen him around the taxicab stand several times.

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Q Talking to his brother? A Yes, sir.

Q Do you know what business he was in? A No, sir.

Q Are you friendly disposed towards his brother? A No, sir.

Q You don't like his brother, do you? A I didn't say I don't like him.

Q I am asking you? A I treat him the same as I treat anybody else.

Q But you have a feeling of antagonism against him? A No, sir.

Q What did you mean a moment ago in answer to my question --

A I treated him the same as I treated anybody else that violates the law.

Q Have you ever quarrelled with him? A I locked him up; never quarreled with him.

Q You have locked him up for violating the corporation ordinances? A No, sir, for disorderly conduct.

Q In connection with his stand in 14th street? A Yes, sir.

Q The hackmen or taxicab men there are a source of trouble to the police there are they not? A Not all.

Q But whatever trouble was had, was in connection with the manner in which he attempted to conduct his business there, is that right? A Yes, sir.

Q Do you remember that the charge was made that you were showing a little vindictiveness against the brother in prosecuting him? A No, sir.

Q Not in this case, but in the Magistrate's Court when you

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had made a complaint against the brother at some other time for violating the corporation ordinance; do you remember that?

A I did not show any prejudice against him.

Q You were charged with having a general prejudice against him?

MR. BROTHERS: I object to that.

THE COURT: Objection sustained.

MR. LEVY: I withdraw the question.

Q Now, have you ever been in that restaurant on Third avenue which was occupied by the Chinamen? A Yes, sir.

Q How many times? A Twice.

Q What were you there for? A I was eating there once; twice I was eating.

Q While you were in uniform or off duty? A Off duty.

Q You became well acquainted with the deceased and the other Chinamen, didn't you? A No, sir.

Q You knew them by name? A After the arrest; I never knew them before.

Q Not before? A No, sir.

Q How long before the time before this unfortunate accident was it that you had been in that place? A About five months.

Q Don't you remember that you were served in that restaurant by the deceased? A No, sir.

Q Are you sure about that? A Yes, sir.

Q Do you know who did serve you? A Some waiter; some other

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Chinaman.

Q Did you talk with the deceased Chinaman? A No, sir.

Q When you visited that place at any time? A No, sir, never.

Q Did you ascertain, or do you know what the position was that was occupied in that restaurant by the deceased? A I had known him as a manager of the restaurant.

MR. LEVY: That is all, your Honor.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q How long had you known the brother of the defendant?

A The brother about two years.

Q You told Mr. Levy that on several occasions you had locked him up for violation to the law? A Yes.

Q Was he fined for those violations?

MR. LEVY: Objected to as not material, competent, or relevant.

THE COURT: You were interrogating him for the purpose of ascertaining whether or not he was biased, and the theory of the examination was if he had had a quarrel with the defendant's brother he might be biased against the defendant, and that if he had arrested the defendant's brother without cause that might be indicative of bad dealing between him and defendant's brother, and possibly indicate bias as against the defendant, and in that connection it is competent to show that as a result of those arrests of the defendant's brother, the defendant's brother

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was fined. I think in that connection it is competent.

MR. LEVY: Of course, with the distinct understanding that the action of the brother and the disposition of the cases against the brother, this defendant has nothing to do with.

MR. BROTHERS: Oh, I concede that.

THE COURT: Of course, the jury are told that in so many words.

Q He was fined? A Yes.

Q On each and every occasion? A Yes.

Q On how many occasions? A On three occasions.

THE COURT: I think that will be enough on that point.

MR. BROTHERS: That is all.

MR. LEVY: That is all, Officer.

THE COURT: Gentlemen, we are waiting for the Chinese Interpreter, and in the meantime we will take a recess until 12 o'clock. Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial, or form or express any opinion thereon until the same is submitted to you. The Court takes a recess until 12 o'clock.

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TRIAL CONTINUED, 12 o'clock noon.

(At this point Guy Maine, of 27 Bandman Avenue,  
Lanaica, Long Island, is sworn as Chinese Interpreter.

H O O S U N L E E, (134 Third avenue) called as a witness on  
the part of the People, being first duly sworn, through the  
~~Official~~ Chinese Interpreter, testified as follows:

DIRECT EXAMINATION BY MR. BROTHER:

Q You live at 134 Third avenue? A Yes, sir.

Q How long have you lived there? A Between thirteen and  
fourteen years.

Q How long have you been in the United states? A Twenty  
six years.

Q Are you in business at 134 Third avenue? A Yes, I have  
a share in it.

Q Is that between 14th and 15th streets, in the city of  
New York? A Yes.

Q Who else conducts the business there? A Do you want the  
name of the outside partners?

Q I mean who were there in the restaurant? A Chung Wing,  
Lum Dew and myself.

Q Chung Wing is dead now, is he? A Yes.

Q Do you remember the 1st of November, about 2:30 a. m.,  
having some trouble with white men in your restaurant, at 134  
Third avenue? A Yes, I remember.

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Q The defendant here on trial, Ludwig Brall, did you see him in your restaurant at that time? A Yes, I saw him.

Q Now, will you tell us how many white men came in at that time? A Two; he and the other one.

Q Do you see the other one here in court? A Yes, he is here.

Q Where is he? A That is the man (indicating Adolph Brall).

Q How many chinamen were in the restaurant at that time? A We three were there.

Q The three that you have mentioned? A Yes, including the dead one .

Q What happened in the restaurant? A It was due to the buying of a box of cigarettes, and Chung Wing had trouble with the man.

Q What did you yourself see and hear? A I saw Chung Wing handing a box of cigarettes to them, and I heard Chung Wing say "fifteen cents", and they said "Only ten cents.

Q Did you see what kind of cigarettes they were? A "Naturals".

Q Do you know the price of those? A I know it is 15 cents.

Q Which of the white men was talking about the ten cents to Chung Wing? A Both said the price was ten cents.

Q And then what happened, tell it all in your own way?

A I noticed after the argument of the price they disagreed, and finally both went out, went downstairs. Chung Wing followed them. I heard Chung Wing call me to help him. As I went down

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I saw the man give him one blow and then Chung Wing lay on the floor, on the ground.

BY THE COURT:

Q When these white men left the restaurant, did either one have a box of cigarettes? A I didn't notice which man had the box of cigarettes.

Q But did one or the other have a box of cigarettes? A Yes, the box of cigarettes was taken away.

Q When you say the box of cigarettes was taken away, what box of cigarettes do you mean? A That box of "Natural" cigarettes.

Q You mean that box of Natural cigarettes that was in the restaurant at the time that these men came in was taken away by one of the two men, is that so? A That is the cigarettes that was on the counter at the time, but when they went away, then the cigarette was gone. That was the "Natural" cigarette that they were arguing about the price.

BY MR. BROTHERS:

Q When Chung Wing called on you to come and help him where was Chung Wing? A He was downstairs.

Q I understand the restaurant is one flight upstairs, up from the street? A Yes, one flight up.

BY THE COURT:

Q Did you see any money paid for the cigarettes in the restaurant, for this box that you have been speaking of? A No, I did not see it.

BY MR. BROTHERS:

Q Did the other man, the other Chinaman, Lum Dew, - did he

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go down with you? A He followed me.

Q When you got down on the sidewalk what happened? A Before I got clear down to the street I saw the white man gave Chung Wing a blow and Chung Wing fell down.

Q Were there any blows struck by anybody in your restaurant?

A No, there were none.

Q How long had you known Chung Wing? A I knew him quite a long time, but we were in business about seven or eight years together.

Q About how old a man was he? A He was about forty-eight years old.

Q He had trouble with his right arm, did he? A Yes.

Q Tell us what that was? A I was told by him --

Q No, tell how it looked. A The arm was stiff all the time; it could not be raised much.

Q Did he wear spectacles? A Yes.

Q Did you see any policemen there after Chung Wing was struck?

A As soon as he was struck the policemen came by the way of 14th street.

Q Were you taken to the station house? A After I went back to the restaurant, then a policeman came up and asked me that I must go along with him to the station house and act as a witness.

Q Did you see which of the white men it was that struck Chung Wing? A This one. (Indicating the defendant.)

Q Indicating the defendant? A Yes, this is the man, he is the man that gave the blow.

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BY THE COURT:

Q Where do you say that you were at the moment that the blow as you say, was given? A I was by the entrance.

Q Were you standing on the sidewalk; yes or no? A Yes.

Q When the white men started out of the restaurant to go down to the street, did you hear them say anything? A They didn't say anything.

Q You say that Chung Wing followed them down? A Yes.

MR. BROTHERS: That is all.

BY THE COURT:

Q About how large a room is that restaurant? A I could not give you the exact dimensions, but it holds fourteen tables.

Q Were you in the room on the morning of November 1st when the two white men came into it? A I was there.

Q Did you see what they did when they first came into the restaurant? A As soon as they came in, they sat down and ordered something to eat.

Q To which one of the three Chinamen was that order given?

A It was given to Chung Wing.

Q Did you see whether or not that order was served? A Yes, it was served.

Q While the defendant and the other white man were eating, were there any other white people in the restaurant? A At that time there were only those two; nobody else.

Q About how long did the defendant and his companion remain

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at the table? A Between fifteen and twenty minutes.

Q Do you know whether they paid for what they ate? A I didn't know what they ordered; I didn't know whether they paid for the meals or not. Chung Wing had charge of that.

Q You heard in the restaurant, as you say, some talk about a box of cigarettes, is that so? A Yes, I heard that.

Q Between what persons was that talk? A Chung Wing was talking with these two men.

Q You mean the defendant and the defendant's companion and the Chinaman whom you have named, were talking, is that so?

A Yes, my partner was talking with these two men.

Q Where did that talk take place, in what part of the restaurant? A At the counter where the cash was paid over, where the cash counter was.

Q That was about how far from the table at which the defendant and his companion had been sitting? A They were eating in the front of the restaurant by the window, the table separate from the counter. There is about the distance of four separate tables.

Q The counter at which the talk was, was that near the door through which they had entered the restaurant? A There is a counter, then right in front of it is the entrance.

Q Where were you when that talk took place? A I was standing by the kitchen door.

Q That was about how far away from the counter? A About three or four steps.

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Q Did you take any part in that talk? A No, I didn't take part.

Q Did you talk with either the defendant or his companion at any time that morning while they were inside of the restaurant?

A Not at all.

Q During that talk did you know where the waiter was who served the defendant and his companion? A The one that served them is the very one that talked with them.

Q And give me his name again. A Chung Wing.

Q How many flights up is that restaurant? A One flight. It is about sixteen or seventeen steps.

Q Did you see either the defendant or his companion while they were in the act of going downstairs? A There was a bend there, as they go out of the entrance. I saw them go out but going down the stairs I didn't see them.

Q When you are on the sidewalk and enter the building, you enter the hall, do you not? A Yes, there is a little hall.

Q About how far do you have to walk along the hall after you pass the entrance door downstairs, before you get to the foot of the stairs leading up to the restaurant? A About the distance between here and that table.

MR. LEVY: About 12 feet, I take it?

Q Did you see either the defendant or his companion in that hallway, that is to say, on the ground floor, after they had left the restaurant? A No, I did not see them there.

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Q So that, as I understand you, you did see the defendant and his companion after they had left the restaurant, in the hall on the floor of the restaurant, but you did not see them in the act of going down the stairs, or in the hall downstairs on the ground floor, or again until they were on the sidewalk in front of the restaurant, is that so? A Yes, that is so.

THE COURT: You may examine, Mr. Levy.

CROSS EXAMINATION BY MR. LEVY:

Q Do you understand English? A Very little.

Q But, you were able to understand what was said between Chung Wing and these two men that morning? A Some of the conversation I understood.

Q How long did that argument or talk last? A A few minutes, three minutes or so.

THE COURT: Pardon me, I have not it quite clear in my mind whether that talk was with the deceased.

MR. LEVY: It was, your Honor.

MR. BROTHERS: So I understood.

Q That talk or argument was had with Chung Wing, the deceased?  
A Yes.

Q Now, what were Chung Wing's duties in that place? A He was the waiter.

Q And he did serve the two men with the dishes that they asked for? A Yes.

Q And he also was in the habit of serving other people who

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came there? A He did serve others too, but at that time they were the only ones there.

Q So that he had the use of his hands to carry the dishes to and from the tables? A Yes, only a little stiff.

Q But he could use his arm for the purpose of carrying dishes and attending to the duties of his position? A Yes.

Q Now, the counter at which you say the talk took place, the cash drawer is located there, is it not? A Yes.

Q And the men, after they had been served with food, went to the counter to pay for what they had eaten, isn't that so?  
A That is the custom.

Q And on that counter there is a little cigar case in which are kept either cigars or cigarettes, or cigarettes alone?  
A There were cigars and cigarettes.

Q There are different kinds of cigarettes that were kept by you at that time? A Yes.

Q The conduct of the two white men while in that restaurant was perfectly peaceable, wasn't it? A At that occasion they did not make any disturbance; but in former times they always quarreled about the price.

MR. LEVY: I move that be stricken out.

THE COURT: I will leave in the first part, that they made no disturbance; the rest is stricken out.

Q Didn't you see them go up and pay for what they had had, and then order the cigarettes? A I did not notice they had paid

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anything or not, but I only noticed at the time when they asked for cigarettes, I took notice of them.

Q And are you able to swear whether or not they laid upon the counter 10 cents for cigarettes? A That I didn't see.

Q Did you see any money placed upon the counter at all? A I didn't notice it.

Q Do you remember that the bill for what they had gotten to eat, was 45 cents? A I don't know; I don't remember.

Q When they started to go down stairs, the two white men, did they walk downstairs? A It was kind of half running.

Q Didn't you approach the counter while the argument was going on and didn't Lum Dew also approach the counter? A No, we did not.

Q Who was it that descended the stairs first? A I went out; Chung Wing went down first and I followed him.

Q Did the white men precede Chung Wing, or did he precede them? A The white men preceded Chung Wing.

Q Did they go out together, the two white men, or separately? A They all went down, the three of them all rushed down about the same time.

Q That is to say, Chung Wing and the two white men, is that what you mean? A Yes, they went out.

Q Together? A Yes.

Q Will you tell me, please, how wide the stairway is?

A About the width of that. (Indicating jury box door.)

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Q Show with your hands. A Like that. (Indicating.)

MR. LEVY: That is about 3 feet, I take it?

MR. BROTHERS: A little over 3 feet.

JUROR No. 2: About 2-1/2 feet.

Q Do you know how far down the stairs they had gotten before Chung Wing called on you to come down? A I didn't know where he was at the time, but I heard his call.

Q Are you able to say whether or not Chung Wing, before he went downstairs, took off his apron? A He did not have any apron on; sometimes he did not put on any apron at all.

Q I am talking of that morning; did he have an apron on?

A No.

Q Did he have a hat on? A He had a hat. He put on a hat. The hat was right there and he took it up.

Q Did he have a coat on? A Yes.

Q Did he put his coat on? A He had the coat on.

Q Where did he get the hat from? A The hat was in the vicinity of the counter.

Q Before he left the restaurant to go downstairs, did Chung Wing say anything to either you or to your other partner? A No.

Q Did he say why he was going downstairs or indicate by words in any way the purpose of his going out? A No, he did not.

Q Do you recall to mind what words he used when calling up to you? A He said in Chinese, "Come down and help me."

Q And that sound came from the hallway? A It sounded like

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from the entrance of the building, from the hall.

Q Where was Chung Wing when you got first sight of him as he descended the stairs? A He was on the sidewalk when I first saw him.

Q Was the door leading into the entrance open? A You mean at the time after I got down the hallway?

Q As he was going down the stairs. A The door was closed.

Q Now, then, I want you to describe to the jury how many doors must be opened in order to gain access to your restaurant, from the street?

BY THE COURT:

Q If a man is on the street, out on the sidewalk and wants to go inside of your restaurant, and all doors are closed, what doors would he have to open in order to get in? A There is a door by the sidewalk at the entrance, and then there is another door that leads into my restaurant; two doors.

BY MR. LEVY:

Q Now, the door on the sidewalk is the street door, is that what you mean? A Yes.

BY THE COURT:

Q Is that door all wood, or is there glass in it? A The middle part is glass, a large plate of glass.

Q Glass like window glass that you can look through? A Yes, I can see through it.

BY MR. LEVY:

Q Is it entirely clear, or is it painted, or glazed in any

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way? A It is just like that, clear (Witness indicates window glass of court room).

Q There is considerable lettering and painting on it, signs?

A No, no lettering.

Q None at all? A No.

Q Now, in order to get to that first door from the street, do you have to pass through the vestibule in front of it? A About two or three steps, then is the door.

Q Do you have a light in front of the door, facing the sidewalk or inside behind the door? A There was two; one in the front and one in the back.

Q After you open that door, and go in, you would have to, in order to go to the restaurant, go up how many steps; stairways, I mean? A There is one flight. It has sixteen or seventeen steps.

Q When you get to the head of the steps there is another door, is there not? A As you get to the top of the stairs, then there is a little bend, and then you come to the door.

Q That is to say, there is another little hallway that turns around, is that what you mean? A There was only a small place. Formerly it was used for a hall upstairs, but we partitioned it off.

Q Now, what kind of door was that door which led from that little space into the restaurant proper; describe it? A It is a swinging door; a glass door, but it is a swinging door.

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Q It swings both ways? A Out.

Q What is it made of; is it wooden or what? A It is wooden, but it has a panel of glass in the centre.

Q About how large is the glass in the centre? A About that (indicating).

MR. LEVY: About a foot?

MR. BROTHERS: Yes.

Q You mean a foot square, is that what you mean? A Quite long.

Q Running to the top of the door? A Yes.

Q Now when the three men, the two white men and your partner, Chung Wing, went downstairs, who was it that opened the upstairs door? A The door was not locked.

Q I am not talking whether it was locked; was it closed?

A The door was not locked when the two white men walked out.

Q I did not ask you whether it was locked. I am asking you whether it was closed? A There is a hook there. At that time the door was hooked to the side of the wall. It was hooked.

Q That is what I am trying to find out.

BY THE COURT:

Q In other words, that door, during the time that the defendant and his companion were in the restaurant was fastened by a hook and was open, is that so? A Yes.

BY MR. LEVY:

Q When you got down the stairs, was the door leading to the

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street open or closed? A It was closed.

Q And how was it opened? A Is there a knob on it? A Well, when I push it it is open.

Q Doesn't have a knob to turn? A The door has no knob at all. The only way to lock it is with a key.

Q Then it must have a lock with a knob that turns? A There was a thing on the outside that can push the door open. From the inside you don't need any. Just push the door open.

Q Was it a swinging door, or was it a different kind of a door? A It only can swing out, but you can't swing it in.

Q To what particular point on that stairway did you get when you first saw Chung Wing downstairs? A I didn't see Chung Wing until I pushed the door; then I saw him out there.

Q Then you pushed the door open and went out on the sidewalk, is that right? A Yes.

BY THE COURT:

Q Now, at that moment, how many Chinamen, besides yourself, if any, were on the sidewalk? A There was Chung Wing and myself on the sidewalk, and then my other partner was right after me.

Q And when you came down on the sidewalk and Chung Wing was there at what particular point or place on the sidewalk was Chung Wing standing? A They were by the lower end side of the doorway.

Q You mean on the side of the door nearest to 14th street, is that so? A Yes, nearer 14th street.

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BY MR. LEVY:

Q And how near the entrance were they? A Chung Wing was standing several steps from the entrance door.

Q Well, won't you please try to tell me whether he was standing near the entrance in the middle of the sidewalk or near the gutter? A About the middle of the sidewalk.

Q How many steps would he have had to take from the position in which he stood in order to get to the curbstone? A Perhaps about four steps.

Q Are you able to point out to his Honor and the jury what distance Chung Wing would have had to go from the spot at which he stood when you saw him when you got to the sidewalk, to get to the curbstone? A About from here to that table.

Q From where you are sitting? A Yes.

MR. LEVY: What would you say that was?

MR. BROTHERS: At least six feet.

THE FOREMAN OF THE JURY: About six feet.

(The distance is measured by a ruler and it is about seven feet.)

Q Did you see Chung Wing struck the very minute that you came out of the door of your place on to the sidewalk? A I saw Chung Wing was struck as soon as I got downstairs.

Q To the door? A When I saw he was struck down by the man I was right by the doorway.

BY THE COURT:

Q How much time passed from the time that you opened the

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door until the time when he was struck? A An instant; he did not take long.

BY MR. LEVY:

Q Now, where did you see him strike; what part of his face or body? A I saw the blow, but where the blow landed, I did not take special notice.

Q Will you please tell his Honor and the jury in which direction was Chung Wing facing when the blow was delivered? A His face was facing the doorway; my door.

Q When the blow was delivered was Chung Wing standing or was he walking or running? A I saw him as he was trying to walk to the restaurant, walk to the door, as he was going to walk.

Q Did you see his foot extended as if about to take a step to go towards the restaurant? A Something like that, like taking a step.

Q Did you hear him say anything at that time? A No, I did not.

Q Did you hear the defendant or the other man say anything at that time? A I heard some little sound, but I didn't know what they were talking about.

Q Will you now tell me please where was this defendant at the time that he struck that blow? A You mean the defendant.

Q Yes, the defendant? A They were facing each other; as he was standing here Chung Wing was lying down on the floor.

Q Now, I am talking of before the blow was struck. I will put it this way: How close were they to each other when the

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blow was delivered? A No more than a step.

Q And where was the other white man at that time? A He was further down.

Q Describe if you please the positions; this defendant, you say, was facing the deceased. Now, where was the other white man; what was his position? A He was several steps away from him, below.

Q Below where, towards 14th street? A Towards 14th street.

Q Are you sure that when that blow was struck that your partner Lum Dew was not on the sidewalk? A He was not on the sidewalk yet.

Q He had not got down yet? A He was right after me. I don't know whether he was by my side or not, at that time.

Q Isn't it a fact that you and Lum Dew and the two white men got together, or mixed together? A We were on the sidewalk, but not mixed together.

Q Did you see any one strike Lum Dew? A No.

Q Did any one strike you? A No.

Q Did you see a fight in progress when you got down to the entrance? A The only thing that I saw was the blow that he delivered to Chung Wing.

Q Was there any more than one blow struck in the entire affair? A I only saw one blow.

Q Did you or Lum Dew or Chung Wing strike any blow?

A No, sir.

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Q Did you see the companion who was with this defendant strike any blow? A No.

BY THE COURT:

Q Was the deceased your partner, or was he merely an employee? A He was my partner.

BY MR. LEVY:

Q Did you see this defendant turn around? I will illustrate by the motion of my body -- did he turn around and deliver a swinging blow, just as I illustrate to you? (Indicating with a right-hand swing, and turning body from right to left)

A I saw him this way (indicating swing with right hand) This way (indicating).

Q Did he turn his body around so as to get close to Chung Wing? A I did not quite notice that.

THE COURT: We will take a recess until 2 o'clock.

Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, or form or express any opinion thereon until the same is submitted to you. The Court takes a recess until 2 o'clock.

TRIAL CONTINUED, 2 p. m.

H O O S U N L E E, recalled, for further cross examination, testifies as follows:

CROSS EXAMINATION BY MR. LEVY: (Continued)

Q When you saw the blow struck -- or did you say you did not

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see where the blow landed? A That is so.

Q You did not see where it landed? A I did not see it.

Q Then what did you see Chung Wing do? A I did not see him do anything.

Q Did he stand up, or did he fall back, or did he fall down?

A He fell down.

Q Right at the spot where he was struck? A After he was struck he fell, and then landed by the gutter.

Q Did he get off the sidewalk at all, when he fell? A You mean Chung Wing?

Q Yes. A He fell out, but he did not walk out there.

Q Did he fall off the sidewalk, or on the sidewalk? A He fell out in the street by the gutter.

Q Did any part of his body remain on the sidewalk? A He was all clearout in the street.

Q How far out in the street? A About a foot away from the gutter.

Q Do you know what the curbstone is? A Yes, sir, I know.

Q Was any part of the deceased's body lying on the curbstone, or over the curbstone? A He was out in the street clear.

Q In what direction was his body lying; what position? A The head was facing upward, kind of diagonal, lay there in a diagonal way.

Q In which way was his head facing, towards 15th street or towards 14th street? A His head towards 15th street.

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Q Are you sure his head was towards the direction of 15th street? A No mistake; his head was towards 15th street.

BY THE COURT:

Q Which was nearer to 15th street? His head or his feet as he was lying on the street? A You mean to say which side his head, on 14th street or 15th street nearer?

Q When he was lying on the street what part of his body was nearest to 15th street; his feet or his head? A The head was nearer 15th street.

Q And the feet were nearer to 14th street than his head was? A The feet near 14th street.

BY MR. LEVY:

Q When he fell down what was then done by any one in that party? A Nobody did anything to the body until the police came and they took him up.

Q How long after Chung Wing fell was it that the police arrived on the scene? A They came right away.

Q Who lifted up Chung Wing? A The police.

Q Was there a chair brought down? A A chair was brought down.

Q Who placed him on the chair? A At that time when he was put on the chair there was the police, and also the doctor.

Q Did you see many people in that neighborhood at the time of the trouble? A At the time when the blow was struck there was nobody there, but after the occurrence there was quite many.

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Q Did you see after the blow was struck what the defendant did? A After he struck the blow he tried to run away, but the police caught hold of him.

Q Did you see what became of the companion of the defendant; the other white man? A His companion was also caught hold of by the officer.

Q Did the officer run after him, or did he run into the policeman? A They tried to run down to 14th street, and just then the police came towards them.

Q Then when you saw the blow struck what did you do? A I tried to catch those two men.

Q What did you do, did you go away or stay there or what? A I was going to get after them, but I saw the police caught hold of them. Then I stood there; I didn't go any further.

Q How long did you stand there? A Just a couple of minutes.

Q Then what did you do? A I got back upstairs to the restaurant.

Q Now, when the blow was struck and Chung Wing fell, and the police got the defendant and the other man, did you see what Lum Dew did? A He went up to the restaurant.

Q Did he go up right away, or did he wait until you went up? A I don't remember who went up to the restaurant first.

Q But you were not placed under arrest, or called as witnesses on the sidewalk? A After I went back to the restaurant, then the police came and asked me to go and act as a witness.

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Q Now, the approach into your restaurant is by means of steps, two or three steps that you have got to ascend before you get to the vestibule in front of the street door, isn't that so? Like a stoop? A Yes, that is so.

Q How many steps, do you remember? A There are two or three steps from the street.

Q From the sidewalk? A From the sidewalk, and then after you get up onto a little platform, then another step before you get to the door.

MR. LEVY: That is all, your Honor.

MR. BROTHERS: I think that is all. I would like to have the diagram which has been referred to, marked in evidence by consent.

MR. LEVY: No objection.

MR. BROTHERS: It shows the Third avenue intersection with 14th and 15th streets drawn to a scale of one inch to twenty feet.

(Diagram is marked as People's Exhibit 2 in evidence).

L U M D E W, called as a witness in behalf of the People, being first duly sworn, through the Chinese Interpreter, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where do you live? A 134 Third avenue, near 14th street.

Q You have lived there how long? A I was there about eleven

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years.

Q You have been in this country how long? A Twelve years.

Q You were born in China, were you? A I was born in California.

Q But you are a Chinaman? A Yes, sir.

Q Your parents were Chinese? A Yes.

Q Do you know the last witness? A Yes, I know him.

Q Were you and he and Chung Wing in business at 134 Third avenue, in a restaurant? A Yes.

Q Now, going back to the early morning of the 1st of November, 1915, do you remember seeing the defendant and the other white men in your restaurant? A I remember.

Q What part of the work did you have charge of? A I was a dishwasher.

Q Did you then see anything of any trouble that happened in the restaurant that night? A The only dispute was about the price of cigarettes, that is all.

Q Were you in the restaurant room at the time the dispute was had? A I was by the door of the kitchen.

Q Did you hear what was said by the white men or any of the Chinamen about the cigarettes? A I did not understand their talking.

Q You do not understand English? A No.

Q They were talking, were they, the white men and Chung Wing?

A They were disputing, from the way I understood.

Q They were talking? A Yes.

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Q But you did not understand them? A I did not.

Q What did you see? A I don't know whether they took the cigarettes or not; I didn't see that.

Q Did you see them go out of the restaurant? A I saw them go out.

Q Did any one go out at the time that they did? A The three went out first, and then finally Lee went out, and then I followed.

Q By the three, you mean the two white men and Chung Wing went out first? A Yes.

Q And you went out? A A minute or so after Lee went out, and then I followed.

Q Did you get as far as the sidewalk? A When I got to the sidewalk I saw Chung Wing was lying on the ground.

Q Who was there; you saw Chung Wing lying down. Now, who else was there? A I saw the police had hold of the white men then.

Q You did not see any blow struck on the sidewalk? A How the blow was struck I didn't see.

Q Whereabouts was Chung Wing lying? A Was lying by the side of the curb, on the street.

Q As you came out of the door on to the sidewalk was he directly in front of you, or was he to your right or left? A A little way from the entrance to the restaurant.

Q Would that be towards 14th street or towards 15th street?

A It is nearer 14th street.

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Q But in front of the building in which the restaurant was?

A It is a little way from the front of the entrance of the restaurant.

Q Did you go over and look at him? A I went over and looked at him, but his face was full of blood.

Q Where was the defendant when you came out to the sidewalk?

A Well, he may be about ten steps away from the body.

Q What was he doing? A The policeman got hold of him.

Q Did the policeman have hold of him at that moment? A Yes.

Q Did you see the other white man? A I saw him get hold of this one (indicating the defendant).

Q That is the defendant? A Yes, sir.

Q How many policemen were there when you arrived? A Those two policemen. Each one got hold of a white man, and then the third one came up and asked me to come to the station house.

Q You went to the station house, didn't you? A Yes, the police asked me to go.

MR. BROTHERS: I think that is all.

CROSS EXAMINATION BY MR. LEVY:

Q Just a few questions please. Was the door upstairs, when you came down, the upstairs door, was that open or closed? A It was open and hooked.

Q How about the door downstairs, was that open or closed?

A It was closed.

Q When you got down to the sidewalk you saw Chung Wing

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lying down? A Yes.

Q Will you please tell me exactly where he was lying? A How he was lying, I could not tell you, but I knew he was lying down.

Q Was he lying on the sidewalk? A He was lying on the street, near the curb where the cars pass.

Q Do you know the difference between the sidewalk and the street? A The place where you walk that is the sidewalk.

Q That is right. And I want to know exactly to the best of your recollection where you saw Chung Wing lying? A He was lying on the street close to the gutter.

Q Was any part of his body, his legs for instance, lying on the sidewalk, or extending over the sidewalk? A No, all clear.

Q Are you able to say in which direction the body was lying? A Suppose here is the curb, his head was nearer towards the curb, and his feet were pointing out further to the street.

Q With your Honor's indulgence for a moment, -- we will call that straight line, with his Honor's permission, the curb. I want you to make a mark showing in which direction the body of the deceased was lying. Consider that that straight line indicates the curb. (Handing paper to the witness) A Suppose this is 14th street here, the feet was right about here and the head more close to the curb (indicating).

Q If I may be permitted, we will call that the head, and the body lying in this direction: is that so? A Yes, similar to that.

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BY THE COURT:

Q How far was the head from the curb? A Only a little bit.

Q Show with your hands. A (Witness indicating about six inches).

MR. LEVY: That is about six or eight inches, I suppose.

Q Did you remain down there until they lifted up the body of Chung Wing? A I went up to the restaurant first, before the body was taken up, but I understood ---

MR. LEVY: No, I don't suppose we want the understanding.

THE COURT: Mr. Levy, do you want that paper marked for identification?

MR. LEVY: I think perhaps it would be well to put it in evidence, although it is practically my own illustration.

MR. BROTHERS: As long as Mr. Levy made it I do not object to it.

(Paper marked defendant's Exhibit 1 in evidence.)

(Defendant's Exhibit 1 is shown to the jury.)

BY MR. LEVY:

Q Why did you go upstairs and leave the body of your partner lying bleeding upon the sidewalk? A I saw the police had hold of the prisoner, so I went back to the restaurant.

Q Weren't you concerned to know whether or not your partner

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was dangerously or badly hurt? A At that time the prisoner was caught.

Q I am talking about the condition of Chung Wing: weren't you concerned about his condition at all? A Well, I noticed he was badly hurt and in dying condition, and I did not dare to interfere.

Q As a matter of fact, were you not a little bit afraid that you might yourself get involved in some trouble if you stayed down on the sidewalk? A No.

Q Did you strike anybody upon that occasion? A No, I didn't.

Q Did you see any blow struck? A No, I didn't see.

Q At any time were you and Hoosun Lee and this defendant and the companion, the other white man, ever close together? A No.

Q How did you come to go downstairs? Were you called down?  
A I heard the call for help so Lee went out and I followed.

Q And where did that call for help come from, to the best of your belief? A I heard the voices come from below.

Q Did they come from out in the street, or did the voices come from the hallway. It seemed it came by the doorway, by the entrance.

Q How long after Hoosun Lee had gone down did you go downstairs?  
A Maybe a minute.

Q Did you put on a hat or a coat? A No, I didn't.

Q Did you see Chung Wing put on a hat or a coat? A He had a hat on.

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Q Did he have a hat on when he was up in the restaurant or did he put it on before he went downstairs? A He hadn't any hat on at the restaurant, but as they go out he put on a hat.

Q And followed after them? A Yes.

Q Did he walk slowly after them, or did he run after them?

A Fast walking.

Q After them? A I mean the white people fast walked away.

Q I am talking about the way chung wing walked; did he walk fast or slowly? A Rapid steps.

Q Did he have anything in his hand when he followed them?

A No.

Q Did you see any cigarettes? A No, I didn't.

Q Did you see any money? A No, I didn't.

Q Did you notice down on the street where Chung Wing's hat was? A I didn't notice where the hat was.

Q When he was lying on the ground did chung wing still have his hat on his head? A No.

Q What do you mean, that he did not have it? A No, he did not have the hat on his head.

Q Did you see whether or not this defendant had a hat on his head? A I didn't notice whether he had a hat on or not.

Q Did you notice the condition of this defendant's face? A I saw a scratch on his face when the policeman had hold of him.

Q Where was the scratch? A Right here (indicating left temple).

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Q Was he bleeding? A No.

Q How did you come to notice that scratch? Was it pointed out to you? A I saw him have that scratch while we were down in the police station.

Q Were you down on the sidewalk when they lifted up the body of Chung wing? A I was not there.

Q Did you send a chair down from upstairs? A The doctor and police came up and asked for a chair, and I took the chair down.

Q When you took the chair down where was Chung wing then?  
A He was carried into the hallway then.

Q On the chair? A I brought the chair down, but before I gave the chair to the officer the body was carried into the hallway by the stairway.

MR. LEVY: That is all, your Honor.

MR. BROTHERS: Nothing further. That is the People's case. We rest.

MR. LEVY: May it please your Honor, I desire to place on the record the motion provided for under Section 410, of the Code of Criminal Procedure, upon the ground therein stated.

THE COURT: I will deny the motion.

MR. LEVY: Exception, please.

DEFENDANT'S CASE.

MR. LEVY: Your Honor, I intend to waive the opening with your Honor's permission in the interest of the economy of time.

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STEPHEN P. PETTIT, (Freeport, Long Island)  
called as a witness on behalf of the defendant, being first duly  
sworn, testifies as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q What is your full name, if you please? A Stephen P Pettit.

Q And you reside where? A Freeport, New York.

Q That is in Nassau County, isn't it? A Yes, sir.

Q Do you occupy any official position there? A I do.

Q What is the position you occupy? A Sheriff of Nassau  
County.

Q You have been sheriff of Nassau County how long? A Two  
years.

Q Have you occupied other positions than sheriff? A Yes.

Q What positions? A Police magistrate.

Q Magistrate in Freeport? A Yes, sir, and constable down  
in Hempstead.

Q Do you know the defendant at the Bar? A I do.

Q You have known him some time? A About two years.

Q He is a resident of Hempstead, is he not? A Hempstead  
Village, now.

Q He is in business there, isn't he? A Yes, sir.

Q What business is he engaged in there? A Cigar store.

Q He has been in that business since you have known him?

A Yes, sir.

Q Do you know others who know him? A I do.

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Q Do you know what his reputation in the community in which he lives is for peacefulness and veracity? A I think I do.

Q State it, if you please, to his Honor and the jury.

A Very good.

Q A peaceable man and a truthful man? A Yes.

Q A law abiding citizen? A Yes.

MR. LEVY: You may examine, Mr. Brothers.

CROSS EXAMINATION BY MR. BROTHERS:

Q You did not get acquainted with the defendant in your official capacity, did you, as sheriff? A No, sir.

Q But you have only known him since you have been sheriff, is that correct? A I think so; I know him about two years.

Q But not intimately? A Well, I would not say; quite well.

Q Did you buy cigars of him? A I think I have stopped in the store at Hempstead a few times.

Q But you know nothing about this occurrence on Third avenue?

A Nothing, only what I read in the newspapers.

MR. BROTHERS: That is all.

MR. LEVY: That is all, Sheriff.

ELVIN N. EDWARDS, (Freeport Long Island) called as a witness on behalf of the Defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q You are an attorney and counselor at law? A I am.

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Q And that, of course, is far superior to that of being a judge, isn't it? A (No response.)

Q You have practiced law how long? A About eight years.

Q And you have also occupied an official position? A Yes.

Q As what? A As magistrate.

Q And you were a judge how long? A I think about a year and three quarters.

Q You know this defendant? A I do.

Q How long have you known him? A About two years; not quite two years.

Q You have known him in what way? A Well, I have seen him nearly every day.

Q He has a store, hasn't he in Hempstead? A Yes.

Q In Hempstead Village? A Yes.

Q And Freeport, how far is that from Hempstead? A It is about four miles. But he lived at Freeport a great deal of the time.

Q So that you had an opportunity to observe him frequently?

A Yes.

Q You know others who know him? A Oh, yes.

Q Do you know what his reputation in the community in which he lives is for peacefulness and veracity? A I do.

Q What is it, please? A Excellent.

Q He is looked upon as a well behaved, law abiding citizen?

A He is.

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MR. LEVY: You may examine, Mr. Brothers.

CROSS EXAMINATION BY MR. BROTHERS:

Q Did you say you once had been a magistrate? A I was a magistrate in the village of Freeport.

Q How did you get acquainted with the defendant? A Why, he used to do some business with a store under my office. I think he sold them cigars and things of that sort there. I think he supplied them with cigars. I am not sure about that, but he was there most every morning and every evening. I got my newspapers there, so I saw him nearly every day for the last year and a half or so, until recently.

Q You are not an intimate friend of his? A No.

Q You passed the time of day with him? A Yes.

Q His friends are not your associates, are they? A I would say no, in the sense of associates, only that is a term that might have a varied meaning.

Q I mean, you don't visit the homes of his friends, and they do not visit your Home? A No.

Q Just acquaintances by meeting him in that store? A I know a number of his friends very well.

Q That is other people who came in and out of the store? A Men who ran the store, and the barber and the other people we have on our business streets.

Q Do you know his brother? A Yes, sir.

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Q You have known his brother how long? A I think I have known his brother probably, I don't think I have known the brother as long as the defendant.

Q And not quite so well? A And not quite so well.

BY MR. LEVY:

Q That is a small town in which he has his store? A Yes, about 5,000 population, I should think.

Q And I suppose in a small town like that, church people, citizens and residents mingle more or less? A Yes.

Q Than they do in a large city? A Yes.

Q You are quite certain that his reputation is good?

A Excellent.

MR. LEVY: That is all.

J O H N J. M U R P H Y, (Freeport, Long Island) called as a witness on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q Mr. Murphy, what is your occupation? A Warehouseman, and truckman.

Q Where is your place of business? A 50 Front street.

Q How long have you been engaged in business? About 25 years.

Q Your business place is here in New York? A Yes.

Q Your residence is where? A 93 Broadway, Freeport.

Q How long have you lived there? A Going on three years.

Q Do you know the defendant? A Yes.

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Q How long have you known him? A Close on to three years.

Q Do you know others who know him? A Yes, sir.

Q Do you know what his reputation is in your community?

A Very good.

Q With regard to his peacefulness and his being a law-abiding man, and his truthfulness? A Yes, sir.

Q And that is his reputation in that community there?

A Yes, sir.

MR. LEVY: You may examine, Mr. Brothers.

MR. BROTHERS: No questions.

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LUDWIG BRALL, (Hempstead, Long Island) the defendant, called as a witness on his own behalf, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MARK ALTER:

Q How old are you, Ludwig? A Twenty-six.

Q Married? A Single.

Q Where do you live? A Hempstead, Long Island.

Q How long have you lived there? A I have lived in Hempstead now about four months. I lived in Freeport before that.

Q How long did you live in Freeport? A About two and a half years.

Q With whom do you live there? A With my partner in business, Mr. Ernest A. Ashtown.

Q Your people and father reside here in the City? A Yes.

Q Your business is what? A Cigars store. I have a retail store and do a little wholesale business, traveling the Island.

Q Your partner's name is Ernest Ashtown, is that correct?

A Yes.

Q Ludwig, you were born in New York City, were you? A Yes, sir.

Q How many other children are there in the family? A There is three brothers.

Q Older than you? A Yes, sir, I am the youngest.

Q Is your mother alive? A No, sir.

Q Father? A Father is alive.

Q Have you ever been convicted of any crime? A No, sir.

Q By that I mean fined, or anything? A Yes; I was not exactly arrested, but I was told to appear in the police court

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in Freeport for automobile speeding. They had a trap out and they stopped everybody going over 15 miles an hour. I was fined \$5 for going 21 miles an hour.

Q That is the extent of your violation of the law during your entire life? A Yes.

Q You had a Darraque machine or a Ford that time? A A Ford.

Q Do you recall the night in question, or the morning in question, of this alleged trouble between you and the deceased?

A Yes, sir.

Q Where had you been the night previous; were you in town?

A The night before?

Q Yes. A No, sir, not the night before; I was home.

Q At Hempstead? A Yes, sir.

Q When did you come to New York City? A I arrived in New York City, I guess around 10:30.

Q In other words, did you take the train, or come in your car? A I came in the Ford.

Q In your Ford machine? A Yes.

Q Anyone with you? A All alone.

Q Did you have any special purpose in coming to New York?

A Yes.

Q What was your purpose? A To spend the night with my Brother Adolph, to meet my father at 10 o'clock next morning to celebrate his 70th birthday, which was on November 1st.

Q This unfortunate occurrence took place on the birthday of

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your father? A Yes.

Q On that day, at 2 o'clock in the morning of that day --

A Well, I suppose so, I don't exactly know the time.

Q Well, what time did you reach New York City, or what time did you start away from Hempstead in your car? A I had been away all day. I had been riding through the Island in the machine with a friend.

Q Had you been drinking? A No, sir.

Q By the way, so as to have it clear in the minds of the Court and jury, had you drunk at all that night? A That night?

A That night?

Q Yes. A No, not that night, that morning.

Q Had you drunk at all that morning? A Yes.

Q What was the extent of your drinking? A I had one glass of beer at the New Victoria Hotel.

Q You are not a drinking man? A No, sir.

Q You never drank to excess? A No, sir.

Q You never have been intoxicated? A No, sir.

Q You say you reached New York City what time? A About half past 10, I don't know exactly.

Q Where did you land, about, that hour? A Why, I landed at 14th street and Irving place.

Q That is about the place where your brother has his taxi stand? A Yes.

Q In front of Luchow's Restaurant? A No; I left the machine

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right on the side of the Academy of Music.

Q That is the place where your brother has his station?

A In that neighborhood.

Q And that is where you expected to meet him? A Yes.

Q Did you meet him there? A No.

Q Where, in fact, did you meet him? A I did not meet him until much later, in the New Victoria Hotel in 47th street.

Q How did you come to find him there? A I waited around on 14th street until, I guess, after 12 o'clock, when another chauffeur came along. I said, "Have you seen my brother?" He said, "No, I have not seen your brother, but I saw his car about half an hour ago standing in front of the New Victoria Hotel on 47th street." So I waited on 14th street a little while longer and he did not come up and I drove my Ford up there.

Q Did you meet your brother? A Yes, I met him.

Q At the New Victoria Hotel? A Yes, sir.

Q What did you do there? A He was sitting there with some friends. I sat down with him and we had one glass of beer and we smoked a cigar, and conversed a little, and then we left.

Q Where did you go to? A My brother went in his taxi and I in my car, and we drove to his garage where he kept his car, on West 12th street, called the Midtown Garage.

Q Did you place your car in the garage? A Yes, sir.

Q Did your brother leave his there? A Yes, sir.

Q Then you were on foot; where did you go? A Then we

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walked to the corner of 14th street and Seventh avenue, and took the cross town trolley going east.

Q Intending to go where? A Home.

Q Your brother lives where? A 241 East 13th street.

Q Is he married? A No, sir.

Q He has lived there quite some time? A Not so very long I don't think.

Q Had you been to his house before? A Not that house.

Q That was the first time? A Yes. I did not come in very often.

Q You got on the car, is that correct? A Yes.

Q How far did you ride? A I guess we rode right down to 14th street and Third avenue.

Q His home was on the other side of Third avenue, was it not?  
A Yes.

Q What did you get off at Third avenue for? A Well, we were on the car and my brother suggested we step off and go to the chop suey restaurant and get something to eat.

Q And you did enter this place on Third avenue between 14th and 15th street? A Yes.

Q Can you recall about what time you reached there? A No, I would not say, because I don't know.

Q Was the place lit up? A Upstairs?

Q Yes. A Yes.

Q Was there a sign outside, "Chop Suey", or something of that

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sort? A There may be.

Q Was there any notice outside or bills that there was a restaurant there? A You could tell by the fixtures on the upper floor where the restaurant was.

Q In Chinese style? A Yes.

Q You and your brother entered that place; was it on the ground floor or the first floor? A The first floor.

Q There was a light in the hallway? A I don't remember.

Q You sat down at a table? A Yes.

Q In what portion of the premises, of the room itself, did you sit, or about what table? A I don't remember; it might have been the second or third table from the doorway. I don't just remember.

Q Your brother sat at the same table with you, is that correct?

A Yes, sir.

Q Was there any other person sitting at the table other than you and your brother? A I don't recall. I don't think there was anybody there.

Q I am referring to your own table? A No.

Q Do you recall now whether any other white persons were in that room, in the restaurant at the time you were there? A I don't believe there were.

Q Were there any other Chinamen other than the deceased?

A Yes, sir, two other Chinamen.

Q Are those the two men who were on the witness stand?

A Yes, sir.

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Q Who was the first person you spoke to when you entered the place? A My brother, I guess.

Q I am referring not to your brother, but to the Chinamen in that place. A The first one I spoke to of the three, when we got through with the meal, I asked them for a pack of cigarettes.

Q Which one of the three Chinamen did you or your brother speak to first in the place? A I guess the first would be I spoke to Chung Wing.

Q That is the man who is dead? A Yes.

Q Did you do the talking, or did your brother? A The talking was, I bought a pack of cigarettes.

Q I am referring now to the time before you got your cigarettes, to the time you sat down to your meal. A There was no talking to the Chinamen at that time.

Q You had to give an order, didn't you? A Oh, yes, at that time my brother ordered the meal.

Q You ordered what? A I ordered charmaine, I think that is what you call it.

Q That is a delicious Chinese dish? A Yes.

Q And your brother ordered what? A Peppered steak.

Q That also is a very delicious Chinese dish? A I never tried that.

Q You enjoyed your meal? A I did not, because I was not specially hungry, but my brother was. I ate my part.

Q And your brother ate his peppered steak? A Yes.

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Q You had nothing to drink? A Tea.

Q But no intoxicating liquors? A No.

Q The entire bill amounted to what? A 45 cents.

Q Who was to pay the bill? A My brother paid it; he got there first; he paid it.

Q Was there a check handed out? A I don't think there was any check. I think he walked to the counter.

Q You were in the place how long before the proposition was made to find out how much was owing the Chinamen for what you had taken? A I guess it took us fifteen to twenty minutes to eat.

Q Then did you put your coat on and arise? A I had my coat on.

Q And your hat? A I didn't have my hat on.

Q It was on a rack? A I think it was on the seat next to me.

Q You and your brother put your hats on and started to walk to the desk and pay the amount of your bill? A Yes.

Q Where is the counter or cash desk? A As you are walking out, it is to the left.

Q Near the door, the exit or entrance door? A Yes.

Q Was there anyone behind the counter? A I think Chung Wing walked around the back of the counter.

Q Was there a cash register there? A To tell the truth, I don't remember.

Q Coming back to the time when the order was given, you say your brother gave the order? A Yes.

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Q For the eatables? A Yes.

Q To the deceased, is that correct? A That is right.

Q How many dishes were served to you; I mean plates, on the service of your order? A I think there were two plates and one bowl.

Q Charmaine is a soup, is it not? A Yes, in a bowl.

Q That is brought in a bowl? A Yes.

Q And there is a large dinner plate brought to you at the time the charmaine is served, or do you take it from the bowl ?

A Take it right from the bowl.

Q It is a large and very deep bowl, or a small sized bowl?

A It is a very deep bowl.

Q Was the bowl filled, almost running over, as far as the soup itself was concerned? A No.

Q Or was there quite some space between the top of the bowl and the soup in there?

MR. BROTHERS: What difference does it make?

MR. ALTER: I will show it in a moment, of the man's ability to take the plates and carry them around.

THE COURT: He may answer.

A Well, the soup was not exactly running out, but it was pretty well filled, I guess.

Q There was soup in the bowl and a plate, and the peppered steak was brought in on a platter? A It comes in a little Chinese dish, and the dish is on a white plate.

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Q That is, two dishes with the steak. The dish with the steak and another place underneath? A Yes.

Q That makes four dishes, is that correct -- the bowl and the soup plate, the dish upon which the steak is put, and another plate? A You got one too many; it is three, just a bowl and two plates.

Q Were knives, forks and spoons served to you there? A Yes.

Q Brought along by him at the time when the other dishes were brought? A Yes.

Q By whom? A By Chung Wing.

Q The deceased? A Yes.

Q Did he place these different receptacles on the table?

A Yes, sir.

Q When you went over to the desk to pay your bill, as I understand it, your brother intended to pay, or offered some money for the payment of the bill? A Yes.

Q How much money did he lay down, if any? A He laid down a half a dollar.

Q To whom? A To Chung Wing.

Q Chung Wing, was he in front of the desk or behind the desk?

A He went behind the desk.

Q How long is this desk? A I could not say; that may be about ten or twelve feet long.

Q And a cigar counter on that, as I understand.

A Well, a cigar case on the counter, just a glass case on the counter.

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Q Upon the counter or upon the case, was the money placed?

A On the counter. If I am not mistaken there is a rubber mat lying there, and it was laid on the rubber mat.

Q At the time the money was placed on the counter there was something said between you and your brother as to a smoke?

A Yes.

Q Tell the jury what that was? A My brother asked me if I had a cigar or a cigarette with me, so I felt, and I said, "No, but I will buy a pack of cigarettes."

Q Did you call for cigarettes? A Yes, sir.

Q You called for a special kind, did you? A Yes, I pointed in there to a certain cigarette.

Q A certain kind of cigarette was handed out to you? A Yes.

Q By whom? A By Chung Wing.

Q Now, this counter or cigar case opens from behind the counter?

A Yes.

Q Is it a lid case that you can raise, or must you push the door? A That I cannot tell you, I don't recall.

Q Did he raise the top of the case, or was it one of those pushing doors? A I don't remember that. Wait a minute, - I think I do; I think he shoved the door and reached his hand in.

Q After that the cigarettes were placed on the counter?

A Yes.

Q How much money did you tender in payment? A I gave him two nickles.

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Q What happened after that? A Why, Chung Wing kept the two nickles and he also kept the five cents change which my brother was supposed to get.

Q That is, your brother's bill was forty-five cents for the eats? A Yes.

Q And he did not get that five cents piece which he was entitled to as change from the fifty cent piece? A Yes.

Q What was said then? A Then I said to him, "Just a moment, I just gave you ten cents". I said, "You are keeping the other five." He said, "Yes, cigarettes 15 cents." I said, "No, no, ten cents all over the world."

Q You are in the cigar business? A Yes.

Q You said ten cents, and the Chinaman said fifteen cents? A Yes.

Q Did you return the cigarettes? A Yes, sir, after he insisted on keeping the five cents.

Q What did you say to him in reference to the fifteen cents? A He said, "If you don't want to pay it, give me the cigarets back", and I gave him the cigarettes back.

Q Did you do that? A yes. I guess the cigarette box was open. I was about to hand a cigarette to my brother, and I closed the box and gave the cigarettes back, and got our money back.

Q He gave you the ten cents back, and left the five cents for your brother? A Yes.

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Q What happened after that? A He said, "Cigarettes cost fifteen cents all over, fifteen cents." He said, "I bet you, I bet you", he said.

Q Who said that? A Chung Wing. He said, "I bet you." My brother went down in his pocket and got out some money? He said, "All right, I bet you. I bet you \$25."

Q He said that to the Chinaman? A Yes.

Q He took \$25 and laid it on the counter? A Yes.

Q What did the Chinaman say? A Chinaman said, "Dirty money."

Q Any other remark made about your money? A No, he kept saying "Dirty money".

Q Anything about American? A He said, "Dirty money". My brother said, "What do you mean?" So he said; he flared up, he said, "Dirty money, get out of here, you American son-of-a-bitches", he said.

Q What did your brother say? A My brother said, "Go on, you monkey, you won't say that downstairs."

Q He called him a monkey, and your brother said, "You won't say that downstairs"? A Yes.

Q Was anything else said immediately after that? A No.

Q What did your brother do after he called him a monkey?

A He started walking downstairs.

Q Anxious to get out of the place? A Yes.

Q Then what did you do? A I started to follow him.

Q What became of Chung Wing? A Chung Wing was angry. He

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pulled off his apron and put on his hat and coat and started out after my brother, started shoving him.

Q What became of the other two Chinamen in the place? A With that the other two Chinamen came out; that is, went up to them.

Q Were they going slowly or in a hurry? A They got there before I did; they blocked the way that I could not get out.

Q So that your brother was out first? A Yes.

Q There were three Chinamen after him, and then you came?  
A Yes.

Q Did you all reach the street about the same time? A No, sir.

Q When you got down stairs what happened as far as any trouble was concerned? A One of the Chinamen kicked my brother when he was about two steps down from the landing. Then my brother ran downstairs, and the 3 Chinamen after him, and I was last.

Q In fact, you had had no words with the Chinaman; you did not call him a monkey or say anything to him? A No, sir.

Q So that there was no feeling, as far as you know, against you? A No, I gave my cigarettes back and got my money back.

Q When you got outside, what happened? A When I got outside, I looked towards 14th street, and I saw three Chinamen spring at my brother, three of them.

Q How long a time did that take, after you had the trouble?

A About a minute or so.

Q They were in a scramble? A Yes, sir.

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Q All four of them? A Yes, all in a general mix-up.

Q Then what did you do? A They were punching and kicking and I ran over to him and I started pulling for my brother, got hold of one and pulled him, and got hold of another and pulled him. Then somebody struck me in the back of the neck, one of them.

Q Do you know whether that was with the fist, or some instrument? A I don't know whether it was a fist or not.

Q Some hard substance? A I don't know. It was so suddenly.

Q Were you hit any place, any other place on your body? A Yes.

Q Where? A I was struck here. (Witness indicates left temple) I felt a sharp pain. I don't know whether it was done by any instrument, or with fingernails, I could not tell you. I know my hat fell off.

Q Did you bleed? A Yes, I bled; that is, I felt up there and the blood was on my fingers.

Q Were you ever knocked to the ground during the melee? A Yes, I staggered and fell on that blow when I was hit in the temple.

Q What became of your cap? A The cap fell off and fell on the sidewalk.

Q What then? A I looked and saw the officers coming, and they got up, stumbled and fell right at the feet of Officer Peattie.

Q During this mix-up, or during this so-called mix-up, did

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you strike the deceased? A I might have struck him, but I don't know whether I did or not. I know I was pulling him out in the general mix-up, and I might have struck him.

Q At the time you claim you might have struck him, you were being struck yourself? A Yes.

Q Your forehead or temple was cut? A Yes.

Q Your brother was being struck by three Chinamen? A When he was on the ground they were punching and kicking him, when I sprang into the affair.

Q You had no feeling against the Chinamen? A No.

Q You never had any trouble with them before? A No.

Q As far as you know your brother never had any? A I don't think he ever did.

Q You heard the testimony of some of the witnesses, that you deliberately turned around from where these two Chinamen were with your brother and struck at the deceased who was some few feet away from you, is that true? A No, sir.

Q That is not true? A I did not walk at all. Everything I did was done right in the one spot where I was standing. I was pulling the Chinaman away, and I felt the blow, and I struck and I felt this pain and I fell.

Q Did you strike Chung wing, the deceased, because of a cry for help, or did you hear any cry for help at that time?

A No, there was no cry for help.

MR. ALTER: That is all, your witness.

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## CROSS EXAMINATION BY MR. BROTHERS:

Q Did you ever live in New York City? A Yes, sir.

Q Where? A I lived at 1544 Second avenue.

Q How long ago was that? A I have not lived in the City for quite awhile; I guess ten years or so.

Q What kind of cigarettes did you order? A "Schinasi Prettiest" is the name.

Q He served you "Schinasi Naturals", didn't he? A No, sir.

Q "Schinasi-Naturals" are fifteen cents, aren't they? A No, thirteen.

Q You would not expect to go into a restaurant and get them for thirteen cents? A I don't know.

Q You could get them for thirteen cents, perhaps, at the United Cigar Store? A I can get them any place for thirteen.

Q Any restaurant too? A I should imagine I could.

Q But, as I understand it, from your story, you gave the cigarettes back, and you got your money back? A Yes.

Q So that there was no further need of any quarrel at all?

A No, there was not any need.

Q Nobody was out of pocket at all? A No.

Q You had your money and the Chinaman had his cigarettes? A Correct.

Q And yet you say that these Chinamen followed you and your brother into the street? A Yes, sir.

Q And picked a fight with him on the sidewalk? A No, the

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fight was picked upstairs. I told you about the dirty money.

Q Well, the three Chinamen went out and set upon your brother out upon the street? A Yes.

Q Was there anything to prevent their fighting with him in the restaurant? A Yes.

Q What? A His running away.

Q Oh, he ran out, did he? A He walked quick, or ran.

Q Didn't he run out because you had the cigarettes and you were going to skin the Chinamen out of five cents? A No, sir.

Q And that is why he ran? A No, sir.

Q Your brother was not afraid of these Chinamen, was he?

A He was not trying to get into any fight.

Q You did not run out, did you? A No, I had no cause to run.

Q You were not afraid? A Why should I? I didn't have any argument with the chinamen.

Q But your brother ran out, is that so? A Yes, sir.

Q He went so fast they could not catch him until he got out on the sidewalk? A Well, they might have caught him; he got kicked on the stairway.

Q But you did not see that. A Oh, yes, I did.

Q On this narrow stairway you saw that? A Yes.

Q You were the last one; your brother was at the foot of the stairs? A I did not say at the foot of the stairs; two steps from the upper landing of the stairs.

Q He was two steps from the upper landing? A Yes.

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Q And the Chinamen were between you and your brother? A Yes.

Q And you saw one of them kick your brother? A Yes, sir.

Q And you saw one of them kick your brother? A Yes, sir.

Q Of course he did not turn around and retaliate, did he?

A Who?

Q Your brother? A No, sir.

Q What did he do? A He ran downstairs.

Q Just as fast as he could go? A I don't know whether it was as fast as he could go.

Q He made a lot of noise going down the wooden stairs, didn't he? A They did make some noise, naturally.

Q When he got on the street did he continue to run? A That I could not tell you.

Q And these Chinamen were facing you? A Yes, sir.

Q And you were facing the Chinamen? A No.

Q It was a regular procession down the stairs? A I was not chasing anybody. I ran down the stairs.

Q To see what was up? A Well, I kind of felt, I knew what was up. I wanted to protect my brother.

Q You felt something was going to happen? A Positively.

Q What made you think that? A The three Chinamen running after my brother.

Q You had been in there before? A In that restaurant?

Q Yes. A Once or twice before.

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Q You had trouble there before? A No.

Q You and your brother? A Positively not.

Q Didn't you have trouble over change before in that restaurant? A No, sir, never.

Q You say your brother took out twenty-five dollars, and put and put it down on the counter and he said he would bet twenty-five dollars that he could buy those cigarettes for ten cents anywhere? A Yes, on the invitation to bet, by the Chinamen.

Q Did he take the \$25 with him when he went out? A Yes, sir.

Q What did the chinaman say when he layed that \$25 down on the counter? A "Dirty money; dirty money".

Q That seemed to anger your brother? A Slightly, yes.

Q He got mad right away? A No, slightly angry.

Q In fact, he told the chinaman he would not dare come down on the sidewalk and call him a son of a bitch, didn't he? A He did not use your words.

Q He said, "You won't dare say that on the sidewalk"? A "You won't dare say that downstairs."

Q In other words, he invited him out on the sidewalk? A Not necessarily.

Q That is the way you took it? A Not I.

Q It was what he said then that made you afraid when they went down on the street there would be trouble? A No.

Q At that moment you thought everything was peaceful, did you? A I thought it would end all right.

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Q But your brother was angry? A I thought he was slightly angry, naturally.

Q You were angry too, weren't you? A No.

Q How did you feel about it? A I felt perfectly normal. There was nothing to make me feel out of sorts.

Q Your feelings didn't rise at all, because the Chinaman called you a son-of-a-bitch; that didn't anger you in the least?

A You are getting ahead of it; up to that time he had not called my brother a son-of-a-bitch.

Q I am talking about the time he did call him that? A Certainly I felt a little angry to that.

Q You got sore about it? A Slightly.

Q What did you say? A I didn't say anything.

Q What did you do? A I didn't do anything. I stood right there. My brother did the talking; I didn't do any of it.

Q Your brother seemed to be the one that did all the talking, is that right? A Yes, he did it all.

Q In fact, he said to him, "You monkey, you won't say that to me downstairs", that is what he said? A Yes.

Q How did the Chinaman take that? A He got very angry too.

Q What did he say? A Well, he did not say anything, but shoved him, shoved my brother.

Q While he was back of the cigar counter? A Yes, he got around and shoved him.

Q How did he shove him? A Pushed him.

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Q In which direction? A Towards the door.

Q Tried to get him to go out, is that so? A I don't know what he wanted to do.

Q He pushed him towards the entrance? A Yes; I don't know exactly whether directly towards the entrance, but in that direction.

Q Did your brother go then? A Yes.

Q He did not resist, of course? A No.

Q You took no part in anything there? A No, sir.

Q Your brother then started to run? A Yes.

Q And was it then when your brother started to run that Chung Wing went and got his hat and coat? A I don't know if it was exactly that time or not.

Q When was it he got his hat and coat? A When he shoved my brother he took his apron off and threw it away and put on his coat and hat.

Q What was your brother doing all that time? A That only took a couple of seconds, I guess.

Q Well, he had to untie his apron? A No, not untie it specially.

Q He took it off? A Yes.

Q Then he had to take his coat down? A Yes.

Q And put his coat on? A Yes.

Q Then he had to reach out and get his hat and put that on?

Q He put his coat and hat on the same time? A What I mean, he got the coat and hat at one time and put the hat on.

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Q While he was doing that, what were you and your brother doing? A My brother was going out.

Q Now, which Chinaman kicked him? A I don't know; I could not tell you that.

Q It certainly was not Chung Wing, was it? A I don't know; he was the first one there. I think it was him.

Q If your brother went very quickly, how did Chung Wing overtake him? A He did not go quick out; he walked very gradually.

Q You paid your bill and your business was completed? A Yes.

Q There was nothing then to keep you in the restaurant? A No.

Q Why didn't you go on about your business? A Because I could not go.

Q Why not? A Well, when Chung Wing got to the upper landing, then the other two Chinamen entered the thing.

Q Did he call anything to those other Chinamen? A No, he did not call them.

Q Of course, you were not frightened at all then? A I was not frightened -- yes, at that I was, when I saw three Chinamen blocking the landing, blocking the door, and I could not get out.

Q Had your brother gotten out then? A Yes, he was about two steps down, when he was kicked.

Q You were still in the restaurant? A Yes, sir.

Q How in the world could you see anybody kick your brother then; you were in the restaurant? A I was in the restaurant, standing at the door; I could look down.

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Q These fellows were blocking the passage way? A Yes, on the platform; you could not go downstairs unless you go by way of the platform. I call it the landing of the stairs.

Q It is a very narrow place? A Yes.

Q You could not tell us which Chinaman kicked him? A No.

Q What part of him did he kick? A He kicked him in the shin (indicating).

Q The man that kicked him was standing above him? A Yes.

Q And he kicked him in front of the shin? A Yes.

Q And your brother was going down the stairs? A Backing down.

Q He was backing down? A Yes.

Q I thought you said he hurried downstairs. A After he was kicked.

Q The kick did not hurry him, did it? A I guess it did.

Q Did the Chinaman reach downstairs with his foot and kick him in the shin, or did he just launch the kick right out?

A This way, straight. (Indicating.)

Q And your brother was several steps below the Chinaman?

A I did not say that; -- one or two steps down.

Q Do you want to change that? A I did not say several.

Q Didn't you say the Chinaman was on the landing and that your brother was several steps down from the landing? A A step or two down. If I said several, I didn't mean it; -- a step or two down.

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Q How far behind the last Chinaman were you as you were going downstairs? A Practically no distance; I was standing right there.

Q You saw the back of the last Chinaman going downstairs, didn't you? A Yes.

Q How far behind him were you when you went down? A They were running down; I was not specially running down. They were running down.

Q Were you on the stairs at the same time that the last Chinaman was on the stairs? A Yes.

Q How far away from him were you; one or two steps? A No, I guess a little more than that; five, or six, or seven steps.

Q You kept right along? A Yes.

Q When you got on the sidewalk what did you see? A I saw three Chinamen springing at my brother.

Q Springing at him? A Yes.

Q What was he doing at that moment? A My brother?

Q Yes. A He was not doing anything, standing there with his face towards the Chinamen.

Q In what position was he? A A standing position.

Q Did he have his hands in front of him to repel the attack?  
A Yes.

Q Or with his hands down? A No, sir; I suppose ready to repel the attack.

Q He had his fists up? A I don't know whether he had his

fists clenched or not.

Q You were looking right at him? A Not specially.

Q Why can't you tell us? A I was not looking right at him.

Q Who were you looking at? A I was looking at them all;  
no one in particular.

Q Tell us what your brother was doing. A I told you he was  
standing there.

Q You say three Chinamen sprang at him? A Yes.

Q What do you mean by that? A They jumped at him; they  
rushed for him.

Q Jumped at him? A I do not call it a jump, they went at  
him in a general mix-up, and my brother fell down.

Q He fell down? A Yes.

Q You didn't tell that a little while ago when Mr. Alter  
was examining you, did you? A I did not say the way he fell down.

Q You said you fell down; did he fall down too? A I was  
not at the scene. I could not tell very well just at this time,  
I was not near the affray at that time.

Q I don't want to have any misunderstanding; three Chinamen  
went at your brother and he fell down? A They all fell.

Q The whole four of them? A Yes.

Q In a heap? A Yes.

Q What were you doing? A I ran towards the scene.

Q What did you do? A I pulled the Chinamen away from my  
brother.

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Q As you reached down to take hold of the Chinamen, what were they doing down there on the ground? A Punching and kicking. Fighting and punching.

Q You reached for the nearest figure, I suppose.

Q Who did you get hold of? A I could not tell you that; it happened so quick.

Q What did you do then? A I pulled him away from my brother, one with the left hand and another one with the right hand.

Q You were strong enough to pull two struggling Chinamen away, one with each hand, just pulled them right away? A Not at one time.

Q Did you get them up on their feet? A No, just pulled them away.

Q Did they get up on their feet? A Yes.

Q What became of the third Chinaman? A I don't know what became of him.

Q Was Chung Wing among that group of three that you wrestled with? A Yes.

Q Was he one of the two that you pulled away? A I could not tell you that. I don't know, I am positive the one I pulled away was the stout Chinaman.

Q That big, burley Chinaman? A Yes.

(Mr. Brothers directs Hoosun Lee to stand up in the court room.)

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Q He was flat on the sidewalk kicking and squirming? A He was on them, yes.

Q You pulled him away with one hand, is that right? A Yes.

Q Which hand? A I don't know whether it was the left or the right; I pulled him away.

Q Then was he the first one you pulled away or the second?

A That is kind of hard to remember.

Q In fact, you cannot remember even striking a blow, can you? A Yes, I struck a blow.

Q Who did you strike? A I don't know.

Q I understood you to say you had not any recollection at all of striking anybody, didn't you say that? A I said I was struck in the back of the neck and I struck. Then I was hit and I fell.

Q You said, "I might have struck him, but I haven't any recollection of it."; is that true; tell us who the man was that you struck? A I don't know.

Q Have you a recollection now of having landed a blow on anybody? A It struck somewhere, but where, I don't know.

Q Let us see if we can find out when it was; was that while the man was lying down, or after they had gotten up? A After they had gotten up.

Q When they got up, you could look right into their faces, of course, couldn't you? A Not all of them; they were not all in front of me.

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Q Well, the man you struck was of course in front of you?

A Not necessarily.

Q You had to look at him in order to strike; didn't you take any pains to see where you were striking him at all? A No.

Q It was a critical moment, and you wanted to get good execution with your blow, didn't you; didn't you want to see that it landed somewhere? A I didn't have a chance. I was struck in the back of the head and I struck, but where the blow landed, I don't know; I could not tell you. Then I got a blow on the side of the head and I staggered and fell.

Q You could not tell us whether your hand came in contact with a man's body or his head? A No, I could not tell you that.

Q Did your brother strike anybody? A Not that I saw.

Q What was he doing on the sidewalk there; wasn't he doing anything at all? A On the sidewalk?

Q Yes. A Yes.

Q At any time? A Yes.

Q In the beginning? A Yes, he was underneath three Chinamen.

Q When they got up, what was he doing? A I guess he was getting up too.

Q He got up too? A Yes.

Q Then what did he do? A I don't know what he did.

Q Now, you remember that you didn't make any complaint in the magistrate's court that these Chinamen had assaulted you and your brother? A I did not have a chance to say a word there.

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Q Not a chance? A No.

Q You were there when the magistrate said to the officers, "Measure the wound on this man's face so that you may give him a good fair trial"? A Yes.

Q And that magistrate who was so fair as that, would not give you a chance to enter a complaint against these men? A I entered it before that.

Q Did you know the magistrate? A No, sir.

Q What was his name? A Magistrate McQuade, I think it was.

Q He is a personal friend of your brother's, isn't he?

A I don't know.

Q You know his name just as well as you know your own, don't you? A No, I don't; I don't know the man.

Q You have seen him in the court room since the trial started, haven't you? A Yes, sir.

Q You saw him here? A My brother told me it was him.

Q He is a friend of your brother's, isn't he? A You will have to ask my brother that; he is not a friend of mine.

Q And that man did not give you a chance, or the City Magistrate did not give you a chance to enter a complaint that these Chinamen had assaulted you and your brother? A It was not necessary; a complaint had been made before that.

Q Where did you make the complaint? A At the police station. I wanted to make it against these Chinamen for being in the fight. The Lieutenant said that I could not make the complaint, that I

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was held for felonious assault. Then I turned to the officer. I said, "Officer, you know these two Chinamen were in the fight too, why don't you arrest them?" Officer Peattie said, "Yes, I will make the charge against the two Chinamen." He stepped forward and made a charge against the two Chinamen.

Q Where was that done? A At the police station.

Q Do you recall that the lieutenant said that if you had any such complaint to make, to make it to the police court judge?

A No, I don't think he said that. What he did say was that I was held for felonious assault and I could not make it, make a charge; that is what I understood.

Q But you are making it now, aren't you, that these Chinamen assaulted you and your brother? A Making the charge now?

Q Yes, you are making the accusation? A Yes.

Q You are having a complete opportunity to make it? A Yes.

Q Nobody is preventing you from telling all you want to about this matter now? A No, sir.

Q And in fact, you talked to the Assistant District Attorney very shortly after this occasion, with Mr. Deuell? A Yes, sir.

Q On the second day of November? A Yes, sir.

Q At 2:20 p. m. A Yes..

Q And he asked you what happened, didn't he? A Yes, sir.

Q Do you remember telling him anything about striking any Chinamen? A I told him I don't know whether I struck or not; if I remember right.

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Q Have you ever had any experience in boxing? A No.

Q Have you any recollection at any time in your life that you ever struck another person with your fist? A Not clinched.

Q Did you ever strike anybody? A Yes, when I was very young, I guess I did.

Q You had a distinct recollection of it afterwards, didn't you; you could remember that you had struck such and such a boy?  
A Yes.

Q And yet, you could not remember the day after this occurrence, when you were talking to Mr. Deuell, that you had struck anybody? A That was a different thing; there were three or four people in the crowd when I was hit, and I struck, if I remember right, I struck blindly; I don't know where I struck, if I did strike.

Q Now, let us see if you told this to Mr. Deuell. I will read it to you slowly and you can then see whether it accords with your recollection.

MR. LEVY: If it is in contradiction, I will make no objection; ~~if~~ if it is not in contradiction, I must object to it.

MR. BROTHERS: It seems to me that would be a question for the jury.

MR. LEVY: But you may read to the jury matter which may later develop to be incompetent.

THE COURT: It may be an amplification of this statement already made, just the same as if he were interrogated more fully regarding it.

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Q Did you say anything to Mr. Deuell about your brother putting down \$25 cash on the counter? A I don't know whether I told him \$25, or whether I told him he put money down.

Q Did you tell Mr. Deuell anything about these men, all down on the sidewalk in a heap on top of your brother? A Positively.

Q You did? A Yes, sir.

Q Is this what you told Mr. Deuell about your brother; -- (reading): "So my brother went down and I followed, and when I got down I saw three Chinamen sparring at my brother and three of them went for him, so naturally I went over and tried to separate them. I didn't want to see my brother get hurt." Is that what you said to Mr. Deuell? A Something to that effect.

Q You do not dispute that you said that, do you? A I will not say word for word.

Q He had a stenographer there writing it down, didn't he?

A He did.

Q (Reading.) "So with that, this Chinamen that was hurt, he sprang for me." That is Chung Wing, isn't it? A Yes, sir.

Q (Reading.) "So with that, this Chinaman that was hurt, he sprang for me, and I don't know whether he hit me with his hand or whether he had an instrument that hurt me (indicating eye)." Do you remember you put your hand to your eye and to your face?

A Yes.

Q (Reading.) "But anyhow, I fell down, and the next thing

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I knew, I was picked up by an officer and I really didn't know that this Chinaman was hurt until about two minutes after, and then some one came up to the officer and said -- 'You better attend to this man, he seems to be hurt', and then I looked around and saw the Chinaman lying there." Is that what you told Mr. Deuell? A The latter part is right.

Q Didn't you tell it all to him as I read it? A I could not say if it is exactly right; it may be right.

Q You were trying to tell Mr. Deuell the truth, were you?

A Yes, positively.

Q Why didn't you tell him that these men were all in a heap. It says there they were all in a general mix-up. I pulled them apart to protect my brother. I am saying the same thing now in substance.

Q Today you said you didn't know who the man was that struck you, and you told Mr. Deuell the day after it happened, -- "This Chinaman that was hurt, he sprang for me." A I didn't say that.

Q You swear you did not say that to Mr. Deuell, positively?

A I would not say positively, but I think I said I thought that the Chinaman was the one that sprang at me, I still think so.

Q Didn't you see his gold eyeglasses on his face as he faced you? A He did not have any eyeglasses on; I did not see any.

Q Didn't the man that waited on you and talked about the cigarettes, have gold spectacles on his face? A Upstairs he did.

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Q And he had them on down in the street when you punched him?

A No, no, I didn't see any, if he had them.

Q Will you swear he did not have them on? A I would not swear he did not, but I don't think he did.

Q The man that faced you, that you struck, was the man you had the argument with, wasn't he? A That I struck?

Q Yes. A I don't know whether I struck him or not.

Q I would like to understand whether you struck anybody or not? A I believe I struck somebody, but who, I don't know. I am telling you when I got struck in the back of the head I struck into the heap, I don't know who I hit, because I think I was justified in striking, for the reason I was being struck.

Q Did you have your back to this crowd of Chinamen when you were struck in the back of the head? A No, but part of them were in front. There was somebody in back struck me. I am pretty sure it was one of the Chinamen.

Q Did you say anything to Mr. Deuell about anybody striking you in the back of the head? A I don't remember whether I did or not.

Q Well, you did not, did you? A I don't know whether I did or not.

Q You said this Chinaman that was hurt, sprang for you, and you fell down? A Correct.

Q But you never told Mr. Deuell a word about striking at anybody, did you, isn't that right; would you like to read it?

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A I will take your word for it.

Q It is not here, that you struck anybody? A Oh, it is not there?

Q You can read it over if you like. You will not find you said a word to Mr. Deuell about striking any Chinamen.

A It was a general mix-up, as I am telling you. I was pulling one, and I was hit and swung, and I don't know whether I hit anybody or not.

Q When you got through swinging, what happened; where were you? A I was still standing there.

Q I thought you fell down? A Not at that time. Then after that I was struck on the temple.

Q Was it after you were struck on the temple that you fell down? A Yes.

Q Then you got up, did you? A No, I don't know whether I got up. The officers rushed in then. I don't know whether I tried to get up or stayed down. The officer picked me off the ground.

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Q He testified you ran into his arms? A No, I did not do that.

Q Have you any scar on your face? A Not now, no.

Q Your hand was pretty lame next day, wasn't it? A No.

Q It was not? A No.

Q When you struck, did you close your fist up? A The chances are I did, but I don't remember doing that.

Q What were you doing in that restaurant at that hour of the morning, anyway? A Getting something to eat.

Q You don't usually eat at half past two in the morning, do you? A No, sir. Do you mean a reason for being out that late?

Q No, why were you eating at that hour? A My brother suggested it. He said, "Let us have something to eat", and I had something to eat with him.

Q You had been in the New Victoria Hotel at about twelve o'clock, drinking beer? A Drinking a glass of beer; one glass.

Q So that there was no reason why you could not eat up there? A No, he did not suggest eating up there. That is the reason we did not eat there.

Q Now, as I understand it, there is no claim but what you had a dispute in this restaurant, about the cigarettes, or that the dispute was had between you and your brother and the Chinaman about the cigarettes? A There was a dispute over the price of cigarettes.

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Q There was quite a noise in the street over this fight, wasn't there -- yelling? A No, I don't think there was any yelling at all.

Q Didn't you hear any one yell? A No.

Q Not a sound? A I will not say there was not a sound.

Q Isn't that what made you so mad to see this yelling Chinaman yelling for the police? A No, he did not yell.

Q How do you know? A I was there.

Q You cannot remember swinging your fists and landing a blow on the man's head, but you can remember nobody yelled; how can you account for that? A To the best of my recollection I did not hear anybody yell. To the best of my recollection I will not positively say whether I struck or not. Everything I am telling you is the best of my recollection.

Q You made no complaint to the officers when they arrived, did you? A About what?

Q About anything? A No.

Q You kept perfectly quiet until you got before the lieutenant, is that right? A Yes, practically.

Q Now, if you had been set upon by these Chinamen, you and your brother, and the police came in their uniforms to the scene, why didn't you right then and there charge these men and say, "Officer, arrest these men, they have been assaulting us." Instead of that you kept quiet. Why did you do that?  
A I thought they were under arrest.

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Q You knew you were under arrest? A Yes, and I thought they were, which they were.

Q Why didn't you tell the officer what was going on? A They did not ask me what was going on.

Q You are old enough to be able to talk for yourself without being asked? A It was not necessary to say anything there; I could do it when I got to court.

Q But you did not do it when you got to court, did you? A Certainly.

Q Were you real mad when you struck with your fist, that time? A It is kind of hard to tell.

Q What are you smiling about? A I am not smiling. It is just an expression.

Q You were not smiling when you struck that blow? A No.

Q You hit as hard as you could? A That I could not say.

Q Don't you know how hard you struck? A No.

Q Had you ever seen that Chinaman before that night? A To the best of my recollection I had not. I had been in the restaurant once or twice.

Q He was old wasn't he, rather feeble? A Not that I noticed.

Q Didn't you notice he walked very slowly and handled himself like a cripple? A No, I didn't notice that. He walked up and laid down the plate and knives and forks the same as anybody else would.

Q Now, your purpose in coming to the city was to attend a

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birthday celebration the next day? A Yes.

Q And you came all the way from Hempstead? A Yes.

Q That is not very far, is it, Hempstead? Half an hour on the train? A It is more than half an hour on the train; about fifty minutes.

Q What time did you leave Hempstead to go to New York on the night you came here? A I left Hempstead very early in the day. I had been out in the machine taking a ride all afternoon.

Q You had been all over Long Island in that new Ford? A It was not a new Ford.

Q You only had it a little while? A I had it more than a little while. I was out riding around.

Q You got into the city at what time? A I guess around ten or half past.

Q In the night? A Yes.

Q What did you want to come over at that time? A I was out riding on the way to New York, and I figured I would spend the night with my brother, meeting my father the next morning at 10 o'clock by appointment.

Q You could just as well have left the car at home and come over next morning, couldn't you? A Yes.

Q You had been out carousing all afternoon and evening?

A No.

Q Having a good time? A Yes.

Q Up around 47th street, in the Tenderloin? A No; no, sir.

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Q You were whooping it up, so to say? A No, sir.

Q When this Chinaman had the temerity to call your fellows out of your name it made your blood boil, and you got sore?

A It made us feel a little sore, positively.

Q And when you hit him, you hit him as hard as you knew how?

A I don't know about that. I might have.

Q What day of the week was it you left Hempstead? A I don't remember the day, Saturday or Sunday.

THE COURT: The calendar will show.

Q Sunday was the first. A It was on a Sunday.

Q Then you left on Sunday? A Yes. You could not do any carousing on Sunday.

ERNEST ASHTOWN (Hempstead, Long Island) called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q Mr. Ashtown, where do you live? A Hempstead.

Q What is your occupation? A Cigar dealer.

Q What is your place of business? A Main street, 49 Main street.

Q Are you engaged in business with any one? A Mr. Brall.

Q With the defendant in this action? A Yes.

Q You have been his partner how long? A Since the 15th of October, 1915. Three months the 15th of this month.

Q Have you known him any length of time? A About between

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three and four years.

Q Where have you known him, what places? A I met him when he moved to Freeport. I used to meet him quite often and being in the same cigar business I used to buy cigars from him.

Q That is how your acquaintanceship ripened into friendship?

A Yes.

Q And subsequently you became partners? A Yes.

Q Do you know many of his friends? A Yes, quite a good many.

Q You have mingled with him in business and in social circles?

A Yes.

Q Do you know what his reputation is for peaceableness and truthfulness? A If I did not think he was truthful, I would not have taken him as a partner.

Q You have found him a truthful man? A Yes, sir.

Q A peaceful man? A Yes.

Q Do you live in Freeport now? A Hempstead.

Q At Hempstead the defendant occupies a room in your house?

A Yes.

Q Are you married? A Yes.

Q You occupy a house there? A Yes.

Q And he lives at the house? A He rooms with me.

MR. LEVY: You may examine, Mr. Brothers.

MR. BROTHERS: I have no questions.

ISIDORE BRALL (1046 Lexington avenue), called as a witness on behalf of the defendant, being first duly sworn,

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testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q Mr. Brall, you are the father of this defendant? A Yes.

Q How old is your boy? A He is twenty-six.

Q Where were you born? A In Germany.

Q And you have been in the United States how long? A Fifty-two years.

Q You have three sons? A I have four sons.

Q And this boy is the youngest, the defendant? A Yes.

Q On the 1st of November, 1915, was that your birthday? A Yes, I was seventy years old.

Q Was it intended on that day to have a reunion of your family? A Yes, that is the reason he came here.

MR. LEVY: That is all, you can examine, Mr. Brothers.

CROSS EXAMINATION BY MR. BROTHERS:

Q Have you any separate bedrooms up in your house? A No; I got one large room at 1046 Lexington avenue.

Q You live there all alone? A I ain't got no wife. The mother of my children is dead.

Q You live there by yourself? A Yes.

MR. BROTHERS: That is all.

MR. LEVY: May I ask your Honor to suspend at this point?

THE COURT: Gentlemen of the jury, you are admonished

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not to converse among yourselves on any subject connected with this trial or form or express any opinion thereon until the same is submitted to you.

The court stands adjourned to Monday morning at  
7 half past ten o'clock.

(The Court takes an adjournment to Monday, January 10th, 1916, at 10:30 o'clock a. m.)

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THE PEOPLE vs. LUDWIG BRALL.  
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New York, January 10th, 1916.

TRIAL CONTINUED.

A D O L P H B R A L L, (241 East 13th street) a witness sworn in behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. ALTER:

Q How old are you, Adolph? A Thirty-three years old.

Q Your business is what? A I am a chauffeur.

A In business for yourself? A Yes, sir.

Q You own a taxi-cab, do you? A Yes, sir.

Q Do you own any more than one? A No, sir.

Q You do your own work? A Yes, sir.

Q And you are a brother of the defendant? A Yes, sir.

Q You are the young man who was with your brother during the night of this altercation or trouble? A Yes, sir.

Q Adolph, you have been convicted of several minor offenses, haven't you? A Automobile ordinance.

Q Violating the traffic laws and so on? A Yes, sir.

Q Have you been convicted of any other offense other than that? A No, sir.

Q You live where? A 241 East 13th street.

Q On the night in question at about twelve o'clock, where were you? A At the New Victoria Hotel in 47th street.

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Q And Broadway? A Between Broadway and Seventh avenue.

Q Where was your stand? Where did you conduct your business?

A At Luchow's restaurant, 14th street near Irving place.

Q How long have you been in that business? A Four years.

Q While you were at this restaurant who was with you?

A My brother.

Q Who else? A That is all.

Q What time did your brother arrive there, if you know? A My brother got there about twelve o'clock.

Q What did you do at the restaurant, did you see anything?

A No.

Q Did you drink? A I had a couple of glasses of beer.

Q When you say a couple, you mean two? A Yes.

Q Any more than that? A No, sir.

Q And your brother had what? A My brother had one.

Q One glass of beer? A Yes.

Q You stood there a short while, did you, and then left? A Yes.

Q Did you have your car there with you? A Yes, sir.

Q While you were in the restaurant, where was your car?

A Outside by the door.

Q Front of this Hotel? A Yes, sir.

Q What is this, a hotel and restaurant? A Hotel and restaurant, yes, sir.

Q When you left in what way did you return downtown, by the

L? A No, by machine.

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Q Did your brother accompany you? A My brother was there with his machine.

Q You drove yours, and he was the chauffeur of his own? A Yes.

Q You went downtown, did you? A Yes, sir.

Q Who led the way? A I did.

Q Where did you go? A Down to the Midtown Garage, West 12th street.

Q When you entered the garage did your brother follow? A Yes.

Q What did you do in the garage? A We left our cars and went downstairs.

Q After leaving the garage where did you go? A Went to 14th street and Seventh avenue and took a car.

Q Took a crosstown car going which way? A East.

Q What was the purpose of your going east? A We were on our way home.

Q And that car would come a short distance of your home?

A Yes, sir.

Q How far did you go on the car? A To Third avenue and 14th street.

Q What made you get off at that place? A I lived at 13th street, between Second and Third avenue, and I suggested to my brother if he wanted to eat something. He said no. I said, "Lets have some chop suey", and we went around to this chop suey restaurant.

Q That is this place in question where this unfortunate

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occurrence took place? A Yes.

Q That is on Third avenue between 14th and 15th streets in New York City.

Q And you and your brother went to the restaurant, did you?

A Yes, sir.

Q You went upstairs? A Yes.

Q What happened upstairs when you got there; were you seated?

A We sat down. I took off my hat and coat. My brother sat down and I gave him the order.

Q Order for what? A I ordered a charmaine for my brother, and I ordered a peppered steak for myself.

Q To whom did you give the order? A To the deceased.

Q And after you had given the order to him did he return?

A Yes, sir.

Q A short while afterwards? A Yes.

Q With the order as you gave it? A Yes.

Q Charmaine consists of what, soup? A It contains soup with noodles and two pieces of port, two pieces of chicken and half an egg.

Q And that was brought in in a dish? A Yes.

Q Anything underneath the dish? A Underneath the dish is a little plate to hold it.

Q Yours was brought in on what? A On a small dish with a little plate underneath, and a bowl of rice.

Q The deceased was the one that brought these things in to you?

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A Yes.

Q Did he have to walk any distance from the kitchen to your table? A Yes, sir.

Q About how far? A About fifteen feet.

Q He placed them on the table, I take it? A Yes, sir.

Q What happened after that? A Well, after we got through eating I went to the counter and said how much. He said, "Forty-five cents." I gave him fifty cents. He rang up the cash register forty-five cents and laid down a nickle. At that time I asked my brother is he had a cigar. He said no. I said, "Have you a cigarette?" He said, "No, I will buy a pack", so he ordered a pack of cigarettes. He put down the ten cents and this Chinaman handed him a pack of cigarettes. He opened them to hand me one when the Chinaman picked up his ten cents and my five. My brother said, "What are you charging for them?" He said "Fifteen cents". My brother said "It costs ten cents." He said, "No, it costs fifteen cents all over." I said, "It costs ten cents." He said "It costs fifteen cents." I said "I'll bet you". He said "I'll bet you." I said, "I will bet you \$25." I laid \$25 on the counter.

Q What became of the cigarettes at that time? A He laid them back on the counter.

Q Did you have a cigarette out of the box? A No.

Q Did you take the money back? A My brother took his money back.

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Q The ten cents and the five cents? A Yes.

Q And he gave him back the cigarettes? A Yes.

Q Then you said you would bet \$25? A Yes. He said, "Dirty money, dirty money." He said, "You Melican." So I called him, I said, "You monkey, you wouldn't say that to me if I was downstairs.

Q What were the exact words? A I said, "You would not say that to me if I was downstairs or anybody else." He got excited and tore off his apron and put his hat and coat on.

Q At that time where was his hat and coat? A Lying by the counter.

Q He slipped them on? A Yes.

Q While he slipped them on what were you doing? A I was putting on my coat.

Q Were you standing there or going out? A I was on my way out.

Q Where were the other two Chinamen? A One was by the kitchen and one sitting at the table.

Q Were these words you had with the Chinaman in a loud tone?  
A Yes.

Q Did the other two Chinamen come up? A Yes. He said something to the other two Chinamen, and they followed him.

Q You got into the hallway, then what? A They led me to the door, and as I got down the steps this Chinaman kicked me in the shin.

Q You showed a mark which was caused by coming in contact

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with your shin and the foot of one of the Chinamen? A Yes.

Q That bled, did it? A Yes.

Q Then what happened? A The other two Chinamen were in back of him; they led me down the stairs and as we got to the sidewalk, the first thing I was on the ground and the three Chinamen on top of me.

Q were they on the ground, standing up or lying down? A Lying on the ground.

Q What were they doing? A Pushing me, kicking me, and everything.

Q Then did your brother come on the scene? A Yes.

Q What did your brother do? A I looked up and I seen my brother push him off me, a kind of swinging. As I got up I started to run back and the other two Chinamen still had me and I noticed my brother on the ground, just getting up when the officer had hold of him.

Q Did you at any time see your brother leave you, turn around and hit the Chinaman? A Not that I know of.

Q If he had done so, you would have seen him? A Yes.

Q This was all one general fight? A General mix-up a general fight.

Q They struck you and you were striking back? A Yes.

Q Do you recall where the Chinaman was picked up? A Which Chinaman?

Q The Chinaman, the deceased? A Yes, sir.

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Q Whereabouts? A He was lying on the curb, right on the sidewalk, at the curb.

MR. ALTER: Your witness.

CROSS EXAMINATION BY MR. BROTHERS:

Q You never had any trouble with any of these Chinamen before, had you? A No, sir.

Q Had you been in there before? A Yes, sir.

Q Did you ever have any trouble with Officer Peattie? A No.

Q Did you ever see him before that night, as far as you know?

A Yes, sir.

Q Ever talk to him? A Yes, sir.

Q And never had the slightest bit of trouble with him? A No, sir.

Q Did you ever have any trouble with Officer Siegel? A Yes, sir.

Q He arrested you, or had you fined, three times for violating the rules of the City Ordinance respecting chauffeurs, did he not? A Yes, sir.

Q You left the Victoria Hotel at what time? A Around a quarter after twelve.

Q You got into the Chinese restaurant at what time? A Chinese restaurant, about around a little after two o'clock.

Q Where were you all that time? A Where was I all that time?

Q Yes. A I went over to the garage, left the cars and waited for a car at seventh avenue and 14th street.

Q It did not take very long to drive down from 47th street .

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to 12th street in the cars, did it? A No, it took about twenty minutes.

Q It does not take very long to ride across 14th street from Seventh avenue to Third avenue? A But they run every half hour.

Q Every half hour? A Yes, sir.

Q On 14th street? A Yes, sir.

Q I thought that was a very busy place. It has been said there was a car running back and forth every minute or two? A On Third avenue. I am talking about the crosstown.

Q How long did you have to wait for a car? A We must have waited about twenty minutes.

Q You left the hotel a little after twelve? A Yes, sir.

Q You have accounted for forty minutes and there are two hours elapsed; tell me what you were doing the rest of the time, the other hour and twenty minutes. A An hour and twenty minutes--we went upstairs and we had something to eat.

Q You said you got in there a little after 2? A I said a little after two. I thought you asked me when we got out.

Q I asked you what time you got in? A I misunderstood you.

Q Do you want to change it now? A Yes.

Q What do you want to say now? A We got in there about, it must have been around twenty minutes of two going in there; I thought you meant going out.

Q You were in there about twenty minutes? A About twenty minutes, yes.

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Q So that the fight on the sidewalk did not take place at half past two as the officer said? A It was around between two and half past two; I could not recall the time.

Q Did your brother hit anybody at all that night? A Well, when I was on the ground and these Chinamen on top of me, I kind of looked up and seen my brother pulling, and naturally swinging his hand, but I didn't know where it handed.

Q At that time you were on the sidewalk, were you not? A Yes, sir.

Q Were you close to the building, or in the middle of the sidewalk or near the street? A I was right in the middle of the street right near the building.

BY THE COURT:

Q When you say the middle of the street what do you mean?

A From the door of the entrance.

Q You mean the middle of the sidewalk? A Yes, sidewalk.

BY MR. BROTHERS:

Q That is the only place you saw your brother make any motion toward any one? A Yes, sir.

Q You remember seeing the Chinaman lying on the pavement, don't you? A I don't recall seeing him. I think a lady directed the officers attention who had me.

Q Did you see him lying on the pavement in the street?

A At what time?

Q At any time. A Yes, sir.

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Q Where was he? A Lying on the sidewalk, near the gutter.

Q Was he on the sidewalk or on the pavement? A Where the people walk; you call that the sidewalk. He was on the sidewalk.

Q Then you never saw him lying on the roadway at all? A No, sir.

Q Not once? A No, sir.

Q I suppose you were pretty badly battered up, weren't you?

A I was kicked. I was black and blue; my coat was ripped right off me.

Q These three big Chinamen were on top of you and you were down on the street? A Yes, sir.

Q They kicked you? A Yes, sir.

Q And pounded you? A Yes, sir.

Q And you were in pretty bad shape when they got through?

A I was in bad shape. I never was black and blue. My coat was tore right off me.

Q Of course you made a complaint at once to the policemen when they came, didn't you, that they had assaulted you? A I could not say nothing, no, sir.

Q You told the Magistrate, I presume, all about your injuries and showed him your torn coat, did you? A Yes, sir.

Q And you knew that Magistrate, didn't you? A Yes, sir.

Q The Magistrate didn't pay much attention to what you said, did he?

MR. LEVY: Objected to.

THE COURT: objection sustained.

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Q Did the Magistrate say anything to you when you called his attention to the black and blue mark?

MR LEVY: Objected to.

THE COURT: sustained.

Q You heard the Magistrate call Officer siegel's attention to a scratch on your brother's face? A Yes, sir.

Q Any one call the officer's attention to any bruises upon you? A Yes, sir.

Q Who did? A The Magistrate.

Q What's his name? A Magistrate McQuade.

Q What did he say? A Measure that man's marks." I told him he had one on my knee. He took me in his room, and he looked the one over in my knee.

Q Were there any marks shown to you than the one you exhibited upon your shin? A The only mark that was bleeding was on my knee, I was kind of black and blue.

Q Whereabouts were you black and blue? A On the body.

Q Whereabouts on the body? A On the arm and breast.

Q Badly battered, were you? A Not badly.

Q Your coat was torn? A It was ripped right off me. I had no coat going to the station house, it was torn right off me.

Q Was the cloth torn? A Yes, sir, ripped off.

Q You exhibited that in the Magistrate's Court, did you? You showed it to the people there? A I did not have no coat. It was ripped off me. I don't know what became of the coat.

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Q Was it the officer who ripped it off of you? A No.

Q While you were trying to get away from him? A No.

Q Were you trying to run away? A No, sir. I was hollering for protection. Even when the officer had me the Chinaman struck me in the face while the officer had me.

Q Did it make a mark on your face? A No, sir, just caught the side of my ear.

Q Shortly after the occurrence, do you remember you had gone to talk with Mr. Deuel, who was Deputy Assistant District Attorney at that time? A Yes, sir.

Q That conversation took place between you and Deuel on Tuesday, November 2nd, did it not, do you remember that? A Yes, sir

Q At the Fourth District Magistrate's Court, is that right?

A Yes, sir.

Q In the afternoon, is that right? A Yes, sir.

Q You told him that your name was Adolph Brall, a chauffeur?

A Yes.

Q You said you lived at 247 East 13th street, is that right?

MR. LEVY: Is this anything which contradicts his testimony?

MR. BROTHERS: It is.

THE COURT: It is offered as being in contradiction, As I understand the witness is being interrogated concerning the alleged inconsistent statement made by him on a prior occasion.

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MR. LEVY: Then the attention of the witness, I respectfully submit, should be directed to the alleged contradiction, the specific statement.

THE COURT: Yes.

Q You told Mr. Deuel who you were, didn't you? A Yes.

Q He told you who he was? A Yes, sir.

Q He told you that you did not have to talk if you did not want to? A Yes.

Q And that if you did speak it might be used against you when the case was brought to trial? A Yes, sir.

Q Then he asked you to tell what happened, is that right?  
A Yes, sir.

Q And you told him? A Yes, sir.

Q The man who was killed was the man that you had the trouble with upstairs about the cigarettes? A Yes, sir.

Q That is the same man? A Yes, sir.

Q When you talked with Mr. Deuel about the man with whom you had the dispute about the cigarettes, you were referring to the dead man, were you? A Yes, sir.

Q Do you remember you told Mr. Deuel about the charge of the cigarettes. I shall not read it all. You said, "Yes, you are talking this way up here, come downstairs", did you say that? A I said to him, "You monkey, you would not call me that downstairs, or anybody else."

Q "So he came down and pushed me down stairs and the three of

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them all on top of me", you said that of course? A Yes.

Q "So this one fellow happened to fall", did you say that to Mr. Deuel? A "This one fellow happened to fall"?

Q Yes. A I don't recall it.

Q "And the other two went at me and as they did the officer came and as soon as the officer had hold of me he struck me in the face". Did you say that to be Mr. Deuel? A Yes.

Q Who struck you in the face? A This stout Chinaman.

Q I will read that sentence again: "Now, this one fellow happened to fall and the other two went at me, and as they did the officer came and as soon as the officer had hold of me he struck me in the face". Did you say that to Mr. Deuel? A I recall saying that I was on the ground at the time and I had noticed one of them fall, but I don't know who it was.

Q Did you say what I have read? A What I can recall I said is when the officer had me he struck me.

Q Who struck you, the officer or the Chinaman? A The stout Chinaman.

Q "Did you say "Now, this one fellow happened to fall"? A Which one fellow?

Q That is what I don't know--"So he came down". I suppose that is Ching Wung, isn't it? A The three of them came down.

Q Well, I will have to read it all again. I go back: "My brother and I went up to have some chop suey, see, and after

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coming out my brother ordered a package of cigarettes, so he laid down the money, and he opened them up, and he charged him fifteen, and my brother said, 'What are you charging?' He said, 'This is the right charge', and my brother said 'I'll bet you', and I wanted to bet him and he said, 'That's dirty money, you dirty Melican, see'. 'Dirty money', like that, so I said, 'Yes, you are talking this way up here, come down stairs', so he came down and pushed me down stairs and the three of them on top of me. Now, this one fellow happened to fall and the other two went at me and as they did the officer came and as soon as they did the officer had hold of me he struck me in the face." Did you say all that to Mr. Deuell? A Yes, sir.

Q You claim now that the words "he struck me in the face" referred to the stout chinaman and not to the officer? A Yes, sir.

Q You remember saying this to Mr. Deuel, in answer to this question of Mr. Deuel's? "When you got out on the landing and started to go downstairs, just what happened", and did you answer: "They pushed me and they all got at me and knocked me down and this fellow that got hurt he moved me and as he moved he fell back, he is a kind of a cripple, and I suppose he couldn't hold himself. Where were you, on the stairs? A No, down on the sidewalk." Did you say that to Mr. Deuel on that occasion? A I recall I did say that.

Q Was that true? A What I said there? A Yes, sir.

Q Did you say this: "Did you dstrike the Chinaman? A Never struck one of them", did you say that? A Yes, sir.

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Q And this: "Q Did you see your brother strike the Chinaman? A No, sir, my brother never struck one of them there. My brother was on the street. One of them hit my brother on the head with something." Did you say that to Mr. Deuel? A Yes, sir.

Q And that of course is true? A Yes, sir.

Q So that you didn't strike the Chinaman, did you? A No, sir.

Q And your brother did not strike them? A No, sir.

Q And your best recollection is that the Chinaman just fell down of his own accord, is that it, he being cripple and was not able to stand up? A No, sir.

Q Isn't that what you said: "And as he moved he fell back, he is a kind of a cripple, and I suppose he couldn't hold himself", is that what you mean?

MR. LEVY: The construction should be left to the jury.

Question withdrawn.

Q Now, what did you mean when you spoke to Mr. Deuel, "And as he moved, he fell back, he is a kind of a cripple, and I suppose he could not hold himself", what did you mean by that? A What did I mean by that?

Q Yes. A because I seen him when he brought the stuff he kind of moved it over that way (indicating).

Q You said "He fell back and I suppose he could not hold himself. What did you mean by that? A I mean when I was lying on the ground, the three of them on top of me, my brother

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started to pull him off. I imagine he fell back.

Q You think it was then he fell back and cracked his skull?

A Yes.

Q So that he must have been lying on the sidewalk at that time?

A Yes, sir.

Q Where was he when you saw him? A On the sidewalk.

Q With his glasses broken? A I don't know.

Q Did you see the officers picking up the pieces of glass, and the gold rim of the eye-glasses from the pavement? A No, sir.

Q You didn't see that? A No, sir.

Q Well, where were you at that time? A The officer had me in his hands.

Q You are sure you didn't see Ludwig swing the blow and strike the Chinaman in the face? A No, sir.

Q Nobody did that as far as you could see? A No, sir.

Q What was your idea in laying down \$25 in front of this Chinaman waiter, betting him that much money on the price of a pack of cigarettes? A He insisted, saying they were fifteen cents all over. I said, "I'll bet you." I put down the money showing I wanted to make good what I said.

Q How did you expect to make good by doing that? A He insisted upon saying they were fifteen cents, and I wanted to show him they were ten cents.

Q Were you getting angry about it? A No, sir.

Q By displaying \$25 in a chop suey place? A Naturally when

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he said, "I bet you", I laid it up.

Q Were you trying to impress the Chinaman that you had a lot of money with you? A No, sir.

Q When he called you a son-of-a-bitch that didn't affect you at all, I suppose? A Yes, sir, it did.

Q Did it make you a little angry? A A little, yes, sir.

Q You practically invited him out on the sidewalk? A I didn't practically. I said, "You monkey, you would not call me or anybody else that if I was downstairs."

Q When you got downstairs onto the sidewalk do you remember you and your brother started to walk down towards your house and that these two Chinamen, Lee and Lum Dhu, seeing you walking away, they called you out of your name, do you remember that, and you turned around and went for them? A No, sir.

Q If they had called you a son-of-a-bitch on the sidewalk you would have hit them, wouldn't you? A Yes.

MR. LEVY: Objected to.

THE COURT: Objection sustained.

Q That is what you meant when you told Chung Wing upstairs that he would not dare say that to you downstairs?

MR. LEVY: Objected to.

THE COURT: I think you have been all over that,

Mr. Brothers.

MR. LEVY: That is all.

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GEORGE MARTIN LEVY, (Freeport, Long Island)  
a witness called on behalf of the defendant, being first duly  
sworn, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q What is your occupation, Mr. Levy? A A lawyer.

Q You have been admitted to the Bar how long? A Since  
October, 1909.

Q You practiced in Nassau County? A Yes, sir.

Q And yours is a general practice there? A Yes, sir.

Q Both civil and criminal? A Yes, sir.

Q You have lived in Freeport how long? A Twenty-five years.

Q Do you know the defendant? A I do.

Q How long have you known him? A Maybe between two and three  
years.

Q Did you know him when he lived in Freeport? A Yes.

Q And since he took his place at Hempstead? A Yes, sir.

Q Do you know what his reputation is for peacefulness and  
veracity? A Well, at Freeport I do.

Q What is it? A Very peaceful and quiet.

MR. LEVY: That is all.

MR. BROTHERS: No question.

ROLAND N. LAMB, (Freeport, Long Island) called as a  
witness on behalf of the defendant, being first duly sworn,  
testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

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Q Mr. Lamb, what is your occupation? A My occupation, I am manufacturer of ice, and in the coal business. I am president of the village of Freeport.

Q You have been president of that village how long? A Two years.

Q Have you occupied other official positions? A No, sir.

Q Do you know this defendant? A I do.

Q How long have you known him? A Two years.

Q Do you know others who know him? A Yes, sir.

Q He has been under your observation? A Yes, sir.

Q Considerably? A Yes, sir.

Q Do you know what his reputation is in the community in which he lived for peaceableness and truthfulness? A Yes, sir.

Q What was it? A The man bore a very good reputation and it was with considerable surprise.

MR. BROTHERS: I object to that.

THE COURT: He bore a good reputation.

Q Both for peacefulness and truthfulness? A Yes, sir.

MR. LEVY: You can examine, Mr. Brothers.

MR. BROTHERS: No question.

FRANK J. DAVIDSON, (500 West 14th street) a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q Mr. Davidson, what is your occupation? A Hotel and

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restaurant.

Q What hotel and restaurant? A Strand Hotel.

Q Located where? A 500 West 14th street.

Q You have been in the hotel business how many years? A Thirty-five years.

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

Q How long have you known him? A About eight years.

Q Do you know others that know him? A Yes, sir.

Q Do you know what his reputation is for truthfulness and peacefulness? A I never seen nothing wrong with the man at all.

Q Do you know whether it is good or bad? A Good.

MR. LEVY: You may examine.

MR. BROTHERS: No question.

SAMUEL VORZIMER (1610 Lexington avenue) called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q Mr. Vorzimer, what is your business? A Auctioneer.

Q You are in business where? A 130 East 14th street.

Q How long have you been in business? A Twenty-five years.

Q Do you know this defendant? A I do.

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

Q Do you know others who know him? A Yes, sir.

Q Know what his reputation is for truthfulness and peace-

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fulness? A Very good.

MR. LEVY: That is all.

MR. BROTHERS: No questions.

MR. LEVY: The defendant rests your Honor.

MR. BROTHERS: The People rest.

MR. LEVY: Your Honor, I desire to place upon the record the renewal of the motion made upon the close of the People's case upon the grounds as stated.

THE COURT: Motion denied.

MR. LEVY: Exception, if you please.

MR. LEVY: May it please your Honor, I am perfectly willing to send this case to the jury upon your Honor's charge, and without summation.

MR. BROTHERS: I prefer to address the jury.

THE COURT: I think you had better sum up the case.

(Mr. Levy sums up to the jury at 11:15 a. m.)

(Mr. Brothers sums up to the jury at 12:25 p. m.)

THE COURT: I will say I will let the case go to the jury on manslaughter in the second degree.

MR. BROTHERS: Yes, I think it is right.

THE COURT: I will charge you gentlemen after recess.

You are admonished not to converse among yourselves on any subject connected with the trial, or form or express any opinion thereon until the same is submitted to you. The Court takes a recess until quarter past two.

(Whereupon at 1 p. m. the court takes a recess until 1:45 o'clock p. m.)

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