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CASE #2743



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

3279

-----X  
THE PEOPLE OF THE STATE OF NEW YORK :

Before:

vs.

: HON. JOHN P. MCINTYRE, J.

G E R P O P E,  
-----X

: and a jury.

Indictment filed 25th of April, 1919.

Indicted for assault in the second degree.

New York, January 9, 1920.

A P P E A R A N C E S.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY JAMES G. WALLACE.

FOR THE DEFENDANT: MR. FRANK A. ARANOW.

Peter P. McLoughlin,

Official Stenographer.

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(A jury being selected and sworn the Court admonished the jury and adjourned the trial of the case until Monday morning, January 12th, 1920 at 10.30 o'clock.)

New York, January 12, 1920.

THE COURT: Juror No. 7 has sent word that he is sick. We will select another juror to take his place.)

MR. WALLACE: Does the defendant consent?

MR. ARANOW: He does.

MR. WALLACE: Does the defendant personally consent?

MR. ARANOW: Yes.

MR. WALLACE: Will the defendant rise and say so?

(The defendant responds.)

A juror being selected the entire jury was then duly sworn.

Mr. Wallace opens the case on behalf of the people.

JOHN J. RAFFERTY, a witness called on behalf of the

People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALLACE:

Q Mr. Rafferty, where do you live? A 633 West 52nd street.

Q What is your business? A Contractor.

Q Where is your place of business? A 624 West 52nd street.

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

Q What was the first time you ever saw him in your life?

A The morning I spoke to him about the hoisting apparatus,

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April 3rd I think.

Q April 3, 1919 that is about 12 o'clock noon? A Yes, sir.

Q Where did you see him? A 52nd street, North River.

Q At 52nd street and the North River? A Yes, sir.

Q Whereabouts was the defendant? A Standing on the bulkhead.

Q Standing on the bulkhead near the pier? A yes, sir.

Q 52nd street and North River in the city and county of New York? A Yes, sir.

Q Now, did you have any conversation with the defendant at that time? A Yes, sir, I did.

Q State to the jury what you said to him and what he said to you. You are a contractor? A Yes, sir, I am a contractor.

Q I understand the defendant is also a contractor? A Yes, sir, he is a sand and stone dealer.

Q Has a place of business at 52nd street? A Yes, sir.

Q You had a place of business in 52nd street? A Yes,

Q And you live in 52nd street? A Yes, sir.

Q Tell us what conversation you had with the defendant?

A I came along 12th avenue and I saw this gentleman standing there; I went up to him and asked him whether he represented the Colonial Sand and Gravel CO., he says, "I am the boss". I says, "That catamaran, which is a hoisting apparatus for hoisting stone, coal and so forth out of boats-- and their company was using my catamaran."

MR. ARANOW: I move to strike that out.

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THE COURT: Strike it out.

BY MR. WALLACE:

Q Just tell us what you said to him. A I told him if he wanted to use that catamaran any more to please call me up on the telephone or come to the office which is only up the street and he could have the use of it; otherwise he could not have the use of it at all any more.

Q When you said to him does anybody represent the Colonia Sand and Gravel Company, did he reply to that question? A He said "Yes, I am the boss."

Q What did you say when he said "I am the boss"? A I told him not to use that catamaran any more unless he telephoned to me or came up in person.

Q What did he say in reply to that statement of yours?  
A Why he made a filthy remark to me, will I use the language?

MR. ARANOW: I move to strike that out.

Q Just say what he said to you and what you said to him, no matter how filthy it may be? A He said "You cock sucker, you don't own that catamaran. I looked at him in amazement.

MR. ARANOW: I move to strike out "in amazement".

MR. WALLACE: I think that is proper.

THE COURT: No. The way in which he looked may be stricken out.

THE WITNESS: (Continuing) I said to him "You look like a gentleman, I am surprised at the language you are using. I just turned around like that (indicating) and he

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punched me right in the jaw.

Q With his fist? A Yes, sir. I turned around and two men, a few around there, I said, "Did you hear what he said to me", and as I turned around he struck me on the head with a broom.

Q You turned around, turned your head away? A Turned my head away; he turned around at the same time.

Q Did you see where he got the broom? A No, sir; my back was to him.

Q He struck you on the head with the broom? A Yes, sir.

Q Did you fall? A No, sir, but I staggered back and the blood began streaming down my eyes.

Q Did you have a hat on at the time? A Yes, sir.

Q Did the hat come off? A Yes, sir.

Q What was the result of his blow as far as your head went?

A I was taken to the station house in an automobile and the police surgeon sewed it up, and after that my own physician attended to me.

Q Do you know how many stitches the ambulance surgeon took in it? A Three.

Q Have you told us all the conversation you had with the defendant prior to this act he committed of hitting you on the head with the broom? A Yes, sir.

Q Was anybody else present, right near you at that time?

A There was one man in his office I guess he was checker for him.

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MR. ARANOW: I move to strike out the guess.

THE COURT: Strike it out.

Q What was his name? A I don't know his name.

Q Anybody else there at the time? A Yes, sir, there was a man named Mr. Moran.

Q Did he come up to you after this happened? A Yes, sir.

Q Have a conversation with the defendant? A Yes, sir, I said to Mr. Moran, "Don't let that man get away, he is after striking me." I staggered along, passed towards 54th street, north, I walked up after him and told this Moran not to let him get away.

Q What did Moran do? A He asked him what he done it for and he brought him back I think to his office and he remained there.

Q Was anybody else there at the time that happened? A Another man named Donnelly.

Q Now besides these two men you have mentioned was anybody else in close proximity to this quarrel? A The only one I saw was the man that was in the office, Mr. Pope's employee.

Q One of his employee's, a checker in the office? A Yes.

Q Was there? A Yes, sir.

Q And Mr. Moran and Mr. Donnelly? A Yes, sir.

Q Any other people within a radius of half a foot or so? A There were people coming up 52nd street, 12 o'clock, coming from work.

Q How far would you say any of those were, do you know?

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A I should judge 40 or 50 feet.

CROSS EXAMINATION BY MR. ARANOW:

Q Mr. Rafferty do you know the Colonial Gravel & Sand Co.? A Yes, sir.

Q Do you know of them ? A Yes, sir.

Q How long have you known of them? A Practically since they have been in business.

Q How long is that? A I don't know, possibly maybe four years or so; I don't know the exact time they were in business.

Q Do you know the place they occupy on the river front? A I do.

Q Just describe to the jury where it is? A It is on 52nd street, from 52nd street to 53rd street west of 12th avenue.

Q About how many feet does that comprise, that property, how many feet does that comprise in length and width? A Why, I should judge it comprises 200 feet. Are you asking me how much property he has?

Q How much is that place that he occupies? A Why that is what they call the Farm along the North River.

Q How much do you mean by that altogether, if you know? A I should judge about the length of a block-- I should judge it is a hundred feet wide.

Q In other words there are two streets, 52nd street on one side and 53rd street? A 53rd street is a blind street--

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54th street.

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Q They occupy between 52nd and 53rd? A Yes, sir.

Q About 120 feet west of 12th avenue? A Well, I should imagine it is.

Q Don't you know? A It is a farm that adjoins 12th avenue.

Q It isn't a farm, is it? A That is what they call it in the Dock Department, the Farm.

Q You had that place once? A Never.

Q Didn't you ever lease that place? A No, sir; never occupied that place, never.

Q Sure about that? A Positive.

Q You pass up and down the street every day? A Pretty much.

Q Almost every day? A Yes, sir, pretty much.

Q You saw this catamaran as you passed it? A Yes, sir.

Q When did you see it before the 3rd of April? A Most every day before.

Q Tell the jury where you saw it? A Why in the midst of the Colonial Sand and Gravel Company's pile of sand; it was frozen over.

Q How long was it in there? A Possibly six or seven months.

Q Where was that catamaran before that? A I think on some of the docks, 54th or 52nd street or 51st street, I am not sure which, wherever I had use for it.

Q For six months you saw that on their property? A Yes.

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Q It was covered over with sand? A Yes, sir.

Q Did you see the catamaran-- it has poles or beams standing up? A You can see the wheels and the beams and some of the platform.

Q During the six months did you see that catamaran used?

A No, sir; it was not used.

Q Did you see it on April 2nd the day before? A Well if I was down there I did.

Q You can't tell us whether you did or not? A I couldn't tell you whether I was on the dock that day or not.

Q Did you see it April 3rd? A I could not tell you that.

MR. WALLACE: I object to this as immaterial, incompetent and irrelevant. The question is not whether he saw it there, but the question is whether when he spoke about the catamaran this man assaulted him.

THE COURT: I will allow it.

BY MR. ARANOW:

Q Tell this jury what day prior to April 3rd, you saw that catamaran? A Yes, sir, any day I was down there I couldn't help but see it.: I walked down the street from the place of business

Q When before April 3rd did you see that catamaran?

A Any day I was down there and looked.

Q Did you see it the first of April? A If I was down there I did.

Q Have you any recollection of that? A I know the cata-

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maran was there--

Q Please answer the question. Did you see it ten days before April 3rd? A I did.

Q What day if you recall? A Possibly two days before April 3rd.

Q Where was it standing? A In the sand pile.

Q Sand covered over parts of it? A They were riding it away from it at that time.

Q Who was doing that? A The Colonial Sand and Gravel Co.

Q The company didn't do it, what man was doing it? A I don't know.

Q You saw several men there? A Yes, sir.

Q Did you see any one of them? A No, sir, I did not.

Q Do you know who they are? A The Colonial Sand and Gravel Company's employees.

Q Did you talk to any one of them? A I did not.

Q Do you know where the office of the Colonial Sand and Gravel Company is? A Yes, sir.

Q Where? A It was in 49th street-- if it is there yet I don't know near 11th avenue.

Q You know it isn't there? A They were talking about buying a place in 50th street, I don't know.

Q You know it had been changed? A No, sir.

Q It is still in 49th street? A I don't know.

Q On the morning of April 3rd did you see this catamaran?

A If that is the day he assaulted me I did.

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Q Well, that is the day you allege he assaulted you, isn't it? Did he assault you any other day? A Only one day.

Q What time in the morning did you see the catamaran?

A 12 o'clock.

Q Where did you see it? A 54th street and North River.

Q How many blocks away from 52nd street? A Two.

Q Was anybody on it? A No, sir.

Q Anybody standing near it? A Several men might have been walking up the block.

Q What is that? A Several men might have been walking up the block.

Q You are not guessing at it? A I didn't notice.

Q Did you go up there and talk to anybody while near the catamaran? A No, sir.

Q How near to the catamaran did you go? A I came down near the middle of 12th avenue and the catamaran was over near the pier.

Q How far away from 12th avenue? A About 40 feet.

Q Did you go near the catamaran? A I walked right down to the Colonial Sand and Gravel Company's office.

Q You came down 12th avenue? A Yes, sir.

Q You saw the catamaran standing 40 feet away from you near the pier? A Yes, sir.

Q Without going to look at the catamaran you went to the Colonial Sand and Gravel Company? A Exactly.

Q You saw this man Gene Pope? A Yes, sir, I saw him.

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Q You went up to him and you told him not to use that catamaran any more? A I did not. I asked him who was--

Q Just answer the question. A I did not.

Q Did you say to him, "You must not use that catamaran any more? A I did not.

Q Did you tell him not to use it any longer unless he telephoned to you? A I did not. I will answer your question.

Q Answer the question. Did you go up-- did you during that conversation state that he must not use that catamaran unless he telephoned to you? A I did.

Q Did you tell him he must not use that catamaran? A I did.

Q Did you ever see him use it? A I saw the Colonial Sand and Gravel Co.--

Q Did you ever see him use it? A I saw his company use it.

THE COURT: You are asked if you ever saw him use it.

MR. ARANOW: I move to strike that out.

BY MR. ARANOW:

Q Please answer my question. A Judge, can I ask a question.

Q Please answer my question. A No, sir; I did not see him use it.

Q You said you saw some employees use it, is that right?

A Employees of the Colonial Sand and Gravel Co.

Q Did you talk to any of them? A I did not.

Q Did you speak to any one of the men that were using that catamaran? A I did not.

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Q Where was this? A Where was what?

Q That you saw somebody use this catamaran? A Why 52nd street, 54th street, 56th and 53rd street, North River.

Q How long before the 3rd of April? A Six or seven months.

Q What month was that? A Why that was six months or seven months before the first of April.

Q Can you recall what month that was?

MR. WALLACE: Now, if your Honor please, it does not seem to me that the questions are relevant, and I object to them.

THE COURT: I suppose counsel is endeavoring to establish some sort of provocation.

MR. ARANOW: This man goes up to him and says, "Don't you use my catamaran", and I want to know what ground he had for saying it.

MR. WALLACE: Even if he had no ground for saying it it does not matter a particle; it does not justify an assault.

THE COURT: I will allow it.

Answer the question. A Possibly six or seven months before in the spring of the year or in the summer.

Q That is the summer prior? A Yes, sir.

Q You passed 52nd street pretty near three times a week during those six months? A Yes, sir.

Q When you approached this defendant ~~who~~ was he standing

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near any house? Q He was standing I should judge about eight or ten feet away from the shanty.

Q I show you this picture and ask you whether that is a fair description of the place as it was at that time, that day. Look at it carefully. A Yes, sir, this shows the shanty but it doesn't show where the sand and stone was piled; it shows the shanty and another room, shows his engine room and the shanty.

Q That is the house in which he was standing in front of?

A Yes, sir; in front of this engine room.

MR. ARANOW: Will you concede that?

MR. WALLACE: (Addressing the witness) Is it all right?

THE WITNESS: Yes.

MR. WALLACE: I concede it.

(A picture referred to is offered in evidence and marked Defendant's Exhibit A.)

Q I show you this one, show you a photograph this is another view showing the sand and other things about the same vicinity as it was that day? A No, sir; it does not look like it appeared that day.

Q Looking towards that pile? A No, sir; this shows a pile of sand.

Q Ah! that I am concerned with is the engine house and the office. This place. (illustrating) A This look slike a picture to me taken very recently; it looks like it very much now.

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Q I am concerned with this part near the engine? A Yes, sir

MR. ARANOW: I withdraw it.

BY MR. ARANOW:

Q Now you were standing eight or ten feet away from that shanty and he was standing there? A yes, sir.

Q Facing in that direction? A Toward 12th avenue.

Q You walked from 12th avenue towards the shanty? A Yes.

Q You said the distance between 12th avenue and the shanty was about that far? (Illustrating) A The shanty I guess is about twenty feet away from the river -- about 60 or 80 feet.

Q You walked from 12th avenue sixty or eighty feet to the place where this man was standing? A yes, sir.

Q When you spoke to him you say he punched you? A Yes.

Q After you spoke to him he punched you in the jaw? A After he used that vile language to me.

Q You turned around and said, something, "What do you think of that"? A Yes, sir.

Q You said that to whom? A This man Donnelly came up the block.

Q Anybody else? A Several coming up there.

Q Who were they? A I don't know who they were.

Q Anybody else? A Several coming up there.

Q Who were they? A I don't know who they were.

Q Did you say that to Moran? A He was within hearing distance; I said that to Moran.

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Q Did you say to Moran, "What do you think of that?" A I was looking toward Donnelly; Moran was behind me.

Q You did not move when he punched you in the jaw? A I staggered back.

Q You didn't use any vile language yourself? A I certainly did not.

Q You did not raise your arm to defend yourself? A I did not.

Q You did not attempt to take your coat off? A I did not.

Q You stood there and simply turned around and said "What do you think of that?" A Yes, sir.

Q As you turned around that way facing towards 52nd street he struck you on the head over here, is that right? A He struck me on the head here.

Q Tell us exactly the point? A That is what I am saying to you.

Q You were facing towards 52nd street, weren't you? A Yes.

Q Gene Pope was standing in front of you there? A No, sir standing in front of me there.

Q I refer to 52nd street over there? A Yes, sir.

Q Gene Pope was standing about where Mr. Wallace was?

A He was standing to the river-- I was facing south.

Q You were facing south? A Yes, sir.

Q To your left? A Yes, sir; this way. (Illustrating)

Q And Gene Pope struck you 8 feet away from the shanty, is that right-- and where you were standing eight feet away from the shanty when he struck you? A About there.

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Q When he came out to meet you did he have the broom in his hand? A He didn't come out to me; he was in conversation with me.

Q Did he have the broom in his hand at that time? A No.

Q When talking with you did you see him back up? A I did not.

Q He did not back up? A I did not notice; I was standing there talking an ordinary conversation.

Q He did not back up at any time? A He might have in the talking; I didn't notice whether he was backing or whether I was moving.

Q Didn't he back to the back of the shanty and get up against the wall there ~~by~~ and find the broom? A He done that after he punched me.

Q After he punched you he backed up didn't he? A Yes, sir; he was right close to it, he reached right behind.

Q When he punched you did he back up? A Why, no, sir, he just turned around.

Q Five or ten feet away from the shanty he turned around? A Yes, sir; possibly around that distance.

Q The broom laying right beside him there-- wasn't it standing against the wall of the shanty? A No, sir; lying on the ground.

Q Didn't he back up? A He just turned around and picked it up.

Q He didn't say anything to you? A No, sir.

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Q You were a witness in the Magistrates' Court on April 8th, 1919? A Yes, sir.

Q Did I cross examine you at that time? A You asked me some questions.

Q See if I did not ask you this question? You talked to him, he was walking while he was talking to you? A. He walked back towards the engine room." Do you remember that question? A I do.

Q Do you remember that answer? A Yes, sir.

Q Do you remember this question: "With his face towards the engine room he was backing up? A. He backed up." Do you remember that question? A I do.

Q Do you remember that answer? A No, sir, I do not.

Q This question "This broom was standing along side the engine room up against the wall? A. Yes." Do you remember that question? A Yes, sir.

Q Do you remember that answer? A No, sir.

Q That was on what date-- April 8th, wasn't it, in the Magistrates' Court? A I don't remember the date.

Q Can you refresh your memory on that? A Was it the first day I was up there? That was the day he was arrested?

Q That was the day we had the hearing before Magistrate TenEyck when I examined you. A Yes, sir.

Q That was five days after this alleged assault? A Yes.

Q Will you say that you didn't say that in the Magistrates' Court? A I will not.

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Q Isn't what you testified to in the Magistrates' Court true? A Yes, sir.

Q Did you use any vile language towards him there at any time? A No, sir, I did not.

Q When you said, "What do you think of that", did you put your hand out something like that, and say, "What do you think of that" (illustrating)-- addressing Moran or Donnelly? A No.

Q Just indicate to the jury the exact spot where you were struck? (Witness indicates).

Q Right there? A Yes, sir.

Q I want to refresh your memory. Do you remember this question being asked in the Magistrates' Court: "Did you at one time have a lease of the 53rd street dock? A I had the privilege". Do you remember that testimony? A 53rd street?

Q Yes, 53rd street? A No, sir, it is in 52nd street.

Q That is between 53rd and 52nd street? A No, sir.

Q You say this is not between 53rd and 52nd street where this happened? A Not where I had the lease.

Q Now Mr. Rafferty did Gene Pope pick up the broom standing against the wall? A I didn't notice whether he did or not; it didn't make any material difference to me; I didn't notice.

Q When he was packing up what did you do? A I was talking to him.

Q Did you walk along gently or follow him along? A Why there was not -- he might have been backing up a step or two, I wouldn't call it backing up; might have been a couple of steps.

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Q Didn't you tell in the Magistrates' Court he backed up 8 or 10 feet? A It didn't make any difference to me; it didn't make any difference to me between now and then.

Q Didn't you state when he backed <sup>up</sup> you followed him up?  
A I might have.

Q Didn't you follow him up? A We were talking there; there wasn't any following up to be done.

Q After he punched you he backed up, didn't he? A No, sir; after he punched me as I recollect it I turned around and he picked up the broom and struck me; that is the way I recollect the thing. I was dazed after he struck me.

Q Now we will go back to a question by me: "You didn't give him any cause or provocation for backing up against the wall?" A I certainly did not." Do you remember that question and answer? A Yes, sir.

Q "You did not raise your arm?" A No." A No, sir.

Q Do you remember that? A Yes, sir.

Q That is the truth? A Yes, sir.

Q "You didn't threaten him?" " Raised my arm, when I said "Did you see that," if you call that raising it. I am telling you what it was.

Q "Q. You did not threaten him? A. I did not. Is that right, that is true, isn't it?"

MR. WALLACE: I object to the reading of these questions if they are to show inconsistent statements they do not seem to be proper and he cannot read the whole

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record, this is not proper cross examination, and I object to it. The statements show no material variance.

THE COURT: They are questions put by counsel to the witness and answers given, and if they tend to contradict the testimony that he has given in this trial I will allow them.

MR. WALLACE: They do not seem to tend to contradict, but on the contrary the questions that he has just been reading are exactly what the man has testified to, and hence they are incompetent.

THE COURT: I will allow counsel for the defendant to proceed.

BY MR. ARANOW:

Q The next question "He just backed up? A. I don't know why he backed up. I had no reason to threaten him."

MR. WALLACE: I again say they are not contradictory and this is improper cross examination, and I ask your Honor to direct counsel for the defense to cease such improper cross examination.

THE COURT: I will allow it.

THE WITNESS: This is eight or nine months ago.

Q Now answer my question "He just backed up? A. I don't know why he backed up; I had no reason to threaten him". A Yes sir; that is right.

Q Didn't you state you had been following him up "A. I did after awhile." Did you testify to that? A If it is there

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I presume I did.

Q Do you know where the catamaran is today?

MR. WALLACE: I object to that on the ground that it is immaterial, irrelevant and incompetent where it is.

THE COURT: It may become material. I will allow it.

A I think it is up there between 52nd and 53rd street, North River on the bulkhead.

Q Don't you know it is on their property, the Colonial Sand and Gravel Company? A It isn't their property; it is the property of the City of New York.

Q On the property they lease and occupy? A I suppose they do; I do not know whether they lease it or not.

Q Are you a lawyer, sir? A No, sir.

Q Is it on the property they are now occupying legally or illegally, if you know? A Why, yes, sir.

Q Have you a lawyer? A Have I a lawyer in this case?

Q Any case? A No, sir; I have not.

Q Have you commenced suit against the Colonial Sand and Gravel Co. for the return of the catamaran? A I have not.

Q Did you ever write a letter to the Colonial Sand and Gravel Company that that property was yours and you wanted it returned? A I did not.

Q But on the day of this alleged assault that catamaran was on 54th street, two blocks away? A Yes, sir.

Q Did you see the persons who moved it from 52nd to 54th street? A I did not.

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Q You don't know how it got there? A No, sir, I do not.

RE DIRECT EXAMINATION BY MR. WALLACE:

Q How old are you? A 51 years old.

Q As I understood you to say when the defendant struck you you turned your head away? A Yes, sir.

Q And spoke to some one there-- turned sort of to the rear? A Yes, sir.

Q Then the next thing you knew you were struck on the head with a broom? A Yes, sir.

Q Did you see what he did, that is with your own eyes, when he picked the broom up? A No, sir.

Q When you say you know you were struck with a broom you mean you learned afterwards? A yes, sir.

Q You didn't see him in the act of picking the broom up? A No, sir, I did not.

Q Therefore you are not in a position to tell us whether or not he actually picked it up off the ground or from against a barn or shanty or anything else? A No, sir; I am not in a position to say.

Q Is this the broom with which you were struck by this defendant, if you know? A yes, sir; that is the broom I was struck by.

MR. WALLACE: I ask that it be marked for identification.

(Marked People's Exhibit 1.)

Q During this time that this catamaran was frozen up in

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the sand bank you didn't have any use for it? A No, sir; I did not.

Q When was the first time that you thought you might have occasion to use it?

MR. ARANOW: I object to any thought.

THE COURT: I will let him answer the question.

A Why after it came out. --

Q That was about when? A That was April.

Q April? A Yes, sir.

BY A JUROR:

Q How many men and how long a time would it take to move that catamaran about two blocks? A About ten minutes; it is on wheels with a team of horses on it; it is a matter of a pair of horses to it in pulling it right along.

BY MR. ARANOW:

Q 56 years of age? A yes, sir.

Q Has it ever occurred in your life where a man struck you that you turned the other cheek to him?

MR. WALLACE: I object to that on the ground that the question is immaterial.

THE COURT: Question excluded.

Q You told Mr. Wallace you did not see where the broom was before he picked it up? A What do you mean?

Q Did you see the broom before he picked it up? A No, sir, I did not.

Q Did you know where it was before he picked it up? A No.

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Q Did you see him pick it up? A No, sir.

Q Did you know where he got it from? A Why I imagine he got it from the --

Q Do you know where he got it from? A The exact spot, no, sir.

Q Well, the approximate location, if you please? A Well, it was close by where he was,

Q Where was it near the wall or on the floor or was it on the ceiling or lying down? A No, sir, it was on the -- either on the wall or against the wall of the house.

Q You don't know? A No, sir.

Q You did not see it? A No, sir; not when he struck me; I saw it afterwards.

Q Before he struck you? A I didn't notice it.

Q At page 13 of the stenographer's minutes did you testify in the magistrates' Court on April 8th, before Magistrate TenEyck? A Yes, sir.

Q Did I question you at that time? A You questioned me yes, sir.

Q Did I ask you this question: "Did you see where the broom was", and did you make this answer "lying alongside of the engine room"?

A If it is there I did.

Q That is the truth? A Practically the truth the same as I said now.

Q Did you see where the broom was? A Did I see where

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it was? Well, I am not used to being in court very often and if I answered that way, I was answering it truthfully as I thought and I am telling the truth now.

MR. WALLACE: He may have seen it afterwards.

BY MR. ARANOW:

Q Before you had a chance to say anything, before the man hit you with the stick over the head, and you said "Not with a stick, with a broom and broke the handle".

A I remember saying that.

Q I asked you "Did you see where the broom was", and you said "lying alongside the engine room".

MR. WALLACE: That is where it was after he was hit on the head with it. There is no time fixed there.

Q Now did you see where the broom was? A "Lying alongside the engine room", is that the truth? A If I answered it there yes.

Q "Q. How far away from the engine room"? A. "It was against it".

A I don't know what you call the engine room or the office where he walked into.

Q Do you remember that question and answer? A I remember you asking me several questions and I remember answering them and anything that is in that book I presume is what I said.

MR. ARANOW: I move to strike that out.

THE COURT: No. I will let it stand, because he says

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that he probably said all that is in that record.

Q Did you make a statement to anybody that you got this man now and before you get through with him there will be nothing left of him? A Certainly not.

Q You are not bitter about this case against this defendant? A I am not bitter because a man of his years would strike me--

Q Are you bitter against him? A Not personally, no, sir, nothing bitter; I wouldn't want to see the man go to prison, for any length of time but I would like to see him have a curb put to his nasty temper.

MR. ARANOW: I object to that.

THE COURT: No, it is characterizing his feelings. I will allow it to stand.

Q This occurred in your own bailiwick?

MR. WALLACE: I object to that on the ground that the word bailiwick is improper.

THE COURT: Question excluded.

MR. ARANOW: I withdraw it.

WILLIAM J. MORAN, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he lives at 437 West 48th Street.)

DIRECT EXAMINATION BY MR. WALLACE:

Q What is your business? A Watchman.

Q On April 3rd, 1919, by whom were you employed? A I am

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in Mr. Pope's employ, but I am employed about by 50 different people.

Q In other words everybody around that neighborhood contributes to pay you? A Yes, sir.

Q You watch the property? A The property surrounding the Greater New York Company, all the freight coming down the North River.

Q Who pays you directly? A The commission men and the owners as a rule.

Q Now you know a man named Rafferty? A Yes, sir.

Q How long have you known him? A I know Mr. Rafferty about 30 years.

Q Do you know this man Pope? A yes, sir.

Q The defendant? A Yes, sir. -

Q How long have you known him? A Ever since he has been in business I think six, seven or eight years, I am not sure now

Q You are familiar with the premises around 52nd street and North River? A I am there twenty eight years.

Q Were you there on the 3rd of April, 1919 about noon?

A Yes, sir.

Q Did you see the defendant there this man here Pope?

A Yes, sir.

Q Did you see Mr. Rafferty there? A yes, sir.

Q When you first saw them what were they doing? A In conversation.

Q About how far were you from them when you first saw

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them? A I was passing there about when I first saw them, I went in the engine room to bring some tools in there, and while in there I heard some angry words, stepped out to see who it was and I saw Mr. Rafferty calling somebody to witness this man here calling him a cock sucker or something like that.

Q You heard this man calling him a cocksucker? A Yes, sir

Q Heard the defendant call him a cock sucker? A yes, sir.

Q Did you hear Mr. Rafferty say anything to the defendant? A That is all I heard was Rafferty calling some witnesses to hear the man calling him that.

Q Did you hear who he was calling? A He was calling quite a few men there, Mr. Donnelly, I think, and a half a dozen altogether.

Q Now what if anything did you see happen after you heard this calling and after this defendant used that term? A I started to walk over to them, I was about four feet from Pope and I seen Pope reach behind, reach for that weapon.

Q He picked up a broom? A yes, sir, that broom.

Q Do you recall whether he picked it up from the floor or was it leaning against the shanty? A Leaning against the shanty.

Q What did he do with the broom? A He raised it and hit Rafferty, and he says, "Yes, you cock sucker."

Q He called him a cocksucker? A When he hit him."

Q The second time? A Yes, sir.

Q He struck him on what part of the body? A The back of his head. Mr. Rafferty had his back turned to him at the time.

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Q Did you see what happened to Rafferty after he was struck with the broom? A I seen the blood flosing, and he asked me to hold Pope not to let him get away.

Q Did you make any effort to hold him? A I put my hand on Mr. Pope and told him not to run.

Q Did he move meantime? A No, sir.

Q Did he say anything to you? A No, sir, he went into the office. I followed Mr. Pope in the office and I said, "You were follish to do a thing like that."

Q He went into the office? A Yes, sir, inside.

Q You went after him? A Yes, sir.

Q What did you say to him? A I said, "You were foolish to do a thing like that " "Well", he says, "when he got excited everything turned red, and he did not know what he was doing."

Q Pope said that? A Yes, sir.

Q Everything turned red and he didn,t know what he was doing? A Yes, sir.

MR. ARANOW: I object to counsel repeating the remarks of the witness. I think it is not necessary. I think counsel ought not to repeat the words of the witness, and I ask your Honor to please rule on that.

THE COURT: I will let it stand for the time being. Mr. Wallace knows, of course, that the answer must not be repeated. There is no case against it.

MR. ARANOW: There is a rule of the Appellate Division

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THE COURT: There is a rule of the Appellate Division I believe where it says it is improper for counsel to repeat the answer to questions given by a witness.

BY MR. WALLACE:

Q Did you see Rafferty strike the defendant? A No, sir.

Q Hear him use any bad language towards the defendant?

A No, sir.

Q When you went in the engine room with the defendant was there anybody else in the engine room? A The engineer was upstairs.

Q Was the checker or anybody downstairs? A No, sir; there was a checker in the office.

Q That is not the engine room? A No, sir.

Q Quite close to it? A Sort of an angle, L form.

Q Do you know what that checker's name was? A No, sir; I do not.

Q After you had this conversation with the defendant that you speak of in the engine room did anybody send for a policeman or an ambulance or anything like that? A I sent for the policeman on the corner-- he seen my hands going up, and he came over when I beckoned to him.

Q The policeman came? A Yes, sir.

Q That was Officer Reiner? A Yes, sir.

Q What happened after he got there? A I left him then, and didn't bother any more; I went to my own office, and they took him away in an automobile.

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Q It was Pope's car that was? A Yes, sir.

Q The complainant and the officer and everybody got into it and went to the station house? A Yes, sir.

Q Is that right? A Yes, sir.

CROSS EXAMINATION BY MR. ARANOW:

Q You say you are the watchman on the dock? A Yes, sir.

Q At night or day? A One of us there day and one at night.

Q You were doing day duty that day? A Yes, sir.

Q Just prior to having heard the conversation did you talk with anybody? A No, sir.

Q Where had you been just prior to walking over to the engine room? A Taking a look over the dock, -- preparing to go in-- she was just going up on the first tow.

Q Where were you? A Just across the pier from 52nd street.

Q You walked into the engine room? A Yes, as I did Pope and Rafferty were standing talking.

Q Did you notice how far away they were from the engine room? A They were out of sight of the engine room.

Q How far away from the office were they? A About back to back, Pope was backed to the office, about two feet south of the door.

Q His back was to the office? A Yes, sir.

Q Rafferty-- how was he facing? A Close together.

Q You went in the engine room? A Yes, sir, I went in the engine room.

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Q How long did you stay there? A Until I heard the angry voices and then I came out.

Q How long? A It could not be over a minute.

Q When you heard the angry voices you went outside?

A Yes, sir.

Q What was the next thing you saw? A I saw Rafferty calling some witnesses over to listen to Pope calling him a cocksucker, and the next thing I saw was that he struck him.

Q The first thing you saw was Rafferty calling to some witnesses? A Yes, sir.

Q What did he say? A He said "Come and listen to what this man is calling me."

Q How was he moving with his arm? A No, sir, just put his hand up the same as I do, his hand up-- to stop a car.

Q Calling witnesses? A yes, sir.

Q How many witnesses were there? A Well, that was noon time, quite a few men, I couldn't exactly tell you.

Q How many did you see? A I seen five or six myself.

Q Do you know any of them? A I know them all.

Q What are their names? A Well, I can mention a few of the names.

Q Give me five or six? A I will give you what I can, John Donnelly is one or Thomas Donnelly, I should say and Peter Donnelly was another, and then there was -- I won't say no more names because I can't rightly tell the names, I know their faces, I know all these longshoremen but I don't know them proper-

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ly by name.

Q How far were they from Rafferty? A About 15 feet.

Q That is the first thing you saw? A Yes, sir.

Q What was the second thing you saw? A I seen Mr. Pope hit the man with a stick.

Q He called him a cock sucker? A Yes, sir.

Q That is the time you heard him call the name? A Yes, sir; that is the first time I heard him call him that.

Q And the last time? A Yes, sir, and the last time.

Q There were not two times? A I couldn't say what happened before, but in my presence that was all.

Q Then hit him with the broom? A Yes, sir.

saw it did

Q As you ~~saw~~ he grabbed the broom with both hands? A No

Q What is that? A I couldn't say that; he reached behind and swung the broom in --

Q Do you know whether with two hands or one hand? A No, sir; I could not say.

Q How far away from him was Rafferty at that time? A Close enough to hit him with the broom, you can imagine where he hit him --

Q Will you tell us how far away he was? A About a couple of feet away.

Q Five? A Well, inside of five.

Q Standing perfectly still? A yes, sir with his back turned to him.

Q Now let us get that straight. Pope was with his back

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to the office? A Yes, sir.

Q Just as you are sitting now? A Yes, sir.

Q Rafferty standing in front of him? A Yes, sir, that way.

Q As I am now? A About this way.

Q Rafferty turned and stood in this direction, and said, "Come over here and listen to what this fellow has to say about me? A "Come over and listen to what this man is calling me."

Q He picked up the broom? A Yes, sir.

Q Struck him on the head? A yes, sir.

Q Standing as I am now? A Yes, sir.

Q He wasn't bending over? A No, sir.

Q He wasn't stooping? A No, sir.

Q Just stood perfectly straight? A Yes, sir.

Q Shoulders erect and arms down? A I don't think that the man ever thought he was going to be struck.

BY A JUROR:

Q Did the broom break like that when he struck him. (Referring to the broom handle) A yes, sir.

BY MR. ARANOW:

Q Who picked up the broom afterwards? A I did not pick it up.

Q Who did? A I don't know, I couldn't exactly say; I took Mr. Pope to one side.

Q Are you related to him, Mr. Rafferty, in any way?

A I have a nephew that married Mr. Rafferty's niece about

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six months ago since that thing happened.

Q Did you testify in the Magistrates' Court? A Yes, sir.

Q Did I question you at that time? A Yes, sir.

Q Did you testify at that time of the conversation you had with Mr. Pope inside of the shanty? A No, sir; not to my knowledge; I was not asked that question.

Q You did not answer that because you were not asked, is that right? A Yes, sir.

Q This is the first time you ever told under oath the story about the conversation you had? A In the office.

Q The first time you ever told that? A Yes, sir; I think so.

Q Did you see Mr. Pope back up? A He couldn't back up.

Q Did you see him back up? A He couldn't back up.

Q Answer the question. Did you see him back up? A No, sir, I did not.

PETER J. DONNELLY, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he lives at 455 West 44th street.)

DIRECT EXAMINATION BY MR. WALLACE:

Q What is your business? A Longshoreman.

Q For whom do you work? A I have different men as bosses.

Q Different men? A Yes, sir, different, four or five men in one week, and may be one man in two weeks.

Q You load and unload boats that come into the docks?

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A Yes, sir, according as I am hired.

Q Do you work for Mr. Rafferty? A No, sir.

Q For Mr. Pope? A No, sir.

Q Do you know Mr. Pope or Mr. Rafferty? A I know Mr. Rafferty about twenty years off and on but have no dealings with him in the time being.

Q You know him from being around that neighborhood?

A Yes, sir, around there four or five years.

Q On the 3rd of April, 1919, about twelve or a little before twelve o'clock were you in or about 52nd street and the North River there? A I was about 15 feet from the river front, about 15 feet, back of where the trouble was.

Q Did you see Mr. Pope and Mr. Rafferty there at that time? A Yes, sir.

Q Now what first attracted your attention then if anything? A Well, I was generally coming past there, that way looking out for automobiles and I happened to be standing there afraid of getting run over; so I happened to be standing there and I heard Mr. Pope and Mr. Rafferty having some words, and all of a sudden Mr. Pope got very riled up and called him a bad word, a cock sucker. As he did Rafferty turned around and he said "You heard what he said, this man called me"-yes"- he turned again, and on the turn Mr. Pope came like and half swung up and punched him in the jaw, and as he did --

Q With his fist? A Yes, sir; just as he turned around he reached over and gets a broom and hits Rafferty on the head

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Mr. Rafferty said, "I thought you were more of a gentleman than that". He kind of fell back with the force of the blow and Moran was standing in the back and he hollered "Don't let him get away, see what he done". Moran came up and put one hand on his neck and one on the shoulder and held him there until the officer came. That is all I know.

CROSS EXAMINATION BY MR. ARANOW:

Q Tell us that again. A Well, I was standing about 15 feet south when I saw this here -- these men having some words and on a sudden Pope got very riled up and called Rafferty a cock sucker. As he did Rafferty turned around and he says, "You have heard what this man said--" yes-- as he did Pope punched him in the jaw, and he was about to turn and he reached over and got this broom and hit Rafferty across the head, and ~~as he~~ <sup>did</sup> Rafferty said, "I thought you were more of a gentleman than that" kind of staggered back, and as he staggered back he hollers to Moran, standing in the back, "Don't let that man get away, hold him."

Q Rafferty hollered to Moran? A Yes, sir. He walked up and got-- caught Pope, one hand on his neck and the other on his shoulder, and held him until the officer came and that is all I know.

Q So who was standing with you? A There was nobody standing with me.

Q How many fellows were standing with you at that time?

A Nobody only myself.

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Q Any men around you? A No, sir.

Q Were you talking to anybody? A No, sir; I was just standing there talking to nobody.

Q Anybody within a radius of 120 feet of you? A There might be; I didn't measure it.

Q Within a radius of ten feet? (No answer.)

Q Was Peter Donnelly there? A I and Pete Donnelly.

Q Who is John? A No John Donnelly with me only myself.

Q Nobody named John Donnelly there? A No, sir; I did not see him.

Q Were there five or six standing there altogether? A No sir, a lot of men coming up and down; I don't know who they were.

Q A lot of men coming up and down with you? A Standing behind me; I didn't know them.

Q Was John Donnelly there? A I did not see him.

Q Do you know him? A Yes, sir, he is a manure man, that is his business there.

Q Was he there? A No, sir, I did not see him.

Q You were all alone? A Yes, sir; other people passing; I don't know who they were.

Q Was there anybody with you, sir, anybody talking to you? A No, sir; not at the time.

Q Anybody standing within two feet of you? A No, sir.

Q Were there five or six men in a group around you?

A No, sir, nobody in a group alongside of me, not as I know, I was looking toward where the trouble was.

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Q What was the first thing that attracted your attention towards Pope and Rafferty? A I happened to be standing there previous to that, three or four minutes before this thing happened, I always look around, on account of automobiles going in and out, I don't want to get run over.

Q What was the first thing that attracted your attention towards Pope and Mr. Rafferty? A Kind of talking loud words.

Q What was the first thing you heard? A The first thing I heard he called him a cock sucker.

Q Did you see Rafferty raise his hand? A No, sir; nobody raised his hand.

Q See him come over? A No, sir, he turned around and says, "You seen what this man called me", and he had his back--

Q Did he raise his hand like that (illustrating) A Mr. Rafferty after he says to Pope at the time-- he turned around to talk to me.

Q Just show me -- supposing we will say this is the wall of the shanty. A yes, sir.  
tell us

Q Now just/about the way Pope was standing, with his back against the shanty? A Yes, sir, with his back against the shanty, Pope was standing this way, there is the shanty and Rafferty was here.

Q Rafferty was standing about where I am? A Yes, sir, and Pope standing like that about a step away, as far as this.

Q Show me how far away Rafferty was from Pope? A About

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that far, about that close up to him.

Q At that time it was that Pope struck Rafferty on the head? A Yes, sir.

Q Is that right? A Rafferty just on the turn, he came around half way and hit him on the head with it, he broke as he knocked Mr. Rafferty's hat off it fell on the ground and the side of his head was hit, the neck, full of blood.

Q I am trying to get ~~from~~ you to show me how far away Rafferty Pope was? A I will tell you now.

Q You be Pope and I will be Rafferty. Will you do that? A I couldn't tell you that; I will tell you the reason why it was done so quick I had no time to think. I hadn't any idea anything like that was coming off.

Q Can't you give us an idea just how far Rafferty was away from Pope, what their relative positions were? A It couldn't be no further than three feet.

Q Like you and I? A About that far, he stepped this way, it came on the side of his head as he was turning around, he got hit on this side of the head, turning around.

Q Did you see Pope grab the broom? A I seen him reach over for the broom.

Q Where did he get it? A South of the office door.

Q Did he walk back towards it? A Just got this way and got the broom (illustrating)

Q You didn't see him back up? A No, sir; I didn't see him back up; he stood there like a statue, piece of mar-

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ble, as if he didn't know what he was doing, like a cowardly look on him.

Q You have known Rafferty for twenty years? A Off and on.

Q Related to him? A No, sir.

Q Do you belong to any club with him? A I don't belong to no clubs, and that's more-- no clubs, Americans don't have to belong to no clubs.

Q When he struck him he said, "I thought you were a gentleman", is that right? A Yes, sir, that's it, he said, "I more of thought you were a gentleman than that."

Q Then he struck him with the broom? A Yes, sir, after Rafferty expressed that.

Q Did you testify in the Magistrates' Court? A No, sir, I did not.

J O S E P H R E I N E R, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he is a police officer attached to the 26th Precinct.)

DIRECT EXAMINATION BY MR. WALLACE:

Q You are a police officer attached to the Police Department of the City of New York? A Yes, sir.

Q You were such on the 3rd of April, 1919? A Yes, sir.

Q On that day did you go to a pier or a place near 52nd street and the North River in the city and county of New York? A Yes, sir.

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Q Did you see this man Pope, the defendant? A Yes.

Q Did you see a man named Rafferty there? A Yes, sir.  
this man out there.

Q Did you notice the condition of Rafferty when you arrived at this place?

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

THE COURT: I will allow it.

Exception.

A Mr. Rafferty was full of blood, the blood from a cut on his head, all down his collar, shirt and clothes were full of blood.

Q What, if anything, did you do? A I asked Mr. Rafferty what the trouble was.

Q Was the defendant there at that time? A Yes, sir.

Q What did Rafferty say in the presence of the defendant?

A He said he hit me with a broom, and he showed me this broom here.

Q What did the defendant say, if anything? A I asked him, did he do it.

Q What did he say? A He said-- he admits he done it, but he don't know what he does sometimes, he gets excited and it goes to his head.

Q He said he did it but he didn't know what he does?

A Yes, sir.

Q What did you do after that? A I told him he was plac-

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ed under arrest. I told him he was under arrest, and I took him to the station house.

Q You and the defendant and the complainant got into his car, didn't you? A Yes, sir.

Q And drove over to the station house? A Yes, sir.

Q And sent for the ambulance? A Yes, sir.

Q Who was the doctor that came in response to the call?

A Dr. McClave of Bellevue Hospital.

Q What if anything did he do with regard to treating Rafferty? A He put two or three stitches in his head.

Q You brought that broom here today? A Yes, sir.

Q Is that the broom you got at the time the crime was committed? A Yes, sir.

Q Where has it been since? A The Property Clerk's room in Police Headquarters.

MR. WALLACE: I offer it in evidence.

MR. ARANOW: I object to that on the ground that it is incompetent, and immaterial and it has not been shown that it is in the same condition as it was at the time it was used.

BY THE COURT:

Q What was its condition when you found it? (No answer)

MR. ARANOW: I would like to ask him some questions.

THE COURT: You may ask him if you wish.

BY MR. ARANOW:

Q When did you first see this broom? A When I got to

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the scene, 52nd street and 12th avenue.)

Q Where was the broom? A Mr. Rafferty gave it to me.

Q How long had he had it, do you know? A Well, I don't know how long he had it.

Q Was it just exactly as it is when Rafferty handed it to you? A Yes, sir.

Q Do you know how long after the assault it was? A I do not.

Q Do you know where the other parts of this broom are?  
A No, sir, I do not.

MR. ARANOW: I object to its receipt in evidence.

Objection overruled. Exception.

(Marked People's Exhibit 1.)

Q What time was it when he got to this place? A About 12 o'clock noon.

MR. WALLACE: I would like to have the jury examine the broom.

(The jurors do so.)

(At this point the Court admonished the jury, and took a recess until 2 o'clock.)

AFTER RECESS.

D R. E V A N M c C L A V E, a witness called on behalf of the people, being duly sworn, testified as follows:

(The witness states he resides at Bellevue Hospital.)

DIRECT EXAMINATION BY MR. WALLACE:

Q You are a physician and you were on the 3rd of April, 1918, connected with Bellevue Hospital? A Yes, sir.

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Q On that day did you have an ambulance call to the 26th Precinct? A I don't remember it.

Q Can you tell by looking at your records and seeing if they will refresh your recollection? A Yes, sir.

Q Is that the ambulance call? A Yes, sir.

Q Will that refresh your recollection as to the call on the 3rd of April? A I don't remember that call; that is my writing.

Q I ask you if you will look at it and try to refresh your recollection? A No, sir; it does not.

Q Now will you please read that third line there across and tell me whether or not that refreshes your recollection as to having had an ambulance call in that neighborhood?

A No, sir, it does not.

Q Do you remember having treated this man Rafferty?

A I don't remember.

OFFICER REINER, recalled.

CROSS EXAMINATION BY MR. ARANOW:

Q Your name? A Joseph Reiner.

Q Attached to what precinct? A The 26th.

Q Where is that located? A 345 West 47th street.

Q At the time that you arrived at the dock there were a great many people there? A Yes, sir.

Q Now look at this picture and tell us whether or not that is about the location of the place where you saw the man standing, the defendant? A Yes, sir, that is the place.

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Q That is the place occupied by the Colonial Sand & Stone CO.? A Yes, sir.

Q A great many people there at that time? A Well, there was many people there, around noon time, going out to their dinner.

Q Was there quite a big crowd there? A Well, going by about fifteen or twenty people-- after this thing had happened

Q After you got there Mr. Rafferty talked to you? A Yes.

Q Is that right? A Yes, sir.

Q Where did you find the defendant? A About three or four feet away from Mr. Rafferty.

Q After you had a conversation with Mr. Rafferty did you have a conversation with the defendant? A Yes, sir.

Q Did you at that time have the broom? A Yes, sir.

Q When did you first get the broom? A As soon as I got there.

Q Who had it? A Mr. Rafferty.

Q Where did he have it? A In his hand.

Q Any other parts that were there? A No, sir.

Q No other parts? A No, sir.

Q You took that broom to the station house? A Yes, sir.

Q You had it in court? A Yes, sir.

Q Did you wrap it up in this piece of paper? A Yes.

Q When did you wrap it up? A When I left the court up in 54th street.

Q That day? A Yes, sir.

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Q You put it in some place in the Property Clerk's office?

A I put it back in the station house.

Q In the station house? A Yes, sir.

Q Did you put it in the Property Clerk's office? A No, sir, I did not.

Q When did you put it in the Property Clerk's office, if any time? A I didn't put it there at all.

Q Why not? A I left it in the station house, and they sent it from the station house to the Property Clerk's office.

Q Is that the rule of the Department? A Yes, sir.

Q Sure about that? A Yes, sir.

Q It isn't a rule requiring you to place it in the Property Clerk's office? A No, sir, not that I know of.

Q You don't know anything about that? A No, sir.

Q You didn't place it back in the Property Clerk's office?

A No, sir.

Q You wrapped it in this paper on the day in the court house? A Yes, sir.

Q No mistake about that? A No, sir.

Q Look at the date of that newspaper? A That was the newspaper I wrapped it up in.

Q What is the date on that paper? A January 6th.

Q What year? A 1920.

Q Now that is the paper you wrapped it up in in the Magistrates' Court? A No, sir, I take that back; I wrapped it in an envelope; I didn't mean that newspaper then.

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Q Tell the Court why you didn't take that down to the Property Clerk's office? A It isn't the rule-- we always leave it in the station house.

Q That is your experience on the Police Force? A Yes.

Q For how many years? A For about five years.

Q Did you show that paper or that broom to Mr. Rafferty since the day you were in the Magistrates' Court? A No, sir; I did not.

Q Did you show it to him? A No, sir.

Q Did you have a talk with him in the station house?  
A No, sir.

Q Did you try to put the piece into the brush? A I did not.

Q Didn't you see it can't possibly fit in there? A I didn't see whether it would fit there at all or not.

MR. WALLACE: It is apparent to everybody that it does not.

MR. ARANOW: I am not addressing myself to you.

THE COURT: That is a matter of argument with the jury.

MR. ARANOW: I don't want counsel to interrupt me.  
He may object to it.

THE COURT: He may comment on it when he comes to sum up.

BY MR. ARANOW:

Q Where did you keep it in the station house? A I gave

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it to the lieutenant in charge at the desk.

Q What is the lieutenant's name? A I couldn't tell you just now; I would have to look it up.

Q Where did you go to get this? A I went to the Property Clerk for it.

Q You were in the Magistrates' Court at that time?

A What time?

Q When the examination was had before Mr. Justice Ten-  
syck? A Yes, sir.

Q Did you testify? A I don't remember whether I did or not.

Q Did you make any statement under oath at that time that the defendant said something about sbeing red? A I dont know whether I did or not.

MR. WALLACE: There is no proof that this man was called as a witness in the Magistrates' Court. He says he doesn't know whether he was or not.

BY THE COURT:

Q Were you in the Magistrates' Court? A I was there.

Q Did you testify? A I could not tell you now. I would have to think, but I think I was there and did not testify.

Q Do you recall what happened in the station house on the day of the arrest? A All I know about is going to the station house.

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Q Did you hear Rafferty say something with regard to seeing Pope in the station house-- saying that he has got him now and before he would get through with him there would be nothing left of him? A I didn't hear him say that.

MR. WALLACE: The People rest.

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MR. ARANOW: I am going to ask the Court to permit me to recall this witness for the purpose of two or three questions. I am not prepared at this time; I am not ready for it now.

MR. WALLACE: If the man is going to be cross examined let him be cross examined now.

THE COURT: You may recall him if you desire, and I will determine then whether it is proper.

MR. ARANOW: I move to dismiss the first count, the charge of assault in the second degree on the ground that the people have absolutely failed to establish the essential elements.

THE COURT: Motion denied. Exception.

MR. ARANOW: I also ask your Honor to dismiss the second count on the same grounds.

THE COURT: Motion denied. Exception.

MR. ARANOW: If your Honor please I ask you to direct a verdict for the defendant.

THE COURT: Motion denied.

MR. ARANOW opens the case on behalf of the defendant.

PATSY De FILIPPO, a witness called on behalf of the defendant, being duly sworn, testified as follows:

(The witness states he lives at 22 10th street, West New York, New Jersey.)

DIRECT EXAMINATION BY MR. ARANOW:

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Q What is your business? A Foreman.

Q For whom? A The Colonial Sand Co.

Q Working there now? A No, sir.

Q Where are you now employed? A Fred, T. Liken.

Q In what employ? A Foreman.

Q When did you leave the Colonial Sand Co.? A I left it the 26th of June.

Q Of last year? A Yes, sir, this year, 1920, I mean last year.

Q Do you remember the day of the fight? A Yes, sir.

Q Where were you? A I was down on the dock.

Q How far away from the engine house? A About 16 feet.

Q What were you doing there? A I was at dinner time, called up the men for dinner; I called up the men to their lunch.

Q What were you doing that morning there? A Me? I was standing there at twelve o'clock.

Q Before twelve o'clock what did you do? A I wash outside.

Q Where? A Outside looking for the chauffeur.

Q Around noon just exactly where were you at dinner time?

A I was down at the dock.

Q Where? A Right over here (illustrating)

Q Near the engine house? A Yes, sir, a little further.

Q Who was with you at that time? A Joe, he is not here, and a couple of more men there.

Q Did you hear or see Mr. Rafferty? A Yes, sir; I seen

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a lot of men.

Q Where did you see him? A I seen him between the door of the shanty.

Q Between the shanty door? A Yes, sir .

Q What was he doing? A He was talking there, I seen him talking there, but I couldn't hear what they said.

Q What did you see anybody do? A I seen him throw up his hands like this (indicating) towards the 54th street side, his hands like that.

Q Moved his hands to the 54th street side? A Yes, sir.

Q What else? A And then I--

Q Please speak a little slower and more distinctly? A I saw the defendant strike the other man in the face.

Q Saw who strike? A That man there. (Referring to the complainant.)

Q Strike whom? A Mr. Pope.

Q You saw the complainant strike Mr. Pope? A Yes, sir.

Q What else did you see? A Then I seen the dock man come there and get hold of Pope by his neck and so he stopped them.

Q The dock man? A Yes, sir.

Q Didn't you see anybody use a broom? A I seen Mr. Pope walk back by the door and that man was there.

Q What did you see that man do? A I seen that man fight with pope; this man wanted to fight with him.

Q Now, will you please tell us what you saw this man do

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after he punched Mr. Pope? A He said, "Go home, don't annoy me."

Q What else did he say? A The other man--

Q Who? A The other man.

THE COURT: Who is the man?

THE WITNESS: The otherman I did not know his name.

Q (Indicating the complainant) A Yes, that man over there.

Q What, if anything did he do? A Pope withdrew backwards against the wall, and there against the wall laid the broom, and Pope then raised the broom, and he said, "Get away from here". Then he called two or three men standing at a certain distance, he called them to help him, and then when he approached him with several others towards Pope -- Pope then hit him with the broom on the head.

Q Towards this man -- when Pope went back towards the engine house office, what did this man do as Pope backed up? A He was calling with his hands to these men to come along and then he was making a motion to strike with his clenched hand.

Q Did pope strike this man with his fist at any time? A No, sir.

Q Did you see the catamaran that day? A Yes, sir, I saw it in 54th street; he was right in front there it is a derrick.

Q How long did you use that derrick? A Six years and a half.

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## CROSS EXAMINATION BY MR. WALLACE:

Q How long have you known the defendant Pope? A Seven years.

Q How long did you work for him? A Six years.

Q When did you stop working for him? A Well, between the 24th or 25th of June.

Q He is interested in the business in which you are now employed? A No, sir.

Q Now did you testify in the Magistrates' Court at the request of of this defendant? A They did not send for me; I was there, but they did not call me.

Q You were there but they did not call you? A No, sir.

Q You say that you were on this pier or thereabouts on the third of April, 1919? A Yes, sir.

Q You were busy with your men,, were you? A It was noon.

Q How many men did you have directly under your supervision at that time? A 14 or 15.

Q 14 or 15, what sort of men, laborers? A Laborers, yes, sir.

Q Who worked for you? A The chauffeur.

Q They drove the truck? A Yes, sir.

Q Motor trucks? A Yes, sir.

Q And the people that loaded them? A Yes, sir.

Q How many men were with you there at the time? at 12 o'clock on April 3rd? A Eight or nine.

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Q Eight or nine? A Yes, sir.

Q They all worked for Pope, didn't they? A Yes, sir.

Q How far away were you from the scene of this quarrel when you first noticed it going on? A About fifteen feet away.

Q About fifteen feet away? A Yes, sir.

Q Near enough to hear loud voices, but not near enough to hear what was being said? A I could hear, but I didn't hear what it was about.

Q You were not close enough to distinguish what was being said? A No, sir.

Q How long do you think fifteen feet is as far as this man or the wall or what? A From this witness chair (indicating the witness chair) to the lawyer for the defendant.

Q These men were talking in a loud tone of voice? A At first they talked loud.

Q Well, what did they say? A I heard them saying "it is my derrick."

Q Who said that? A That man there which I pointed to before sitting there in the court room.

Q He said "that is my derrick". A Yes, sir.

Q What did Mr. Pope say? A And Pope said it is my derrick.

Q Did he say anything else? A Then he asked Pope, "Who are you".

Q You did hear what was said then, didn't you? A Yes, sir, when I approached near them I heard.

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Q When did you approach? A In four or five minutes.

Q They were there for four or five minutes before you went towards them? A Yes, sir; I approached closer and I heard them.

Q How far away were you when you had approached closer?  
A Fifteen feet.

Q Still fifteen feet? A Yes, sir.

Q When you first heard the conversation going on you were further away than fifteen feet, is that right? A First I was fifteen feet.

Q Then you approached closer, and you were still fifteen feet away, is that so? A No, sir.

Q How far were you away when you did approach? A Eight feet.

Q About eight feet? A Yes, sir.

Q About as far as from me to you? A Yes, sir, a little further.

Q A little yet? A Yes, sir.

Q About that far away (Illustrating) A Yes, sir.

Q You were there before a blow was struck? You were within say twelve feet, is that right? A Yes, sir.

Q Now, you could hear everything, could you? A Yes, sir.

Q They were talking in pretty loud voices, this time?

A Yes, sir.

Q Now what did you hear after you were this far away?

A Then after he said that is my derrick Pope said "That is

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my derrick", and that man sitting in court here I heard him say to Pope, "You are a son of a bitch."

Q You didn't tell us about that before? A No, sir, I did not.

Q Your hearing is getting better now that you are twelve feet away from the scene? A I approached closer then.

Q Now after the complaining witness, Rafferty said this to the defendant Pope, what did Pope do if anything? (No answer.)

Q Did Pope get angry, did they strike at each other or anything like that? A At the same time that this man there in the courtroom called Pope a "Ginny son of a bitch" he said, "I will show you who I am", and struck him.

Q Now you say he called him a "Ginny son of a bitch"? A Yes, sir.

Q Is that right? A Yes, sir.

Q And said at the same time, "I will show you who I am"? A Yes, sir.

Q And ran to him? A Yes, sir.

Q Struck him? A Yes, sir.

Q What did Pope do? A Pope said "Get away from here" "Are you crazy."

Q Pope said "Get away, are you crazy"? A Yes, sir. And then Pope was withdrawing backwards and he was coming towards Pope.

Q How far did he run away? A Four or five feet, with-

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drawing backwards.

Q Did you go to his assistance? A No, sir; I only was looking.

Q You were looking? A Yes, sir.

Q Did any of your eight or nine men go to his assistance?  
A No, sir.

Q You waited to see what he would do? A Yes, sir.

Q Is that right? A Yes, sir.

Q What did he do? A Well, that man there asked several men who were standing there "Come on and we will kill the Ginny son of a bitch."

Q Did he say that to you? A Pope withdraw backwards.

Q Did he say that to you and your crew or to some other men that were there? A No, sir, not to my crew at all; they were standing at a distance.

Q Did he say it to Mr. Moran, the watchman? A No, sir. He only asked some of them who were standing there, he called them over.

Q Did he say it to O'Neill, one of the previous witnesses? A Who is O'Neill?

Q A man whom you have seen on the witness stand or here in the court room? A No, sir, I did not see him.

Q How far away were these men to whom he said this?  
A About twenty feet away; I did not measure it.

Q You did not measure it? A No, sir.

Q They were much further away from the scene than you

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were, weren't they? A Yes, sir.

Q When you heard him say this "Come, let us kill the  
" Ginny son of a bitch", what did you do, anything? A I didn't  
say anything nor do anything; I stood there.

Q What did Pope do? A Pope was withdrawing backwards  
all the time.

Q He has been withdrawing now for sometime. Come to  
the end of the withdrawing scene. What did he do after he  
stopped?

MR. ARANOW: I object to that question.

THE COURT: It is bad in form.

Q After he got through withdrawing what did he do, if  
anything? A He withdrew against the wall of the shanty.

Q We are through with the withdrawing, I said after he  
got through withdrawing, what did he do? A He took this broom.

Q He took the broom? A Yes, sir.

Q What, if anything, did he do with the broom? A He  
took the broom, and he said to this man, "Get away from me or  
I will hit you with it."

Q At this time was his back against the shanty?

MR. ARANOW: I object to the question.

MR. WALLACE: It is a proper question.

MR. ARANOW: I am addressing myself to the Court.

THE COURT: Ask him if his back was to the shanty?

Q Was his back to the shanty? A Yes, sir.

Q So that he could not get at the man out there? A No.

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Q Then what did he do after he got into that position?

A He told him to get away from him, and he kept on approaching attitude and then it was he struck him.

Q How did he strike him. He took this broom in his hand?

A Yes, sir.

Q Mr. Pope had this broom in his hand, didn't he?

A Yes, sir. He found it there against the shanty.

Q He had it in his hand? A Yes, sir.

Q He raised it up, didn't he? A Yes, sir.

Q Did he hit the shanty when he raised it up, was he so close that it hit the shanty when he brought it back? A No, sir, he raised it in front of him.

Q In front of him? A Yes, sir, right sideways.

Q The shanty wasn't so close as to interfere with him?

A No, sir he was standing against the shanty, and he was holding the broom sideways.

Q Well, now, after he got it in that position what did he do? A Then he struck him.

Q Struck this man here? A Yes, sir.

Q Whereabouts? A On the head.

Q What happened after that? A Then the watchman came and he seized Pope by the collar.

Q Where were all the men that Rafferty were calling to?

A They were away twenty feet.

Q They didn't come up near the men, did they? A No, sir, at no time, did they come because I thought he was striking the

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watchman too, and then they came.

Q They didn't come up near Pope after he struck Rafferty, did they? A No, sir.

Q Did they? A No, sir.

MR. ARANOW: I object to the manner in which counsel is asking the questions. This is court room.

THE COURT: Proceed.

BY MR. WALLACE:

Q At any time after Mr. Pope laid Mr. Rafferty low with this bludgeon did anybody come up?

MR. ARANOW: I object to that as being entirely improper and based on a statement not in evidence. It is his own statement.

THE COURT: There is no evidence to show that he laid him low.

Q Well, after he struck him with this broom, did anybody strike Mr. Pope or offer him any violence? A No, sir, because the watchman had him by the neck.

Q Just one man had him by the neck? is that right?

A Yes, sir.

Q One man? A Yes, sir.

Q The watchman? A Yes, sir.

Q Is that right? A yes, sir; and the others were all around him.

Q Did the watchman strike Mr. Pope? A He shook him.

Q He shook him? A Yes, sir.

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Q Did he strike him? A No, sir, I didn't see that.

Q In the meantime you did nothing during all this altercation but just stand and look, is that right? A No, sir.

Q What did you do after it was all over? A Pope told the foreman who was standing there to go and call the police.

Q I thought you were the foreman? A No, sir, another foreman was there.

Q Pope told him that? A Yes, sir.

Q It wasn't Mr. Rafferty or Mr. Moran that called the police, it was Pope, is that right? A Yes, sir; he says go and get the cop.

Q Now, when you saw Mr. Rafferty struck on the head did you see the broom break? A Yes, sir.

Q You did? A Yes, sir.

Q So it was rather a hard blow apparently?

MR. ARANOW: I object to that.

THE COURT: Question excluded.

Q Did he strike him hard or did he bring the broom down gently? A He couldn't possibly hit him hard because his back was against the shanty.

Q So he didn't hit him hard? A No, sir.

Q Just easy? A Not very easy.

Q What do you call very easy? A Just raised it.

Q Just hard enough to break the stick of the broom?

A Yes, sir.

Q Now, you say you were in the Magistrates' Court, but

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you did not appear and testify, is that right? A I was there but I was not called.

J O S E P H M A Z Z U L I O, a witness called on behalf of the defendant, being duly sworn, testified as follows:

(The witness states he lives at 764 8th avenue.)

DIRECT EXAMINATION BY MR. ARANOW:

Q Do you speak English? A Yes, sir.

Q How long in this country? A Eleven years.

Q What did you work at? A The Colonial Sand Company.

Q Where? A 57th street dock.

Q Do you remember the day of the fight? A Yes, sir.

Q Were you there that day? A Yes, sir.

Q What were you doing about twelve o'clock that day?

A I was standing around the dock. I am the dock foreman.

Q Did you see that man Mr. Rafferty there that day?

A Yes, sir.

Q When did you see him there, what time? A About 12 o'clock or after twelve.

Q What did you see him do? A I seen him, that gentleman, there, and this gentleman coming out of the office.

Q What office? A The office down the dock.

Q I show you this picture. Show me just where you saw him coming out of? A Right out of this door (indicating)

Q Which door? A Witness indicates )

Q That is the door where it says "No admittance"?

A Yes, sir.

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Q Now who came out first? A That gentleman came out first.

Q Who followed? A Mr. Pope.

Q Where did they go? A They were about five or six feet away from the shanty, and I seen Mr. Pope point with his hand to the west, to the uptown side.

Q Did you hear any conversation? A No, sir.

Q What was the next thing you saw? A What I heard? Was Mr. Pope was saying that is my catamaran.

Q What else? A And this man was saying no it was his.

Q What then? A Pope asked him who he was any way "Who are you anyway".

Q What did he say? A Who are you.

Q Who said that? A Pope.

Q What did Rafferty say? A Never mind who I am, I will show you who I am.

Q What happened? A He punched him in the face, called him a "Ginny son of a bitch" and punched him.

Q Who? A Rafferty punched Pope.

Q What did Pope do? A Backed up, and he said "What is the matter with you, are you crazy", he backed up as far as the shanty.

Q What did he do then? A Rafferty followed him and called some man on the dock "Come over here and beat this fellow up.

Q How did he do it? A Pope backed up to the shanty and

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Rafferty was fighting him.

Q What did Pope do? A He got close to the shanty and caught hold of the broom that stands by the shanty and he hit him right in the head.

Q What did you do, if anything? A I was standing there, nothing.

Q You are still working for Mr. Pope? A Yes sir.

Q When you said he called a couple of men did you see the men? A They were men on the dock; none of them moved

Q How many men were there about? A Three or four standing on the dock.

Q Did you see the dock watchman come up? A Yes, sir.

Q What did he do? A He caught a hold of Pope by the neck, and Mr. Pope said, "Let me go, I won't run away". The watchman caught hold of Pope by the neck and he said "Let me go" and he told me to get an officer. I sent a boy or one man around the block to get the officer.

Q Who told you to get the officer? A Mr. Pope.

CROSS EXAMINATION BY MR. WALLACE:

Q How long have you known Mr. Pope? A I have known him about eight years.

MR. ARANOW: Please pardon me a moment.

BY MR. ARANOW:

Q You know that catamaran? A Yes, sir.

Q How long have you used that? A I am using it about six years.

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BY MR. WALLACE:

Q Now, you know Mr. Pope for eight years? A Yes, sir.

Q How long in this country? A 11 years.

Q Working for him for eight years? A Yes, sir.

Q You knew him before you worked for him? A Yes, sir.

Q How long before you worked for him did you know him?

A About two years.

Q A friend of his? A Yes, sir.

Q For how long? A Well, as long as I know him.

Q For eight years? A Yes, sir.

Q Now his foreman? A Yes, sir.

Q On the day in question you were his foreman? A Yes, sir.

Q The 3rd of April? A Yes, sir.

Q How many men did you have under your control? A Four men on the dock.

Q What did they do for a living? A Shoveling sand.

Q All Italians? A Yes, sir.

Q There was another foreman here who also had a number of men under him? A He is the outside foreman.

Q How many men did he have under him? A Well, he was taking care of the drivers.

Q This was about twelve o'clock noon? A Twelve o'clock noon.

Q On April 3rd? A Yes, sir.

Q You were there? A Yes, sir.

Q Who else was right near you? A Well, another man, a

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driver.

Q What was his name? A Joseph Marsuli.

Q A friend of yours down there? A No, sir.

Q Who is he a driver for? A Driving for the Colonial.

Q For Pope? A Yes, sir.

Q Did you testify in the Magistrates' Court? A No, sir,  
I did not.

Q Why not, were you called there? A I was not called.

Q How far away from you was Pope and Mr. Rafferty when you  
first noticed that they were talking together? A About ten or  
twelve feet.

Q Ten or twelve feet? A Yes, sir.

Q What were they doing in that vicinity? A Standing  
around watching the men that ran over.

Q Standing watching the men-- two of your own men?

A Yes, sir, two of them who were pulling a barge.

Q How many feet were you from Pope? A About 12 feet.

Q Just as far as from you to that man there? A Yes, sir.

Q They were all Italians, were they? A Yes, sir.

Q When you first saw Pope and Mr. Rafferty what were  
they doing? A They were talking, and I saw Mr. Pope pointing  
to the uptown side.

Q When you first saw Pope and Refferty there talking,  
Pope was pointing? A Yes, sir.

Q Did you hear what they said? A Heard them talking  
about the catamaran and Pope says it was his.

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Q You were close enough to hear that? A Yes, sir.

Q After Pope said the catamaran was his and Rafferty said it was his what happened? A Pope asked him, "Who are you anyway".

Q What did Rafferty say? A Never mind who I am.

Q What happened after that? A "You Ginny son of a bitch" and he punched him in the face.

Q He said, "Nevermind who I am, you Ginny son of a bitch?"

A Yes, sir.

Q Is that right? A Yes, sir.

Q Then he punched Pope in the face? A Yes, sir.

Q That is the first real trouble that there was? A Yes.

Q Is that right? A Yes, sir.

Q What did you do, anything? A No, sir.

Q Just stood there to see what was going to happen? A Yes

Q What happened after that when Rafferty took this punch at Pope? A As Rafferty was calling the men Mr. Pope backed up.

Q Rafferty was calling the men? A Yes, sir.

Q How did he call them? A "Come over here we are going to trim this Ginny fellow up.

Q To whom did he call? A Just three or four men who stood on the dock.

Q How far away from the scene of the conflict were they?

A They stood on the corner taking lunch about 120 or 130 feet.

Q About 125 or 130 feet away? A Yes, sir.

Q He yelled pretty loud "Come over here we are going to

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trim this guy." A Yes, sir.

Q You at once jumped over to punish him, I suppose, didn't you? A No, sir, I was here; I was coming over.

Q You just saw it? A Yes, sir.

Q And these men came right over? A They did not, no.

Q They didn't seem to pay much attention to Rafferty?

A No, sir.

Q Then after all this happened, after he called the men and after the men did not come over, what took place then? A He followed him up.

Q Did he keep on retreating? A Pope kept on backing up.

Q How long was he backing up? A About eight or nine feet until he got to the shanty.

Q He couldn't go back any further? A No, sir.

Q He didn't go in the shanty door? A No, sir.

Q The broom was standing there right alongside of it like that? A Yes, sir.

Q What happened as regards the broom, what did he do?

A He caught hold of the broom, and he says, "Don't come nearer or I will hit you."

Q He caught hold of it and said, "Don't come nearer or I will hit you?" A Yes, sir.

Q That didn't bother Rafferty, he went right on? A Yes.

Q Kept right on going after Pope? A Yes, sir.

Q With his fist? A Yes, sir.

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Q Did he make any attempt to strike him? A With what?

Q Before he struck Pope he caught hold of him? A Yes, sir, and he hit him with the broom.

Q A hard blow? A I don't know how hard; I can't explain myself; I seen him hit him.

Q Did the stick break? A Yes, sir.

Q Hard enough for that, wasn't it? A Hard enough for that.

Q What happened after that? A The foreman on the dock got hold of Pope, and hit him.

Q Didn't the watchman hit Pope? A No, sir.

Q Did anybody hit Pope after that? A No, sir.

Q What did these men that were 120 or 130 feet away do-- did they come rushing up after you saw Rafferty strike or hit Pope?

MR. ARANOW: I object to that.

Q What did all these men do who were 120 feet away? A Well it was rushing up to see what was the matter.

Q I am talking about the men, did they run up? A Yes, sir, they came over.

Q Who were they? A I don't know them.

Q Did they do anything? A No, sir.

Q Struck nobody? A No, sir.

Q Hit Pope? A No, sir.

Q What did you do after all this took place? A Pope told me to get an officer.

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Q You got an officer? A Yes, sir-- I didn't get him, I sent another man.

Q Who was he? A One driver.

Q What was his name? A It is John.

Q John what? A I don't know his second name.

Q Now, Rafferty was bleeding pretty much from the cut on his head, wasn't he? A Yes, sir.

Q Did you see any marks on Pope? A I seen a little bit; I told Pope he was bleeding from his lip.

Q You told him so? A Yes, sir.

Q Where he got struck? A Yes, sir.

Q Did you go to the station house? A No, sir.

Q See the policeman come up? A Yes, sir.

Q Were you there when he came up? A Yes, sir.

BY THE FOURTH JUROR:

Q Was that door of the shanty open or closed during the day? A Closed.

Q Closed all day? A Yes, sir.

Q A sign was on that door? A Yes, sir.

BY MR. ARANOW:

Q When you said you noticed some blood on Pope's lip, when was that? A That was right after he hit him with the broom.

JAMES MAZILLI, a witness called on behalf of the defendant; testified as follows:

(The witness states he lives at 522 West 49th street.)

DIRECT EXAMINATION BY MR. ARANOW:

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Q What is your business? A Iceman.

Q With whom do you work? A I am working for the ice company.

Q Where located? A 633 West 47th street.

Q How long are you working for that company? A Working now about four months.

Q Where did you work before that? A Colonial Sand & Stone Co.

Q Where are they located? A 615 West 49th street.

Q Now do you remember the day of the fight? A Yes, sir.

Q What were you doing that day? A I was going by the engine room.

Q I show you this picture-- A For a pail of water.

Q You were going to the engine room for a pail of water?  
A Yes, sir.

Q Just what room do you mean, point it out? A (Witness indicating) This here.

Q That one there? A Yes, sir; where these three men are standing.

Q What time was that? A It was about ten or a quarter after twelve something like that.

Q Ten minutes or a quarter after twelve? A Yes, sir.

Q Speak louder? A Yes, sir.

Q Do you know Mr. Pope? A Yes, sir.

Q How long? A About 6 or 7 years.

Q Did you see that man Mr. Rafferty there? A Yes, sir.

Q What did you see him do? A At the time I was going

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in the engine room I seen this man he pointed to Pope and he says, "Now", he says, "did he want to fight--" he called some of the gang standing on the dock and Mr. Pope was standing by the shanty where the office is and so Mr. Rafferty says "Come on men we are going to lick this Ginny son of a bitch here." He was getting near to Mr. Pope and Pope didn't see the broom behind him-- he was standing there at the back side of the shanty.

Q What did he do? A He pulled the broom and he lifted up the broom and he says to Mr. Rafferty "Here don't come nearer and Mr. Rafferty went too close to him, and when Pope seen Mr. Rafferty with Pope he let go of the broom, and hit this man on the top of the head.

Q What else happened then? A That is all.

Q Did you see the dock watchman? A Yes, sir, then the dock watchman came and grabbed Mr. Pope by the neck.

Q Did you hear Mr. Pope call this man a cock sucker, this man Rafferty? A No, sir.

Q Did you see Mr. Pope strike Rafferty in the face or punch him in the face? A No, sir.

Q Where did the watchman come from, where was the watchman? A He was in some place on the 12th avenue side.

CROSS EXAMINATION BY MR. WALLACE:

Q What is the name? A Mazilli.

Q Did you testify in the Magistrates' Court? A No, sir.

Q Never testified in court before in this case? A No, sir.

Q This is the first time you have been called? A Yes, sir.

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Q How long have you known Pope? A About 6 or 7 years.

Q Related to him? A No, sir.

Q A relation of his? A No, sir.

Q Work for him? A Yes, sir.

Q How long? A Not now.

Q When did you quit working for him? A I quit about four months ago.

Q Who do you work for now? A Henry Ruddy, the Metropolitan Ice Company.

Q You were on that day, on the 3rd of April, too, weren't you? A Yes, sir.

Q What was your business when you worked for Pope? A I was driving a truck, I was driving.

Q How did you happen to be around the place where this thing occurred? A Because it was dinner hour, the drivers of trucks we try to load before dinner.

Q A couple of men loading a truck was there? A No, sir, I was the last one loading.

Q Who was there besides you? A Well, I couldn't tell you the engineer was there.

Q The engineer was there? A Yes, sir; he was working on top of the engine room.

Q What was his name? A I couldn't tell you.  
the

Q Was he checked in the office? A No, sir, I don't know.

Q You don't know? A No, sir, I did not see him.

Q Now you say you were going to the engine room for some

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purpose? A No, sir, I did not see him.

Q Now you say you were going to the engine room for some purpose? A Yes, sir.

Q What were you going there for? A I went for a pail of water to water the horses.

Q To water the horses? A Yes, sir.

Q Is that where you get your water? A Yes, sir.

Q As you went to the engine room what if anything did you hear? A I heard or seen this Mr. Rafferty outside and he was saying to Mr. Pope, wanted him to fight at the same time.

Q You saw what? A I saw Mr. Rafferty point to Mr. Pope to fight him.

Q He wanted Mr. Pope to fight? A Yes, sir.

Q What was he doing, was he sparring like? A Yes, sir, going with his hands like this and at the same time he called a couple of men from the dock.

Q Where were they? A I couldn't tell you there were some men from that dock, I don't know and he says "Come on over".

Q How far away were they? A About thirty feet.

Q About thirty feet away? A Yes, sir.

Q How many were there? A I didn't see how many men there were there.

Q You didn't see? A No, sir.

Q You just thought they were there?

MR. ARANOW: I object to that.

A That is what I told you; I don't know how many men were

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there.

Q Did you see any men with your own eyes? A I wasn't looking over there.

Q You didn't even look? A No, sir, I didn't look over there.

Q Did you see him call these men-- what happened after you saw him call these men? A Why after dinner--

Q What happened after that? A After that this Mr. Rafferty was still getting near Mr. Pope and Mr. Pope was starting back to the shanty.

Q He was with his back against the shanty? A Yes, sir.

Q How long did he stand with his back against the shanty while Mr. Rafferty was sparring? A Not very long.

Q How long about? A Going like this, fighting.

Q For a minute? A Ye, sir, about a minute.

Q After he stood there for a minute-- in the meantime, was there any word passed between them? A No, sir.

Q No words at all? A No, sir.

Q Did he say anything at all? A No, sir, not at all.

Q Did Rafferty say anything? A Mr. Rafferty says "Did you call the men", and Pope lifted up the broom and says "Don't come near me."

Q Pope lifted up the broom and said "Don't come near me?" A Yes, sir.

Q What did Rafferty say? A He was getting close to him and Mr. Pope let go of the broom.

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Q He hit him? A Yes, sir.

Q Hard? A Just let it go like this (indicating)

Q What happened to the broom, did it break? A Yes, sir, it broke.

Q Just let it go easy and it broke? A Yes, sir.

Q Did you see Rafferty bleeding? A Yes, sir.

Q You saw the blood coming down? A Yes, sir.

Q What happened after that? A That is all. Then some watchman came from the 52nd street dock, came up and he grabbed Mr. Pope by his neck.

Q Did he hit him? A No, sir.

Q He didn't hit him? A No, sir.

Q Did anybody hit Pope after that? A No, sir.

Q Nobody hit him at all? A No, sir.

Q These men that Rafferty were calling did they come up?  
A I didn't see nobody come up.

Q You didn't see anybody come up? A No, sir, I just seen the watchman come up.

Q What did the watchman do with Pope, did he take him any place? A No, sir, he just -- Mr. Pope said, "Leave go, I won't run away."

Q What happened after that, did you stay there or did you go away? A No, sir, I went right away.

Q You went about your business? A Yes, sir.

Q You did not go to the Magistrates' Court? A No, sir.

Q Who first spoke to you about testifying in this case?

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A The lawyer.

Q When was this? A About two weeks after the--

Q Two weeks after? A Yes, sir, and then I went back about once more.

Q In the Magistrates' Court, did you take the witness stand to testify? A Yes, sir.

MR. ARANOW: He was not called.

A No, sir, I was not there.

Q Now while all this fight was going on you didn't not take any part in it? A No, sir, not at all.

Q What did you hear Rafferty call Pope if anything?

A Called him-- he didn't call Rafferty, call him anything, he said, "Come on we are going to lick this Ginny son of a bitch here."

Q Who said this? A Rafferty.

Q What did he say when Rafferty called them? A He didn't say a word.

Q He just backed up? A Yes, sir.

D R. R I C H A R D H O F F M A N, a witness called on behalf of the people being duly sworn, testified as follows:

(The witness states he lives at 1037 Madison avenue.)

DIRECT EXAMINATION BY MR. ARANOW:

Q Are you connected with any institution? A Yes, sir.

Q What institution? A Post Graduate Hospital at the present time.

Q Where is that located? A 28th street and 2nd avenue.

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Q Attached to what university? A - Cornell.

Q Connected with what institutions? A The Mount Sinai, <sup>neurological</sup> the institution on Randall's Island, the Manhattan State and the Post Graduate.

Q Did you make an examination of the head of the complaining witness? A Yes, sir.

Q Did you know at that time actually as to how the blow was struck? A Yes, sir.

Q Did you examine the wound? A I did, yes, sir.

Q Will you describe to the jury the wound as you saw it?

MR. WALLACE: I would like to object to the testimony of this witness on the ground that it is incompetent, irrelevant and immaterial. No testimony has been given of the degree of severity of the wound by the People. And there is no testimony before the Court calling for any rebuttal or any reply by this witness.

THE COURT: I will let him describe what he saw. He may describe the wound as he saw it.

Q Tell us what you saw? A About 2 1/2 inches above the right ear and somewhat behind the middle of the skull, the line that would run from here to here in that section there like this (indicating) there is scarcely visible a small scar, small and round about a half an inch in size; there is absolutely no sign of any stitches having been placed in it.

BY THE COURT:

Q Did you expect to find the stitches? A You would find

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the scar a scar of the stitches. You see when you suture a wound where you insert your needle it will show -- it will show just where you insert your needle and it will still be visible in the skull, some of the needle puncture.

BY MR. WALLACE:

Q How long after? A For all time, the scar never disappears.

Q Do you mean to say there is no scar on his head? A A scar there about half an inch in size.

Q You mean you saw no breaking of the skin? A Yes, sir.

Q Do you say there was no breaking because there is no needle puncture? A No needle puncture of a suture; if it had been it was very superficial and the sutures came out. I was told the sutures were removed two or three weeks after.

THE COURT: Strike that out.  
BY MR. ARANOW:

Q Doctor, where an abrasion of the skin of the scalp is caused, can you tell us whether or not there would be bleeding and to what extent would the bleeding be? A Slight--

MR. WALLACE: I object to that on the ground it is incompetent and irrelevant.

THE COURT: I would like to know something about his qualifications.

MR. ARANOW: He said he was connected with the Post Graduate Hospital at 28th street and Second avenue.

THE COURT: An institution where they care for nervous conditions.

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BY MR. ARANOW:

Q Have you studied physiology? A Yes, sir.

Q Under what man? A Dr. Flint, Austin Flint.

Q What other institutions have you studied physiology in?

A No other institution; that was one of my medical courses

Q At Mount Sinai did you have any work in physiology?

A Only so far as in the course of the term physiology is taught, merely preparatory study.

Q Did you have surgery and medicine in Mount Sinai? A Both.

MR. ARANOW: Does your Honor still hold you would like to hear more of the qualifications of this man?

THE COURT: I would like to know how many times he has stitched wounds, how many times he has extracted the threads.

BY MR. ARANOW:

Q How many times have you sutured wounds yourself? A Hundreds of times. I served as an interne in the Bellevue Lying-In Hospital and also in the Out Patient department of the Mount Sinai Hospital.

Q After a certain period of time you removed them? A Always within a period of five days.

Q The hole made by suturing or the wound heals up, does it not? A The scar of the needle puncture remains always; you can always see it.

Q What do you suture with? A With any material, I do not care what.

Q Tell me what material you use? A We usually work

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with this--

Q. It is absorbed, isn't it? A Catgut, yes, sir, that is you usually use catgut or you use <sup>horse hair or</sup> silk because the catgut may be absorbed and may carry infection and the wound may re-open.

BY MR. WALLACE:

Q. Well the scar made by that whatever it is, is fairly visible, you still have the pricks made by the needle? A I did not detect them; I saw none there.

Q. Will you state now that no stitches were ever put in this man's head as an expert? A I say that as far as I can see at the present time.

Q. Nevermind, will you state? (No answer.)

BY THE COURT:

Q. I want your opinion now. You claim to be an expert. Are you prepared to state now that in your opinion there were no stitches inserted in his head? A I can only say that there are now no visible signs of stitches having been in it.

Q. Are you prepared to state in your opinion that there were no stitches placed in his head? A In my opinion there were no stitches placed in his head.

BY MR. WALLACE:

Q. How long have you been a physician? A 12 years.

Q. How many cases have you examined of old wounds where the wound has healed? A They were innumerable.

Q. You never found one in which you did not find the

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print of the needle? A No, sir.

BY MR. ARANOW:

Q May I inquire-- a blow or laceration of the scalp will cause bleeding? A Blood will usually flow in the slightest scalp injury.

BY MR. WALLACE:

Q Can you tell me whether you see any indication of a wound on that side of my finger? (Indicating)

Q You see that shows a wound sewed up? A I would infer that that wound was never sewed.

THE COURT: Strike that out.

Q Why did you testify as an expert here?

MR. ARANOW: I brought this man, if your Honor, please, to testify to something entirely different, and I haven't had a chance to examine this man so far.

MR. WALLACE: I want to find out if he is an expert, your Honor. We have no evidence that he is an expert.

THE COURT: You may ask him some questions you think proper Mr. Aranow.

MR. ARANOW: I will withdraw the witness.

MR. WALLACE: No further questions.

G E N E P O P E, the defendant, being duly sworn in his own behalf, testified as follows:

(The witness states he lives at 464 Park Avenue.)

DIRECT EXAMINATION BY MR. ARANOW:

Q How old are you? A 29.

Q Are you married? A Yes, sir.

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Q Got any children? A Yes, sir.

Q Live with your wife? A Yes, sir.

Q How long have you been in this country? A 14 years.

Q Are you a citizen of the United States? A Yes, sir.

Q How long? A Since I was 21 years of age.

Q How long is that? A Eight years ago.

Q When did you first become associated with the Colonial Sand & Gravel Co.? A Seven years ago.

Q Is that a corporation? A Yes, sir.

Q Are you one of its officers? A Yes, sir.

Q Do you recall the catamaran or whatever that is?

A Yes, sir.

Q How long have you been with the Colonial Sand & Gravel Co.? A Since I have been with the company--

Q How many years? A Seven years or something like that.

Q When was the first time that anybody ever spoke to you about the ownership of the catamaran? A On April 3rd Mr. Rafferty came down the dock.

Q Where did you use that catamaran? A Brooklyn, under the Manhattan Bridge, and down at Canal street fir the subway.

Q You have leased certain property from the city up there?  
A Yes, sir.

Q What property is that? A 52nd street to 54th street.

Q East or west of what? A West of 12th avenue to the river.

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Q How long have you had that? A Since I have been with the Colonial Sand Company, seven years.

Q What did you use that property for? A For storage of sand and gravel and other things in our business.

Q Where for the first time did you see Mr. Rafferty? A In my office down at the dock.

Q When you say in your office show me on the picture where you mean? A He came right in here, through this door.

Q Where the cross is there? A Yes, sir.

Q Was he outside the office or inside the office? A He was inside the office.

Q What did he say to you and what did you say to him?

A Why he said to me, "Are you Mr. Pope, the Colonial Sand Co.?"

A I said yes. He said who told you to pull that catamaran.

I said what catamaran. He said the catamaran buried under the sand here. I said, why come outside and show me which one you mean. We got a steam engine and we never used it for two or three years.

Q Did you ever use that catamaran to unload or load in the dock? A No, sir, not that dock.

Q What have you got there? A A steam engine shown in that picture there.

Q You never used that catamaran on that dock? A No, sir. I walked out of the office after him, and pointed to 54th street and showed him if that was the catamaran he was talking about and he said yes. I said, why, man, I had it in use for my own

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property. And he said since when is it your own property. And I said since I am with the Colonial Company, and he said, I will show you if you pull that again what I will do to you if it is yours or not, and I said who are you anyway, and he said none of your damni business who I am. And I said if you don't want to tell me who you are I don't want to talk to you at all, I am through with you, and he says to me, "You Ginny son of a bitch where did you learn this in Italy", and I said no, I learned this right in this country, in America, just as good an American citizen as you are, and he said, well I will show to you, and he punched me right in the face.

Q Where were you standing at that time? A Outside the office.

Q How far away? A About five or six feet from the office. As soon as he punched me in the face I said "what is the matter with you, what the hell is the matter with you", I could not express myself and I said, "What the hell is the matter with you", and he said, to me-- he came and pulled me again, and he said to the other fellows, "Come on over we will kill this fellow here today." I couldn't get any further than the wall and he was coming towards me all the time I saw the broom and picked up the broom and I said to him, "Get away from me or I will hit you in the head with it", he came so far and I let go of the broom.

Q How far away was he from you when you struck him with the broom? A About four or five feet away from me.

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Q Did you call him a cock sucker? A No, sir.

Q At any time? A No, sir.

Q Did you punch him in the mouth? A No, sir.

Q Was he bleeding at the mouth? A No, sir.

Q Were you bleeding at the mouth? A Yes, sir.

Q Who called your attention to it? A Joe, my foreman.

This happened not in the public street but happened right on leased property.

Q On your leased property? A Yes, sir.

Q He punched you? A Yes, sir.

Q How far away from 12th avenue was that about? A About 125 feet.

Q When he punched you did you walk back, turn around and back, how did you go back then? A I jumped away and retreated.

Q When you jumped back did he stop or follow you? A He followed me all the time.

Q Why did you strike him on the head with the broom, why? A I was afraid that they were going to kill me.

Q Do you know what part of the broom hit him? A I don't know.

Q Do you know whether this part or the handle part hit him? A No, sir, I don't know.

Q You saw him bleeding afterwards? A Yes, sir.

Q Did you try to run away? A No, sir.

Q Did you take him to the station house in your car?

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A Yes, sir.

Q You drove it yourself? A No, sir, my chauffeur drove it.

Q When you <sup>took</sup> the man to the station house who was with you? A Rafferty, the officer and the chauffeur.

Q The officer and the chauffeur? A Yes, sir.

Q In the station house was there any conversation between Rafferty and the officer? A Yes, sir, Rafferty says to me in the station house, he says "I got you just where I want you, when I get through with you there will be a finish". I didn't make any answer to that.

Q Did you tell the policeman about seeing red? A Never did, never spoke to the policeman.

Q Did you tell the watchman? A No, sir.

Q Moran? A No, sir.

Q That you saw red? A No, sir.

Q Did you go into the shanty with the watchman after you hit him with the broom? A No, sir.

Q What did the watchman do? A He caught hold of me by the neck, and he shook me.

Q What did you say? A I said "what did you do that for", and I called Joe and I sent him for an officer and when the officer came I told the officer to have Rafferty under arrest and the officer told me to go to the station house and I claimed I wanted Rafferty arrested and they told me I should go up to the 54th street court.

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## CROSS EXAMINATION BY MR. WALLACE:

Q Did you take the stand in the Magistrates' Court? A No.

Q Did you waive examination after you heard what the People's witnesses said? A Yes, sir.

Q So this is the first time you have taken the stand in your own behalf? A Yes, sir.

Q Have you ever been convicted of a crime? A Disorderly conduct five dollars fine.

Q Whereabouts? A In the 54th street court.

Q What was the disorderly conduct? A He fined me five dollars.

Q What did you do? A We had a little talk with a man--

Q You were sober? A No, sir, I was only fined five dollars.

Q Were you ever convicted in Jersey? A No, sir.

Q Sure about that? A Yes, sir.

Q Who was the Judge who fined you five dollars? A I don't know his name.

Q How long ago is that? A About, I don't remember, about a year ago, something like that.

Q You were fined five dollars for talking? A Well, well we talked to each other and they took me up there.

Q Charged with disorderly conduct? A (No answer.)

THE COURT: I am curious to know what Judge fined him five dollars for talking.

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BY MR. WALLACE:

Q How old are you? A 29.

Q How much do you weigh? A About around 210.

Q Worked hard all your life? A Yes, sir.

Q How many men have you got working for you on this pier? A Well, sometimes fifteen, sometimes ten and sometimes twenty.

Q There were a number of your men that testified here today who were at this quarrel with you and Rafferty, weren't they? A Yes, sir.

Q Pretty big husky fellows too, some of them aren't they? A Yes, sir.

Q Are you married? A Yes, sir.

Q Got any children? A Yes, sir.

Q Did you serve in the Army during the late war? A No.

MR. ARANOW: That is very improper.

THE COURT: It is not material. Mr. Wallace did not serve either.

MR. WALLACE: Neither did you I thought if that man was such a good fighter he might have volunteered.

BY MR. WALLACE:

Q How many times have you talked in your life to Mr. Rafferty? A This is the first time.

Q This is the first time you ever saw him? A Yes, sir.

Q Never had any trouble with him before that? A No.

Q Didn't even know him? A No, sir.

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Q Never met him? A No, sir.

Q Know him to pass him? A No, sir.

(At this point the Court admonished the jury and adjourned the further trial of the case until tomorrow morning, January 13th, 1919.)

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New York, January 13, 1920

## T R I A L   R E S U M E D.

G E N E   P O P E, the defendant resumes the stand.

CROSS EXAMINATION BY MR. WALLACE:

Q I believe you said yesterday, Pope that you had never seen Rafferty before April 3rd, the day when you had this quarrel with him? A Yes, sir.

Q Is that right? A Yes, sir.

Q What was the first time you saw him on that day?

A 12 o'clock in my office down at the dock.

Q He was in your office? A Yes, sir.

Q Now is this your office here (referring to the photograph) A Yes, sir, here.

Q This whole building is your office? and that or just that end of it? A This whole building here.

Q You were inside this building? A Yes, sir.

Q What were you doing in there at that time? A At the dinner hour I was there with the checker when the checker goes out to lunch.

Q Was the sign no admittance on the door? A Yes, sir.

Q The door shut or open? A Shut.

Q Shut tight? A Yes, sir.

Q You did not see Rafferty until he opened the door and came in? A Yes, sir.

Q Did he close the door behind him? A There is a spring on the door it closes by itself.

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Q He went in to your office? A Yes, sir.

Q What took place inside your office? A Rafferty asked me who told you to touch that catamaran.

Q What did you say? A I said, what catamaran do you mean, and he said the catamaran outside here, and I said, come outside with me and show me what you mean, and I showed him up 54th street, and said, is that the one you mean and he said, "That's the one I mean."

Q He talked about the catamaran in your office, and then you both went out of the office? A Yes, sir.

Q Is that right? A Yes, sir.

Q So up to the time you left the office there was no trouble? A No, sir.

Q And the quarrel you had with him was not occasioned by his coming into your office that was not the cause of your trouble? A What do you mean?

Q Up to the time that you had left your office with no admittance sign on the door you hadn't any trouble with him?

A No, sir, no trouble with him in the office.

Q If he had walked away at that time there would not have been any trouble if he went on his way? A If he walked away.

Q So you are out now, away from the office, where did you go? A Five or six feet.

Q Is that right? A Yes, sir.

Q At no time did you get more than 5 or 6 feet

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from the office? A I didn't measure it, five or six, something like that.

Q In other words you opened the door, and you stepped out and you walked probably as far as from here to there, and you said he pointed? A Yes, sir; he pointed to the catamaran.

Q Now when you got to this point you say five or six feet about from the office door what conversation took place then between you and Mr. Rafferty? A I told him "Why can't I touch my property, and Mr. Rafferty says "Since when is it yours", and I told him since I am with the Colonial Sand and Stone Company. He says to me if you go and touch pull that catamaran again I will show you if it is yours. When he said that I said who are you anyway? And he said "None of your damned business who I am, and I said "If you don't say who you are I don't want to speak to you at all. Keep away from my place. He said where did you learn this, in Italy, you Ginny son of a bitch", and he punched me right in the face.

Q Now he said that and it was the start of the trouble, wasn't it, "Where did you learn this, in Italy?" A Yes, sir.

Q And he called you "a Ginny son of a bitch?" A Yes, sir.

Q At the time these three witnesses you produced here were standing around within a short distance, weren't they?

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A Within a short distance.

Q Some so close that they heard just what this man  
said? A Yes.

Q Close enough to hear? A Yes.

Q Then he struck you, didn't he? A Yes.

Q With what fist? A With the right fist.

Q Wheredid he hit you? A The left jaw.

Q Hit you down there? A Yes, right here (indicating)

Q A little bit higher? A Yes.

Q Did you fall? A No, I didn't fall.

Q Stagger? A A little.

Q Did you hit him back? A No.

Q It was on your property? A Yes.

Q He came in and picked a quarrel with you without any  
provocation, didn't he?

(No answer.)

Q You didn't say anything to him?

A I certainly did not. I told him what is the matter  
with you -- are you crazy?

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Q You didn't call him a damned cock sucker or anything of that sort? A No, sir.

Q Do you know any reason whatsoever why this man struck you? A Yes, sir, he struck me when I asked him "Who are you".

Q Without any reason except you wanting to get the sataran?

MR. ARANOW: I object to that.

THE COURT: Let him state what the reason was.

THE WITNESS: Well, it was no reason when he struck me.

Q Do you know of any reason? A I asked him "Who are you", and he got insulted because I asked him who he was, and I told him keep away from my property.

Q That is the only reason he struck you? A Yes, sir, maybe some other reason in a business way.

Q Maybe some reason in a business way? A Yes, sir.

Q You never met the man before in your life? A No, but I heard what he has been doing.

Q You thought maybe perhaps it was some business matter that he didn't mention at all, and for that cause he struck you? A Yes, sir.

Q You did not hit him back? A No, sir.

Q A man came right on your property and struck you without any reason and you didn't hit him back? A I don't know how to fight with the hands-- I pushed him back.

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Q How long have you been working there down on the dock? A I never worked on the dock; I hadn't been there long.

Q How long have you been there? A Six or seven years.

Q What did you do before that? A Superintendent for the Manhattan Sand Company.

Q The same kind of business? A Yes, sir.

Q Your own business you have there now? A Yes, sir.

Q Where did you work when you were superintendent for the Manhattan San Co.? A All around New York, New York and all over.

Q Around the river front? A Around different buildings.

Q Never saw a fight before I suppose, did you? A I saw a fight but I never fight.

Q You didn't fight? A No, sir.

Q Did you ever throw a brick at a canal boat captain, named Clark and knock him flat on his deck? A No, sir.

Q You never fought with any one in your life? A No, sir.

Q Now you were only four or five or six feet from the little office when Mr. Rafferty first struck you, is that right? A Well, it is five or ten or twelve, I did not measure it.

Q You said five or six feet. Now is it five or six or twelve feet? A I didn't have a tape measure with me.

Q How many steps did you take after you came out of the office? A I did not count them.

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Q Did you have to walk away in order to see what you were pointing at -- whereabouts did you walk -- when you came out here in what direction was the catamaran, this way or that way? A That way (illustrating)

Q As soon as you came out of the door? A Yes, sir.

Q Where that mark is? A No, sir Rafferty followed me up.

Q As soon as you came out of the door you could see the catamaran over here? A I had to walk down because I was here and you could not see the catamaran from there.

Q How far did you walk? A Five, ten or twelve feet, something like that I didn't measure it exactly.

Q Now after he struck you, did you turn your back to him? A No, sir.

Q You walked away from him? A Yes, sir, I was watching what he was doing; he was coming this way all the time.

Q This old man came right here? A He called three or four other men to come over and kill this Ginny bastard.

Q Meantime you were backing away from him? A Yes, sir.

Q Afraid he was going to kill you? A Yes, sir.

Q In great fear weren't you? A I was afraid; I didn't know what he was going to do.

Q Didn't you see any man running up here, or some men running up there to you? A I saw a few I didn't see how many there were but I saw a few.

Q How many did you see? A I couldn't say maybe six

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eight or ten, something like that: I saw numbers of men coming.

Q They were all friends of Rafferty? A Yes, sir.

Q You thought that if you hit Rafferty on the head that would them more friendly to you?

Objected to. Objection sustained.

Q Now you hit Rafferty on the head because you were afraid of the men that were his friends that were running up towards you? A I told Rafferty keep away from my property, don't come towards me or I would hit him.

Q You were not afraid to defend yourself with your fists against a man of Rafferty's age and size? A I mean I never was a fighter; I don't know how to fight.

Q Rafferty was the man you were afraid of? A Yes, sir.

Q Not the men up here (indicating) A I was afraid of Rafferty and the other men that were coming, I know the other men were a tough gang.

Q You thought it would make them a little more gentle to hit Rafferty on the head, is that the idea? A Yes, sir, for my own protection.

Q Here is a man coming up here (indicating) A Rafferty was coming near me and I thought he would hit me again.

Q So he came close up to you again? A He didn't hit me again. If I hadn't hit him with the broom he would have hit me again; I don't know what he would do then.

Q Did you know that broom was there when you backed up?

A No, sir.

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Q Was there an iron bar standing near the broom? A No.

Q Sure about that? A I don't know; I didn't see any iron bar.

Q You don't know? A No, sir.

Q You just reached back and grabbed the first thing your hand touched, is that right? A When I got to the door I couldn't go any further, and I caught hold of the first thing and it was this broom.

Q The first thing you grabbed? A Yes, sir.

Q When you reached back you didn't know what you were going to get? A I touched the broom in back of me, and I seen Rafferty, I don't know whether it was a broom or a stick, told and I ~~NEW~~ Rafferty "Don't come near me or I will hit you", and Rafferty came towards me all the time and the other men were coming.

Q Is that the broom? (Showing witness a broom) A I don't know.

Q Did you see a broom like this on the dock? A I saw a broom, but I don't know whether this is the broom or not.

Q Was it a broom like that? A I couldn't tell you.

Q You don't know that? A No, sir.

Q You have a broom down there by the shanty, did you know what sort of a broom it was? A Yes, sir.

Q Show us how you took it and how you hit Rafferty now?

A This way (Indicating) I lift it up, and I told him, "Don't

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come near me or I will hit you in the head with this, and he was coming all the time and the other men were coming.

Q You were watching him? A Yes, sir.

Q And you still say the other men were coming? A Yes, sir.

Q Well, your men didn't make any effort to get between you and the other men? A No, sir.

Q They didn't help you at all, did they? A No, sir.

Q You didn't know your men were there to help you?

A I know they were there, but they did not help me.

Q Did you say to them-- there are some men coming down here today, "Kill the Ginny". (No answer.)

Q Did you say that to your men? A I didn't say anything.

Q Did you say "I will bring these other fellows up and I will try and restrain this violent man who is attacking me, this wild man? A No, sir, I didn't say anything like that.

Q You didn't ask them for any assistance against this gang that was coming at you? A No, sir, I didn't have a chance to ask them.

MR. ARANOW: I object to that as trying to make the man say things which he ordinarily would not say. I submit it is not proper cross examination.

THE COURT: I will allow it.

Exception.

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Q I will say crowd or number. Now, did you hit Rafferty very hard or just let the blow fall gently on his head? A It fell-- I was very nervous and quick.

Q Did you hit him hard? A No, sir.

Q You did not? A No, sir.

Q You just hit him softly? A I did, I was very nervous and he was going to hit me again, and the gang was coming.

Q You were terrified? A I was afraid he was going to hit me again, and I wanted to keep him away and I told him to keep away from my place.

Q Did you hit him so hard that the broom broke? A The broom broke, yes, sir.

Q It broke after it struck his head, didn't it? A Yes, sir.

Q Hard enough for that? A Yes, sir.

Q You saw the blood streaming down his head, did you?

A Yes, sir.

Q He had a hat on when you hit him, didn't he? A Yes.

Q You hit him hard enough to cut his head through the hat, didn't you? A I don't know.

Q Well, you hit him on the top of the head right here, didn't you? A I don't know if I did; I think he had a cap on.

Q You told us he had a hat on until I called your attention to the fact that he was cut through the hat? A I called it a cap; he had something on.

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THE COURT: Strike that out.

Q Will you say he didn't have a hat?

MR. ARANOW: Will your Honor instruct counsel not to argue with the witness.

A I don't remember just what he had if a hat or a cap.

Q You are not sure about that? A No, sir.

Q Now after you were struck and were bleeding what happened to all these men that were running up to attack you?

A He told everybody --

Q What happened to all the men that were running up to attack you. I don't want to know what he told anybody.

A To be his witnesses.

Q Where were the men? A They were right near him.

Q They came up, did they? A They came right near him.

Q How many of them? A Five or six.

Q He told them to be his witnesses? A Yes, sir.

Q Did he say, "The Ginny son of a bitch has hit me already, go on and kill him boys", did he? A I didn't know that; I didn't hear that.

Q You were there, weren't you? A I did not hear it.

Q Did he? A I don't know if he did or not.

Q Standing quite close to you, wasn't he? A Yes, sir.

Q You were standing quite close to him? A Yes, sir.

Q Did he tell them to hit you then? A I don't believe he did.

Q Did any of them hit you then? A No, sir.

Q Nor at any other time? A No, sir.

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Q So your fears were groundless, weren't they, as far as these men were concerned? A Well, these men when they came near me and they saw Rafferty had stopped they held on as this gang had disappeared now, and the watchman caught hold of me by the neck and I told the watchman he was going to hit me, and I told him, "Don't hit me, leave me go and the watchman says all right, I won't hit you but you got to stay here, and I called my foreman to get a cop.

Q Rafferty did say something more, what was it that he said? A He said to get these men to be his witnesses.

Q What is that? A That is all, to get the witnesses.

Q Sure about that? A Yes, sir.

Q He lost all desire to kill you after you hit him on the head and split his head open?

MR. ARANOW: I object to that. I again ask your Honor to instruct counsel to desist from making statements in his questions.

THE COURT: I cannot determine until I hear the question.

Exception.

Q Now, did you go into the office with Mr. Moran afterwards as he testified? A No, sir.

Q You did not have any conversation with him at all?

A No, sir.

Q Sure about that? A Yes, sir.

Q Did you say him after you got inside that you didn't know

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what you were doing? A No, sir.

Q Did you say to anybody else that when you got angry you saw red, and you could not control yourself or words to that effect? A No, sir.

Q Never said that? A No, sir.

Q Never told the policeman that? A No, sir.

Q Did you ever see this policeman before that day? A I saw him before surely.

Q Ever have any trouble with him? A No, sir.

Q Ever have any trouble with Moran? A No, sir.

Q Ever have any trouble with Connell or whatever his name is? A I don't even know him.

Q You don't know him at all? A No, sir.

Q You didn't say to either Moran or the police officer that you got excited and hit this man and you did not know what you were doing? A No, sir.

Q Is that right? A No, sir.

Q The only reason you had to hit the man was because you were in fear for yourself? A Yes, sir.

Q Then you hit him very easily? A I don't know I was so afraid that they were coming near me all the time -- what was I going to do.

Q You never called him any names? A No, sir.

Q How long have you been on that dock since this time-- right along every day? A Well every day except holidays and so forth I am down there.

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Q At the time the police officer came and took you to the station house in the automobile did you tell him at that time that Rafferty had assaulted you? A I told him I wanted to have Rafferty arrested.

Q You told him you wanted to have Rafferty arrested?

A Yes, sir.

Q He had struck you? A Yes, sir.

Q What did he say? A He said "Tell that to the captain in the station house.

Q Did you tell the captain he assaulted you? A Yes, sir.

Q And struck you? A Yes, sir.

Q He wouldn't take any complaint there for you? A He told me to go to the Magistrates' Court and when I got up there to tell it to the Judge.

Q You are sure you told the officer on the dock when he came there that Rafferty struck you? A Yes, sir.

Q Did you tell Moran or anybody else that Rafferty had struck you? A No, sir.

BY MR. ARANOW:

Q Was Mr. Rafferty dressed as he is now at the time he came on the dock with a tie and collar? A No, sir.

Q Did he have the same clothes on at that time? A No,

Q Was he dressed with a white collar? A No, sir.

Q Did he have a derby or fedora hat? A I think he had a cap.

Q What sort of clothes did he have on? A Well, like an

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ordinary working man's clothes.

Q It was the same clothes that he wore in the Magistrates' Court the same day? A Yes, sir.

Q He walked into the car and got out of the car right away? A Yes, sir.

Q Another thing I wanted to ask you-- you lease from the city just exactly what property? A 52nd to 54th street.

Q Two blocks? A Yes, sir.

Q Both blocks? A Yes, sir.

Q You also lease that property from 53rd to 54th streets?

A Yes, sir.

Q Is that right? A Yes, sir.

Q You have that lease for how long, from month to month?

A Yes, sir.

J O S E P H   R E I N E R,   a witness   called on behalf of  
the People, recalled:

BY MR. ARANOW:

Q You stated you had been in the service five years?

A Yes, sir.

Q Are you acquainted with the rules of your department?

A Yes, sir.

Q Are you acquainted with paragraph 145 of rule 131A of your rules relating to instruments used as evidence-- if it is wanted as evidence it should be forwarded to the property clerk, do you remember that rule? A That is a rule of the department.

Q Did you forward that property to the property clerk?

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A I did.

Q You did? A Yes, sir. I forwarded it to the station house and from the station house it went to the property clerk.

THE COURT: I don't think it means that he must do it.

MR. ARANOW: It says he must do it.

THE COURT: What difference does it make whether he forwarded it to the property clerk or not. The evidence here is that it is the broom with which the assault was committed, and that would be sufficient.

MR. ARANOW: I want to show why he didn't forward it to the property clerk directly.

THE WITNESS: I did not take it to the property clerk's office, no, sir.

BY MR. WALLACE:

Q When you came on the dock there and placed Mr. pope under arrest, did he at that time tell you that Rafferty had struck him?

Objected to; objection overruled; exception.

A He did not.

ALFRED E. PECK, a witness called on behalf of the defendant, being duly sworn, testified as follows:

(The witness states he lives at 682 East 18th street. Brooklyn.)

DIRECT EXAMINATION BY MR. ARANOW:

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Q What is your business? A Employed by the Empire State Subway Company.

Q How long have you been in this business? A About 18 years,-- the Empire State Subway and subsidiary companies.

Q Do you know the defendant Gene Pope? A I do.

Q Did you do business with him? A I have, I did.

Q Do you know other persons that know him? A Yes, sir.

Q Do you know what his reputation is for honesty and truthfulness?

THE COURT: Is that the test here? Isn't it for peace and quietness?

MR. ARANOW: I want to show whether this man has found him honest and truthful.

MR. WALLACE: I don't think it is material on the question of his veracity or credibility here. I think the question for the jury is whether or not he is a quarrelsome man or a mild sensitive individual.

A I know the defendant to be an honest man, I never caught him in a lie; I have been doing business with him.

BY THE COURT:

Q What is his reputation in the community in which he lives, if you know what reputation he enjoys in the vicinity in which he lives? A Well, he lives in Jersey, I know his reputation for a hardworking man.

Q Where is that? A In New York City. It starts from the Battery to the city line; we have different jobs at differ-

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ent times

Q From the speech of other people and what you have observed about him, what is his reputation for peace and quiet and what you have observed about him what is his reputation for peace and quiet and veracity? A It is a good reputation.

Q You have discussed with other people his reputation for peace and quiet and veracity? A No, sir, I have not.

MR. ARANOW: The Court of Appeals has held that the fact that men do not discuss a man's reputation is the very best evidence.

THE COURT: The evidence goes in for what it is worth. I am not going to strike it out.

MR. WALLACE: No questions.

GEORGE ODENALLER, a witness called on behalf of the defendant, being duly sworn, testified as follows:

(The witness states he lives at 429 21st street, West New York, New Jersey.)

DIRECT EXAMINATION BY MR. ARANOW:

Q What is your business? A Meat and grain business. I am the manager.

Q Your residence is in New Jersey? A Yes, sir.

Q Do you know Gene Pope? A Yes, sir.

Q Where does he reside? A He lives also in Jersey.

Q Do you know his family? A Yes, sir.

Q His wife? A Yes, sir.

Q His children? A Yes, sir.

Q Visit his house? A Yes, sir.

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Q Do you know other persons that know him? A Yes, sir, very many.

Q Do you know what his reputation is for honesty and truthfulness? A Yes, sir.

Q Is it good or bad? A Good.

Q Do you know what his reputation is as being a law-abiding, peaceful citizen, good or bad? A Good.

CROSS EXAMINATION BY MR. WALLACE:

Q Have you any business dealings with the defendant?

A Yes, sir.

Q Sell him hay and grain? A Yes, sir, I have, but not just not.

ISADORE FREID, a witness called on behalf of the defendant, being duly sworn, testified as follows:

(The witness states he lives at 100 Morningside Drive.)

DIRECT EXAMINATION BY MR. ARANOW:

Q What is your business? A Insurance.

Q How long in that business? A Some 18 years.

Q Where is your office? A 149 Broadway.

Q In this city? A Yes, sir.

Q Do you know Gene Pope? A I do.

Q Did you do business with him? A I did.

Q Do you know other persons that know Gene Pope? A I do.

Q Do you know what his reputation is for honesty and truthfulness? A Good.

Q Do you know what his reputation is for honesty and

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truthfulness and as to whether or not he is a lawabiding citizen? A I never heard anything to the contrary.

CROSS EXAMINATION BY MR. WALLACE:

Q Do you know him in a social or business way? A In a business way.

Q You do his insurance business for him? A I do.

Q Just a slight acquaintance with him? A I went out to lunch and such things.

MR. ARANOW: The defendant rests.

J O H N J. R A F F E R T Y, the complaining witness called by Mr. Wallace.

Q At the time you went to the dock to meet Pope on the 3rd of April, 1919, how were you dressed? A Exactly as I am now.

Q You mean the precise suit of clothes on? A A brown suit like this on I came from the Supreme Court that morning, from the Supreme Court room, I left there the city hall at half past eleven or a quarter after eleven, and I came up on the "L" to 59th street and transacted some business at 59th street and the North River and I walked down, I had a blue over coat on and a brown fedora hat.

Q You say exactly as you are dressed now, you mean in the same manner, you don't mean that you had this suit of clothes on? A No, sir.

Q You had a suit of clothes of that color and a fedora hat and overcoat on? A Yes, sir.

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Q Now were you dressed in a cap and sweater? A No, sir.  
I was not out of the Supreme Court a half an hour.

THE COURT: You were asked how you were dressed.

BY A JUROR:

Q Did you punch the defendant in the face? A I never raised my hand.

BY MR. WALLACE:

Q When you say you never raised your hand you mean you never punched him -- you did raise your hand to call somebody?

A Yes, sir.

Q What did you say?

Objected to. Objection sustained.

THE COURT: That has all been gone into.

BY MR. ARANOW:

Q This man struck you on the head? A Yes, sir.

Q Through the hat? A Yes, sir.

Q Have you got the hat here? A No, sir.

Q Have you brought it? A No, sir.

Q Did you ever have it in court? A I did.

Q Did you show it to me? A No, sir.

Q Did you show it to the Magistrate? A No, sir.

Q Are you dressed in the way you were in the Magis-

trates' Court on the day that I examined you? A I was full of blood with a handkerchief around my neck.

Q Did I examine you? A Yes.

Q In 54th street and you were dressed there, bleeding

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with a handkerchief around your neck in the court.

THE COURT: Let us get the date of this examination.

MR. ARANOW: On April 8th I am talking about, the day he was arrested, -- I am talking about the date I examined you.

MR. WALLACE: The attorney is interrogating you upon the day of the examination in the Magistrates' Court, for several days after the third of April. Do you recall how you were dressed on that occasion?

A Yes, sir.

Q How were you dressed? A A collar and tie on and a brown suit and a fedora hat.

Q Now after you had this man locked up you went home?

A I went home.

Q How soon after you had this man arrested? A Why, as soon as the case went to court.

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Q Q How soon after? A Why immediately after.

Q How many minutes please? A Why, I walked out of the station house, and I walked right down to 52nd street to my mother's house.

Q You had lunch there? A Yes, sir.

Q Did you change your clothes? A No, sir, I did not.

Q When did you go to court, after lunch? A Yes, sir.

Q You didn't change your clothes? A No, sir, I did not.

Q Just left them with the handkerchief around you?

A Yes, sir.

Q Just prior to coming to Gene Pope's place didn't you stop at a place where they were loading manure?

MR. ARANOW: I object to that on the ground that it is immaterial.

THE COURT: He may answer the question.

Q Didn't you come from a place where they were loading manure prior to coming to Gene Pope's place, answer that if you can? A Yes, sir.

Q Where were they loading manure, that is what street?

A 59th street.

Q You were not loading manure yourself? A No, sir.

BY A JUROR:

Q The ambulance surgeon put three stitches in your wound? A Yes, sir.

Q After that you were treated by your own physician?

A Yes, sir.

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23 Q How often did you see him? A About seven times after that when he took the stitches out.

Q When did he take the stitches out? A About two weeks after.

BY A JUROR:

Q You had that overcoat on? A Yes, sir.

Q Did any blood get on your overcoat? A All down the front of it.

Q Did you submit that in evidence? A No, sir, I did not.

BY MR. ARANOW:

Q You had that dock between 53rd and 54th streets west of 12th avenue-- between 43rd or 54th or 54th and 56th?  
A 53rd and 54th.

Q How long ago did you have that?

MR. WALLACE: I object to this line of questioning on the ground that it is improper re-cross examination. There was no question asked by me of this witness that had any reference to docks.

THE COURT: I will allow it.

A About eight years ago.

Q Did you give it up? A Yes, sir.

Q Did you individually have it or did a company have it? A Why Rafferty brothers had it.

Q You dissolved business when you gave it up?

Objected to as immaterial. Excluded.

Q Did you sell it?

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Objected to as incompetent and immaterial. Question excluded. Exception.

MR. WALLACE: The people rest.

MR. ARANOW: I renew the motion made at the conclusion of the people's case that your Honor direct a verdict of acquittal on all the grounds mentioned-- that the evidence produced both by the prosecution and defense shows that the defendant was justified in his attack even under the version of the people's witnesses, the complainant in this case.

THE COURT: It is for the jury to say. There is a question here for the jury, The question of self defense is always one for the jury and cannot be treated as a matter of law. I will decline your request.

Exception.

THE COURT: When I pass upon a question of law, gentlemen you must not glean anything from it, one way or the other because it does not mean that the Court entertains an opinion upon the facts. The facts are all left for you. The Court's decision does not mean that the Court has adjudged the defendant guilty.

(The Court charges the jury.)

(The jury return a verdict of not guilty.)

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