

START

755

CASE

997

Q On the first of January 1908 did you in company with your wife visit the premises 122 Christopher Street, in this City and County? A Yes. We went to visit right opposite where I live across the street.

Q What are the premises, 122 Christopher Street? A It is a low German restaurant and saloon and very fine people visit there.

MR. MITTNACHT: I ask that that last portion of it be stricken out.

THE COURT: Strike that out.

MR. MITTNACHT: I ask also, your Honor, to instruct Mr. Fisher, the Interpreter, to speak loud when he asks the question so that I can hear it.

THE COURT: Mr. Fisher will kindly do that.

Q And you went in there for refreshments with your wife?
A I drank a glass of white wine and my wife drank a glass of milk.

Q While in there did you see this defendant? A Yes.

Q You saw him there, did you? A Yes.

Q Did he do anything to you? A Yes.

Q Just describe to the court and Jury exactly what he did? A As I came in with my wife he came towards me. The same silk handkerchief which I now have around my neck, he pulled off of me, and my wife come close to me and said "Wilhelm,

WILHELM

755

here is your handkerchief" and I ran after him.

MR. MITTNACHT: I object to what his wife
stated to him.

BY THE COURT:

Q Was the defendant present? A Yes.

DEFENDANT'S COUNSEL: Was this spoken in English
or German?

THE COURT: We will proceed with less rapidity
and possibly with a little better order. Now, you
have an objection to make?

MR. MITTNACHT: Yes sir.

THE COURT: Now I will hear it. What is your
objection. I will hear you. State it.

MR. MITTNACHT: I will be very brief---whether
or not it was spoken in English or German, whether this
defendant understood what his wife said.

THE COURT: I will allow it.

(The question is put by the Interpreter)

A German.

THE COURT: I will strike it out temporarily.

BY MR. MURPHY:

Q Just proceed? A My wife said to me "Wilhelm, your
handkerchief is gone".

MR. MITTNACHT: I object to what his wife said.

THE COURT: It does not appear that the de-

997
755

defendant understood the German language. Do not say what your wife said to you. Your wife said something

Q Your wife said something? A Yes.

Q What did the defendant do? A He pulled a handkerchief from my neck. At that time I hadn't touched any wine yet.

Q Just go on, what else happened. A As soon as my wife called he ran out---

MT. MITTNACHT: I object to that and ask that that be stricken out?

Motion denied.

Exception.

A (Continuing) and the defendant here pushed me with his fist, he threw me on the ground and took my watch and pulled my uniform open.

Q When you say he pulled you to the ground were you in the premises 123 then, or outside? A It was on the street, on the track where the Electric Railroad goes.

Q This was in the street? A Yes, in front of the saloon.

Q Now, proceed? A When he held me---Forshay held me--- this defendant pulled open my uniform and took everything out of my pockets and handed them over to Forshay.

Q What did he take? What do you mean by everything?

A A Gold watch and chain valued at \$75., \$17. cash money,

997
CASE 755

and a silk handkerchief and another watch which I didn't know at the time I had which was found later on, which was pawned.

MR. MITTNACHT: I object to that.

THE COURT: Strike out "another watch which he did not know at the time, which later on was pawned."

MR. MURPHY: Consented to.

Q What is the uniform you wear? A I am a machinist of the Brem Lloyd Steamship Company.

Q When the property you have just described to the Jury was taken away from you what did you do? A The defendant and his friend ran away, my wife went to the police station.

MR. MITTNACHT: I object to that. How does he know? I object on the ground that he states now what his wife did.

Q Do you know what your wife did? A (No answer)

BY THE COURT:

Q Did you see her go to the police station? A I know that my wife went to the police station and made the complaint.

MR. MITTNACHT: I object to the last and move that it be stricken out.

Q Did you see your wife go to the police station? A I went with her. I had been also arrested at the time.

THE COURT: Motion to strike out denied.

MR. MITTNACHT: I withdraw my objection now. He says he was with her.

755

CASE

BY MR. MURPHY:

Q You went with your wife to the Police Station and a complaint was made, and what happened after that? A There was a revolver which I handled and that revolver was taken away from me and then given back to me again.

Q After you made your complaint at the Police Station what did you next do after that? A Then I went home and when my wife went out to get wood the following morning to make the fire she met this defendant on the street.

BY THE COURT:

Q Were you with your wife at the time? A I was not.

THE COURT: Strike it out.

MR. MURPHY: Consented to.

Q Tell us what you yourself know. After having made your complaint at the station house and going home, when did you next see the defendant? A I didn't see him until he was introduced to me at the police station.

Q What do you mean by that? A He was placed in front of me in the police station.

Q With how many others? A Six or seven.

Q What do you mean when you say "introduced"? A My wife was asked if there was some one in that row who had robbed me.

Q What did you do? A I said "This is the man," and then some gentleman there told me "place the hand upon the defendant."

CASE 755

MR. MITTNACHT: I object as to what some gentlemen told him.

THE COURT: Strike it out.

Q You said "This is the man" indicating whom? A This is the man who robbed me. "This is the man here," the defendant.

Q Indicating the defendant you said that? A Yes sir. "That's the man".

Q That is, you said "This defendant was the man". A Yes This is the man that robbed me openly.

Q Did you see your property afterwards? Have you seen it since the night it was taken from you? A I saw one watch in a pawn shop.

Q Was that watch your property?

MR. MITTNACHT: I ask that that be stricken out, having no connection whatever---

THE COURT: Question allowed, subject to being connected.

MR. MITTNACHT: Exception.

A Yes.

Q You are sure about that? A Yes. I had it eleven years.

BY THE COURT:

Q Was it the watch you had on your person at the time when you first met the defendant Lawlor? A Yes, but I didn't know at the time time that I had it with me.

CASE 755

MR. MITTNACHT: Then I ask that that be stricken out.

THE COURT: I think I will let it stand.

MR. MITTNACHT: Will your Honor hear me on my motion to strike out, for the reason he said he did not know he had it on his person. He so testified just now.

THE COURT: Strike it out.

BY MR. MURPHY:

Q You saw a watch in a pawn shop? A Yes sir.

THE COURT: Just ask him when he saw that watch last before the time that he saw it in the pawn shop.

MR. MURPHY: Yes.

(The Interpreter puts the court's question)

A I saw that watch the morning before that, when I was undressing.

BY THE COURT:

Q Where was it then? A In my room Where I live.

Q In your rooms? A Yes. There is a small bicycle on that watch with a red lantern.

Q In what part of your room was the watch then? A In my vest pocket.

Q Was that the same vest that you had on on the day when you first met this defendant? A No, it was not the same vest.

997
CASE 755

BY MR. MURPHY:

Q You say you had a sum of money on your person that night? A \$17. in my side pocket.

Q Did you see the defendant take \$17. from your person that night? A Yes, the large one the big one took that with the pocket book.

Q Who took it? A The defendant here, and gave it to a man named Forshay.

Q The defendant took the sum of \$17. from your person and gave it to some one else? A Yes sir

THE COURT: (Addressing Interpreter) You say to him that he must answer, if possible, in fewer words.

Q I will ask you to look at the defendant and say to the court and Jury whether there is any possible doubt in your mind as to whether or not he is the man, who on the first of January, the time described, that is after 10:45 knocked you down, assaulted, and took from your person the sum of \$17. and a watch? A Yes.

Q He is the man who took it? A Yes sir, that is the man.

CROSS EXAMINATION BY MR. MITTNACHT:

Q You say that you went into a saloon on Christopher Street on New Year's Night, is that right? A Yes.

Q The saloon keeper's name is Newton, isn't it? A That

755

I don't know.

Q Denkhard, I meant to say? A I don't know what his name is.

Q How often have you visited that saloon with your wife?

Objected to.

Question allowed.

A About three or four times in the evening.

Q You and your wife were standing in there at the bar, were you not? A On the bar, yes.

Q Now how many men were in that saloon at the time that you and your wife entered to get a drink? A There were not many. One was sitting down; there were about five or six including myself and wife.

Q Could you identify one or all of the six that were in that saloon that night? A I could only identify one who was sitting near the stove.

Q Now weren't there ten or fifteen men in that place that night? A I don't think so. The boss was sitting at the table playing cards.

MR. MITTNACHT: I ask that that be stricken out I asked nothing about the boss.

Motion denied.

DEFENDANT'S COUNSEL: Mr. Lynch, will you stand up.

(A man arises in Court Room.)

CASE 755

Q Look at that man and tell us whether you had seen him there that night? A I can't see so far. He is too far back.

(The man is brought forward)

THE WITNESS: Yes, this man helped to bring me to my house.

DEFENDANT'S COUNSEL: Lawlor (Not the defendant) step around here.

Q Did you see this man there that night? A Yes, he is there always.

Q Sure about that? A Yes.

Q Do you know him? A I saw him there ever day. He is there every day.

Q Do you know him by name? A No, only by sight.

DEFENDANT'S COUNSEL: Carson step around here please.

Q Did you see this man there? A No, I don't know him.

Q Will you swear that he was not there that night? A I didn't see him. He was not in the saloon.

Q Now do you know a man by the name of Wing Foster? A Yes, I know him.

Q Do you know a man by the name of Maleney? A No.

MR. MURPHY: At this point I wish to object to a general line-up in front of the bar and the asking of the names of different people, unless coun-

755

CASE

sel in some way indicates what the purpose of it is.

Objection overruled.

Q Do you know a lady by the name of Mrs. Forshay? A Yes

DEFENDANT'S COUNSEL: Stand up please Mrs. Forshay.

(A woman arises in court room)

THE WITNESS: Yes, I know her.

Q Do you know the wife of one of the defendants? A This lady was in my house and offered me money five times.

THE COURT: (Addressing Interpreter). You tell him that he is only to answer questions and answer in as few words as possible. Tell him he must not disobey again. The District Attorney will have an opportunity to ask him any questions that may be necessary to give him an opportunity to explain.

Q You are afraid to acknowledge that you know these people, are you not?

Objected to; objection sustained.

DEFENDANT'S COUNSEL: Will young Mrs. Forshay stand up?

(A young woman arises in court room)

Q Do you know that young lady there, the wife of one of the defendants? A Yes.

DEFENDANT'S COUNSEL: Is Mr. Nute in court?

(No response)

CASE 755

MR. MITTNACHT: Kindly call Mr. Nute at the door, please. He was here a minute ago.

Q Before that witness comes, I will ask, you were here last Thursday weren't you? A Friday.

Q You were standing out in the corridors here excited, accusing the District Attorney of standing in with the crook, didn't you?

MR. MURPHY: That is objected to as grossly improper.

Objection sustained.

Q Didn't you accuse Mr. Marshall in the presence of the people in the corridor of this court room of standing in with crooks and trying to get you away from here?

Objected to; objection sustained.

Q Do you know this gentleman here, Mr. Nute? A Yes, I know him from sight.

Q Do you know this gentleman, Mr. Frank (Indicating)? A I don't know exactly. I think I know him by sight. Yes. He is a man that sells newspapers I spoke to him to-day for the first time.

Q Now the night that you went into the saloon did you see a man in there with whom you had trouble, by the name of Maloney

A I didn't have any trouble with nobody, never.

Q Didn't you go around to the house of Mrs. Forshay with a man by the name of Wing Foster and ex-convict?

CASE 755

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

MR. MITTNACHT: We are going to connect that with the next question that I put.

MR. MURPHY: If the counsel for the defense is allowed to go into these questions I can see now that there will be no termination to this trial. I cannot see the relevancy.

THE COURT: I will allow it to stand.

A Yes.

Q Didn't you and Wing Foster call upon Mrs. Forshay and demand \$25. or \$50.?

Objected to.

Objection overruled.

MR. MITTNACHT: Will your Honor instruct this witness to answer yes or no. The questions are simple and plain.

THE COURT: Yes.

A By request of Mrs. Forshay I called upon her with Wing Foster in order to settle the matter.

Q Now didn't you go and call upon Forshay and threaten her on two or three occasions that if she did not pay you the money you were going to persecute these boys?

Objected to.

Objection sustained.

755

Exception.

THE COURT: If you frame that question in a definite way I will allow it.

MR. MITTNACHT: I will ask it again, your Honor.

Q You had trouble with another lady here within the last few days didn't you?

Objected to.

Objection sustained.

Q Didn't you shoot at a woman and strike her child within the past few days?

MR. MURPHY: Objected to as grossly improper.

Objection overruled.

A No. It happened in my house. There was nothing happened. The lady wanted to get \$15. out of me.

Q Yes or no? A I myself notified the court.

Q Didn't you pay that woman \$20. to keep her from coming down here to testify in this case? A No.

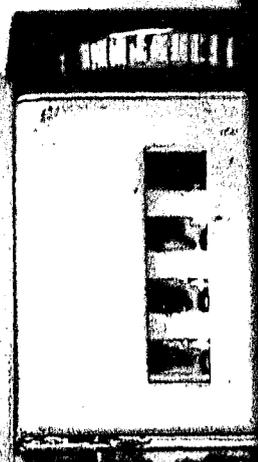
Q How much did you pay her? A Nothing.

THE COURT: Now, Counsellor:

MR. MITTNACHT: I am attacking the credibility of this man.

THE COURT: You will ask your question in a more subdued tone of voice.

MR. MITTNACHT: That is my natural tone of voice your Honor.



CASE 755

THE COURT: Well then, proceed in an unnatural tone of voice.

Q You did not deliberately fire across the street and strike the child in the face, did you?

Objected to.

Objection sustained.

THE COURT: You may ask him whether he fired the revolver at anybody.

Q Did you fire a revolver across the street into another house?

Objected to.

Objection overruled.

THE COURT: Tell him he must answer yes or no.

(The Interpreter instructs the witness to answer yes or no.)

A In my own house the revolver exploded. I wanted to do something with it.

Q Did not the bullet strike across in the next house adjoining to yours, go through the window and strike a baby's face?

Objected to.

Objection sustained.

THE COURT: He has already testified. I sustain the objection.

Q What kind of a looking man is Wing Foster? A He is a

CASE 755

small man; he has got a sharp face, looks like a crook.

Q And as a matter of fact he is an ex-convict, isn't he?

A I don't know, but I think so. I don't know.

Q Now do you know where Wing Foster is to-day? A I don't know.

Q You have not paid him to keep away from here have you?

Objected to.

Objection overruled.

A No.

Q Didn't you during the time or the interval between the hours of this day and to-day prefer charges against the police officer, accusing him of standing in with crooks?

Objected to.

Objection sustained.

THE COURT: If you get an affirmative answer to that it does not tend to discredit this witness.

MR. MITTNACHT: Exception.

THE COURT: There is nothing to show but that the charge might have been well founded, if he made it. You may ask him anything that tends to affect his credibility. This question has not that tendency, therefore the objection to the question is sustained. Put your next question.

Q Didn't you report a certain police officer to a captain, yes or no?

CASE 755

Objected to.

Same ruling, exception.

Q Didn't you tell the captain that the police officer was having this case put off purposely?

Objected to.

Same ruling, exception.

Q Didn't you state that he was standing in with these people for the purpose so that this case could not come to trial?

Same objection.

THE COURT: Objection sustained. Nothing further along that line, counsellor.

MR. MITTNACHT: Exception. I am through on that line.

Q You did not see this defendant take any watch from your person, did you? A Yes, he took everything out of my pockets. He pulled it out of my pocket.

Q Now as a matter of fact isn't it true that you were attacked by a man by the name of Wing Foster and robbed by him in conjunction with a man by the name of Maloney? A No, I can't say anything about that.

Q Isn't it a fact that you were knocked down on the car track and put on the sidewalk by a man by the name of Forshay, yes or no? A I was knocked down by the defendant.

MR. MITTNACHT: I ask your Honor to direct the

CASE 755

witness to answer yes or no. I think the question is plain and simple.

THE COURT: I will allow the answer as given by this witness to stand.

Exception.

Q And did not this defendant take you home into your own house? A No.

Q Will you swear to that as a positive fact?

MR. MURPHY: Objected to. The man is under oath; he is swearing to everything.

Q Didn't you in your own house after you had been carried up into your own rooms---

THE COURT: Not so loud. I will not speak to you again about it. Ask questions in a lower tone of voice.

Q Didn't you attempt at the time this man carried you upstairs into your house, try to shoot him and fire the pistol off the bullet going through the ceiling? A No. That is an invention. That was some one else.

Q Did you try to shoot him in your own house? A No.

MR. MITTNACHT: Stand up Mr. Lynch.

(A man in court room arises.)

Q Wasn't that man up in your house also at the same time?

A Yes .

Q Wasn't a man there by the name of Bayonne----they called

CASE 755

ed him "Bayonne", who has been since killed by an automobile? Wasn't he there and with another man carried you up stairs in the house? A I don't know. If I see him I may know him.

Q Well, he is dead. And you are positive now, as positive as to this defendant not being in your house at the time as you are to all the rest of your testimony? A Yes. He was not in my house.

Q I say you are just as positive about his not being there

THE COURT: He has answered.

MR. MITTNACHT: That is all.

RE-DIRECT EXAMINATION BY MR. MURPHY:

Q How long have you been in the employ of the Steamship Company? A Eight years.

Q In the capacity of machinist? A Yes.

Q What is the Steamship's name? A Kaiser-Wilhelm II.

Q You have been in the employ of the company that operates that Steamship eight years? A Yes.

MR. MITTNACHT: Objected to as immaterial.

W I L H E L M I N A W E R N I C K E, a witness called on behalf of the people, being first duly sworn testifies as follows : (Through Interpreter)

DIRECT EXAMINATION BY MR. MURPHY:

CASE 755

Q You are the wife of the complaining witness William Wernicke the complaining witness? A Yes.

Q You reside at 119 Christopher Street? A Yes.

Q Were you in company with your husband on the night of January 1st at about 10:45.

Objected to as leading.

Objection overruled.

Exception.

A Yes sir.

Q Did you with him visit the premises 122 Christopher Street? A Yes sir.

Q While with him did you see this defendant? A Yes.

Q Did you see him do anything to your husband at any time while you were with him? A Yes.

Q Just describe to the court and Jury what you saw the defendant do at that time? A I saw directly that this defendant took that handkerchief from my husband's neck and handed it over to a second man immediately. Then we went outside and the tall one knocked my husband down.

Q What do you mean by the tall one? Whom do you mean?

A The tall one who is sitting here now.

Q The defendant (Indicating the defendant) A Yes.

Q Go on. What else did you see him do? A And in the meantime I looked for some protection, some help.

CASE 755

MR. MITTNACHT: I object to what she did,
looked for help and I ask that that be stricken out.

THE COURT: I will strike it out.

A (Continuing) And then I didn't see any more of the big one.

Q That is, of this defendant? A Yes.

Q That is when you saw the defendant strike your husband
you then went away, did you? Is that so? A I stood in the
vicinity to look around if I could not see an officer.

Q Did you see the defendant do anything to your husband
except strike him? A Not from the defendant.

Q What did you see? Just describe all you saw? A I
only saw this defendant took the neck handkerchief from my
husband in the saloon. I saw another man there, when I saw
that I could not get any assistance from my husband. Then I
saw and I see some big man try to pull off the necktie of my
husband's collar. I raised my arms and I said "get away; make
away", and I begged some one to help carry my husband over to the
house; and one man, he had his hand tied up, and some large man
he had a stiff large hat on, and then while my husband was
placed on the sofa somebody said "Lady, with a revolver, come
outside".

Q Did you say that you saw the defendant strike your
husband out on the sidewalk, in front of 122 Christopher Street?

A Yes.

Q That is a restaurant and it is opposite the house where

CASE 755

you live is it not? A Yes.

Q Your husband is employed as a machinist on board a steamship, is he not? A Yes sir.

CROSS EXAMINATION BY MR. MITTNACHT:

Q As a matter of fact, Mr. Wernicke, you live in another apartment, don't you, 20 feet away in the rear?

MR. MURPHY: I object to that as indefinite, your Honor, I don't know what he means.

THE COURT: Another apartment from what?

MR. MITTNACHT: From the saloon. Mr. Murphy asked whether he lived over the restaurant and she said yes?

MR. MURPHY: I did not say that.

THE COURT: What do you want to ask her.

MR. MITTNACHT: Whether it is not a fact that she lives somewhere else than the place described by Mr. Murphy.

MR. MURPHY: I didn't say and I didn't ask her if she lived over the saloon, but I asked if she did not live across the street from the saloon. That is very different.

MR. MITTNACHT: I did not so understand.

THE COURT: Ask her where she lives?

CASE 755

Q Where do you live? A 119 Christopher Street.

Q What number is this restaurant where this trouble took place? A The officer who is sitting in the rear of the room knows that.

Q Well, it is two doors away, isn't it? A It is across the way from where I live.

Q How many men were in the saloon that night while you and your husband were in there both in drinking? A I think about five, six or seven, I can't say exactly.

Q It may have been more? A I can't say exactly.

Q Now, what makes you so sure and so positive that this is the man who took the handkerchief from your husband's neck in the saloon? A Because I immediately recognized him in the morning when I was going for wood, and I recognized him because he had the same collar and the same necktie on?

Q Is that the only way you identified him by the collar and necktie? A Also his face.

Q Did you ever see this man before that time in your life? A No .

Q And how long were you in the saloon at the time of the occurrence, the taking of that handkerchief? A The highest, one second.

Q And out of five or six men in that saloon---

(Question withdrawn)

Q The men were all standing together at the bar, weren't

CASE 755

they, drinking? A No. A few of the occupants were sitting down playing cards with the proprietor of the saloon.

Q Are you ready to state whether or not there were not six or eight people standing up at the bar drinking? A There were a few standing at the bar and drinking, but the most I believe were two.

Q Will you swear that there were not six standing? A I cannot say for certain how many were there.

Q You say that all this took place from the time that you went in there to get the drink, the occurrence of taking the handkerchief, one second, is that right; yes or no. A We came in and ordered something, and immediately after ordering the neck handkerchief was thrown from his neck.

Q When you went in there you were looking right ahead of you with your husband, went through the bar? A We were standing directly in front of the bar and there were two of them dancing and this big man, the defendant, was standing by the bar.

Q Hadn't he been standing with four or five others? A No.

Q You are positive about that? A Yes.

Q What makes you so positive when you saw the man only a second? A The two of them were dancing and this defendant was standing directly behind my husband.

Q Were you watching the dancing? A Yes.

CASE 755

Q Then you were not looking at others in the place were you? A No.

Q Then how was it possible for you to see this man here?

THE COURT: That is a matter of argument to the Jury, not a question for the witness. I hold that your question is not proper.

Exception.

Q Can you describe the man who carried your husband home?

A Yes.

MR. MITTNACHT: (Addressing defendant.) Stand up.

Q Was it as tall a man as this here? A He was as tall.

Q Now will you swear it was not this man that carried your husband home (Indicating defendant). A This is the man who robbed my husband, but I cannot recognize the tall one again who went up stairs with him.

Q Did you see him rob your husband? A I only saw him, he took the handkerchief from his neck.

MR. MURPHY: I presume he meant the defendant. He said "Him".

MR. MITTNACHT: Yes.

Q Will you swear that this man robbed your husband?

THE COURT: It does not make it plain for the record. Ask whether the defendant robbed him.

Q The defendant, yes? A Yes.

CASE 755

Q What did he rob him of? A I saw when he took his neck handkerchief.

Q How did he get it off? A He pulled it away from him and placed it in the hands of some other man.

Q You are positive of that? A Yes.

Q Could you identify the other men if you saw them here?
A Yes.

Q Will you describe them to this court and Jury please?
A It was Forshay.

Q Was the man who took the handkerchief arrested also?
A Yes.

MR. MITTNACHT: Mr. Carson, will you stand up please?

(A man present arises).

Q Look at this man here. Did you ever see him before?
A I don't know him.

Q Did you see him there that night? A No.

THE COURT: Now, for the purposes of the record get the name of that young man down on the record.

MR. MITTNACHT: I called the name of Carson, your Honor. And now Lawlor (Not defendant) will you stand up?

Q Did you see this man Lawlor there that night? A No.

Q Positive you didn't see him? A No, I didn't see him.

Q Will you swear that he was not there that night?

CASE 755

MR. MURPHY: Objected to.

MR. MITTNACHT: There is a direct contradiction here and I think I am right on that score.

THE COURT: She has testified that she does not remember having seen him.

MR. MITTNACHT: What was the last answer?

THE INTERPRETER: I did not see him.

Q Could you identify any of those men that were there that night? A Yes.

MR. MITTNACHT: Now Mr. Lynch, will you stand up,
(The man addressed arises)

Q Did you see that man there that night? A Yes, I know that man, that man helped my husband.

MR. MITTNACHT: Mr. Fowler. Is Fowler in court?

Kindly call outside for him, Mr. Officer.

Q Do you know a man by the name of Wing Foster, or a man they called Wing Foster? A Yes.

Q What kind of a looking man is this man Wing Foster? A He is tall.

Q As tall as the defendant? A But he does not look as refined as the defendant at the bar.

Q He is as tall a man as the defendant Lawlor here is, isn't he? A Yes.

Q Did you see the man who struck your husband on the street?

CASE 755

MR. MURPHY: Objected to as already answered.

Objection overruled.

A Yes.

Q Now wasn't it Wing Foster who struck your husband? A

No.

Q Why are you so sure that Wing Foster did not strike him?

Objected to.

Objection sustained.

Q Do you know Mrs. Forshay? A Yes.

MR. MITTNACHT: Mrs. Forshay, stand up?

A Yes.

MR. MITTNACHT; Now, the younger Mrs. Forshay.

(Another woman arises)

A Yes.

Q Do you know Mr. Frank (Indicating)? A Yes sir.

MR. MITTNACHT: Is Mr Forshay in court.

(No response)

MR. MITTNACHT: Is Mr. Nute in court?

(No response)

Q Do you know Mr. Nute? A I don't know him.

(Mr. Nute now enters the court room)

MR. MITTNACHT: Step around here, please.

Q Will you swear you don't know him? A I may have seen
him in the neighborhood where I live, but who he is I don't
know.

CASE 755

Q Were you not a customer in his place, buy bread from his bakery? A Oh, yes, that is the baker, I didn't know him right away.

Q And didn't you use him as an interpreter to extort \$50. from the defendant's mother?

THE COURT: That is not a proper question because extortion embodies a conclusion. You may ask whether she did not use him as an interpreter and then you may find out the circumstances.

Q Didn't you through Mr. Nute demand from Mrs Forshay the sum of \$50., payable \$25. at one time and \$25. on the 24th day of this month? A Because my husband had told me that Mrs. Forshay -----

MR. MITTNACHT: I object to that.

THE COURT: I will hear what this witness has to say, counsellor. When I get at what purports to be her answer, if you consider it irresponsive it may be stricken out, if it is so. Proceed, Mr. Interpreter.

A (Continuing) That was because my husband told me Mrs. Forshay wanted to pay \$25., so much per week, and I said I would not have anything to do with it, that she should pay it all down at once.

MR. MITTNACHT: I ask that that be stricken out.

755
CASE

THE COURT: Strike it out, and the Jury will disregard it.

Q Didn't you go to Mr. Frank---stand up, please Mr. Frank---and make a demand upon Mrs. Forshay for money again after that,

MR. MURPHY: I wish to object, in as much as it does not appear that Mrs. Forshay has anything to do with the subject matter of this indictment, and it is therefore irrelevant and immaterial, it has not been connected, and I see no chance of its being connected.

MR. MITTNACHT: In these cases invariably it is the duty of the defendant to make its case as clear to your Honor and the Jury as it is to all concerned. If this woman did go there and demand money it was an attempt on her part to extort this money, it was compounding a felony if they had gotten that money.

THE COURT: That is where you fail entirely. A person may go to another and make a demand for money, and the presumption is that it is a lawful demand and not a wrongful one. In the absence of evidence to the contrary. I will allow you to ask whether she demanded money of Mrs. Forshay.

Q Didn't you demand \$50. payable in two installments of \$25. each, yes or no?

CASE 755

Objected to as already answered.

THE COURT: Counsellor, you have not fixed the date. I will allow the question if you show that subsequent to the occurrence alleged---

A I cannot answer the question yes or no. I want permission to say a few words.

THE COURT: I will not give it. Answer yes or no.

A Yes, I was there.

BY THE COURT:

Q When? A That I can't tell exactly.

Q Was it after the first day of January 1908? A Yes.

MR. MITTNACHT: Since the indictment has been found, and between the first and last date of this trial.

Q Was it after the 10th day of January? 1908? A Yes.

Q Now didn't you on the last time that you called at Forshay's stand in front of her house hollering up that if they did not give you the \$50. you would stay here for the rest of your life and convict these boys?

THE COURT: That I will not allow.

Q Didn't you tell Mr. Frank, Interpreter through Mr. Frank to Mrs. Forshay, or rather Mr. Forshay that you wanted this \$50. and you wanted it quick because you were going away from the country?

755
CASE

THE COURT: I will not allow that, do not ask any further questions along that line.

Exception.

THE COURT: I will allow you to show if you can that the complaining witness personally, or through this witness in his behalf, offered to withdraw any complaint of a criminal character that he might have had against the defendant upon the consideration of the payment to him of a sum of money.

MR. MITTNACHT: Yes sir. That's it.

Q Didn't you either directly in person or through an interpreter tell Mrs. Forshay if she would give you \$50. you would go to Germany and you would not prosecute these boys?

MR. MURPHY: Objected to.

THE COURT: I will not allow that.

MR. MITTNACHT: I cannot see any other way I can get it in.

THE COURT: She is not the complaining witness.

Q Didn't you tell them there that your husband had sent your there, yes or no? A I don't know. I can't tell that now.

Q You can't remember? A No.

Q Didn't you go there with your husband on one occasion to make the demand? A No sir.

Q You swear to that? A Yes.

CASE 755

Q You were willing to get your husband to pull off for \$50. weren't you, and go to Germany? A No, I want to say a few words. MR. MITTNACHT: Objected to.

(Question withdrawn)

Q Didn't you go with your husband on one occasion or more when your husband made a demand for a money consideration of Mrs. Forshay to pull off from the prosecution of the defendants.

A No.

Q Positive about that? A Yes, positive.

Q There was a warrant sworn out for your husband a few days ago, wasn't there, for shooting at a neighbor?

Objected to as grossly improper.

Objection sustained. Exception.

Q Isn't it a fact that when your husband was assaulted by a man by the name of Wing Foster on the street you ran into the saloon and called for help, didn't you do that?

MR. MURPHY: Objected to; nothing in the testimony that Wing Foster did assault him. The question is improperly framed.

Objection sustained. Exception.

THE COURT: It assumes something not in evidence

Q And did not this defendant and others come out-side of the saloon and pick your husband up from the street, the defendant Lawlor? A I didn't see anything like that.

CASE 755

Q Didn't you see them pick him up from the street? A Yes, I saw him being picked up.

Q And wasn't it the defendant Lawlor who picked him up? A He had a stiff hat. It was a tall man. I would know those two men again.

BY THE COURT:

Are you able to say that the man who picked your husband up is not the defendant Edward J. Lawlor? A That I don't believe possible.

BY MR. MITTNACHT:

Q But you won't swear positively that it is not the man? A No.

Q Now isn't it a positive fact that when this defendant Lawlor and Lynch--- this man---and a man by the name of Bayonne who is now dead, when this defendant and the other two men brought your husband up in the house that your husband attempted to shoot this defendant in his rooms?

Objected to.

Objection sustained.

Q Didn't you husband draw a revolver and fire when he was brought up stairs; yes or no?

Objected to.

Objection overruled.

A No.

Q Didn't he fire? A No.

997
755

Q When he was firing at these men didn't you grab his hand and the bullet went into the ceiling?

Objected to.

Objection sustained.

Exception.

Q Didn't you show the bullet hole in the ceiling to Mrs. Forshay and tell her how it occurred?

Objected to.

Objection sustained.

Exception.

Q Didn't you tell Mrs. Forshay that that bullet that went into the ceiling was a bullet intended for this defendant?

Objected to.

Objection sustained.

Exception.

Q Didn't you send for Mrs. Forshay to come to your house?

Objected to as incompetent, immaterial and irrelevant.

MR. MITTNACHT: I am going to follow that up with a material proposition.

Objection overruled.

Exception.

A No.

Mr. Mittnacht: Stand up, Miss Forshay.

755

CASE

Q Didn't you see this young lady, the wife of one of the defendants, come to your home? A No.

Q Didn't she come to your home? A She was several times in my house.

Q Didn't you show her the bullet hole and say if you did not get the \$50. they would get what that hole in the ceiling was intended for, pointing to it.

Objected to.

Objection overruled.

A No.

Q Didn't you tell her "your husband has got two big revolvers besides and that is what he does with people when he wants to."

MR. MURPHY: May I ask the court to direct Counsel to abandon this line of examination?

THE COURT: I so direct. I won't allow it.

Exception.

Q Do you know a man by the name of Maloney?

Objected to.

Objection overruled.

A I don't any of the men by name.

RE-DIRECT EXAMINATION BY MR. MURPHY:

Q Will you look at the defendant carefully and say whether or not as you look at him there is any doubt in your mind as to

755

CASE

whether or not he is the man whom you saw on the first of January take your husband's handkerchief and strike him and knock him to the ground, yes or no? Is there any doubt in your mind?

A Yes.

Q He is the man who took your husband's handkerchief, struck your husband and knocked him to the ground? A Yes.

Q In front of the premises 122 Christopher Street? A Yes

RE-CROSS EXAMINATION BY MR. MITTNACHT:

Q Where did he strike him?

Objected to.

Objection overruled.

A In front of the saloon.

Q Where did he strike your husband? A Right in front, in his forehead.

EMIL M. SUTTING called as a witness on behalf of the People and being duly affirmed testifies as follows:

DIRECT EXAMINATION BY MR. MURPHY:

Q You are a police officer attached to the 14th precinct?

A Yes sir.

Q Did you some time subsequent to the first day of January arrest the defendant? A On the 2nd day.

Q Just describe to the court and jury under what circumstances you made the arrest? A About 9 o'clock that morn-

755

CASE

ing, January 2nd, I was standing at the corner of Grove and Hudson Streets, on a school crossing, when I saw two officers and this Mrs. Wernicke and the defendant standing on the corner, on Christopher and Hudson, and one of the officers beckoned me over, and I walked over to them and asked them what the trouble was.

MR. MITTNACHT: Was the defendant present?

Q Officer, you may testify to what you did and saw but not what conversations were had with you outside of the presence of the defendant? A The defendant was present, I asked what the trouble was, and she said "This is one of the men that had robbed her husband the night before".

Q Saying this defendant was one of the men? A Yes sir.

Q What then? A And then I took him to the station house, and I notified her to bring her husband to the station house so that he could make a complaint.

Q Did her husband come to the station house? A Yes.

Q Was the defendant with certain others put in a line when he came? A No sir.

Q What was done? A Only myself and another officer, the defendant, Mrs. Wernicke and Mr. Wernicke.

Q What was done? A As he identified him as being the man who struck him and robbed him.

Q Did you search the defendant when you took him to the station house? A I did.

CASE 755

Q Did you find any property upon his person? A No sir.

A I found a collar and necktie in his pocket.

Q Was that all? A That's all that I remember.

Q Do you know anything about the watch that the complaining witness has testified to as having been taken from him on that night? A I found the watch in a pawnshop.

MR. MITTNACHT: I object to that and ask that that be stricken out.

THE COURT: You can show him the watch for the purpose of identification and ask him where it was found.

MR. MURPHY. Yes sir. There is a stop order on it and the police in some manner neglected to subpoena the pawn-broker here for to-day. I will get it here tomorrow, if an adjournment is had until tomorrow.

MR. MITTNACHT: I ask that that be stricken out, the statement as to the officer finding his watch in the pawnshop.

THE COURT: Yes.

Q Did you go to a pawn shop in connection with your duties as police officer after the arrest of the defendant? A I did.

Q Where was that pawn-shop? A 393 Hudson Street.

Q Did you go in company with the complaining witness? A I did.

755
CASE

Q Were certain articles shown you there? A Yes sir,

Q Among other articles did you see a watch there? A Yes sir.

Q When that watch was shown---

MR. MURPHY: I offer this subject to connecting it later.

Q (Continuing) When that watch was shown did the defendant recognize it?

MR. MITTNACHT: Objected to. Your Honor ruled it out on the ground that they could not connect this defendant with the larceny of that watch---that he did not know he had the watch on his person.

THE COURT: I will allow it, if connected. You may move to strike it out, if not connected.

A Yes sir. And previous to that he informed me----

Q No, never mind. Did he say anything to you in reference to the watch, in the presence of the defendant? A No.

Q It was subsequent to that that he said something to you about a watch? A Yes sir.

Q You then went to a pawnshop and a watch was shown you which the complaining witness identified as his property?

A Yes sir.

Q At the time of the arrest of the defendant did he make any statement to you in reference to the case or to anything?

A The defendant?

CASE 755

Q Yes? A He said that he was not guilty.

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

Q You were not present at 122 Christopher at the time of the alleged robbery? A No sir, that happened the night before.

Q The first you learned of it was the following morning?

A Yes sir.

Q And that was through information conveyed to you by the complaining witness, as a result of which you arrested the defendant? A Yes sir.

Q That is all you know of the case? A Exactly.

CROSS EXAMINATION BY MR. MITTNACHT:

Q At the time that you placed this defendant under arrest ---you did place him under arrest didn't you? A Yes sir.

Q He told you---see if you can recall whether or not the defendant did not tell that a man named Wing Foster did rob this man Wernicke? A He told me that later.

Q Do you know a man by the name of Maloney? A No sir.

Q Don't you know such a man had been arrested and allowed to go by one of the officers in this case? A I heard of him.

Q And there is a general alarm out now for both Maloney and Foster in connection with this case? A No sir, not that I know of.

755
CASE

Q Are you sure there is not?

MR. MURPHY: Objected to, he says he does not know.

Objection overruled.

Q There may be? A Yes.

Q Now you didn't have much conversation with the defendant at all did you? A No.

Q How many man were there? A Where?

Q The night of the arrest of this defendant?

THE COURT: He was arrested in the morning.

Q At the time that you arrested the deferdant how many men were with the defendant, if any? A Only the two officers and the complaining witness and the defendant. They called me over because I could speak German and they couldn't understand.

Q In other words the deferdant was already in the custody of two officers, the wife of the complaining witness was standing by, and you were called over because you also speak the German language? A Yes sir.

BY MR. MITTNACHT:

Q Didn't the defendant tell you that he carried, or helped or aided in carrying the complaining witness to his room? A He did.

Q He told you that didn't he? A Later, yes sir.

Q Do you know Lynch? A No sir.

997
755

CASE

Q Never saw Lynch? A No sir.

MR. MITTNACHT: Stand up Mr. Lynch.

(A man arises)

Q Did you see him at any time? A I don't know. This is the first time, to my knowledge.

Q Are you the officer against whom Wernicke made accusation in connection with this case, charging you with standing in with Crooks and aiding and helping to defeat justice?

MR. MURPHY: Objected to.

THE COURT: That question is objectionable. It assumes something not in evidence.

MR. MITTNACHT: I asked the question of the complaining witness. Your Honor did not allow me to ask it.

MR. MURPHY: It has nothing to do with the issues of this case and does not attack the complaining witness on the question of credibility.

THE COURT: I sustain the objection.

Q Were there any such charges lodged against you by the Captain on the charge of this complaining witness Wernicke?

A No sir.

Q And you know nothing whatever about the case other than what you have already testified? A That's all sir.

MR. MURPHY: The People rest, to this extent, that I will recall the officer in the morning and I

755
CASE

will have here the pawn-broker with the watch for the purpose of connecting such testimony as has already been offered.

THE COURT: I do not think that evidence is essential to your case.

MR. MURPHY: I do not feel that it is very essential. Then I rest.

The defendants' counsel now opens to the Jury.

MR. MITTNACH: I desire to have Mr. Lynch come here again but I am informed that he was brought here out of the hospital and must return again on account of the suffering from his arm and therefore I desire to put him on first.

THE COURT: I will have to adjourn in a few minutes because I have to go down to the Commissioner of Jurors' office to draw a special jury for Judge O'Sullivan.

MR. MURPHY: In as much as you have already stated that you should have to adjourn at a quarter to four I think between the direct and cross examination more time will be consumed than we will have, as it is now twenty minutes of four.

THE COURT: Well, proceed.

P H I L I P J. L Y N C H a witness called on behalf of defendant, being first duly sworn testifies as follows:

1 JAN 1951

997-755

CASE

DIRECT EXAMINATION BY MR. MITTNACHT:

Q I want you to speak loud and distinctly so that these gentlemen can understand and hear every word you say. What is your full name? A Philip J. Lynch.

Q Where do you reside? A 10 Grove Street.

Q What is the trouble with your hand there? A Blood-poisoning. I got operated on a week ago to-day.

Q How long ago? A I got operated on a week ago, but I have been laid up over two months with it.

Q You have been going right along to the hospital? A I have been going to the Dispensary, but I have been laying in the Hospital since a week ago Friday.

Q Do you remember the night of New Years? A Yes sir.

Q Do you remember this saloon of Mr. Denkhard's? A Yes sir.

Q Do you know the defend ant Lawlor? A Yes sir.

Q Do you know Mr. Forshay? A No sir.

Q Do you know young Lawlor? A Yes sir.

Q And do you know a man by the name of Carson? A I know him by sight.

Q Do you know a man by the name of Bayonne? A Bayonne no sir.

Q Have you since learned who the dead man was? A I have heard who he was. He was the man who carried him by the legs.

755

Q Did you identify him when he was alive as the person?

A I saw him while he was alive.

Q You have heard since that he was dead? A Yes.

Q You remember the night of the occurrence of this trouble

A Yes sir.

Q How many people were in the saloon on New Years' night?

A There in the saloon there must have been ten anyhow. Then there was about ten more young fellows came in where this trouble happened.

Q Those ten young men who came in weren't in company with you men, were they? A No sir.

Q The company that you were in was composed of whom?

A Well, Mr. Lawlor here, myself, and the other people I didn't know, only just knew them by sight.

Q Do you know Christianson? A No sir.

Q Do you know Fowler? A No sir. I may know them by sight. I know a lot by sight but don't know their names.

Q Any of those men standing in there by the bar, were they in any way concerned with any trouble between Wernicke and some man in the place? A No sir.

Q If you know? A No sir.

Q Did you see any trouble occur between Mr. Wernicke and his wife and any of the men who were in your company at that time? A No sir.

CASE 755

Q Did you see anyone take the handkerchief off the neck of Mr. Wernicke? A No sir. All these young men when they came in they started to go out the door, there was some commotion, I didn't know what it was because this man and his wife were standing at the end of the bar, and he runs out of the store and his wife following him.

Q At that time did Lawlor or yourself or any of the boys who were standing at the bar at that time, did you go out at that time? A No sir. Mr. Lawlor was standing right at the bar with me all the time.

Q What was the first thing that attracted your attention to the outside? A When the woman came back screaming and hollering in German, and I didn't understand, and I ran out with Mr. Lawlor and the rest, and the man was stretched out on the sidewalk, and I came back to Mr. Denkhart myself and brought out a glass of brandy and gave it to the man.

Q At that time who had hold of the person of Mr. Wernicke, when he was stretched out on the sidewalk? A I couldn't say. There were quite a few out there when we went out.

Q Was Lawlor there? A No sir.

MR. MURPHY: I object to that as leading and putting questions in the mouth of his witness.

THE COURT: Mr. Witness, I will direct you to be here at a quarter past eleven in the morning.

(The Jury is not duly admonished)

CASE 755

Adjourned until Tuesday January 28th. 1908.

Disagreement

CASE 755