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CASE

#1487

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

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

Before:

-against-

HON. THOMAS C. O'SULLIVAN, J.,

FRANK ROGERS.

and a Jury.

-----X
Indictment filed March 9th, 1911.

Indicted for Robbery in the First Degree.

New York, May 16th, 1911.

A P P E A R A N C E S :

For the People: ASSISTANT DISTRICT ATTORNEY EDWARD J.
McGUIRE.

For the Defendant: MR. BERNHARD ROBINSON.

Peter P. McLoughlin,
Official Stenographer.

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

DIRECT EXAMINATION BY MR. McGUIRE:

Q Where do you live? A 125th Street and Third Avenue, American Hotel.

Q Mr. Arrington, what is your business? A I am a foreman baker, sir.

Q Who are you employed by? A By the Howe Baking Company, between 165th and 166th Street on Third Avenue.

Q Was that your employment on the 4th of March last?
A Yes, sir.

Q Where do you live, Mr. Arrington? A 125th Street and Third Avenue, the American Hotel.

Q Do you remember the night of the 4th of March about half past seven o'clock? A Perfectly well, sir.

Q Where had you been that evening? A I had been up to the Bronx, and was returning home, and I came on a surface car; it was very chilly; the door was open, pretty cool there, I got out at 129th Street, started to my hotel which was at 125th Street, stopped in a saloon to get a glass of hot rum.

Q About what time was that when you got to this saloon?
A I think I got in the saloon about a quarter past seven, I got to 129th Street about seven o'clock.

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Q On what street was this saloon? A Third Avenue, the middle of the block.

Q Who was in the saloon when you went in there? A Well, there was four or five fellows standing by the cigar counter. I went in there, I was near the door, there is another counter, I said, "Give me a drink of the best rum you have in the house, I am chilly". Then I saw all the boys standing there, and I said, "Boys, won't you all have a drink". Of course they joined me.

Q Now, at that time did you see the defendant? A Yes, sir; that was the man standing next to me.

Q He stood next to you at the bar, did he? A Yes, sir.

Q What did he say as he stood next to you? A After I treated them twice he said "I am very sorry I cannot retaliate", he says, "I am not working". I said, "That's all right, I never asked you to treat; I came in to get a hot drink of rum, I am chilly".

Q Then what happened? A Then two or three of them, you know, were talking there, and then I went out. I treated no more than three times. I took my wallet to pay for the drinks; I had a band around it doubled like this here (illustrating) and pulled it out of my pocket. I had a pocket in the pants which buttoned here (illustrating), buttoned very tight. I took a five dollar bill out on the counter.

Q Did you open the pocketbook? A Yes, sir; opened it; I had \$20 in the inside; I had \$20 there and I took five from the outside, out of the outside, put it on the counter and took my change back. Then I put the change in here, the bills (indicating).

Q Put your change in the trousers pocket? A The change I got from the five.

Q Where did you put it? A I put my wallet back in my pocket; I buttoned it up tight again; put my coat over it like that (indicating).

Q After you had done that --- while you were doing that was the defendant there? A Yes, sir.

Q After you had fastened your pocket with your pocketbook in it, what did you do? A Then I went out, bid them "Good night".

Q You went out into Third Avenue? A Yes, sir; I started for home.

Q How far did you get before something happened? A I got down to 127th Street, the Guarantee Clothing Company, on the corner.

Q Which corner? A This side.

Q That is the west side? A Yes, sir.

Q On the downtown or uptown corner? A Downtown, on the other side.

Q That is the southwest corner? A Yes, sir; the southwest

west corner.

Q About how long was this after you first went into the saloon? A This was about, I guess, about five or six minutes after I left there.

Q What happened then? A I felt someone going --- as I got across the street two clinched me, got me this way, pulled me around the corner (illustrating). This man, Rogers, is the man who pulled my coat up, took my pocketbook out, unbuttoned the pants. I broke myself away from the two, I had that stick up this way but I grabbed that man and held him and he did not get away.

Q You held him there? A Yes, sir; he struggled.

Q What did he say as you held him struggling there?

A It was another man came up there and he said "Let that man go". I said, "What for". He says "I am a detective". I says "Well, show your badge". He says, "I don't have to." I said "You beat it". I took my stick and hit at him and he got away.

Q Did he go away rapidly or slowly? (No answer)

Q The man to whom you said that, did he go away rapidly or slowly?

MR. ROBINSON: Objected to.

Q Tell us what the man did to whom you showed the stick?

MR. ROBINSON: I object to that as incompetent.
Objection overruled. Exception.

Q Did you understand the question? A Yes, sir, I raised this stick and the man got away from me. Another young fellow came up and I said, "Will somebody help me and I will get them other two". No response, and all they did was ---

Q Was that said in this man's presence and hearing?

A Yes, sir; that man was right there.

Q You were holding this man all that time? A Yes, sir.

Q Were you not? A Yes, sir; he never got away from me until the policeman caught hold of him.

Q What happened after that, after you made that remark in his presence what happened after that? A Then the crowd surged around and a policeman came and they took me and this man to the station house in 126th Street.

Q A policeman came up to you? A Yes, sir.

Q What is his name? A I forget his name.

Q He is in court, isn't he? A Yes, sir.

Q You have seen him to-day? A Yes, sir.

Q Did the defendant say anything while you held him as you have described? A No, sir; he wanted me to let him go.

Q Did he ask you to let him go?

THE COURT: Not what he wanted. Answer the attorney's question.

Q What did he say as you held him there, the defendant, what did he say? A He didn't say anything, only pulled.

Q He pulled? A Yes, sir.

MR. ROBINSON: I move that the answer to the last question be stricken out as not responsive. The defendant wanted him to let him go.

THE COURT: The last part of it may be stricken out.

Q After the policeman came up what happened? A Well, he then took him to the precinct.

Q Did the policeman put his hand upon him? A Yes, sir.

Q Then you and the policeman and the defendant went to the police station, did you? A Yes, sir.

Q At the station house what happened? A Well, nothing, he said to me, he says, "It wasn't me"; I said, "I know better, I treated you too well to do me like that".

Q What answer did he make to that? A He tried to call me a name but he called me the wrong name; I said that ain't my name at all.

Q What name did he call you, what name do you recall he called you? A He called me Harrington.

Q What became of the pocketbook you say he took hold of? A Well, the policeman says he found it.

MR. ROBINSON: I object to that.

THE COURT: Strike it out.

Q When did you first become aware that your pocketbook

was ---

MR. ROBINSON: One question was put to the witness. Let the witness answer that one question.

THE COURT: The answer was stricken out.

Q After you put your pocketbook back in your pocket and fastened it at the time you left this liquor store when did you first become aware that you did not have the pocketbook in your possession? A When that man was pulling it out of my pocket.

Q Did you feel this man pulling it out of your pocket?

A Yes, sir; he got his hand --- he dropped it to somebody else, I don't know where he got it, that dropped on the ground.

Q Did you see the pocketbook after you felt him taking it out of your pocket? A Felt his hand going in to the pocket, unbuttoned, I caught him there by the lapel of the coat.

Q When next after that did you see the pocketbook? A Seen it up in the station house.

Q Who had it then? A The policeman or Judge or clerk or somebody up there.

Q At the station house? A Yes, sir; asked me if that was my pocketbook; I said yes, my name is in it.

Q I show you this article. A Yes, sir, that is right, now, you will see my name in it.

Q I show you that article and ask you whether you ever

saw it before? A Yes, sir.

Q When did you see it before the time, as you say, the defendant put his hand into your pocket on that occasion?

A Well, I said they showed it to me in the police court.

Q Is that the pocketbook that was shown to you in the police station? A Yes, sir.

Q Is that the pocketbook that you had in your pocket, buttoned into your pocket, when you left the saloon? A Yes, sir; had a double rubber around it, the rubber was gone when I saw the pocketbook in the station.

Q Will you look inside the pocketbook? A Yes, sir; that is my name there.

Q Look inside the pocketbook. A Yes, sir. "W. E. Arrington, No. 137 Wood Street, Norfolk, Virginia".

Q Are the contents of the pocketbook as they are now the same as they were on the night of the occurrence that you have stated? A Yes, sir; there is a \$20 bill and two fives ---

Q (Repeated) A Yes, sir; I have some references and some press notices, that is where I had three five dollar bills after I closed it up (indicating).

MR. McGUIRE: I offer in evidence, if your Honor please, the pocketbook and its contents.

MR. ROBINSON: No objection.

MR. McGUIRE: I offer it as one exhibit. I think

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there is no need of taking an inventory of the inside.

MR. ROBINSON: No.

(The pocketbook and its contents are marked People's Exhibit 1.)

CROSS EXAMINATION BY MR. ROBINSON:

Q Mr. Arrington, you said your memory was excellent, is that right? A I said what?

Q You said your memory of that occasion was excellent?

A No, sir; I never said that.

Q You did not? A No, sir; I never said it was excellent.

Q What did you say? A I said I remembered the 4th of March.

Q You didn't say your memory was excellent, did you?

A No, sir.

Q Well, is it excellent or not? A Sometimes it is excellent and sometimes it is not.

Q Is your memory of the events of the 4th of March excellent or is it not? A I remember them perfectly well, sir.

Q Your memory is excellent of that occasion? A Yes, sir; of that occasion.

Q You remember everything that took place on that occasion? A pretty near.

Q I notice you use glasses; is your eyesight good?

A Yes, sir.

Q Very good? A Pretty fair.

Q Do you see well? A Not extra without glasses.

Q Do you see well with glasses, is that right? A Yes, sir.

Q You do not see well without glasses? A I broke my glasses to-day, sir, I dropped them and I had to buy a cheap pair.

Q You don't see well without them, is that right?

A Yes, sir.

Q Your eyesight was in the same condition on the 4th of March, is that right? A Well, sir, my eyesight was perfectly good then, I see anything at all without glasses only reading.

Q Grown worse since the 4th of March? A Reading only is what I use glasses for.

Q I say is your eyesight the same now as it was the 4th day of March this year? A Yes, sir; it is just the same.

Q It is no worse? A No, sir.

Q And no better? A Just about the same.

Q You had to use glasses then? A No, sir; I never wear glasses in the street; never ~~only~~ to read.

Q You only use glasses for reading? A I never use glass-

es to work with even.

Q Now, please answer my question. Don't volunteer any information. Did you use glasses for reading on the 4th of March? A Reading?

Q Yes. A I read the paper in the morning.

Q Now, will you answer my question. Will you kindly repeat the question.

(The stenographer repeats the question.)

THE WITNESS: yes, sir; every day.

Q You used no other glasses on the 4th of March but glasses for reading? A I wear glasses to read, that is all, sir.

Q Is all that you testified to right now all that took place on the 4th day of March in the evening? A Yes, sir; just as I told it, sir.

Q You haven't forgotten anything? A No, sir.

Q Sure about that? A Sure, sir.

Q Your memory is very good, is it? A Yes, sir.

Q Let us see if we cannot refresh it a bit. How many men did you say were in the saloon that night? A Well, I think it was five or four or just along there; I never counted them.

Q You didn't say there were four or five or six men a moment ago?

MR. McGUIRE: I object to that.

MR. ROBINSON: It is very material to find out the exact number of men in the saloon that night. The witness testified he ~~xx~~ remembered everything that took place.

Q You didn't say there were? A No, sir.

Q Why not? A I never counted them.

Q Why not? A I seen the crowd there; I asked every one to drink, every one standing there.

Q I asked you why you didn't say a moment ago in answer to Mr. McGuire's question how many men there were in the saloon, why didn't you say there were four or five or six then? A I said four or five, is that right?

Q You said three or four. A To the best of my judgment.

Q Has your judgment improved since Mr. McGuire sat down?

A No, sir.

Q Will you tell us now how many men to your best recollection, Mr. Witness, were in this saloon? A I will come pretty near telling you, three or four or five is all I know of, and then the proprietor, I found out it was a woman proprietor, she was there too, but she was standing on the other side.

Q That makes six, no more than six? A All I know was just six I treated.

Q Did you see everybody in the saloon that night?

A Yes, sir; I stood by the door; I didn't look back because I was by the door, these people were standing by the cigar case there.

Q When you treated didn't you find out how many were drinking at your expense? A No, sir.

Q Didn't care for money that night? A Yes, sir, indeed I did.

Q Care for it very much? A Always had to work hard enough for it.

Q Now, you didn't count the number of men who were drinking at your expense? A No, sir.

Q You did not? A No, sir.

Q How many drinks did you take that night? A I had three, three hot rums.

Q Is your memory very good as to that? A Three hot rums.

Q Answer my question. Will you kindly repeat it?

(The stenographer repeats the question.)

THE WITNESS: Yes, sir, I remember that.

Q You only had three drinks? A That is what I said.

Q Will you say you didn't have any more? A I said three.

Q Will you say now that you didn't have any more than three drinks that night? A No, sir; I won't say that because I had some drinks after that.

Q You are not very sure as to the number? A I mean in there; I had some before I got there.

Q Not very sure as to how many drinks you had? A In that place I am.

Q How many places did you visit? A One down at my hotel.

Q Before or after? A Afterwards.

Q How many places did you visit before you came to that saloon? A Visited about two in the Bronx.

Q Sure it was two? A Yes, sir.

Q No more than two? A No more.

Q You treated in this place, did you not? A No, sir.

Q Did they treat you? A No, sir, they did not seem like they needed it.

Q What was your answer? A I thought these boys in this saloon needed a drink.

Q What made you think so? A Because I thought they looked like it.

Q Well, how? A Well, they were all standing there waiting for somebody to come in, I suppose, to treat them; they generally do in these places.

Q You thought you would act the part of a public benefactor and treat them to a drink, is that right?

MR. McGUIRE: I object to that as improper.

Q Did you think you were called upon to treat every one who looked as if he needed a drink?

Objected to. Objection sustained. Exception.

Q You didn't treat anywhere else but in that saloon?

A Yes, sir; except my own hotel I always treat; I never drink alone.

Q I am ~~now~~ talking now about prior to entering that saloon at 128th Street and Third Avenue. You say you treated three times? A Yes, sir.

Q You won't say that you treated more than three times?

A No, sir, I won't.

Q You are not sure as to the exact number, is that right?

A That is all I treated, three times, and had three myself.

Q Sure about that? A Yes, sir.

Q How much did you pay at each treat? A I never counted my change at all.

Q You never counted the change? A No, sir.

Q You don't know whether the change you received was correct or not? A Well, I think it was correct; is that right?

Q Do you, yes or no? A Well, I say ---

Q Yes or no? A It was correct to my knowledge.

Q How do you know? A Why how do I know?

Q How do you know it was correct if you didn't count it?

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MR. McGUIRE: I object to that.

A I supposed it was correct.

MR. McGUIRE: I object to it as immaterial, irrelevant and having no bearing upon the case at all; it is only wasting our time.

THE COURT: It may be material as to the accuracy of the witness's memory as to that night, but it should not take many questions of that character to develop it.

Q Will you answer the question? A I answered the question some time ago.

Q You didn't count any one of the three treats? A I just took the change; I threw a dollar bill down each time and he gave me the change and I put it in my coat pocket, little pocket.

Q How many drinks did you have before you went into that saloon? A Really I couldn't tell you.

Q You don't know the exact number? A About four, but beer, nothing but beer, I didn't drink whiskey in over ten years and rum I drank that because I was chilly.

Q The only time you drank rum was in that saloon?

A Hot rum.

Q You drank hot rum every time you treated, is that right? A Yes, sir; that is all I drank.

Q When you came into that saloon was the defendant there? A Yes, sir; he was there, standing by the counter there.

Q Sure about that? A Yes, sir.

Q You don't remember the defendant coming in after your entering into the saloon? A No, sir.

Q Where were you coming from? A I was coming from the Bronx.

Q Where? A 129th Street, the surface cars.

Q Where did you start out from that evening? A Started out from --- I started from the hotel first.

Q What hotel? A 125th Street and Third Avenue.

Q That is where you live? A Yes, sir.

Q Where did you go? A I went up to the Bronx.

Q Where? A Up to 165th and 166th Street.

Q Were you drinking there? A No, sir, that is where I work, I make yeast there every Saturday evening.

Q Were you working that day? A I worked that night.

Q Were you working that day? A No, sir.

Q Do you work during the day? A I work nights.

Q You did not work during the day? A No, sir; I got through my work Friday morning about ---

Q Were you going to work that night or coming from work?

A Went up to make yeast.

Q Were you going to work or were you coming from work?

A I went up to do some work for about 15 minutes.

Q Do you always wear a silk hat when you go to work?

A Saturdays, every Saturday.

Q Do you wear a silk hat when you go to work? A Yes, sir, in the winter time.

Q Always wear a tuxedo coat when you go to work? A I took that silk hat off and put it away; I don't undress to make yeast; I have everything ready there when I go up; I mash it up and stock it away, cover it up, and I put my clothes on again and I am through until Sunday night.

Q You always wear a tuxedo suit Saturday night when you go to work? A I don't go to work Saturday night, sir, that is the only night in the week I had.

Q Was this a Saturday night? A Yes, sir.

Q Didn't you say you were going to work? A I told you I went to make yeast, ten minutes work.

Q You said you were going to work? A That is what you asked me what work I did.

Q How about the tuxedo suit, do you work in a tuxedo suit? A I always dress up.

Q Do you wear a tuxedo suit when you go to work in a bakery?

Objected to. Objection sustained. Exception.

Q How much money did you start out with? A I started out with about, somewhere in the neighborhood of \$41, along there.

Q How much did you have when you came into the saloon? A I had \$40; I just spent one dollar for my fare or less, five cents I paid for the carfare.

Q You had \$40 when you came into the saloon? A Yes, sir.

Q How do you know you had \$40? A Because I had four fives in the front part and a twenty dollar yellow back in the back part, which was fastened up and if you didn't know the pocketbook you would have hardly seen it.

Q Did you count that in the saloon? A No, sir; counted nothing; only just took a five dollar bill, threw it on the counter, and I says, "Give the boys a drink".

Q Sure you threw a five dollar bill on the counter? A Yes, sir, sure.

Q Did you throw the wallet? A No, sir.

Q Didn't you say "Boys, there is \$20 left, let us have a couple more"? A No, sir.

Q Sure about that? A Positive.

Q Didn't you take out your watch and play with it? A No, sir.

Q And say "Boys, this is the real thing in jewelry"? A No, sir.

Q Sure about that? A Positive.

Q Is your memory very good yet? A Yes, sir.

Q You had a conversation with the defendant in the saloon, didn't you? A Just a little conversation.

Q Do you recall what the conversation was? A Well, the only thing he said "I am sorry I can't retaliate and treat back".

Q That is all that you recall? A Yes, sir.

Q You don't recall anything else? A Not that I said to him.

Q Do you recall now asking him to guess your age?

A My age? No, sir, I don't remember anything about asking him my age.

Q Do you recall telling him you were 60 years old?

A No, sir.

Q Do you recall telling him that you dyed your hair black? A No, sir.

Q You didn't say that? A No, sir.

Q You don't dye your hair, do you?

MR. McGUIRE: I object to that.

THE COURT: Objection sustained. Let us have these
some regard to the character of questions and to
the length of time which we are consuming.

MR. ROBINSON: The materiality of these ques-

tions will stand out very plainly when the defendant takes the stand and when the witnesses for the defense take the stand.

MR. McGUIRE: Meanwhile may we have some propriety in the examination.

MR. ROBINSON: If the witness did make the statement it is not improper to ask him if he did make it.

BY MR. ROBINSON:

Q Did you ask someone in the saloon to feel the calf of your leg? A No, sir; I don't remember asking anybody to feel the calf of my leg.

Q Have you forgotten? A I have nothing to forget.

Q Would you say you didn't ask? A No, sir; never asked anyone to feel the calf of my leg.

Q Do you recall telling the defendant that you were connected with six or five fire companies? A No, sir; I remember saying I was in the Norfolk Exempt Department.

Q Is your memory improving? A You ask what I said and I am telling you what I said.

Q Is there anything else you recall saying to the defendant? A I remember saying that, of course.

Q Do you remember saying to the defendant that you were an ex-chief of police? A No, sir; ex-chief of the fire de-

partment.

Q You did not say ex-chief of police of Norfolk, Virginia? A No, sir.

Q When you went out of that saloon you went out alone, didn't you? A Yes, sir.

Q Did you notice whether two or three men were following you? A I never noticed until they caught hold of me and then I seen ---

Q You didn't notice the number of men following you? A I never looked around until they grabbed me.

Q Were you drunk or sober when you left the saloon? A I wasn't drunk. If I had been drunk I guess they would have done me up all right.

MR. ROBINSON: I move to strike that out.

THE COURT: Strike it out.

Q You were not sober? A I wasn't drunk. I had been drinking.

Q Will you answer my question, Mr. Arrington? A I understood it.

Q Do you know what sober is? A Yes, sir. I was sober then.

Q Sure about that? A Yes, sir.

Q You did not stagger? A No, sir.

Q You were not staggering in the street, were you? A No,

sir; I was not staggering.

Q These two men did not support you, did they, the two men who followed you? A Support me?

Q One on each side of you? A No, sir.

Q How many drinks did you have all together in the saloon?

Objected to. Objection sustained.

Q How far had you gotten from the saloon before anything happened to you? A I just crossed across the street from the Guarantee Clothing Company, that is the building on the other side, just as I got to the other side these two fellows grabbed me around like that and held me (illustrating), and this fellow Rogers pulled my coat up and went into my pocket and took the pocketbook out.

Q Did you see that? A Yes, sir; I seen that man take the pocketbook out; I felt his hand.

Q You saw Rogers take your pocketbook out of your pocket-- did you see him do that? A I felt his hand in it and grabbed his hand, and he let the pocketbook go, someone else must have gotten hold of it for the rubber was off it.

Q You are very eager to get a conviction in this case?

A No, sir --- well, I should get it.

Q You are very keen about getting it? A No, sir; no keenness at all.

Q You are testifying to all that you saw, aren't you?

MR. McGUIRE: I object to that.

THE WITNESS: I am telling you the truth.

THE COURT: He has answered.

Q You say that you saw Rogers take the pocketbook out of your pocket? A I say I seen him ---

Q Did you or did you not?

MR. McGUIRE: Let him answer, won't you? I submit one question should be answered before three other questions are asked.

MR. ROBINSON: I submit I am entitled to examine this witness without any assistance on the part of the District Attorney.

THE COURT: You are certainly examining him, without a doubt.

MR. ROBINSON: And I can dispense very well with the assistance of the District Attorney. If the Court please, I think I am entitled to get an answer to this question.

Q (Repeated) A I seen Rogers grab me, pull my coat up ---

Q Will you answer the question? Did you see Rogers take the pocketbook out of your pocket? A I felt him take it.

Q Did you see him? Don't you understand the English language, Mr. Arrington? A Yes, sir.

Q Do you know what to see means? A Yes, sir.

Q Now, did you see him, did you or did you not? A I seen that man ---

Q Did you, say yes or no? A I seen him go down in my pocket.

Q Did you see him or did you not see him take the pocket book from your pocket? Answer the question. A Yes, sir; I seen that man get the pocketbook out of the pocket.

Q What did you see him do with it? A That I could not see after that.

Q What did you see him do with it?

MR. McGUIRE: That is an answer.

Q Didn't you see him take his hand away? A I grabbed him then; that is when I grabbed him.

Q Did you see him do anything with the pocketbook?
A I couldn't see after that.

Q Where did you grab him? A I grabbed him as in the act of getting it out.

Q Did you grab his hand? A I grabbed him right there (indicating); he was pulling it out quick.

Q You grabbed him by both lapels? A Yes, sir; two other fellows was with him.

Q (Repeated) A Both of them.

Q Like that? A Yes, sir.

Q Did you see what he did with the pocketbook when you were holding him like that? A No, sir, I couldn't see then.

Q You don't know what he did with it? A I couldn't tell you.

Q Did you hold him all the time until the policeman came? A I held him until the policeman came.

Q How long did it take until the policeman came? A It took quite a little while.

Q How long? A I couldn't guess; I didn't time myself.

Q Did it take ten minutes? A He was trying to take me up to that saloon again, pulling me.

Q Won't you please answer the question? A You ask me right and I will answer.

Q Haven't I asked you right?

MR. McGUIRE: Objected to.

MR. ROBINSON: I renew my objection to the statement of the District Attorney characterizing my cross examination as bad manners and impertinent, and I would respectfully ask the Court to direct the District Attorney to withdraw those remarks because my intention is not to be impertinent. I believe I have a right to cross examine the principal witness in a case of this character ---

THE COURT: If it is only a question of manners

I think you gentlemen can settle that between yourselves. The Court is not dissatisfied with your mannerism at all except that you are devoting a great deal of time to cross examination. Aside from that the Court has no criticism to pass upon your mannerisms or your regard for the ethics of your profession or anything of that kind. The Court is perfectly satisfied with them. Mr. McGuire may entertain his own view of them I suppose.

MR. MCGUIRE: The only thing I object to, your Honor, is the loquacity that has characterized the proceeding.

MR. ROBINSON: I object to that.

THE COURT: proceed, gentlemen.

BY MR. ROBINSON:

Q How long did it take before the policeman came up?

A Really I didn't time that.

Q Did it take more than five minutes? A I was holding him; it must have been about five minutes.

Q Were you holding him during that time? A Yes, sir; never let go of him.

Q Did the defendant make an effort to escape you?

A Two or three times he pulled away.

Q He did? A Yes, sir.

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Q Sure about that? A Yes, sir.

Q Didn't the defendant tell you you got him wrong?

A Well, I said "I have got him right".

Q Did he? A He told me that, yes, sir.

Q You have testified in your direct examination that you did not see your pocketbook from the time that you saw the defendant --- from the time you saw it in the saloon until you came into the station house, is that right?

MR. McGUIRE: I object to that.

Q Did you testify that way or not, yes or no? A I testified that I had not seen the pocketbook from that time until I saw it in the saloon.

Q Say yes or no to that question. A Yes, sir.

Q You so testified? A I can't say that.

Q Well, did you see the pocketbook? A You asked me if I seen it.

Q I asked you whether you testified to that, whether you have made that statement, did you or did you not make that statement? A I made the statement that I seen the pocketbook in the station house after it was taken from me.

Q You saw the pocketbook in the saloon, did you not?

A I had it in the saloon.

Q Did you see it? Will you answer my question? A Yes, sir.

Q Did you see it at any time before you came to the sta-

tion house? A Before I came to the station house?

Q Yes. A I felt that man take it out of my pocket.

Q Did you see it? Don't you understand what it means to see, to see with your eyes? A He had his hand behind me and I couldn't see behind.

Q Did you see behind? A No, sir.

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

Q Do you remember the policeman picking up the pocketbook, holding it before your eyes and saying "Is this your pocketbook"? A I remember telling him yes.

Q Your memory isn't very good on all things?

Objected to. Objection sustained.

THE COURT: Let me remind counsel that the Court has been exercising its patience for a long time and I am not sure just how long it will last.

MR. ROBINSON: That is all.

PATRICK COGGINS, a witness called on behalf of the people, being duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. McGUIRE:

Q How long have you been a member of the uniformed force, New York City police? A March 27th, 1907. Four years the 27th of March.

Q In the month of March last what was your precinct?

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A The 43rd precinct.

Q That is in the Bronx? A No, sir; 126th Street, upper part of Manhattan.

Q You live in the Bronx, don't you? A Yes, sir, I do.

Q On the night of March 4th last did you see the defendant in this case, Frank Rogers? A Yes, sir.

Q Where was he when you first saw him? A On the outside of the Guarantee corner, 127th Street and Third Avenue.

Q Who was with him? A The complainant Arrington.

Q William Arrington? A Yes, sir.

Q Was he with him at the time? A Yes, sir.

Q Tell us what happened at that time, tell us all you saw at that time? A I was coming to work, to turn out at eight o'clock, and I got off the car at the circle, 128th Street, I was going down towards 126th Street, to the station house. In the middle of the block between 127th and 128th Street I was met there by some man who said, "officer, hurry up, there is some trouble up there, some man held up there".

THE COURT: Strike that out.

Q Some one spoke to you? A Yes, sir.

Q After he spoke to you what did you do? A That was in the center of the block between 127th and 128th Street. I hurried to the corner and I seen these two men having --- Arrington having hold of this defendant here.

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Q The defendant Rogers? A Yes, sir.

Q What happened when you saw him there? A I asked what was the matter and he says, "This scoundrel has robbed me, Officer"; he says, "I want you to arrest him".

Q What did Rogers say? A Well, he says, "I done nothing".

Q Then what happened? A Somebody told me, "Officer, that man's pocketbook is on the sidewalk". I just looked down under the feet and I picked up the pocketbook.

Q Tell us where the pocketbook was when you picked it up in relation to the two men? A It was right between their feet almost.

Q Whose feet, between the feet of the two men? A Yes, sir; it was right under the feet.

Q What did you do with the pocketbook? A I held it in my hand, brought it to the station house, showed it to him in the station house and Arrington says, "That is my pocketbook".

Q Was the prisoner there at that time? A Yes, sir; I had hold of him; I took him to the station house.

Q I show you the pocketbook and its contents. Is that the pocketbook? A Yes, sir.

Q Now, on the way to the station house did Rogers say anything? A Well, he says, "I didn't do anything."

Officer".

Q Did Arrington say anything in his presence? A He says, "Yes, you did".

Q What did Rogers say then? A He said "No".

Q That was about all that was said that you remember?

A yes, sir; I told them to keep quiet until they would get to the station house.

CROSS EXAMINATION BY MR. ROBINSON:

Q Was the complaining witness holding the defendant when you came up? A Yes, sir.

Q In what way? A He had his hand here by his collar of his coat.

Q By the lapel? A Yes, sir.

Q Both hands or only one hand? A One hand, he had a cane in the other.

Q Where did you see the pocketbook lie on the ground, where was it? A It was on the sidewalk.

Q Was it between the two men or on the side of Arrington? A Between the two.

Q Was it between the two men? A It was right under their feet.

Q The feet of each? A Yes, sir.

Q You picked it up, didn't you? A Yes, sir, I did.

Q You asked Mr. Arrington whether that was his pocket-

book? A Yes, sir; I just held it in my hand and he said "That's mine".

BY MR. McGUIRE:

Q This was in the County of New York, was it, where you saw these two men at that time? A Yes, sir.

MR. McGUIRE: The people rest.

MR. ROBINSON: I move to dismiss the indictment on the ground the people have failed to establish a case.

Motion denied. Exception.

D E F E N S E .

T H O M A S M c G O W A N , a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON:

Q Where do you live? A 637 East 137th Street.

Q What is your name? A McGowan.

Q How old are you? A 38.

Q Married? A I am, sir.

Q Where do you live? A 637 East 137th Street.

Q What is your business? A Sheet iron worker.

Q Are you so employed now? A Yes, sir.

Q Do you remember what took place on the 4th day of March, 1911? A Yes, sir; I do.

Q In the evening of that day where were you? A I was in that saloon.

Q Will you talk a little louder? A I was in that saloon that evening.

Q Where is that saloon? A 127th Street, 128th Street, on Third Avenue.

Q When did you go into that saloon? A Well, I was working at 127th Street, I quit at five, it took me, I should judge about ten minutes to get in there.

Q Were you there during all the time? A I was there until this man left.

Q Do you recall seeing the complainant Mr. Arrington in that saloon? A I had a drink with him.

Q About what time was it that he came in, if you recall? A He was there when I got in there.

Q Did you go in first? A No, sir; he was there ahead of me.

Q You mean the defendant here? A The complainant was there ahead of me.

Q About what time do you recall you got there?
A Well, I should judge by the time I washed my hands and everything else in the shop, probably 20 after five when I got in the saloon.

Q You found the complainant witness there at that time?

A Yes, sir, he was there.

Q What was his condition, if you recall, at the time you came into the saloon?

MR. McGUIRE: I object to that as vague.

THE COURT: Objection sustained.

Q What was the defendant doing that you saw when you came into the saloon --- what was the complainant doing when you came into the saloon? A Well, he was standing up in front of the bar drinking.

Q How many men were in the saloon at that time? A Well, about 25, I guess, or 20.

Q Was the defendant there? A No, sir, he was not.

Q Do you know the defendant, don't you? A Yes, sir, I do.

Q How long have you known him? A Well, I know him about, I should judge, about four or three months and a half, something of that kind.

Q How long did you know him before he was arrested?

A That was in March, the early part of March, I think the latter part of January I became acquainted with him. I haven't took notice of that.

Q You were no particular friend of the defendant, were you?

MR. McGUIRE: I object to that as improper.

Objection sustained. Exception.

Q You are here under a subpoena? A Yes, sir.

Q How long after the complainant was in the saloon did the defendant come in if you recall? A Repeat it again.

Q (Repeated) A Well, I was in there, I came in after he was there, that is when I came in the complainant was there.

Q That is not the question. Will you answer the question? A If I can rightly judge, I should judge a full hour.

Q What was the complainant doing while you were in the saloon at that time? A He was drinking up against the bar at the time.

Q Did he treat anybody? A I guess there was ten or fifteen lined up, he was treating, I don't know how many there was; I didn't count them.

Q What was he drinking? A These big five cent hot runs.

Q How many times, if you recall, did the complainant treat in that saloon? A Well, I was reading the paper up at the end of the place there and didn't pay much attention to him; he asked me to have a drink, I had one with him. I know he was ordering them up one after another there.

Q Now, can you say about how many was it, more than ten times?

THE COURT: He said he was reading the paper.

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THE WITNESS: It must have been more than that.

Q How many drinks did you have at his expense?

THE COURT: Do you know or don't you?

THE WITNESS: About five.

Q Do you know or don't you? A About five.

BY MR. ROBINSON:

Q Did you have five from him? A Yes, sir.

Q Were there others that you didn't partake of, were there other treats on the part of the complainant that you did not join in? A I took two cigars.

Q At his expense? A Yes, sir.

Q Did you see the complainant take out any pocketbook while you were in the saloon? A Yes, sir; he had a sort of a wallet or a card case or a bill case.

Q Did you observe? A Yes, sir, I did, yes, sir.

Q I show you People's Exhibit 1 and ask you whether you recall if that is the wallet that the complainant showed in the saloon? A Yes, sir, I believe it is; it looks something like it, anyhow, I think that's it, a sort of a bill case.

Q What did you see him do, if anything, with it? A Well, I noticed that when I came in he took a five dollar bill and treated, when I came in, and he had been treating, of course, previous to that.

MR. McGUIRE: I submit that ought to be stricken out.

THE COURT: Strike it out.

MR. ROBINSON: You will get your chance, Mr. McGuire.

MR. McGUIRE: Will counsel kindly save himself from another experience of the kind he has just been through.

THE COURT: We do not want any side remarks.

Q Will you answer the question? A I saw him change a five dollar bill; he ordered drinks for the parties who he was drinking with.

Q Did he throw this pocketbook on the bar?

MR. McGUIRE: I object to that.

THE COURT: Objection sustained.

Q What did you see him do with the pocketbook, if anything?

MR. McGUIRE: I submit the question ought to be general, what did he see without regard to any particular act.

THE WITNESS: He displayed the pocketbook several times with the bills out, showed every one there what he had in it, and then he ---

Q Did you see how much money the complaining witness

had in that pocketbook? A Well, he threw it down, exposed it to everybody on the bar; he seemed to tempt somebody to take it, I don't know.

Q What did you see? A I saw a ten dollar bill and two fives, those ends sticking out.

Q What did you see the complaining witness do with the change of the five? A Put it in his pants pocket.

Q He didn't put it back in the pocketbook? A No, sir, he did not.

Q Did you have any conversation with the complainant while he was in the saloon? A Well, a very few words I had with him; just listening to the arguments he had with the other people there.

Q Did you see the complainant do anything else in that saloon other than treating? A Well, he was telling who he was and everything like that, going through all kinds of forms and everything, he took his watch out, swung it around, showing the proprietess his watch and he says, "That is the real metal I carry", and a diamond pin in his tie; he said, rings on his fin ers and everything, and she said you are a kind of a gay old fellow for your years and he said, "You know I dye my hair and mustache, always keep young."

Q Anything else you recall the complainant saying?

A Well, he was talking about being chief of several fire

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departments in different counties and then he wanted a couple of men there to feel the calf of his leg, he pulled up one of his trousers to show them the muscles he had on his leg; somebody there felt his leg and he accused him of trying to "touch" him for his pocketbook afterwards.

THE COURT: Strike that out.

Q Did you see the defendant come into that saloon? A I did; he was the first --- I was the first one to speak to him.

Q About what time did the defendant come into that saloon? A Well, I should judge about a quarter after six to the best of my knowledge; I am pretty positive it was after six.

Q You are not sure as to the exact time? A No, sir; I didn't notice the clock exactly, but it was very near that.

Q The complainant had been in that saloon at that time? A Yes, sir; he was there.

Q Did you have any conversation with the defendant? A I just said, "Hello"; I said, "Hello, how are you?". We got talking there and meantime this Arrington ordered another round of drinks and he turns to me and he said "A friend of yours?". I said, "Yes, I know this gentleman." He said, "Won't you ask him to join in a drink?". Rogers was buying a pack of cigarettes.

Q How many times did the complainant treat while the defendant was in that saloon? A He treated several times to

my knowledge. I got disgusted with the man and wouldn't mind him ---

THE COURT: Strike that out.

MR. McGUIRE: May we have the state of the witness's mind stricken out?

THE COURT: Yes.

THE WITNESS: I don't recall exactly how many.

Q Did you see the complainant leave the saloon? A Yes, sir, I saw him going out; I stood right at the door.

Q Was he walking straight or staggering? A He was intoxicated.

MR. McGUIRE: May we have counsel instructed not to lead his witness?

THE COURT: He may answer that.

THE WITNESS: He was drunk naturally.

Q What is that? A He was drunk, intoxicated.

Q That is he appeared to you to be so? A Yes, sir; he did.

Q How many glasses did you have? A A very few; only had five altogether.

Q You took five drinks? A Yes, sir; that is all I had.

Q Was he walking straight or was he staggering? A He was staggering.

Q Did you see anybody else leave the saloon after the

complainant? A The door was open, he walked out, there was two others went with him; I didn't know the men that went with him because it was pretty crowded; they went out together; I didn't know who they were.

Q Did the defendant leave with these two men? A They went out with the man because he was talking with me ---

Q How long after the complaining witness left the saloon did the defendant remain in that saloon? A Well, I don't know exactly how long but I know that ---

Q Was it five minutes or more? A Must have been more than five.

THE COURT: Your answer is that you don't know how long?

THE WITNESS: Five minutes.

Q Can you fix the time in any way? A Well, we stood there talking for a few minutes and I went back to the toilet, that is away in the rear of the saloon.

Q How long do you think that you remained in the toilet? A I should judge by the time I went back and forth I suppose occupied about five minutes.

Q Was the defendant in the saloon when he came back? A Still there when I came back.

Q How long after that did he remain with you? A Well, it may be a few more minutes, I should judge about five.

Q Then what did you see the defendant do, if anything?

A He said, "I am going to leave you now", he said, "I am going uptown, I want to buy something".

Q Did you see him go out alone or with other people?

A He went alone.

Q Sure about that? A Yes, sir, I am positive; no one went out the door with him, I know that.

Q What was the next thing that happened, if you recall?

(No answer)

Q What was the next thing that happened that night that you recall with reference to this case? A Well, I ---

MR. ROBINSON: I withdraw the question.

Q Did you see the complainant and defendant again that night? A I did afterwards.

Q Where? A It was around in front of the saloon where they left.

Q How far away? A Well, just the width of the sidewalk, they were almost out to the street.

Q What was the complainant doing?

MR. McGUIRE: May we have what he saw?

Q What did you see the complainant do? A Well, there was a man came over, looked over the window, called my attention to a crowd on the sidewalk, about 25 or 30 people, I looked out and in the midst of them seen this man with the

high hat and Rogers there.

Q The complainant had been wearing a high hat? A Yes, sir.

Q While he was in the saloon? A Yes, sir.

Q What did you see if anything in that crowd? A Well, I saw the defendant here, Rogers, and this Arrington, the two of them together in the crowd.

Q Did you go up to them, or what did you do? A I looked over, I went outside to see what the trouble was, you couldn't get near them, I saw the crowd, they went down towards the downtown part of the avenue.

Q Was there any policeman there at that time? A No, sir; not that I saw.

Q How many minutes, if you can recall, elapsed before the policeman came upon the scene? A Well, there was about ten minutes or so.

Q Did you see the defendant make any attempt to escape? A No, sir, I did not.

Q Sure about that? A Positive.

Q Did you see the complainant hold the defendant during all that time? A Well, when I got down in front of the window ---

Q Yes or no. A No, sir; I didn't see him holding him.

Q At all? A No, sir; never saw him holding him at all. He was surrounded with a crowd.

CROSS EXAMINATION BY MR. McGUIRE:

Q You didn't see him hold him? A No, sir.

Q How near did you get to him? A As far as I am to you.

Q You didn't see him hold him? A He was pushing him all the time.

Q How do you know he wasn't holding him? A I could see him pushing him towards this window.

Q He was pushing who? A This Rogers.

Q Was pushing who? A This Arrington was pushing Rogers toward this window.

Q The drunken man pushing Rogers? A Yes, sir.

Q The drunken man? A Well, there was only one, Arrington, in this case, that is this man here.

Q He was drunk? A Yes, sir.

Q Yet he was pushing Rogers? A Yes, sir; I suppose doing this (indicating).

Q He was pulling against him? A Clawing at him.

Q You use language that I am not familiar with. A Trying to the best of his ability to put the man over to the window.

Q Who was? A Arrington was.

Q Was Rogers drunk? A Not that I saw, he wasn't drunk, sober when he came in there and looked to be sober when getting out.

Q Was he drunk? A No, sir, not that I know of, no, sir.

Q Don't you know he was not?

MR. ROBINSON: I object to that. The witness has answered the question, if the Court please. The District Attorney objected to some things when I was conducting the examination.

MR. McGUIRE: Is counsel through?

MR. ROBINSON: Yes.

Q Will you give me an answer? Was Rogers drunk? A No, sir.

Q He had not been drinking that night? A Not that I know of, no, sir.

Q You would know if he had been while you were there?
A While I was there, not what he done previous to that.

Q I am not asking you if he was drunk when you were not there, you understand, don't you? A Yes, sir, I do.

Q And this perfectly sober man was allowing a drunken man to crowd him over to the wall, is that your statement?

Objected to. Objection overruled. Exception.

Q Is that your statement? A It appeared to me he was pushing him over.

Q Do you say that, that the drunken man was pushing this sober man over to the wall? A That is what I say.

Q He didn't have hold of him? A No, sir, not that I

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could see him have hold of him.

Q How near did you get to him so as to be able to tell what you saw? A About ten feet away I should judge.

Q You stayed there all the time? A No, sir; I did not stay there; I moved around to see what the trouble was.

Q How did you know it was ten minutes before the policeman came? A I was there on the corner when he came down the street.

Q You did say it was about ten minutes? A I was standing there myself; I was asking someone in the crowd what happened.

Q You had watched Arrington and this man for ten minutes, didn't you? A Yes, sir; it was all of ten minutes I was there.

Q You never went to the relief of this sober man whom this drunken man was pushing up to the wall, did you? A There was too much around him --- no, sir, I did not.

Q Did anybody else take this drunken man away? A Not that I could see, no, sir.

Q And the two stood together for ten minutes that way, did they? A It appeared that way; they were jostling each other around.

Q Arrington never had hold of Rogers? A Not that I could see, no, sir.

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Q Do you mean to say he did not? A Well, he didn't appear to have hold of him that I could see; I wouldn't want to say yes to a thing I don't know.

BY THE COURT:

Q What was he pushing him with? A With his hands.

Q Did he have his hands on him? A Pushing him over, yes, sir.

BY MR. McGUIRE:

Q Did he have his stick in his hand? A Yes, sir.

Q So he was pushing him with one hand? A Yes, sir; he was pushing him with one hand and the stick over his head threatening with it.

Q He was doing that for ten minutes? A Well, not all the time.

Q Well, the part of the time he wasn't doing it what was he doing? A Standing there I suppose waiting for an officer.

Q Didn't have his hands on him? A No, sir.

Q Why was he waiting for an officer? A I don't know.

Q You were a friend of this defendant, weren't you?

A Well, I know him.

MR. ROBINSON: I object to that question.

Q You never asked Rogers what the trouble was? A I couldn't get near him.

Q What is that? A I couldn't get near him.

Q Are you sincere when you say you could not get near him? A Through the crowd, no, sir, I could not.

Q Could you be one of the crowd? A Yes, sir, I tried to inquire what the trouble was.

Q Did you go through the crowd to ask the man who could have told you? A No, sir; I did not.

Q You had known this man from January? A Yes, sir.

Q You had been drinking with him that night? A Well, not at his expense.

Q You had been drinking with him, hadn't you? A Yes, sir.

Q You don't drink at anybody's expense, do you?
A Very seldom.

Q You did that night? A Yes, sir.

Q You had five big hot rums? A No, sir; never touched whiskey or rum in my life.

Q What did you mean when you said you had five drinks?
A I had five glasses of lager.

Q You were perfectly sober? A I was.

Q Yet you let this drunken man push this sober friend of yours around the sidewalk for ten minutes and you never asked any questions? A I tried to find out what the trouble was.

MR. ROBINSON: I object to it.

THE COURT: He has already answered the question.

Q How do you fix the time when you got into that saloon?

A Well, I quit at five and by the time I washed up I suppose it takes ten minutes, put my hat and coat on and everything else, that is 15 minutes.

Q How long did you stay in the saloon? A I left the saloon a little after seven.

Q You were there two hours? A No, sir, not two hours all together, about 25 or 20 minutes after five when I got in there.

Q You stayed there until seven? A Yes, sir, about seven I left.

Q When did Rogers go out? A He went out of there about ten minutes before I did.

Q What had you been doing in there for all that time?

A What was I doing in there?

Q Yes. A I was reading the paper and smoking.

Q Yet you could see the denomination of the bills in the pocketbook? A Yes, sir, one could notice it in a moment.

Q And tell what denominations they were? A He was right alongside of me; he threw it on the bar.

Q You were reading the paper? A Yes, sir, I looked out; he was demonstrating what he had ---

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Q As he threw it out you could read the denominations of the bills? A As far as I could see, what was sticking out of it.

Q What do you mean? A The bills sticking out.

Q Don't you know you just testified to the denominations of the bills in the pocketbook? A A ten and two fives.

Q You could see that because he threw it on the bar? A It was perfectly open then.

Q Here it is. Could you see it as he threw it on the bar? A The bills were exposed in it.

Q How much of them exposed? A Four of them all told.

Q In that pocketbook the bills were exposed? A Sticking out of it.

Q From where? A I suppose the edge of it there.

Q How much of them sticking out? A Well, the edge of them sticking out I suppose about an inch.

Q You could tell it was a ten and two fives? A Yes, sir, I saw what was in it.

Q You were reading the paper? A Yes, sir; I happened to look over the paper; it was thrown out there on the bar.

Q How long have you known this man? Now, tell me the truth. A Some time between, --- pretty near the latter part of January.

Q What do you mean by the latter part of January?

A Well, around the 15th or 16th.

Q Haven't you met him in that saloon? A No, sir, the first place I was introduced to him was up in Lexington Avenue.

Q You met him in that saloon? A Yes, sir.

Q There was a woman bartender there? A No, sir, the owner of the place.

Q You go in there quite often, don't you? A Not very often, no, sir.

Q You go in there quite often? A Sometimes when I pass I go in and get a drink.

Q That night you went in and stayed there until seven o'clock? A Yes, sir.

Q Did you see where Arrington went when he left the saloon? A No, sir; I paid no attention at all to him.

Q You say the first time you saw them together again was in front of the saloon? A Yes, sir.

Q How long a time was there between the going away and your seeing them there? A Well, this Arrington ---

Q Will you listen to the question? A I should judge about four or five minutes; I didn't notice the time.

Q Four or five minutes. Which side of the avenue is this saloon on? A It is on the west side.

Q How far north of 127th Street? A Well, it is the third house from the corner of 128th Street.

Q You said Rogers said he was going uptown? A He told me he was going uptown to buy something.

Q Yet you saw him in front of the Guarantee store on 127th Street, the southwest corner, didn't you? A The northwest corner. No, sir, I didn't see him there.

Q Did you see the policeman make this arrest? A Yes, sir.

Q Where did he arrest him? A That is where he made it, on the Guarantee corner.

Q What corner is that? A That is the northwest corner.

Q The northwest corner? A Yes, sir.

Q That was downtown from the saloon? A Yes, sir; the end of the block.

Q Rogers went out to go uptown? A He said he was going, he said "Good night".

MR. ROBINSON: I object to that. He can only answer where Rogers told him he was going.

Q You stayed there drinking the drinks that this drunken man bought for you? A Yes, sir; he was there.

Q You did it five times, did you? A Yes, sir.

Q You talked with this Rogers after the drunken man went out, did you? A Yes, sir, for a few minutes.

Q Then Rogers left you and went out of the saloon?
A Yes, sir.

Q He said he was going uptown? A Yes, sir; he said "I am going uptown".

Q Did he say that? A Yes, sir.

Q The next you saw of him was in front of the saloon?

A Yes, sir.

Q How long was it after he left? A Well, I was surprised when the man told me ---

Q How long was it after he left? A I should judge it was four or five minutes.

Q Do you know now it was four or five minutes? A Well, I do in a rough guess, but I am not positive.

Q Then you went out of the saloon? A I went out when I saw the crowd around.

Q Where did the crowd go to? A It was at the corner of 128th Street.

Q And the arrest was at 128th Street? A 127th Street at least.

Q You went south, didn't you? A Yes, sir.

Q You saw when the policeman arrested him? A Yes, sir.

Q You never said a word to Rogers? A No, sir, never had the chance to.

Q You never spoke to him? A No, sir, I didn't speak to him at all.

Q You didn't speak to Arrington? A No, sir; I don't know the man ---

Q You didn't go and look for any help for Rogers? A No, sir, I did not; I was inquiring what was the trouble..

Q For ten minutes you were inquiring what the trouble was? A Well, I was looking on to see what the trouble was.

Q Here was your friend that was in this encounter with Arrington, wasn't that so? A It seemed so, they were together there.

Q Did you see the man when the arrest was made? A Yes, sir.

Q Did Arrington have hold of Rogers then? A No, sir, he did not.

Q Did you hear the policeman testify? A Yes, sir.

Q Did you hear the policeman testify he had him by the coat collar? A He didn't have anything of the kind.

Q The policeman is not telling the truth? A He might have grabbed over to him then, but up to the time they were standing two or three feet apart.

Q What is that? A Arrington and Rogers were two or three feet apart.

Q He never walked away? A No, sir; he went in the middle of the street all alone, where he walked away out of the crowd.

Q Rogers was? A Yes, sir.

Q He did not leave the crowd? A No, sir.

Q What did the drunken man do while he was out in the middle of the street? A They told him he was crazy, a couple of people, a woman told Rogers why don't you take a walk away

and he says to them "I haven't got anything to be in trouble for".

Q Why didn't you go away with Rogers? A I wanted to find out what the trouble was; I had no reason to go away.

Q You were trying to find out what the trouble was?

A Yes, sir; I didn't know what the trouble was.

Q You knew there was no trouble, the man in the street was looking on, didn't you? A When the whole crowd surged around them.

Q Do you mean to repeat that that man Rogers stood in the street, in the middle of the street, with ~~a~~ ^{the} drunken man on the sidewalk? A yes, sir.

Q You do? A Yes, sir.

Q Do you mean to say that? A Positively, yes, sir.

Q Rogers was not near the drunken man? A He was about 15 feet away from him, crossing to the other corner.

Q Did Rogers go back to the drunken man? A No, sir.

Q How did they come together again? A He walked over to him.

Q Who did? A Arrington did.

Q He walked over after him? A Yes, sir.

Q Were you there when the policeman came up? A Yes, sir, together, that is how they happened to be on the north-west corner of the Guarantee Clothing corner.

Q I thought ~~xxx~~ ^{they} stood in front of the saloon? A But ~~was~~

doubtedly they walked down towards 127th Street.

Q Do you mean to say they crossed to the east side of the avenue? A No, sir; the west side of the avenue; crossed to the other side of the street, on the downtown side of 127th Street.

Q What did you hear Rogers say? A Well, somebody was talking to him there.

Q What did Rogers say? A I didn't hear what he said.

Q Not a word? A No, sir.

Q In that ten minutes? A No, sir.

Q When you saw Rogers 15 feet away from the complaining witness did you go over and ask him what it was all about?

A No, sir, I did not.

Q You did not? A No, sir.

Q Where did you stand while he stood there? A I was on the outside of the crowd.

Q What do you mean, witness. Tell me what you mean. You say this man was 15 feet away from the complainant?

A Yes, sir; more than that.

Q You could see 15 feet in between them, could you?

A There was two young fellows went out ---

Q Answer me. A Yes, sir, I could see it positively.

Q You never went to Rogers to ask him what it was about?

A I was ---

Q You didn't go, did you? A No, sir.

Q You heard a woman say something you say? A A woman who passed in the street.

Q You heard her say something? A Yes, sir.

Q But you didn't say anything? A That was before he came ---

Q You didn't say anything? A No, sir.

Q Will you answer me? A No, sir.

Q What did Arrington say? A He was there waving the stick over his head and shouting.

Q What did Arrington say? Will you listen to me?

A He was hollering out; I don't really remember what he did say.

Q Didn't he say he was robbed? A Yes, sir; he was hollering out he was robbed.

Q Don't you know he said he was robbed; why didn't you say that a minute ago? A I forgot it.

Q You forgot it? A Yes, sir.

Q Had you been up against Arrington that afternoon or evening? A Been up against him?

Q Yes. A Undoubtedly not.

Q Did you put your hands on him? A No?

Q Yes. A I should say I did not.

Q Were there 25 men drinking in this saloon with Arrington? A I didn't count them.

Q You said there were 20 or 25? A About 20 or 25.

Q Is that your statement? A Yes, sir.

Q How many went out with Arrington? A Only two to my knowledge that I saw going out the door.

Q You were in the back reading the paper? A No, sir; in the front, up near the window.

Q Did you see any men following Arrington? A I didn't know whether they were following him; they went out after him.

Q Where did they? A They went out the door; I don't know which way they went, I paid no more attention once they went out; I forgot all about the incident.

Q Where did Rogers stay when they were doing that? A He stood smoking up at the other end of the saloon, near the window, he was about five feet from where I was.

Q He was smoking? A Yes, sir.

What

Q Had he been drinking? A I think he was drinking beer; I am not positive; I think it was beer.

Q Did he buy any beer himself? A I don't know if he did, I don't remember him buying any.

Q Did you go out of that saloon with Rogers? A With him? No, sir.

Q How long after him did you go out? A I stayed there after he went out --- well, the only time I went out that was the time when the crowd was around outside the door.

Q Do you understand the English language? A Yes, sir.

Q Listen to me carefully. How long after Rogers went out did you go out? That is the question. A About five minutes, I guess.

Q Five minutes? A Yes, sir.

Q How long was that after Arrington had gone? A He was gone fully a quarter of an hour, I should judge then; I didn't exactly see the time but I can figure it out almost that way.

Q Did you see the crowd gathering in front of the saloon before you saw Arrington? A A man called my attention to it.

Q Who called your attention to it? A A man standing there.

Q What is his name? A I don't know his name. He said, "A crowd outside; what is the trouble?"

Q He had to tell you that? A He didn't have to; I saw it out of the window.

Q You were reading near the window? A At the time the crowd ---

Q Somebody told you there was a crowd outside? A This man tapped me on the shoulder.

Q somebody tapped you and said there was a crowd outside? A Yes, sir.

Q Were you near the window or was the man looking out? A He was looking out directly.

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Q Did you hear the noise of the crowd? A No, sir; no noise of any account at all.

Q When you looked out what did you see? A A crowd out there and Arrington and Rogers in the center.

Q At that time didn't Arrington have hold of Rogers?
A No, sir; he hadn't his hands on him; he had the stick over his head; I saw the stick in the air.

Q What was he doing with the other hand? A I could not see his other hand.

Q You don't know but he may have had hold of him?
A probably so, I did not see him.

Q What do you mean? A There were people taller than I am.

Q Why did you say just now he didn't have hold of him?
A They seemed to be apart a good deal.

Q You saw the man's hand in the air and you couldn't see whether he had hold of him? A No, sir, I did not.

BY THE COURT:

Q What was he saying while waving the stick in the air? A He was calling for the police or something of that kind.

BY MR. MCGUIRE:

Q You met the defendant in that saloon quite often, didn't you, this man Rogers? A Well on and off, if I had been in there probably a couple of times a week.

Q Whenever you have gone in there he was there wasn't he? A No, sir, not all the time.

Q He was there frequently? A I wouldn't say that; I admit I met him in there several times, but I--

Q Was Arrington staggering when you saw him holding his stick up? A Yes, sir.

Q Very badly? A He staggered out of the door.

Q Was he staggering very badly? A Yes, sir.

Q Listen to me please. A Yes, sir.

Q He was staggering very badly? A Well, he was staggering.

Q Very badly? A Well I don't know what you mean by badly, he was staggering, that is all I know.

Q How did you see that if the crowd was around? A I saw him

stagger out the door before that?

Q You concluded he was staggering in the crowd because he staggered going out of the door? A I should judge so.

Q That is the way you judge? A The actions of a drunken man--

Q Do you understand I asked you whether Arrington was staggering at the time you saw him from the window in the crowd, didn't you? A Yes.

Q I asked you how could you see that he was staggering if the crowd was around? A I could see his shoulders going like that. (Illustrating)

Q You could see his shoulders going? A Yes, sir.

Q Did he strike Rogers with his stick? A I didn't see him strike him, no, sir.

Q Yet you could tell he was staggering from the motions of his hand? A He appeared to be sagging his shoulders back like lurching over to him.

Q How long did that last? A Well, it seems that when--

Q How long did it last? A Two or three minutes, I guess a minute probably ; he appeared to be moving.

Q Then you went outside? A yes, sir.

Q They went to the corner? A Yes, sir.

Q Did Arrington have hold of Rogers as they went down to the corner? A I don't remember whether he had hold of him or not now.

Q How did Rogers come to the corner? A Quite a crowd got around.

Q (Repeated) How did Rogers come to the corner unless he had him in custody somewhere? A I didn't see him have hold of him, I know that much.

Q You saw Rogers go to the corner with Arrington?

A I saw the two men, they went down.

Q Did you see them go down together? A Yes, sir.

Q Whom did you first tell this story to, who did you tell it to? A Whom did I first tell it to?

Q Don't repeat my questions? A Nobody.

Q Do you mean to say you never told it to anybody until you went on the stand? A Never in my life, sir.

Q Ever talk to defendant's counsel about the case?

A No, sir, I haven't seen the counsel, no, sir.

Q You didn't know what questions he was going to ask you?

A No, sir, I did not.

Q Have you been to see Rogers in the Tombs? A Once, yes, sir.

Q Then didn't you talk with Rogers about what happened that afternoon? A I did not have time to talk with him.

Q Will you listen to me and if you do we will save time. Did you talk to Rogers about what happened that afternoon or evening? A No, sir, I did not.

Q Not a word? A No, sir.

Q How did he know you could testify in his case? A Because he knew I was the last man he spoke to in the saloon.

Q That was five minutes before he met Arrington, wasn't it? A Five minutes before he met him.

Q Because he was in that saloon five minutes after Arrington went out, wasn't he? A He was more than five, more than ten minutes there.

Q Yet he knew that you could testify that he was not the robber because you had been in the saloon within some five or ten minutes before he was seen with Arrington by you? A I suppose he imagined that way.

Q He imagined that way. Witness do you mean to say that you never talked to Rogers about being a witness for him in this case. Answer me. A Not ten words, no, sir.

Q You did talk ten words with him then, didn't you? A Not much more, didn't have a chance.

Q You did talk ten words with him? A Yes, sir.

Q So when you said you never told what you were going to tell on the stand here you told what wasn't true, is that it?

Objected to; objection overruled; exception.

Q You may answer it?

Objected to; objection overruled; exception.

A Yes, sir.

Q Answer the question? A Yes, sir.

RE DIRECT EXAMINATION BY MR. ROBINSON:

Q Have you got a subpoena? A Yes, sir.

Q With you? A Yes, sir.

Q Will you let me see it? A Yes, sir.

Q Will you let me see that officer. Who served this on you? A I don't know, sir.

Q Where did you get it? A It was left at my home, while I was working.

Q Do you know whether this was served by anybody from my office or from the office of the District Attorney?

A The District Attorney he said it came from.

Q A subpoena served on you by the District Attorney?

A Yes, sir.

MR. McGUIRE: Your Honor will kindly note at the request of the prosecution that yesterday morning the defendant's counsel, asked in open court, if I, on behalf of his client, the defendant, would issue a subpoena to this man McGowan in order to procure his attendance as a witness for the defendant. Your Honor will kindly have noted on the record that ^{the} statement of the defendant's counsel now deliberately in the course of the trial asking this witness questions looking to proof of the fact that the subpoena came from the District Attorney's office --

MR. ROBINSON: It is a case of the pot calling

the kettle black. I will accede to what the District Attorney says but the subpoena was served by some one from the District Attorney's office and not from my office.

The Court then admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until tomorrow, Wednesday morning, May 17, 1911 at 10.30 o'clock.

New York, May 17, 1911.

TRIAL RESUMED.

FRANK ROGERS, the defendant being duly sworn in his own behalf, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON.

Q Where do you live? A 56 129th street.

Q How old are you? A 37 years of age.

Q What is your occupation? A Machinist and tool maker.

Q Do you remember what happened on the 4th day of March, 1911? A I do.

Q About seven or half past seven of that evening?

A Yes, sir.

Q Were you in the saloon at Third avenue and 128th street? A I was in the saloon between 127th and 128th street.

Q Were you in that saloon? A I was.

Q Will you talk out loud. About what time did you go into that saloon, if you remember? A Well, I went in the saloon about 7.30.

Q Did you find any people in the saloon when you got

there? A There were about twelve or fifteen people in the saloon.

Q At the time you came in? A Yes, sir.

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

Q Was Mr. McGowan who testified here yesterday there?

A Mr. McGowan was right inside the door as I entered; I spoke to him first.

Q Now what else did you do when you came into that saloon at that time? A I bought a package of cigarettes, right at the end of the bar near the door; the cigar case was there.

Q Did you see the complainant there? A Yes, sir; the complainant was sitting or standing right on my left.

Q What was his position with regard to the bar?

A Why there were eight or ten men at the bar.

Q What I mean is his position with regard to the bar?

A He was drinking.

Q Was he near the bar or away from it? A No, sir; right up at the bar.

Q What was he doing if you saw? A He was drinking there.

Q Did you see what he was drinking? A Well, I heard him call for hot rum.

Q Well you heard him testify here yesterday that

he was treating in that saloon, is that right?

MR. McGUIRE: If your Honor please may I object to the question. I submit, your Honor, that the proper way to bring out this testimony is by asking the witness what happened on the occasion and not to lead him.

MR. ROBINSON: The witness hasn't testified to anything as yet.

THE COURT: It is not quite the proper thing to have the witness characterize the testimony of another witness in any way but I will allow him to answer that question.

Q (Question repeated) A He was.

Q How many times did you see him treat while you were there?

MR. McGUIRE: I object to that. I submit the time has come to stop leading. The witness ought to tell his story of what happened in that place, and not be led along on the record of some other witness.

THE COURT: I will allow that question.

A Three times.

Q Will you state to the Court and jury what else took place in the saloon while you were there and talk up loud.

A I stood at the end of the bar and this man just tapped me on the shoulder and asked me to join him in a drink. I

had a drink with him. I accepted the invitation and I had three drinks with him while I was in there. Then he started talking about the chief of the Fire department and also being a professional theatrical man. He asked me how old I thought he was and I guessed about forty-five or fifty years old; he told me he was fifty, but you wouldn't think so because I dye my mustache." He showed me his diamond rings and his watch. That is all that I seen in there, just treated three times I had three drinks with him while I was in there; that is all.

Q How was the complainant dressed on that occasion?

A He had a silk hat on and a tuxedo coat; a long tuxedo coat and he carried awalking stick.

Q Did the complainant at any time, did Mr. Arrington at any time that you were in the saloon take out any wallet?

A He did not.

Q Did you know while you were in the saloon that Mr. Arrington possessed a wallet? A I did not.

Q Who was paying for the drinks during these times that you have just testified to? A Mr. Arrington, the complainant.

Q How did he pay? A He took the money from his trousers pocket.

Q Was it in bills or in currency? A He changed a bill, the first drink that he bought, the first round he bought he

changed a bill, took the bill from his pocket with change, and he put the change in that pocket.

Q Is that the only time you saw him take out a bill?

A Yes, sir; that is the only time he changed a two dollar bill.

Q How long did Mr. Arrington remain in the saloon while you were there, if you can tell? A Well, probably 20 minutes or 25 minutes.

Q Then what did he do? A He turned and bid me "good night". He told me that he would be pleased to meet me again and I told him I was sorry that the circumstances that I was in, that I could not retaliate and buy or treat him; he shook hands with me, bid me good night and went out.

Q As he was walking out could you tell from the way he walked whether he was drunk or sober?

MR. MCGUIRE: I object to that. I submit that the time must come for this witness to testify and for counsel to stop testifying.

MR. ROBINSON: I object to the manner in which the District Attorney objects to these questions. I think there is a proper way without characterizing them --

THE COURT: The District Attorney may object and we will save time on both sides if there is not so much occasion for objection.

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Objection sustained; exception.

Q Can you tell what was the condition of the complainant with regard to his being drunk or sober?

Objected to; objection sustained; exception.

THE COURT: You may ask him what he did and what he saw.

Q Will you describe to the Court and jury the way that the complainant walked out of that saloon? A I could tell that he was intoxicated.

MR. McGUIRE: I object to what he could tell your Honor.

MR. ROBINSON: Will you let the witness testify.

MR. McGUIRE: I submit the witness is making improper answers.

THE WITNESS: It was plain to be seen he was intoxicated.

THE COURT: Objection sustained. Strike out the answer. You were asked to tell what he did and how he walked.

THE WITNESS: Well, he only had about four feet to walk to get out of the saloon; he was right near the end of the bar, at the entrance of the saloon.

BY MR. ROBINSON:

Q Did he walk straight or did he stagger?

MR. McGUIRE: I object to that. Counsel is now

asking a question that suggests an answer.

A He kind of staggered as he reached for the doorknob, the handle of the door.

Q Did you remain in the saloon after the complainant left or did you go out with him? A I remained in the saloon talking to Mr. McGowan about a position I got that day.

Q How long did you remain in the saloon after the complainant left? A Well, probably eight or ten minutes.

Q Did you see any one leave with the complaining witness or did the complaining witness walk out alone? A After the complainant went out there was two men that had been standing at the rear end of the bar, went out directly after him, two stout men; they went out probably in an intermission of a moment or so, they followed him out; I stood right at the end of the bar near the door, talking to Mr. McGowan.

Q After you had this conversation what did you do?

A I told Mr. McGowan I was going out to get some collars or going out to do some shopping, something of that sort.

Q What did you do then? A I walked out; I went out down towards 127th street; I was going to 125th street; but I walked towards 127th street and that is where I saw the complainant.

Q What did you see? A I saw there was six or eight people standing around him, these two men-- one man on each side of him. As I got close to him, the opposite side of

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the street, these two men pulled away from him. The complainant turned around and grabbed me by the coat, struck me on the head with a cane and started to holler police.

Q Did you have any conversation with the complainant at the time? A I didn't have a word of conversation with him.

Q Did the complainant have any conversation with you?

A No, sir.

Q Did you insert your hand into his back trousers pocket and extract therefrom a wallet? A No, sir, I did not.

Q What else took place while you were standing there with the complainant? A At the time there was a crowd gathered

I stood there for probably five or six minutes before the officer came; this man was hollweing police, calling for the police all the while I stood there.

Q Did he have hold of your during all the time that you stood there? A No, sir; he did not let go of me but twice, two different times, then he grabbed me again just as the officer came he had hold of me; I was standing up against the window there.

Q What took place then? A The officer asked what the trouble was and this man claimed that I had robbed him.

Q What did he say, what did the complainant say to the officer? A That is the statement or the remark that he made; he had been robbed, that I robbed him.

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Q What did you say, if anything? A I told him he was wrong, that I had nothing to do with it, I told him he was wrong, mistaken, I tried to explain to him and he struck me over the head with his walking stick.

Q I show you people's Exhibit 1, and ask you where and when you first saw it for the first time? A The first time I saw that wallet was in 126th street court, or station house there.

Q Who had it, who was holding it? A The officer had it; the officer that made the arrest.

Q I ask you whether you took this pocketbook from the complainant's left hand trousers back pocket? A I did not.

Q One more question. Have you ever been convicted of any offense? A I never was arrested before and am thirty-seven years of age; I am a working man, work every day.

CROSS EXAMINATION BY MR. McGUIRE:

Q You talked to McGowan about this case before he went on the stand as a witness, didn't you? A I saw McGowan --

Q Will you answer me. Did you talk to him?

MR. ROBINSON: I object to that.

Q Before he went on the stand as a witness?

MR. ROBINSON: I object to these tactics on the part of the District Attorney. I object to the bullying methods of the District Attorney, I believe the District Attorney is

a quasi judicial officer acting in the interest of justice, and I object to his bullying the witness when the witness is trying to answer his question.

THE COURT: If there are any manifestations of verbal violence or anything like that that is a proper objection to make.

MR. ROBINSON: The District Attorney by his loud sounding voice drowns any objection that I am trying to raise, and the Court has perhaps been unable to observe them although I have objected many times, and I am prepared now to leave to the Court --

THE COURT: There is no necessity for that.

MR. McGUIRE: I will ask the Court to restrain counsel so that we may proceed with the trial.

MR. ROBINSON: I would ask that you restrain yourself.

THE COURT: I ask that you carry on the proceedings with due regard to decorum and professional etiquette.

MR. McGUIRE: Will the stenographer kindly repeat the question?

(Question repeated).

MR. ROBINSON: If the Court is dissatisfied with the way I am proceeding with the case I am ready to withdraw from the case now.

THE COURT: The Court is simply preserving order and the dignity of the Court and suggest to the attorneys on both sides that they do the same.

MR. McGUIRE: I must say for the prosecution, your Honor, that I am amazed, at this outburst. The witness did not answer my question and I was insisting upon an answer.

MR. ROBINSON: You would not let him answer it.

(Question repeated).

A About two moments, yes, sir.

Q About two moments? A Two minutes.

Q Why didn't you say yes without saying two moments?

A Because that is about the length of time that I talked with him.

Q Did you hear him say yesterday that he had never said a word to you about it before he went on the stand?

A No, sir.

Q You didn't hear him say that yesterday? A No, sir.

Q You heard him testify yesterday, didn't you?

A Yes, sir.

Q Did you hear him say that he went into that saloon about 20 minutes after five and that you came in ^{about} an hour afterwards? A Well, Mr. McGowan --

Q Did you hear him swear to that? A He was mistaken.

Q It wasn't so, was it? A He was mistaken in the time; that is all.

Q Well, it wasn't so, isn't that so? A It was after seven o'clock when I was in there.

Q Will you answer yes or no? A No, sir.

Q you mean the fact was not as McGowan stated it?

A Well, yes, sir, that is what I meant, it was not at that time.

Q Now, you say you came in at half past seven?

A About 7:30 I entered that saloon.

Q Don't you know that the arrest at the station house was entered as 20 minutes of eight, 7:40?

MR. ROBINSON: I object to that, if the Court please.

Q Do you know that or don't you?

MR. ROBINSON: Dont answer the question until I object. There is nothing to show that the arrest was entered at 20 minutes of eight.

THE COURT: It is not necessary that it should be. I will allow the question.

MR. ROBINSON: I take an exception.

THE COURT: This is corss examination, you should remember.

Q Do you know that? A I do not know it, no, sir.

Q Did you see a clock in the station house? A I did.

not notice.

Q Did you see a clock in the station house? A No, sir; I did not.

Q Did you hear McGowan say when you left you said you were going uptown? A I heard him say that.

Q Was that so? A I said I was going --

Q Was that so, did you say that to him?

A I might have said so; I am not positive.

Q Did you or didn't you say it to him? A I am not positive just what I said at that time.

Q Why, then, did you go down to 125th street?

A I was going to buy some collars.

Q Yet you told McGowan you were going uptown?

A I don't remember saying that to McGowan.

Q Did you say it to him, answer me yes or no?

MR. ROBINSON: I believe the witness is testifying to his best recollection when he says he does not remember.

MR. McGUIRE: I ask that counsel be instructed not to interrupt the cross examination of the witness every time I ask a question.

THE COURT: I want to say that there is a proper way of objecting to a question. Now, then, if you object, of course, the Court will pass upon it and then there won't be any necessity for doing the thing

which you have criticized the District Attorney
for doing.

A I don't know.

Q Did you hear McGowan testify about Arrington showing
his pocketbook?? A I heard him.

Q How long were you in that saloon with McGowan?

A Well, probably --

Q What is your best recollection? A About 20 or
25 minutes.

Q Did you hear him say you were there an hour with
him? A No, sir.

Q You didn't hear McGowan say that yesterday?
A No, sir.

Q During the time you were there, was it during that
time that the pocketbook was shown in the sight of
McGowan? A There was no pocketbook exposed at all
while I was in that saloon.

Q You didn't see any pocketbook? A No, sir;
I didn't see any pocketbook.

Q You heard McGowan testify yesterday, didn't you?
A Yes, sir.

Q Heard him testify about seeing the pocketbook?
A No, sir; heard him testify about seeing the pocketbook
but not at the time I was there.

Q That he could testify to the bills in it because

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it was opened so wide? A yes, sir.

Q You didn't see anything like that? A No, sir.

Q How long were you in that saloon with Arrington?

A About 15 or 20 minutes.

Q About 15 or 20 minutes? A Yes, sir.

Q Sure? A Yes, sir.

Q Sure? A Yes, sir, positive, well I won't say positively, about that time, 15 or 20 minutes.

Q McGowan was there before you came in? A Yes, sir.

Q Arrington was there before you came in? A Yes, sir.

Q Are you positive? A yes, sir.

Q You heard Arrington swear yesterday you were in the saloon when he came in, didn't you? A It was a false statement.

Q Did you hear him say it? A Yes, sir, I did.

Q That isn't true, is it? A It is not.

Q Did you hear McGowan testify yesterday that he spoke to you and that he then introduced you to Arrington?

A Yes, sir.

Q Was that true? A Arrington spoke to him.

Q Well is it true what McGowan said? A Well, he introduced me to him.

Q But you said just now that it was Arrington who

asked you to take a drink? A Well, he asked me with Mr. McGowan to have a drink.

Q With McGowan? A Yes, sir.

Q So you had been talking to McGowan before Arrington spoke to you? A Yes, sir.

Q How many times did you drink with Arrington?

A Three times.

Q In how long an interval? A I didn't have one drink drank before he would order another one.

Q How long an interval was it you had those drinks with Arrington? A Three or four minutes.

Q Was he drunk when you took the drinks with him?

A He was intoxicated.

Q You were drinking with a drunken man? A There were eight or ten drinking.

Q Were you or were you not? A Yes, sir.

Q Arrington had hold of you when he said that you had robbed him, didn't he? A Well he grabbed, he caught hold of me.

Q Didn't he or did he have hold of you? A Yes, sir.

Q He kept hold of you until the policeman came?

A No, sir.

Q Never let you go? A If I wished to get away I could have done so.

Q Answer me. A probably two minutes or a couple of minutes a moment or so, he grabbed hold of me again, after he let go some man came up and said he was an officer.

Q Do you understand that you are answering questions?

A Yes, sir.

Q You say that Arrington let go of you after he caught youyou and said you robbed him? A Yes, sir.

Q How long did he hold you on the first occasion?

A Well, probably three or four minutes, probably.

Q Are you able to say without making it probably, what is your recollection? A I couldn't say, well probably three or four moments I couldn't say exactly.

Q What do you mean by moments? A Minutes.

Q Did you see McGowan in the crowd at that time?

A I did not.

Q Where were you when he was holding you? A On the southwest corner of 127th street.

Q How did you get up in front of the saloon with Arrington? A I was not up in front of the saloon.

Q Did you hear McGowan testify yesterday, did you, won't you answer? A Yes, sir.

Q Didn't you hear him swear that a man in the saloon tapped him on the shoulder, pointed to a crowd outside in which you and Arrington were standing on the sidewalk?

A In front of the saloon?

Q Did you hear him or didn't you? A No, sir.

Q You didn't hear him swear to that? A No, sir; I was not standing in front of that saloon.

Q I didn't ask you that. I asked you whether McGowan swore to that yesterday as you recollect? A I don't recollect that.

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

Q As a matter of fact you say it never did happen; you never were in front of that saloon with Arrington and a crowd around you? A No, sir, not in front of the saloon, no, sir.

Q Did you hear McGowan testify yesterday that you were out in the middle of the street 15 feet away from Arrington? A Yes, sir.

Q Is that so? A No, sir; I don't -- I was not in front of the saloon; I was not out in the street; I was on the sidewalk.

Q Was that so or wasn't it so? A No, sir.

Q Did you see the two men again? A I did not.

Q Who went out with Arrington? A No, sir.

Q Were they friends of yours? A Never saw them before to my recollection.

Q Have you seen them since? A No, sir.

Q Had never spoken to them before? A No, sir.

Q They were drinking with you and Arrington?

A They were standing at the--

Q Were they or not? A I was drinking in the same bar-room, yes, sir.

Q They were two of the ten men, were they? A Well there were ten or twelve men standing at the bar.

Q There were two of them? A Yes, sir.

Q Who were the others? A Well, I couldn't tell you, I am not acquainted with every one in the place.

Q But you go there quite often? A I must have been in there three times since I have been up in the neighborhood there.

Q You heard McGowan testify yesterday, didn't you?
(No answer.)

Q You did meet McGowan in the saloon? A Yes, sir, I have met him in there before; I met him--

Q Didn't you as a matter of fact frequent that saloon?

A Well, I have been in there occasionally when I used to --

Q You don't know who the men were that were drinking at the bar? A No, sir.

Q They were all strangers to you except McGowan, were they? A Yes, sir; I knew McGowan.

Q Were they all strangers to you? A Yes, sir.

Q Except McGowan? A yes, sir.

Q Now, when you saw these two men follow this drunken man out into the street, you didn't do anything, did you? A No, sir.

Q You stood there? A I did.

Q How long did you stay there? A About 10 minutes eight or ten minutes.

Q Eight or ten minutes? A Yes, sir.

Q Are you sure? A Yes, sir.

Q Your mind clear now it was eight or ten minutes? A Yes, sir.

Q What time would that be then? A Well, nearly eight o'clock, ten minutes of eight, or something like it, at that time it would be about 20 minutes of eight, I couldn't say exactly just what time it was.

Q You said exactly it was half past seven when you went in there? A About half past seven.

Q How long were you there? A I was there about 20 minutes.

Q How long did you wait after Arrington went out? A About 10 minutes.

Q That would be half an hour? A Yes, sir about a half an hour.

Q So it would be eight o'clock by that time? A Yes, sir; around eight o'clock.

Q Then you went out? A Yes, sir.

Q Where did you see Arrington? A On the corner of 127th street.

Q Was there a crowd around him? A Yes, sir.

Q A crowd was around him? A Well there was a crowd around him.

Q How did you get into the crowd and up against him? A Well, not a crowd, not exactly a crowd, six or eight people standing there with these two men.

Q How did you get through these six or eight people and the two men so as to get up to Arrington? A They were standing on the outside of the sidewalk, and I went in between Arrington and these people that were standing on the sidewalk.

Q You didn't go further away in order to pass down the street? A I would have helped Mr. Arrington if I thought he needed it.

Q Did you go to help him? A I didn't go with that intention, but I would have done so.

Q What were they doing that you went to help him? A If I thought he needed assistance I would have assisted him.

Q You are telling about something that might have happened. I am not asking you about that. Will you get that clear in your mind. So you didn't go to help Arrington,

did you? A I was just walking--

Q Did you go to help Arrington? A No, sir.

Q How did you get up against him? A As I got to him these two men broke away from him, and turned around and grabbed me with his left hand and struck me with his right hand.

Q So that he had hold of the two men, hadn't he?

A No, sir.

Q What did you say they broke away from him then?

A One in one direction and one in the other.

Q Did they break away from him or get away?

A They went away.

Q Why did you say they broke away from him? A Well, that is what I meant; they walked away from him; they didn't walk away from him--

Q How did you get up so close to these men struggling with Arrington that he reached out and caught you?

A There were people standing there.

Q (Repeated). A By walking up there between the people and Arrington and these two men.

Q You went into the crowd of them, did you? A I walked right in between them.

Q Did you walk into the crowd of people? A Yes, sir.

Q Up to where he was struggling with these two men?

A There was no struggling at all.

Q What did you mean by saying they broke away from him? A They walked away, one went one side and one the other.

Q Didn't Arrington have hold of them? A No, sir.

Q Why did you say it a moment ago? A I did not mean that-- when the men had hold of him.

Q The men had hold of Arrington? A Yes, sir.

Q Did they? A Yes, sir.

Q You didn't go up to give him any help? A No, sir.

Q Yet you had been drinking with him a short time before?

A Yes, sir.

Q Why did you go near him at all? A Well, I was--

Q Answer me in your own way, why did you go near him at all? A Well I thought probably he was intoxicated and they were helping him home, each one had hold of each arm, I didn't know whether he was acquainted with them or not.

Q Didn't you hear him say at that time that you had robbed him? A No, sir.

Q Are you sure that you didn't say that this morning?

A Quite sure.

Q Now what was the fact, what did Arrington say to the men or to you? A When Arrington grabbed hold of me--

Q Before he grabbed hold of you what was said?

A I don't know.

Q You were right close beside him, weren't you?

A No, sir, I was walking from 127th street.

Q You got up to him, didn't you? A Yes, sir.

Q What did he say then? A Well he didn't say anything.

Q What did the men say? A They didn't say anything; they walked away from him.

Q Were they talking to him? A Not as I could hear; I could not hear them.

Q Was he talking to them? A No, sir; not as I know of.

Q So it was silent? A As far as I know.

Q There were a crowd of six or seven people around him? A I suppose the people that was there --

Q (Repeated). A Yes, sir; on the outside, on the sidewalk.

Q You went through that crowd of six or seven people up to where Arrington was with these two men that were holding him, and you heard nothing said either by Arrington or the men? A No, sir; I did not.

Q You got right up to Arrington? A I just--

Q Did you get right up close to him? A Not close to him, no, sir.

Q How near to him did you get? A Probably three feet.

Q Then did he walk over to you? A He turned around quick, I was standing at the time, I was right in back of him and he grabbed me by the coat.

Q Was his back towards you? A Yes, sir.

Q Where were the two men talking him to? A I didn't know, he was talking to them.

Q Where were the two men that you saw? A They went away.

Q Where were they when you first saw them and Arrington had his back to you? A The corner, southwest corner of 127th street.

Q You walked up to the back of Arrington? A Yes, sir.

Q Through the crowd to the back of Arrington?

A I didn't have to pass through the crowd.

Q How did you get through these six or seven people standing around there? A I passed in between them.

Q You went through the crowd to Arrington, didn't you? A Yes, sir.

Q He was standing with his back to you? A Yes, sir.

Q At that time didn't you raise his coat and put your hand in his pocket? A I did not.

Q Wasn't it then he turned around and seized you?

A No, sir.

Q Did he let go his grip of you until the policemen came up? A He did.

Q For how long? A Probably a minute or two.

Q What did you do during that time? A I stood there; somebody told me to go away and I says, "I have done nothing

I will stand here.

Q Sure of that? A Yes, sir.

Q Why did he take you by the collar again after a minute or two? A I don't know.

Q What did he say? A He said "I have got you you robbed me."

Q Now when did he say "I have got you, you robbed me"?

A Just before the policeman came up.

Q How long were you in his company at that time, how long were you with him? A I had been over five minutes before the officer came, five or six minutes.

Q He didn't tell you that you robbed him before?

A No, sir; he was hollering police.

Q That is all he said? A Hollering police.

Q When he caught you didn't he say "I have caught you you scoundrel"? A No, sir.

Q I won't let you go? A No, sir, he did not.

Q What did he say to you? A Just didn't say anything, he grabbed hold of me, started to holler police and called for an officer.

Q Didn't he say, "You robbed me"? A No, sir.

Q Didn't he say "You robbed me"? A No, sir.

Q When did he say that, he did say it at some time?

A When the officer came he said that, "he said, "This man robbed me". I told him he was mistaken.

Q What time was this? A It must have been nearly eight o'clock or ten minutes of eight, something like that, I couldn't say exactly.

Q This man was drunk you say? A He was intoxicated.

Q He was holding on to your collar? A He had a hold of the lapel of my coat.

Q He was shouting police? A Yes, sir.

Q And struck you with a stick? A Yes, sir.

Q And he was drunk, was he? A Yes, sir.

Q Was he? A Yes, sir.

Q He held you for five minutes there, did he?

A Well, it was an intermission of a moment or two, he did not have hold of me.

Q For a moment or two? A yes, sir.

Q You heard McGowan testify yesterday? A Yes, sir.

Q You heard McGowan didn't you? A Yes, sir.

Q Heard him swear that for ten minutes he stood there and that the man never put his hand on you? A Yes, sir.

Q Was that true? A No, sir; the man had hold of me.

Q What McGowan said was not true, was it?

MR. ROBINSON: I object to that as characterizing the testimony of another witness. It is for the jury to characterize it.

Objection overruled;

Q How many people were there before the policeman came up? A Probably 50 people had gathered.

Q You were in the middle of the crowd with Arrington, weren't you? A No, sir; I was up against the window.

Q Arrington had you up against the window with a crowd of 50 people there about you? A Yes, sir.

Q The policeman worked his way through the crowd?
A Yes, sir.

BY MR. ROBINSON:

Q Just one question. When you were asked a moment ago to fix the time you came in, had you looked at any clock before going into that saloon? A I looked at the clock in the restaurant where I had been, I had been in the restaurant a lunch room.

Q What did the clock show when you looked at that?
A 20 minutes past seven.

Q How far away from the saloon was that restaurant?
A Two blocks away.

Q Did you make any other stop on the way from the restaurant to the saloon? A I stopped and looked in the clothing store window.

Q You don't know whether that clock you saw in the restaurant was correct, do you? A I do not.

Q Was there a clock in the saloon? A There was but I did not--

Q Did you happen to look at it? A No, sir, I did not.

Q Did you happen to see the clock in the police station? A No, sir.

Q Did you at any time know until Mr. McGuire asked you whether it was 20 minutes of eight when you were brought to the station house? A No, sir.

Q When you testified it was about half past seven when you went into the saloon that was your best recollection? A Yes, sir.

R E B U T T A L.

O F F I C E R C O G G I N S, a witness called on behalf
in rebuttal
of the People, being duly sworn, testified as follows.

BY MR. MCGUIRE:

Q Mr. Coggins, at what hour was it that the defendant came to the station house with you and Arrington?

A 7.40 exactly.

BY MR. ROBINSON:

Q Just a minute. How far away from the station house is the place where you put the defendant under arrest? A One block, 127th street, the station house is 126.

Q How long did it take you to go that block? A About two minutes.

Q A crowd following you? A Yes, sir.

Q Did they interrupt you at all? A No, sir.

Q When did you ~~note~~ the time the moment you entered the station house or when the arraignment was made?

A Just when I entered the station house.

Q It was then 7.40? A Yes, sir.

Q Do you know whether that clock in the station house is timed with any Western Union or any Master clock?

A Timed every night at 12 o'clock.

THE COURT: Has the officer been asked about the sobriety or inebriety of the complaining witness?

BY MR MCGUIRE:

Q At the time you made the arrest did you speak with Arrington? A He said that he had robbed him.

Q Did you speak with Arrington? A Nos, sir, nothing at all.

Q Did he say anything to you? A Yes, sir, he said this man had robbed him.

Q You spoke to him? A Yes, sir.

Q He answered you, didn't he? A Yes, sir.

Q When you showed him the pocketbook you say that you said something to him? A Yes, sir; he said it was mine.

Q That it was his? A Yes, sir.

Q Did you walk with him to the station house? from the

place where the arrest was made? A Yes, sir; I had Rogers by the arm and he was on the other side.

Q From your observation of him and the conversation that you had with him in your opinion, was he sober or drunk at that time? A You could notice a few drinks on him, that is all; he was apparently well able to take care of himself.

BY MR. ROBINSON:

Q When you say he was well able to take care of himself just what do you mean? A Well you could notice that he had a drink or two taken but he was able to walk just as good as if he hadn't had any at all.

Q You could observe he had one or two drinks?

A Yes, sir; you could notice a little on him.

Q On what did you base your observation? A Well he smelled of liquor.

Q Of liquor. A Yes, sir; he smelled of liquor.

MR. Robinson closes the case on behalf of the defendant.

Mr. McGuire closes the case on behalf of the People.

MR. ROBINSON: I object to the statement that the most the defendant is an impudent highway robber as has come into this court for some length of time.

THE COURT: That is an objectionable statement.
The District Attorney should confine himself to matters
in evidence concerning this charge and state nothing
about what has transpired during the past two years.

MR. McGuire concluded his summing up.

THE COURT'S CHARGE.

O'SULLIVAN, J.-

Gentlemen of the jury:

The defendant at the Bar, Frank Rogers, is charged in the indictment in this case with robbery in the first degree, grand larceny in the first degree and assault in the second degree.

The charge of receiving stolen property will not be submitted to you.

"A person who takes from the person of another personal property against the will of the owner of that property by means of force or violence is guilty of robbery".

If the person who so takes personal property by violence from the person of another and against the other person's will takes it when he is helped by an accomplice or another person doing violence to the owner of the property, actually present that it is to say if the one committing the robbery is assisted by an accomplice actually present in committing that robbery he is guilty of robbery in the first degree.

Larceny in the first degree is committed when personal property of any value is taken or stolen from the person of another in the night time.

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Assault in the second degree is committed when one commits an assault with an intent to commit a felony. A felony is a crime the punishment of which means imprisonment in a State prison or punishment by death. So that any crime which is punishable with a term in State prison is a felony.

or property

The taking of money from the person of another in the night time is grand larceny in the first degree and that is a felony. So that is one intending to take money from the person of another in the night time places violent hands upon that other person, with the intent, as I have said, to commit a felony, and he commits an assault by either the placing of violent hands or the placing of hands on the person he does it with intent to commit a felony.

These are all the three charges which grow out of the alleged transaction set forth in the indictment.

If the Prosecution proves to your satisfaction beyond a reasonable doubt any one of these charges why then it would be your duty to convict the defendant and bring in a verdict against the defendant for the commission of that particular crime which you believe has been proved to your satisfaction beyond a reasonable doubt, either robbery in the first degree, taking by violence personal property assisted by another actually

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present, or grand larceny in the first degree, taking and stealing personal property from the person of another in the night time, no matter what the value is-- that is grand larceny in the first degree.

Assault in the second degree is a person intending to commit a felony and with that intent lays violent hands on the person of another, that is assault in the second degree.

You are to take all of the circumstances surrounding this transaction into consideration, the person, what they were doing, the character of the place, the time being the night time which is a necessary element in larceny.

In every criminal action the defendant is presumed to be innocent until the contrary appears, and that contrary, namely guilt, must be established to your satisfaction beyond a reasonable doubt before you will find a verdict of guilty.

Now is there in this case that which satisfies you, under your oaths, after investigating the case thoroughly enough to convince you beyond a reasonable doubt of this defendant's guilt. If there is your duty is plain and if there is not enough evidence to satisfy you to that extent your duty is just plain and

the defendant should have the benefit of the doubt.

There has been something said here about the sobriety of these people. Notwithstanding what other witnesses may say you are to use your every day intelligence, gentlemen, as to what was the condition of that complaining witness after taking several hot rums as he says he did, and as to what was the condition of the others who took their beverage with him at that time. If you can find from the evidence of this man, having admitted his indulgence in hot rum, enough to satisfy you that his memory is clear and his testimony convinces you beyond a reasonable doubt then you may convict the defendant. There is the testimony of other persons who were not drinking. The officer testifies concerning the condition of the complaining witness and I don't know as any other body but himself testified concerning that and he said he knew what he was doing. If you believe that this testimony raises in your judgment a reasonable doubt of this man's guilt you will have nothing else to do than to declare him innocent. On the other hand as I have said, taking all of the circumstances into consideration may not the fact that the man had had several glasses of rum be that thing which might attract others to him for guilty purposes. Will a man in his sober senses be the subject of an attack

so quickly by men who have criminal designs upon him. Will he be so easily the subject of attack as a man who is in his sober senses. May not that be a fact for you to consider. Aside from the consideration of the testimony of a man drunk at the time, concerning which he testified, may not be of such a strong character it may be that you may view it in that light or any light which satisfies you to be the light of reason.

MR. ROBINSON: I ask your Honor to charge the jury that there is no evidence showing that the defendant had the complainant's pocketbook in his pocket or had dropped it.

THE COURT: I so charge.

MR. ROBINSON: I ask the Court to charge the jury that there is no evidence to show that the pocketbook at the time the policeman found it was between the feet of the defendant.

THE COURT: I refuse to so charge. I instruct the jury that the taking of the pocketbook by this defendant from the pocket of this complaining witness is the matter at issue. You have to determine whether or not there is proof of that sufficient to convince you as I have already charged you.

(The jury returned a verdict convicting the defendant of grand larceny in the first degree and assault in the

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second degree as charged.)

MR. ROBINSON: I move to set aside the verdict on the ground that it is against the weight of evidence and upon all the grounds set forth in Section 999 of the Code.

Motion denied; exception.

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