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COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York, Part II.

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

-against-

WILLIAM DYM, indicted as WILLIAM DAM.

: Before:

: HON. EDWARD SWANN, J.,

: and a jury.
-----X

New York, April 3rd, 1912.

Indicted for robbery in the first degree, grand larceny in
the second degree, assault in the second degree,
and receiving.

Indictment filed March 14th, 1912.

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

For the People: LLOYD P. STYKER, ESQ., Assistant District
Attorney.

For defendant: SAMUEL MARKENICE, ESQ.

A jury is duly empanelled and sworn.

(Mr. Stryker opens to the jury in behalf of the
People.)

J O H N S H A K K O, called as a witness in behalf of the
People, being first duly sworn, testifies as follows:

(Through Official Interpreter Rosenthal.)

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DIRECT EXAMINATION BY MR. STRYKER:

Q Where do you live? A 575 West 130th street.

Q What is your business? A Laborer, working in a tunnel in 165th street.

Q Do you remember the 11th day of March, 1912? A I do.

Q At about 2:25 on that day were you walking along Canal street in company with some other person? A Yes.

Q What is that other person's name? A Joe Katz.

Q Is Joe Katz in court? A Yes.

Q Is this Joe Katz standing up at the back part of the room? A Yes.

Q On Canal street, at about that time in the morning, did you see this defendant? A I did see him.

Q And before you saw him did you have any money or any jewelry on your person? A Yes, I had money in my pocket, and I had a watch.

Q And a chain also? A And a chain.

Q How much money did you have before you saw the defendant? A \$20.

Q What if anything did this defendant do to you? A From the rear he struck me with a pipe and I fell.

Q Was the defendant alone or was some one else with the defendant? A There were two of them.

Q The defendant and another man? A Yes.

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Q And did you feel anybody's hands on your pockets or on your person, where you had the watch and the money? A Yes, I did feel it.

Q Whose hands were they? A The hands of the other man's.

Q Of the man with the defendant? A Who was together with the defendant.

Q Now after you felt those hands on your pocket and on your person, did you miss anything? A They took the money and the watch.

Q And after this defendant had assaulted you and his friend had taken your money and your watch, what did they do? A They ran away.

Q Did you see a policeman at that time running after them? A When they set upon me I called for the police.

Q And when the defendant started to run did you see a policeman running also? A Yes, the policeman was chasing them.

Q Is that the officer (pointing to officer Henry Eiseman)? A Yes, sir.

Q After you saw the defendant and his confederate running did you on that night at any time again see this defendant?

A Yes, they were brought to court and I saw them.

Q Well, did you see this defendant that night after he assaulted you, in company with the officer? A Yes, sir, I did.

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CROSS EXAMINATION BY MR. MARKEWICH:

Q How long do you know this defendant? A I had not known him at all until the time that he beat me.

Q Do you know of a restaurant on the corner of Madison and Jefferson street? A Yes, I used to go to that restaurant and buy my meals there.

Q You were eating there on that day, weren't you? A Yes.

Q Do you know a liquor saloon next door to the restaurant? A I don't know.

Q Did you have any drinks on that day, any drinks of liquor? A I don't drink at all.

Q Isn't it a fact that you were in the liquor saloon for about an hour on that day drinking lots of liquor, - beer and whiskey? A I never drank any liquor in my life and I wasn't there.

Q How long were you eating in that restaurant? A We were sitting there until about twelve o'clock.

Q When you say "we" whom do you mean? A I was sitting there with a countryman of mine -- two of us were sitting there.

Q Two besides you? A Two altogether.

Q And this defendant was there too, wasn't he? A I didn't see him.

Q Don't you know as a matter of fact that this defendant

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was a waiter in that restaurant and waited on you all the time?

A I have not seen him there, I don't know anything about him.

Q Don't you know as a matter of fact that you went in the liquor store next door and were drinking there about an hour with the defendant and two of your friends? A No, this is not true; I didn't go to the saloon, I never went to any saloon.

Q You say you left the saloon at 12 o'clock midnight? A Midnight, yes.

Q And from there where did you go? A Canal street, the subway. I was going on Canal street towards the subway to go home.

Q You didn't stop off anywhere at all, did you? A No place, no.

Q You were perfectly sober? A I never drank any liquor in my life, and therefore was not intoxicated.

Q You told the district Attorney that at the time you were assaulted on Canal street it was about 2:30 o'clock in the morning; is that correct? A I don't know exactly; about two o'clock, I think.

Q So it took you about two hours at least to walk from Madison and Jefferson street to Canal street, near Centre street, is that what you want the jury to believe? A We

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walked very slowly, and we were talking about matters at home.

Q As a matter of fact the reason it took you about two hours or more to walk that distance was because you had been rolling in the gutter for some time, weren't you, together with the defendant? A No, this is not so.

Q Isn't it a fact that you invited this defendant to go home with you, to go to Van Cortlandt Park, which is near your home? A I hadn't known him at all.

Q What kind of a watch did you have on your person? A Gilt, - not gold but gilt.

Q And the chain was also gilt? A Yes, the chain also.

Q Was it a long chain? A A little shorter than the chain that the counsel has.

Q When you were sitting in the restaurant was your chain exposed? A No, it was not exposed, because my coat was buttoned.

Q Do you deny absolutely that you were in the liquor saloon next door to the restaurant? A I was not there.

BY THE COURT:

Q When did you leave the restaurant? A Twelve o'clock.

Q What did you do between twelve o'clock and two thirty in the morning when you were robbed? A We were walking slowly and talking to one another.

Q How long did you walk -- how many hours? A About two hours.

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Q When were you robbed? About how early in the morning was it? A About two o'clock.

Q Where did you walk during the two hours? Did you walk all those two hours, or did you go into some other place part of the time? A We were walking all of the time.

Q Walking where? A We went out in Canal street towards the subway.

Q Well, go ahead. A We didn't go any other place.

Q It didn't take two hours to walk there, did it? A We didn't do anything, but we were walking around in that neighborhood.

BY MR. MARKEWICH:

Q Why did you walk there for two hours? Why didn't you go home and go to bed? A I think the subway station is very near, and I think it takes quite some time to get there, and we were walking, and it took us that time.

Q Where were you going? A I was going towards the subway station, in order to go home.

Q Where did you live? A 130th street.

RE-DIRECT EXAMINATION BY MR. STYKER:

Q You are not certain that it was exactly twelve o'clock when you left the restaurant, are you? A It may be five minutes after twelve.

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J O E K A T Z, called as a witness in behalf of the People,
being first duly sworn, testifies as follows:
(Through Official Interpreter Rosenthal:)
DIRECT EXAMINATION BY MR. STRYKER:

Q Where do you live? A 575 West 130th street.

Q Were you with the complaining witness on the 11th of
March, early in the morning? A I was.

Q Did you see this defendant? A On that day I had not
seen him.

Q Did you see the defendant on the night that you were
with the complaining witness on Canal street? A I didn't see
him.

Q I am asking you now ---

MR. MARKEWICH: We will concede that he was there.

Q Were you with the complaining witness Shakko? Were
you there with him at the time he was assaulted? A I was.

Q Tell the Court and the jury what you saw that defendant
do to your friend Shakko? A I saw that this defendant hit
the other man, Shakko.

Q And when the defendant did that was there any one with
the defendant? A There was.

Q Now, after that did you see the defendant or his friend
do anything with regard to the complaining witness Shakko's
pockets? A The other one did.

THE COURT: Let him tell just what occurred, in his

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own words.

Q Tell us just what happened? A After my friend was beaten, then both of them they got upon him and they took away his watch and money.

Q Tell us in your own words, as the Court suggests; go right along and tell us what happened from that time on --- what you did and what you saw? A Then Shakko, the complaining witness, started to holler --- made an outcry, and then both of the other men -- one ran in one direction and the other ran in the other direction.

Q Did you chase the defendant Dam? A No, I did not chase him.

Q Did you see the policeman there (indicating Officer Eiseman)? A Yes, the policeman came to running.

Q What happened from that time on? Tell your story in your own way. A The two started to run and Shakko ran after them and the policeman ran after Shakko.

Q Did you see the defendant Dam on a roof that night?

A I didn't see that.

Q Did you go upstairs with the policeman? A I did.

Q Did you find any one upstairs when you got upstairs?

A Yes, I have found this same man.

Q This defendant right here? A Yes, sir.

Q Where did you find him? A On the roof.

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Q Where was he lying on the roof? A In the corner next to the wall.

BY THE COURT:

Q Was he lying down on the roof, or sitting down or standing up? A He was lying down.

BY MR. STRYKER:

Q The officer then put him under arrest? A Yes, sir.

BY THE COURT:

Q How was he dressed when he was on the roof? A In the same clothes as at the present time.

Q Well, he had his clothes on, did he? A Yes, sir, with a coat.

Q Had you ever seen the defendant before? A Yes, several times, a couple of times before in the restaurant.

Q In what restaurant? A On Madison street.

Q Was it the same restaurant you were in that night?

A The same.

Q Had you been in the defendant's restaurant the night when Shisko was hit in the head and robbed? A Yes.

Q And how long did you stay in that restaurant? A There is no clock in the restaurant, and I can't tell exactly how much time I spent there.

Q What time do you think it was? A It may have been about twelve o'clock midnight or after twelve.

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BY MR. STRYKER:

Q Well, now, did a waiter serve you there with any food or drink? A No, we didn't drink anything, but we were eating and we were served.

Q Did a waiter serve you with things to eat? A Yes, a waiter.

Q Who was the waiter --- was it this defendant? A No.

Q Did you see this defendant in that restaurant that night? A Not that night.

Q Had you ever taken any meals in that restaurant before that? A A couple of times I did.

Q Did you ever see this defendant in that restaurant? A Yes, sir, I did.

Q What was he doing in the restaurant? A He didn't do anything --- I don't know what he did. Many people come into a restaurant to eat.

Q Did he go in to eat or was he a waiter? A He was clothed just the same as any customer, not like any waiter.

Q Was he sitting down at a table when you would see him, or standing up? A He was walking there.

Q Who paid the bill that night, either you or Shakko? A Each one paid for himself.

Q Did you have any money in your pockets, and if so, how much? A About fifty cents I had.

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Q And Shakko, did he have any money? A He did.

Q What was it composed of? A Bills.

Q How did he carry the bills and how did he take them out and pay his bill at the restaurant? A Well, I didn't pay much attention to that.

Q Well, did you see him pull out a roll of bills and pay the check at the restaurant? A I saw him pay for his supper, but I didn't see exactly the money.

Q Did he pay by bill or in coin? A In coin.

Q He paid his bill in coin? A In coin.

Q Do you know whether at any time that Shakko was in that restaurant that night he exhibited any bills or any money except coin, or don't you know? A I did see.

Q You did see what? A I saw that he had money.

Q Well, now after you left the restaurant how long did you and Shakko walk about the streets --- about how long? A I can't say, because I didn't look at the clock.

CROSS EXAMINATION BY MR. HANNEFICH:

Q You heard your friend say that he didn't take a drink of liquor on that day? A He didn't drink.

Q You didn't drink either, did you? A I didn't either.

Q In fact, you don't ever drink at all, do you? A Oh, I drink.

Q And that day you didn't drink anything, did you? A No.

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Q That was your day off? You were not working that day?

A No.

Q How about your friend Shakko, does he ever drink liquor? A He doesn't drink at all; he gets sick when he drinks.

Q He didn't feel particularly well on that day, did he?

A What do you mean, he didn't feel well?

Q Did he feel sick on that day --- did Shakko? A Well, I am not a doctor, I can't tell that.

Q Do you know that saloon that is next door to the restaurant? A I don't know whether there is or not.

Q You were not in there once that day, were you? A No.

Q How long were you together with Shakko in the restaurant?

A I said before I can't tell, because there is no clock in the restaurant.

Q Well, was it about an hour or two hours? A Well, maybe about an hour or two hours.

Q Don't you know the difference between a half an hour and two hours? A Maybe about two hours, maybe an hour and a half.

Q And all that you paid for your meal was ten cents? A Yes, I paid ten cents and he paid ten cents.

Q Shakko paid ten cents? A Yes.

Q For that two hours you had been eating a ten cent meal.

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in the restaurant, is that right? A In that restaurant one can sit five hours for any amount.

Q You didn't go to the saloon and bring some beer and whiskey into the restaurant, did you? A No.

Q You were not in the saloon at all with Shakko? A We were not.

Q And was the defendant drinking? A I didn't see.

THE COURT: He says he did not see the defendant there that night until Shakko was struck.

Q Well, did you see the defendant in the restaurant on that night? A Not that night.

Q You sleep in the same room with Shakko, don't you? A The same.

Q You are a good friend of his? A Naturally; we live together in the same room, we never had any fight, we never struck each other.

Q When you saw your friend attacked, what did you do?
A I ran up and started to holler.

BY THE COURT:

Q How far away were you standing from him or walking from him when he was struck, when Shakko was struck? Indicate by some object in the court room? A As far as from the witness chair to the wall.

MR. STRYKER: Does your Honor mean from Shakko or from

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the defendant?

Q From Shakko, from the time Shakko was struck? A Then I was just alongside of him.

BY MR. MARKIEWICH:

Q Did you run away when you saw Shakko struck? A No, I jumped away about two or three steps.

Q And you ran after the defendant? A I did not run.

Q Who ran after the defendant? A Shakko did.

Q Just as soon as the defendant struck Shakko the defendant ran away, didn't he? A Yes, the defendant ran away.

Q And Shakko ran right after him, isn't that so? A Yes, about ten steps he ran after him.

Q And what did that other fellow do -- ran down to the subway -- ran into the subway? A The other ran in the other direction.

Q How soon after the defendant struck Shakko did the police officer arrive on the scene? A Right away -- soon.

Q And you ran right after the defendant, is that right? And the police officer and Shakko ran right after the defendant? A Yes.

Q How many feet headway did the defendant get on the police officer, or Shakko? A About ten or fifteen steps.

Q Were you on the roof at all? Did you go on the roof at all to see the defendant? A I was on the roof.

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Q So you ran after the defendant also? A I did not.

Q When did you get on the roof? A The policeman called me along.

Q The policeman called you along. Well, now, do you mean to say that the policeman stopped and let the defendant run, and then called you along? A The policeman told me I should run along, and I did.

Q Just as soon as he came up there he found the defendant on the roof? A Oh, we were looking around first, and then we found him.

Q How long were you looking for him? A I can't tell the time.

Q About how many minutes elapsed between the time that Shakko was struck by the defendant and the time the defendant was found on the roof? A I can't tell. I was excited at that time, I can't tell how much time elapsed.

Q Well, the policeman was running right after the defendant anyhow, wasn't he? A Yes.

Q You never lost sight of the defendant while he was in the street, did you? A He ran around the other corner, then I did not see him any more.

Q You did not strike the defendant at all, did you? A I did not touch him at all.

Q Shakko did not strike him either? A No. Shakko fell

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immediately after he was struck.

BY THE COURT:

Q Was Shakko struck in the head? A In the head.

Q Did you see what was used by the man who struck him --- whether a piece of pipe or a stick or what? A He had something in his hand. I couldn't see what it was.

BY MR. MARKEWICH:

Q I thought you told us a moment ago that Shakko when he was struck turned right around and ran after the defendant?

A Yes, he did.

BY THE COURT:

Q How long did Shakko remain on the sidewalk? You say he fell; how long did he remain on the sidewalk? A Perhaps two or three minutes, I don't know.

Q What did he do? A Then he got up and he ran after the defendant.

BY MR. MARKEWICH:

Q And during the two or three minutes the defendant only gained about ten feet headway, you told us? A How can I figure that out exactly?

Q Tell us how far the defendant was away from Shakko and from the police officer when you began to run after him? Point it out to the jury in this court room?

BY THE COURT:

Q Indicate now by holding up your hand --- from the time

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that Shakko fell indicate the falling of Shakko by your hand, and then his rising and let us know how long it took?

MR. MARKEWICH: The witness testified, your Honor, that just as soon as Shakko was struck he started to run after the defendant, and now he changes ---

MR. STRYKER: No, he says he did run after him --- fell down and picked himself up. His two or three minutes is his ignorant way of telling the time.

BY MR. MARKEWICH:

Q Indicate by your hand how long Shakko remained on the sidewalk before he got up? (Witness indicates less than half a minute.)

Q And you told us that as soon as the defendant struck Shakko, while Shakko was running after him, the third man ran into the subway, that is true, isn't it? A I don't say that he ran to the subway --- he ran in another direction, I said.

Q In what pocket did Shakko have the money? A Right side trousers pocket.

Q What bills did he have in his pocket, do you remember?

A There was a ten dollar bill and two five dollar bills.

Q He showed you that, didn't he? A Yes, he did.

Q Do you remember you were drinking in the saloon with Shakko, and Shakko told the saloon keeper that he did not have any money with which to pay for the drinks?

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MR. STRYKER: Objected to on the ground that the question assumes facts ---

MR. MARKEWICH: Question withdrawn.

Q What is it that impresses the denomination of that money on your mind? A Well, I know what money means.

Q Well, that is not the first time that you saw a ten dollar bill or a five dollar bill? A Not the first time, no.

Q When do you get your pay from the Tunnel Company for whom you work? A Every second Saturday -- two weeks.

Q Did you get your pay the day before the assault --- which took place on Sunday --- did you get your pay on the Saturday before that Sunday? A I did.

Q Now, when did you get paid before that? A Two weeks before that, on a Saturday, as I said before.

Q What pay did you get?

MR. STRYKER: I cannot see any materiality, but I do not object.

A \$2 a day.

MR. STRYKER: He said he only had fifty cents.

Q Your friend works in the same place with you, doesn't he? A Yes.

Q He gets the same pay that you get? A The same.

Q How much is that? A \$2 a day.

Q Now, did you get paid the day before too? A Yes, I did.

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Q I want you to tell us the truth because that can be ascertained from the company from whom you got the pay?

MR. STRYKER: I object to the form of the question, it is not fair to the witness; he is a very fair and truthful witness.

THE COURT: Yes, just eliminate that parenthetical clause.

Q Remember you are under oath, and I want you to tell me the truth. Did you get paid on the Saturday preceding the Sunday on which you had that fight, or on which Shakko was assaulted? A I did receive the money.

Q What was your pay? A I received \$27.

Q What did you do with your money? A I have a cousin here, I gave it to her.

Q Did you see what Shakko did with his money? A He put it into his pocket.

Q Were you along with him most of the time between Saturday and Sunday, the time that he was assaulted? A Not all the time, but I saw him with the others in the meantime.

(The Court now declares a recess till 2 p. m., first duly admonishing the jury as usual.)

RECESS till 2 p. m.

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After Recess, Trial Resumed.

THE COURT: The Polish Interpreter being now engaged in another part of the court room, call the officer now, and then as soon as the Polish Interpreter can get here we will put the former witness back on the stand.

MR. MARKEWICH: I won't cross examine him any further, but my client needs an interpreter himself.

HENRY E. EISEMAN, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. STRYKER:

Q Where do you live? A 1070 Myrtle avenue, Brooklyn.

Q You are an officer of the 6th Precinct, New York, Municipal Police force? A Yes, sir.

Q On the 11th day of March, 1912, sometime around two o'clock in the morning, were you on post near Canal street?

A Yes, sir.

Q Did you see the complaining witness Shakko? A Yes, sir.

Q Did you see the man with him, the witness for him?

A Yes, sir.

Q Joseph Katz, I think his name is? A Yes, sir.

Q Did you see this defendant Dam? A Yes, sir.

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Q Please tell the court and tell the gentlemen of the jury in your own way and in your words what you saw and what you did from the time that you saw the complainant and his friend and the defendant? A Yes, sir. About two o'clock in the morning I noticed four men approaching the subway entrance.

Q Of what street? A On Canal street, between Centre and Lafayette. The complainant Shakko and Katz were walking together and talking, and in back of them there were two more men walking, walking very slow, and the next thing that attracted my attention, the defendant sitting here, William Dam ---

Q This defendant here, Dam? A Yes, sir, --- made a move which I noticed. He raised his arm and he struck one of the two that were in front of him, and I didn't realize whether there was any trouble then at the time till I heard an outcry of "Police". I at the time ran over and found Shakko bleeding from a wound in the scalp, and he started to give chase after these two men that were in back.

Q What did you do then? A I also gave chase and as I did chase I rapped my stick to attract the attention of other officers.

Q Officers in the adjoining post or patrol? A Yes, sir. As I did, I had two officers from the twelfth precinct, Officer Smith and Officer Bunz.

Q Is one of those officers that came at your rap in court

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to-day? A Yes, sir.

Q Officer Henry? A Officer Carlton and two other officers of the 6th precinct.

Q What did you do? A I asked them did they see any two running that way. They said yes, they seen one of these defendants running into one of the buildings on Baxter street. So they all surrounded the buildings there and in the meantime I went down to the subway station to get a lantern --- it was pretty dark --- to search the buildings, at that time of the morning. When I got to the subway station ---

Q Before you went to the subway station did you say anything to Katz? A No, sir.

Q I mean when you were going to get your lantern? A Yes, sir, I asked Katz to follow me, but he didn't. He stood there at the subway station, and when I got there to get a lantern, Katz stood there. I said, "Why didn't you come along?" He said "I was afraid, they might hurt me."

MR. STRYKER: I consent to strike that out.

Q I just wanted to know if you spoke to Katz? A Yes, sir.

Q Did you finally get back to the building into which you saw the defendant disappear? A No, sir.

Q You came back to that building, didn't you? A Yes, sir.

Q Tell us what you did then? A Then I called Officer Carlton with me to search the buildings. We went through

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from No. 142 Baxter street clean to No. 136 Baxter street, over roofs and halls and finally we got to 134 Baxter street, onto the roof; there was a wire fence --- a screen like -- over our head, and we could not climb over that, so we had to go downstairs again to go in through the next house to get to that roof, so we did. We got up there and we took Katz with us, called Katz with us up on the roof, and while Shakko was standing downstairs with the other policeman, and we searched the roof. Searching the roof we found the defendant here, William Dam.

Q This man right here at the table (indicating defendant)?

A Yes, sir.

Q Where did you find him? A Found him laying down on the roof right up against the wall.

Q In a shadow there? A In a dark place, yes, sir, and I had the lantern and just looked at him, and ordered him to stand up, and he stood up, and the first question we asked him was "Where is the other man?", and he said, "He ran the other way." And we asked him what did he do with the watch and the twenty dollars, and he said, "Officer, I didn't rob him, I just struck him --- the other fellow robbed him."

Q He said he had only struck him? A Yes, sir.

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

Q Did Katz pick him out as the man? A Yes, sir.

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Q Did you afterwards bring the defendant downstairs to where Shakko was? A Yes, sir.

Q Did Shakko identify him then? A Yes, sir.

CROSS EXAMINATION BY MR. MARKEWICH:

Q You cannot speak Polish or Russian, can you? A No, sir.

Q Yet you say this defendant had spoken to you in English?

A Yes, sir.

Q And you understood what he said to you? A Yes, sir.

Q You do not know that he cannot speak any English at all?

A He spoke English to me.

Q He did? A Yes, sir.

Q Now, when you saw the four men going towards the entrance of the subway station, were you at that time occupying a fixed post? A Yes, sir.

Q That is, in the centre of the street? A Yes, sir.

Q What street? A Well, that centre there is right on the corner of Lafayette & Canal street.

Q And the subway station is just between Lafayette and Centre street? A Yes, sir.

Q So that these men at the very most were about say 100 feet away from you --- about that? A Well?

Q It is a very narrow street? A Yes, sir, a short street there.

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Q And they were in the middle of the block? A Yes, sir.

Q So that your eyes were upon them as they were walking?

A Yes, sir.

Q In fact, it was very quiet? A Yes, sir.

Q The street? A Yes, sir.

Q It was a late hour? A Yes, sir.

Q You could hardly see a person pass through the street?

A Oh, you could see that. The street is pretty well lighted. You could see.

Q But there were not many people in the street at the time? A No, sir, there were not many walking.

Q And for that reason, if you see several men walking together, your attention is attracted, isn't it? A Yes, sir.

Q When you saw the defendant strike the complainant, your eyes became fixed on him? A Yes, sir.

Q More so than it was before? A Yes, sir.

Q You did not take your eyes off them at all? A No, sir.

Q And what did you see next? A I seen Shakko.

Q And ran after --- A No, he picked up his hat to get up and he started in hollering, and next he ran, ran after William Dam, and the other man, and I followed.

Q But William Dam and the other man began to run?

A Yes, sir.

Q Right away? A Yes, sir.

Q As soon as they struck that man? A Yes, sir.

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Q They began to run right away? A Well, it was a lapse of a few minutes.

Q A few minutes elapsed? A Yes, sir; not very long--- just a very short while.

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

Q You heard that witness Katz testify before and indicate by holding his hand up that the time that elapsed from the moment the defendant hit the complainant and the complainant began to run after him was about half a minute. Was he mistaken about that? A Well, I cannot give you the exact time; I just told you it was a very short time between it, very shortly --- I cannot give you ---

Q So it might have been about half a minute? A Well, I cannot give you whether it was one minute or two, but it was a very short time.

Q You are better at figuring time, I take it, than he is, and could tell us better; now, just tell us. A Of course I couldn't take my watch out and time it. It took a very short time.

Q And it was so short you really didn't know what had happened --- you couldn't realize what had happened at that time? A No, sir.

Q And you didn't realize in fact what had happened until you saw the men run, and the complainant in chase after them?

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A I saw William Dam strike Shakko, and my next attention was called when Shakko was hollering for police. Then I realized there was trouble.

Q You did not see the other man go through the complainant's pocket, did you? A No, sir.

RE-DIRECT EXAMINATION BY MR. STRYKER:

Q Officer, there is the complainant; pick out on his head the place where he was hit? A The right side of his scalp here (indicating). I took him to the hospital, that is where he was treated.

Q Did you take him to be sewed up at the hospital?

A Yes, sir.

RE-CROSS EXAMINATION BY MR. MARKEWICH:

Q Can you tell us how many stitches were taken? A I don't know, but I seen him getting sewed up, and I can give you the doctor's name.

Q It was not a very deep cut? A Well, he had a large cut. The doctor put his finger in it, and put his finger all around, feeling for a broken bone.

Q No bone broken? A No, sir. He just put his finger right in through his scalp and moved it all around.

MR. STRYKER: The other officer I have, I do not think it necessary to call him at this time. The People will rest.

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PEOPLE REST.

MR. MARKEWICH: Of course, on the testimony I take it that you will have to deny my motion?

THE COURT: Yes.

MR. MARKEWICH: So I will proceed to address the jury.

(Defendant's counsel now opens to the jury in behalf of the defendant.)

P E T E R A L A T K A, called as a witness in behalf of defendant, being first duly sworn, testifies as follows:

(Through Official Interpreter Rosenthal.)

DIRECT EXAMINATION BY MR. MARKEWICH:

Q Where do you live? A 218 Madison street.

Q You are one of the owners of a restaurant at the address that you have just given? A Yes, sir.

Q What is the name of your partner? A Efim Glishevitz.

Q How long are you established at that place? A Four years.

Q Do you know the complainant, Shakko? A Yes.

Q Do you know his friend who testified on the witness stand? A I do.

Q On the Sunday in question, that is the 10th of March, 1912, did the complainant call at your restaurant with two young men? A Yes, he was.

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BY THE COURT:

Q Did he call with anybody? A With two friends; there were three altogether.

BY MR. MARKEWICH:

Q What time of the day did they arrive? A They came about eleven or twelve o'clock in the morning, forenoon.

Q Have you a clock in your establishment? A Yes.

Q Is it hanging on the wall? A Yes.

Q And was that clock in motion on that day? A Yes.

Q Now, until what time did the complainant and his friends remain in your restaurant? A They were all there all day until I closed up the restaurant. They drank beer and whiskey, and they had things there.

Q What time of the night did you close up? A Eleven o'clock.

Q Where did they get the beer and the whiskey, if you know? A They went outside and brought it in from outside.

Q When you closed your saloon did you notice in what condition they were? A They were intoxicated.

Q Did you observe the complainant very closely during all the time he was in the restaurant on that day? A He was drinking, I saw it.

Q Did you see whether his coat was buttoned or unbuttoned?
A It was open.

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Q Did you see any chain attached to his vest? A I didn't see any chain.

Q Did the complainant exhibit any bills during the entire time he was in your restaurant --- any money? A I didn't see any money about him.

Q Was the defendant in your employ as a waiter? A Formerly he was, but at that time he was not working.

Q He would come to help you out on a Sunday, wouldn't he? A Yes, sir.

BY THE COURT:

Q Was he helping you out on that particular Sunday?

A Yes, he was there and helped me out, but he was most of the time sitting with them and drinking.

BY MR. MARKEWICH:

Q The defendant was also drinking? A Yes, sir, together with them.

Q And was he sober or intoxicated when you closed your restaurant? A He was also intoxicated.

BY THE COURT:

Q Do you let your waiter sit down with your guests at a table and drink with them? A Well, I don't tell him to do so; if he wants to do it, I don't stop him.

Q Well, do you say that Shakko and Katz and the defendant Dan, when they left they were all intoxicated? A They were all intoxicated.

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Q Yet the defendant Dam was working for you that day?

A He didn't exactly work for me, but he helped me out.

Q What is the difference between helping you out that day and working for you that day? A As he had worked before he came around from time to time to help me out whenever I needed help.

Q Did you pay him anything that day for his work? A I did.

Q How much did you pay him? A Twenty-five or thirty or forty cents.

BY MR. MARKEWICH:

Q And his meals, I suppose? A Yes, his meals he would get.

Q Let us see the character of your restaurant: What is the price of a meal in your restaurant?

MR. STRYKER: Do we have to go into these collateral matters? I cannot see any bearing.

THE COURT: I will allow it.

MR. STRYKER: I won't object.

A Ten cents all around.

BY THE COURT:

Q Ten cents a meal? A It makes no difference; a meal ten cents. In some places they served for fifteen cents a meal and I opened one for ten cents to beat the other.

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BY MR. MARKEWICH:

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Q After you left your restaurant did you go in the saloon next door? A Yes; they went in the saloon next door.

Q How long did you remain in the saloon? A I saw them there at twelve o'clock.

Q How long did you remain in the saloon? A They left the saloon, and I remained there after they had left.

Q What time did they leave the saloon? A About twelve o'clock.

Q Was there a clock in the saloon? A Yes.

Q Where is the clock hanging? A On the wall.

Q Did you see whether or not they had any drinks in the saloon? A Yes, they were drinking.

Q The complainant and the defendant and his friends were all drinking? A All drinking together.

Q And the defendant too? A Yes, sir.

Q Now, do you know the proprietor of the liquor saloon?
A I do.

Q What is his name? A I think Horowitz.

Q Did you see whether or not Mr. Horowitz asked the complainant for any money? A I told him to pay, and he said he couldn't pay to-day, I would have to wait until next Saturday when he would get his money.

BY THE COURT:

Q You told him to pay? A I didn't say, but the saloon

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keeper said that he should pay.

Q Where did the saloon keeper say that? A There in the restaurant. The saloon is upstairs and the restaurant is downstairs.

BY MR. MARKEWICH:

Q Not your restaurant, you mean a restaurant owned by Horowitz? A No, I mean the restaurant attached to the saloon-- not mine.

BY THE COURT:

Q You say Shakko and Katz went into another building where a saloon was upstairs, and they got the beer and whiskey and brought it to your restaurant? A Before they brought it into my restaurant I didn't know where they took it from.

Q And you found later that this man, the proprietor of the saloon next door, let them have all this stuff on credit, is that right?

MR. MARKEWICH: No, your Honor, that is not right.

Q Then you say the proprietor of the saloon let these men have drinks on credit, is that right? A Yes, he said, "I will pay you next Saturday."

Q How much was it, do you know? A Eighty cents.

Q And this proprietor of the saloon let them have credit that day for eighty cents worth of drinks? A They had also something to eat there. There is a restaurant downstairs.

Q When did they have something to eat? A About half past

eleven o'clock.

Q When --- in the day or the night? A Night, after they had left the restaurant.

Q They sat in your restaurant from eleven o'clock in the day until eleven o'clock at night eating and drinking? A Yes.

Q Then when they left your restaurant they went right into another restaurant, is that right? A Yes, that was so.

BY MR. MARKEWICH:

Q Now, did you hear what the complainant said to the defendant when they left the saloon, if he said anything at all?

THE COURT: Which saloon, next door to him?

MR. MARKEWICH: Next door to him?

A Yes.

Q What was it? Tell us what the complainant said to the defendant? A He said, "Let us go together to the park."

Q To Van Courtlandt Park? A Yes. It seems to me, something like this park.

BY THE COURT:

Q What hour was that that you heard him say "Let us go to Van Courtlandt Park"? A About twelve o'clock midnight.

BY MR. MARKEWICH:

Q Then they left the liquor saloon? A Yes.

THE COURT: Well, he said the restaurant, didn't he?

MR. MARKEWICH: No, if your Honor please; it is the

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saloon. He has a back room which he calls a restaurant.

BY THE COURT:

Q Was your restaurant open when you closed your saloon?

A The restaurant attached to the saloon was open together with the saloon.

CROSS EXAMINATION BY MR. STRYKER:

Q Did you follow them out of that store too? A No.

Q Well, you were a general witness there that day, why didn't you do a good job and see it through to the end?

MR. MARKEWICH: I object.

Q You watched everything the complainant did from eleven o'clock in the morning until twelve o'clock at night, I take it, is that right? A Yes.

Q And although you did not close up until twelve o'clock, still you left your place at eleven o'clock to follow him up in the saloon next door?

Objected to. Question withdrawn.

Q When did you close your place? A About eleven o'clock.

Q And you did not stay to clean up or anything --- you just went right along with the complainant and the defendant to the saloon next door? A Yes, soon after they left my restaurant I followed them into the saloon.

Q And although you paid this man twenty-five or thirty cents for the day you were willing to let him sit down at your

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restaurant and get drunk with your customers there, although he was getting your good money for work; is that it?

A Yes.

BY THE TWELFTH JUROR:

Q This place next door, does the place consist of two floors, a saloon and restaurant? A Two floors; downstairs the restaurant and upstairs the saloon.

Q Did you join them in eating and drinking while they were there? A Yes, we drank all together.

BY THE COURT:

Q Do you say that Shakko, Katz and a friend of theirs together with the defendant, Dam, were all drunk when they left your place at eleven o'clock at night? Is that right? A Yes, all of them.

Q And they went right from your place, drunk as they were into the restaurant next door to you, is that right? And got food and drink next door to the extent of eighty cents?

A Yes.

Q You followed them in there, you say, and you heard the restaurant keeper, or the saloon keeper demanding his eighty cents, is that right? A Yes.

Q And then you heard Shakko and Katz say that they had no money and that they would pay him next week, when they got their pay, is that right? A Yes.

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Q You are sure you heard that? A Yes, sir, sure.

Q And then you were there still at twelve o'clock when Katz and Shakko left the other restaurant, is that right?

A Yes.

Q And you heard them say "Let us go together"? A Yes.

Q Did anybody ask you to give this testimony, and tell you what to say? A Nobody asked me.

Q Did somebody tell you that if the defendant could say that these men had no money, that there could not be any robbery? A I don't say that they had no money, I don't know whether they had money or not, but I heard them say they had no money.

Q You heard them say, "Come along, let us go together", didn't you? A Yes.

Q Why didn't you go home when you locked up your restaurant?

A I went in there for some business.

Q And you stayed an hour? A I was going there to cash some bills and get small change for the next day's business.

Q That did not take you an hour, did it, from eleven o'clock until twelve? A I didn't stay there a whole hour.

Q Well, you were there at eleven o'clock when they went in, and you were there at twelve o'clock, when they came out, weren't you, according to your testimony? A I did not go there immediately after closing up my restaurant. First I made some

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order there and it may have taken me about half an hour, and then I went into the restaurant next door.

BY MR. STRYKER:

Q I want to ask one question. You have no liquor tax license for those premises, have you?

MR. MARKIEWICH: Objected to as immaterial; he does not say he sold any liquor.

MR. STRYKER: I think I will show the materiality of it.

THE COURT: You may ask him that.

A I have no license, and I don't sell any.

Q Isn't it a fact that this defendant came to you and told you that if you did not come down here and tell this story how you watched this ---

MR. MARKIEWICH: That is objected to; the defendant was in the Tombs.

Q Well, didn't you hear from the defendant that you were to come down here, and if you did not tell just what the complainant did, that he had no watch, that he would see that a charge of selling without a license was made against you?

MR. MARKIEWICH: I object to that as being absolutely incompetent, immaterial and irrelevant.

THE COURT: I will allow it.

A No, nothing of the kind. The policeman told us the very same night that I had to come and be a witness here.

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RE-DIRECT EXAMINATION BY MR. MARKEWICH:

Q As a matter of fact how long do you know this defendant?

A About four years.

Q Do you know other people that know him? A Yes.

Q What is his reputation for honesty?

BY THE COURT:

Q Does he come from the same town in Poland that you do?

A Not from the same village, but from the same State or Government.

BY MR. MARKEWICH:

Q As a matter of fact, you retained me to be his lawyer, didn't you? A I did.

Q And you paid me, together with your partner? A Yes.

BY THE COURT:

Q Why did you do that? Just explain that to us? A Because we don't know the English language and I was convinced that the man was sitting there in the Tombs for nothing, and therefore I thought it my duty to help him out.

BY THE TWELFTH JUROR:

Q Do you know the man that is missing? A I don't know that one at all. I don't know him at all.

BY THE COURT:

Q Well, Shakko --- A Yes, three I know very well. They come to me to have their meals, but the other one I don't know.

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Q Do you know Shakko? A Yes.

Q How long have you known Shakko? A About three years.

BY THE TWELFTH JUROR:

Q How long have you known Katz? A About the same time.

BY THE COURT:

Q What made you think that the defendant Dam was innocent and that prompted you to get a lawyer for him? What made you think he was innocent? A Because I heard that the complaining witness is supposed to have said that they took from him a chain and money, and I knew that he hadn't had any, because I had heard that he said there to the saloon keeper that he had no money to pay.

Q You heard he had said so, or did you hear him say so?

A I heard him myself as he said it.

Q Did you have any talk with the defendant Dam as to his side of the case? A No.

Q Never had any talk with Dam at all after the arrest?

A No, I had no talk with him at all after his arrest.

BY THE TWELFTH JUROR:

Q Didn't you visit him in the Tombs? A I came here but they would not admit me, they wouldn't allow me to see him.

BY THE COURT:

Q Haven't you had any talk with the defendant Dam since he was arrested? A Not a single word; I had no opportunity

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to do so.

BY MR. STRYKER:

Q I presume you could tell whether every man who was in your restaurant that day had a watch and chain on, or not, you are so observing about those things? A Whoever I happened to observe I can say I saw it, and I say so; if I didn't see it, I say so.

BY THE COURT:

Q How long after the defendant was arrested did you find it out? When did you discover it? A The next day a policeman came and told me.

Q What did he tell you? A That the man that had worked for me is arrested.

Q And what else did he tell you? A Nothing else.

Q How did you know that Shakko said that Dam had stolen \$25 from him and his watch? A There was a talk in the restaurant about that.

Q What language did the policeman use when he told you about Dam being arrested? A English.

Q How long have you been in this country? A Five years.

Q How long has Dam been in the country? A Also about five years.

Q Can he understand some English? A A little, the same as I.

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M I K E Z I K E, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows,

(Through Official Interpreter Rosenthal:)

THE COURT: (Addressing the witness) Write your name and address there (handing paper and pencil to witness.)

THE WITNESS: I can only write my name. I live 350 Madison street.

DIRECT EXAMINATION BY MR. MARKEWICH:

Q What do you do for a living? A I worked in a machine shop until I hurt my hand and now for two weeks I cannot work.

Q Do you know the defendant? A A little I know him.

Q How long do you know him? A About four months.

Q When was the first time and where was the first place that you met him? A When I was working in the machine shop I used to go into a restaurant to eat, and there I met him. They used to serve me sometimes with bread and sometimes with other things.

Q That is this defendant, Dam? A Dam, yes.

Q Do you know the complainant? A I don't know him.

Q Did you ever see him? A I saw him at half past eight o'clock when I entered the restaurant, then I saw him sitting with three or four others, drinking.

Q What day of the week was it? A Sunday.

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Q How long did you remain in the restaurant? A About half an hour. I came in there to have my meal, and I left right after that.

Q Did you see the defendant there? A Well, I said before that I seen him there.

BY THE COURT:

Q Had you ever seen him before that --- Shakko?

A No.

Q Have you ever seen him since except to-day? A I saw him in the restaurant, and now I see him for the second or third time coming to court here.

Q What was the next time you saw him after you saw him in the restaurant? A No other place except in this court room.

Q How did you know Shakko was the man you saw in the restaurant, if you never saw him until to-day? Why did you come down here as a witness, if you have not seen him since? How did you know that that was the man? A I don't know exactly who is Shakko, but I know these people. They were all together in the restaurant.

THE COURT: Counsellor, is this man's testimony worth a zero?

MR. MARKEWICH: I object to that remark, and I shall ask ---

THE COURT: I want to give you an opportunity to

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straighten it. This man says he saw Shakko at the restaurant the night in question, and never saw him before and has never seen him since till to-day, and yet this man has been subpoenaed as a witness to testify that he saw Shakko in the restaurant on that night.

MR. MARKEWICH: I take an exception to your Honor's remark as utterly unfair to the defendant.

THE COURT: But this man says he never saw the complainant but once in his life and that was at the restaurant in question, and that was on the 11th of March, and he saw him in court to-day.

MR. MARKEWICH: He said he saw him yesterday.

THE COURT: And yet this man is subpoenaed as a man who would testify that the complaining witness ---

MR. MARKEWICH: Yes, and I believe he is truthful about it.

THE COURT: Well, straighten that out.

BY MR. MARKEWICH:

Q Were you in court here yesterday? A Yesterday?

BY THE COURT:

Q How did you get in court yesterday, and why did you come? A The day before yesterday I went into the restaurant to eat, and the proprietor of the restaurant asked me whether I had seen ---

Q Had seen what? A "Did you see how they were all drink-

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ing together here?", he asked me. I said, "I saw them drinking, but I didn't see them for a very long time; I only came in for a half an hour to have my meal, and I left."

BY MR. MARKEWICH:

Q Did you see me in Madison street? A No.

Q Did you see me in Madison street? I asked you to come down to court, didn't I? A The restaurant man asked me.

Q Did you see me at Horowitz's place on the corner of Jefferson and Madison streets about three or four days ago?

A I was not there.

Q Well, now, when was the first time that you saw me?

THE COURT: I wish you would, in the interest of the defendant, if you please, explain what I have suggested to you. I don't want your explanation, I want this man's explanation of how he knew that the complaining witness, whom he only saw once and whom he only saw again yesterday for the second time, yet four days ago was asked by the proprietor to come down here and testify that he could identify the man when he had not seen him in the meantime to identify him. That is that is bothering me, and it might bother the jury, in the interest of the defendant, and you misconceive the object of my suggestion to you.

MR. MARKEWICH: I do not for a moment question your

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Honor's fairness in the matter; I never did; I know your Honor is absolutely fair, but sometimes you may be carried away by some sentiment for which we are not responsible.

THE COURT: Well, what I want the jury not to be carried away. I may be carried away on a wrong idea, but my mind is so constituted that it is utterly impossible for me to get over that barrier, and I don't want them to be placed in the same way. If you have straighten it out by the testimony of the witness ---

MR. MARKEWICH: I will try to, your Honor.

THE COURT: You have the idea thoroughly, that is, he only saw the man once in the restaurant, yet he agreed to be a witness four days ago, and he had not seen the man since.

MR. MARKEWITZ: He did not agree to be a witness four days ago.

THE COURT: Yes, he told the restaurant man, or the man told him to come down. Now, I want to know how in the world three days before he saw the man for the second time he could come down as a witness and be a witness to identify him as the man who was there on the 11th of March, he never having seen the man except on that particular night, on the 11th of March.

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BY MR. MARKEWICH:

Q After you saw the complainant Shakko at the restaurant, where was the next place that you saw him? A In this court.

Q When? How many days ago? A Two days ago.

Q Did anybody ask you to look at him? A When, now?

Q Two days ago, when you were here the first time? A It was on a Monday when he told me that.

Q Well, now, did you see him at that time out in the hallway, as the officer was taking him up stairs?

THE COURT. No, do not lead the witness. We want him to explain.

(Question withdrawn.)

Q Where was the complainant Shakko on Monday when you saw him? A We were standing outside, we were not admitted into the court room, and we were standing outside in the corridor, and I saw how the policeman took him upstairs.

Q Did you recognize that man as being the Shakko whom you saw in the restaurant on the 10th day of March? A I did recognize him.

Q Are you willing to swear now that you are positive that Shakko is the same man that you saw in the restaurant on the day in question? A Yes, the same.

Q What did you see Shakko, his friends and the defendant do in the restaurant do while you were there? A While I was

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eating there I saw them sitting there and drinking.

Q. Drinking what? A Beer.

BY THE COURT:

Q. Who was sitting there together? A Shakko and his friend who was a witness here, and the defendant and another man whom I do not know.

BY MR. STRYKER:

Q. When was the last time before the time that you saw the complainant in the corridor that you saw that complainant Shakko? A When?

Q. When was the last time you saw him before you saw him outside?

THE COURT: He said in the restaurant.

Q. Although you had not seen him after you saw him in the restaurant, nevertheless you were willing to come down here and swear that that was the man, is that right? A Yes, he is the same man.

W I L L I A M C L O C K E R, called as a witness in behalf of defendant, being first duly sworn, testifies as follows:

(Through Official Interpreter Rosenthal:)

DIRECT EXAMINATION BY MR. MARKEWICH:

Q. Where do you live? A 243 Cherry street.

Q. What do you do for a living? A Cloak maker.

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Q Where do you work? A 25 East 4th street.

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

Q How long do you know him? A About eight or nine months.

Q And do you know the complainant Shakko? A No, I saw him on Sunday and to-day.

Q Where did you see him on Sunday? What Sunday do you mean? A On that Sunday when they were drinking together.

Q How long ago? Figure from last Sunday and tell us about how many Sunday's ago? A This is now the fourth week, it seems to me it is the fourth week.

Q Were you in the saloon on that Sunday, the saloon at the corner of Madison and Jefferson street, owned by one Horowitz? A Yes, I was there; there was also a basement where they served meals. I was there.

Q You were in the basement? A Yes, in the basement.

Q What time in the day was it? A About eleven or half past eleven o'clock, near twelve, I can't tell exactly the time, but about that time.

BY THE EIGHTH JUROR:

Q In the morning or night? A The night.

BY MR. MARKEWICH:

Q Did you see what the complainant and his friends and the defendant were doing in that part of the saloon at the time you were in there? A I saw them four together sitting at a

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table, and each one had a glass of beer before him, and they were talking to one another.

Q Did you notice their condition, whether they were sober or intoxicated? A They were intoxicated and especially Shakko could hardly stand on his feet.

Q Did you hear when they got through drinking what the saloonkeeper Horowitz said to Shakko, if anything? A I remember that the keeper of the restaurant, of the saloon, asked Shakko for money and he said, "Don't be afraid, you will get your money next saturday, I will bring you the money, I will get my pay".

Q How long did you remain in the saloon? A I was not there very long. I came in there, had a glass of beer and left again.

Q About how long did you stay? A About ten or fifteen minutes.

Q Now, just look at this man (indicating Shakko) are you positive this is the man you saw in the saloon at the time?

A Yes, it is the same man. I recognize him.

Q When was your attention first called to this case, and by whom? A I came the next day to the restaurant and I was told about it.

Q Who told you about it? A The restaurant keeper told me about it.

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BY THE COURT:

Q What is his name? A Peter Alatka.

Q The man who was on the witness stand before? A Yes.

CROSS EXAMINATION BY MR. STRIKER:

Q Was it in the restaurant keeper's place that you saw Shakko on the Sunday in question? A No, I saw Shakko in the saloon.

Q Did you see that restaurant keeper in that saloon when you were in the saloon --- I mean Peter Alatka? A Yes, I saw him there, but I didn't remain there long, and I left.

Q You are a friend of the defendant's?

THE COURT: He says yes, eight or nine months.

BY THE COURT:

Q Were Shakko and these three men sitting at a table in the restaurant, or was it in the saloon? A In the basement.

Q How many times had you seen Shakko before that? A I had never seen him before.

Q When is the next time you saw him after that night?

A I didn't see him until yesterday.

Q Well, under what circumstances did you see him yesterday?

A Well, we were sitting here together.

Q Yesterday was Tuesday? A Yes.

Q Did you come here Monday? A I was not. I was working on Monday, but Tuesday and to-day they are Hebrew holidays ---

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the Passover.

Q What was the first day you came to court about this case? A Yesterday was the first time.

Q If you had not seen Shakko but once and that was on the night of March 10th, how did you know that you could be a witness, that you could identify him if you had never seen him since, until you got to Court? A (No answer)

Q How did you know that you could identify Shakko if you had never seen him before the night of March 10th, and had not seen him since until you came to Court? A Why shouldn't I recognize him? I saw him once and I saw him here again, and I recognized him.

Q But how did you know that you could recognize him? How did you come as a witness to recognize him when you had not seen him before or since? How did you know it was the same man? A I am a witness, and I only say what I have seen.

W I L L I A M D A M, the defendant herein, called in his own behalf, being first duly sworn, testifies as follows:

(Through Official Interpreter Rosenthal)

THE COURT: Write your name.

THE DEFENDANT: I cannot read nor write.

DIRECT EXAMINATION BY MR. MARKEWICH:

Q Where do you live? A 218 Madison street.

Q Your name is not Dam, but it is Dym? A Dym.

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Q You are the defendant in this case? A Yes, certainly; what else could I be?

Q What do you do for a living? A I was working in a restaurant.

Q Of course you remember the day you were arrested, don't you?

BY THE COURT:

Q What restaurant were you working in? A 218 Madison street.

Q Is that Peter Alarka's restaurant? A Yes, sir.

BY MR. MARKEWICH:

Q How long are you in this country? A The fourth year.

Q How old are you? A Twenty-one.

Q Were you ever arrested for any offense since you are in this country, or even in the old country? A Never.

Q Now, on the Sunday in question, tell us exactly what took place between yourself and the complainant and his friends from the first time that you saw them in the restaurant until the time you were arrested? Now, tell your story to the jury in your own way? A We were drinking in No. 218 Madison street, and I was helping there and I poured out --- filled some beer and whiskey on the table, and I came around to clean the table, to wipe it up, and they called me vile names because I didn't care they should drink any more. Then they offered me a few drinks,

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beer and whiskey; then I went home and I washed myself and put on a clean shirt, and I came back again. Then it was about eleven o'clock, and my boss had told them to get out; then they went to the corner where there is a saloon upstairs and a kind of a restaurant in the basement, and they were drinking there until about twelve o'clock, and I was drinking with them. Then the saloonkeeper said, "It is time to get out", and I went out into the street, and they said "Come along with us." I wanted to go with them, and one struck me, and the other took my hat, my cap and they had beat me up and I went home and washed my face, and I went back again and my friend came to me and said I should go to Van Courtlandt Park to work.

BY THE COURT:

Q Who came to you? A My friend Mitrofon Potapoff.

BY MR. MARKWICH:

Q Did your friend ask you to go to the park? A Yes.

Q At what time was this, what hour? A It was about ten o'clock in the evening. The restaurant keeper told me I should not go with them, but I told him I had to go there because I had been told about ten o'clock by my friend to go there and work. And when I came along they were standing on the corner of Centre street.

Q Who was standing there? A The man who was beaten and two with him. The other two.

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Q Well, had you seen any of those that you speak of in court to-day? A Certainly I saw.

Q Well, who were they? A They are Russians.

Q Now, what are their names? A I don't know what their names are.

Q Have they been witnesses here to-day? A The same people who gave me a beating on the corner, the same people are here to-day to accuse me.

BY THE COURT:

Q Well, what are their names? You have heard it here one hundred times to-day? A I don't know their names.

Q Have you not heard the name called at least fifty times to-day in this testimony? A Well, if the name would be called out in Russian, then I would remember, but their being called out in English, I can't remember them.

Q Did you not hear the Interpreter call the name out in Russian at least fifty times to-day during this testimony?

A I don't remember.

Q The question is what occurred there that night? Now answer that. Go ahead. You saw these men standing where?

A On the corner of Centre street. When I wanted to go to the Subway, the man who is beaten, he struck me first, and after that another man struck me.

Q The man who was beaten by whom? A I beat him because he struck me first.

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Q What did he strike you with? A And he fell down, with my hand.

Q No, what did he strike you with? A Only with the hand.

Q What did you strike him with? A Only with the hand.

Q Where did you strike him? A In the head, with the fist, the knuckle.

Q Where were you when you struck him, in front of him or behind him? A I was face to face.

THE COURT: Shakko, come up here.

(Shakko, the complainant, comes to the witness stand.)

BY THE COURT:

Q Now, there is Shakko. Now you show us how you were standing and how Shakko was standing when you struck Shakko, and made that wound on him? A Well, we were standing this way (the two facing each other), and he struck me in my face, and then I struck him as I have shown just now.

Q Then what occurred? A After I struck him he fell down, and then he jumped up, and he ran after me, and he said, "Now, we will show you what we are going to do with you." I ran and they ran after me and I came into the street, I don't know the name of it, I am not acquainted in the neighborhood. I got into a hall and I slammed the door, because I was afraid that there was several after me.

Q Well, go ahead, go right ahead now. A Then I went up to the roof in order to hide from them.

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Q Did you see the policeman coming? A Yes, when I was on the roof I saw him.

Q No, but did you see the policeman before you went on the roof? A No, I did not. If I did see the policeman before I would not have run, I would not have been afraid.

Q Did you hear the policeman's night stick rapping on the sidewalk? A I didn't hear it. I was away two blocks from that place.

Q How near was the nearest man to you when you ran into the doorway and slammed the door? A About five steps from me, and I ran into the hall and slammed the door, and when I heard their voices I ran up to the roof, and I went up to the roof, and I sat down, and a policeman came and he struck me once in the face, took me by the wrist and arrested me. I don't know what street it was.

Q Were you lying down or sitting down when the policeman arrested you? A I was half sitting and half lying, leaning over. Then they took me to the Court.

BY MR. MARKEWICH:

Q You are sure you left the restaurant in company with the complainant at eleven o'clock?

THE COURT: Peter Alarka's restaurant.

A Yes, together.

Q And you are sure you went to the saloon or the restaurant

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where you were working? A Yes.

Q Are you sure that you remained there an hour, you remained there an hour, you remained there until twelve o'clock?

A Yes, sir, we left that place about twelve o'clock.

Q When you got through drinking in the saloon did you pay for the drinks? A Yes, I paid --- what drinks I had I paid for.

Q And how about the drinks that the complainant ordered -- Shakko --- did he pay for them? A He drank a whole lot and he didn't pay.

Q Was he asked by Horowitz to pay for it? A Yes, he was asked for the money, and he said, "Why, I had credit here before and I paid you, and I will pay you this time, but not to-day, but next Saturday."

Q How long did you know the complainant? A A year and a half.

Q I mean Shakko? A Yes, about a year and a half.

BY THE COURT:

Q Did you ever know his name before? A I know him only from seeing him drinking in the restaurant; I see him over often, but I don't know exactly what his name is.

Q Do you know his first name? A Yes, Jacob is the first name.

By Mr. Markewitch:

Q The police officer testified that when you were arrested he asked you what you did with the twenty dollars and

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the watch and chain that you took from the complainant, and you told him you didn't take it but your friend took it. Now, did you say any such thing to him?

THE COURT: He said that the other fellow took it.

Q That the other fellow took it and ran away?

MR. STRYKER: That he only hit him on the head, wasn't that the full statement, your Honor?

THE COURT: Yes.

A I didn't speak to him at all. I spoke to the witness here, who was along with the complaining witness, and I asked him, "What do you want of me? You know I am innocent.", but the policeman I did not speak to at all.

BY THE COURT:

Q What did you mean when you said "innocent"? Innocent of what? A I told the witness that I am not guilty of anything.

Q Well, what did you think you were charged with? A I was not aware that they charged me with anything. I was only afraid that they would beat me again.

Q What did you mean when you say you knew you were innocent, if you did not know they were charging you with anything?

A When the witness came with the policeman to the roof, I spoke to the witness in the presence of the policeman, and I told him "What do you want with me now? Do you want to beat me more? I have not done anything."

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BY MR. MARKEWICH:

Q That was after you say you were struck on the face on the roof by the policeman? A Yes, the policeman struck me a blow in the face on the roof.

Q Who was that fourth man, was he a friend of yours, Mitrofon Potapoff? A No, he was not with me. There was a third man with them.

Q How about that name the judge just mentioned, (mitrofon Potapoff); was he along at the time? A This Potapoff, he came to the restaurant about two o'clock in the afternoon, and he said I should go to Van Courtlandt Park.

Q Now, at the Subway station was that man along with you, that Mitrofon Potapoff? A He was not there at all.

Q In other words, when you left that saloon you were in the company of the complainant Shalke, and his friend Katz, and the third man, who you say was a friend or acquaintance of the complaint, but not yours? A There was a third man with them whom I had seen only twice or three times, but whose name I do not know.

Q Did you see any watch and chain on the complainant's person on that day? A I didn't see any.

Q Do you speak any English at all? A No, I don't speak it at all.

Q You speak a few words? A I may catch a word here and there if one speaks to me, but I cannot answer a single word.

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BY THE COURT:

Q Did you hear your employer say that you spoke a little English? A What can I do if he says so? I know better.

Q Did you say that when you went out of your employer's restaurant that one of the men struck you and the other man took your hat and together they beat you up? As soon as you went out of your employer's restaurant that Sunday night at eleven o'clock, and did you say "And I went home and I came back again"? A Yes, I went home, washed myself and took a nap.

BY MR. MARKEWICH:

Q What time was that that you went home and washed yourself and took a nap? A Twelve o'clock.

Q Twelve o'clock midnight, or day time? A Night.

Q Had you gone home earlier than that during that night and washed yourself and come back again? A At twelve o'clock we left the saloon, and there the fight took place. One struck me and the other took away my cap, and I went home and washed my face and took another nap and stayed at home about two hours, because that fellow who was in the daytime in the restaurant had told me not to forget to come to Van Courtlandt Park, that I could get a job, and at two o'clock I started out to go to Van Courtlandt Park, and when I came to the station of the Subway there they were standing.

Q Were you going to Van Courtlandt at two o'clock in the morning, to get a job? A Yes, they are there at three times

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during the twenty-four hours, three shifts.

Q Didn't you say that Mitrofon Potapoff had asked you to go to Van Courtlandt Park at ten o'clock that night, and that your employer told you not to go, - the restaurant keeper said, "Don't go with them"? Didn't you say that, and that that was ten o'clock at night? A He told me twice --- perhaps the interpreter didn't understand me -- but I said twice that that man told me at two o'clock in the afternoon, and then again at ten o'clock at night, I should not fail to go out to Van Courtlandt Park.

CROSS EXAMINATION BY MR. STRYKER:

Q What required you to go home and wash up? A Well, just could I take a wash.

Q Wash up after your day's work, was that it? A They had scratched me a little bit in hitting me.

Q Oh, they had scratched you, and you had to wash up from that? A Yes.

Q Where did they hit you or scratch you, as you say? Where were you --- whose restaurant -- what place in the city of New York? A On the corner, after leaving the saloon.

Q After leaving the saloon --- was that before you were arrested? A Certainly before.

Q How long before you were arrested? A Two hours before my arrest.

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Q Two hours before you were arrested you were scratched up by the complainant, is that right? A Yes, sir.

Q And you went right home to wash up? A Yes.

Q That was in the street that you were struck or scratched?

A In the street.

Q After you had been in the saloon? A Yes, sir.

Q You did not strike them back then? A I had no time to do that; one hit me and the other took away my cap, and I ran away.

Q And that was twelve o'clock? A Twelve o'clock.

Q And then two hours later you came back to the very spot where you say they scratched you? A Not the same spot, but I went back to the station of the Subway.

Q And just as you got there, they happened to come along, is that it? A I didn't know they were there. I thought they had gone.

Q I asked if it was just a pure accident that you happened to come to the subway station at the time they got there?

A No, they were standing there.

Q They were standing there when you got there? A Yes.

Q You walked over to them? A I didn't see them until I came near them, and then they struck me.

Q Then you were assaulted, is that right? A Yes, sir.

Q And you were put in fear, you were afraid when you were struck? A No, I hit them back.

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Q. You hit a very fair blow, didn't you, for a man that was afraid?

THE COURT: We will suspend now till 10:30 to-morrow, and the same admonition holds throughout the case.

(ADJOURNED to Thursday, April 4, 1912.)

Thursday, April 12th, 1912.

TRIAL RESUMED.

MR. MANKEWICH: Before continuing the cross examination of the defendant, I would like to make a motion. I move for the withdrawal of a juror, upon the ground that your Honor made a statement this morning which in my opinion is prejudicial to the defendant. That statement made in the hearing of the jury as I understood it, was substantially as follows: That I, as attorney for the defendant, in the present case, had made a statement to Mr. Press that I will deliberately prolong this case for the entire day so as to give Mr. Simpson, a brother attorney, a chance to have his case put off till Monday. I believe that such statement made in the hearing of this trial jury may prejudice the defendant, and I move for the withdrawal of a juror, not only upon these grounds -

THE COURT: Do you deny that you told the district

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Attorney that?

MR. MARKEWICH: I told the District Attorney distinctly that I told it in the spirit of a jest.

THE COURT: But you did tell the District Attorney just as the Court said?

MR. MARKEWICH: Yes. That is not the question. The question is whether, if the District Attorney had told you that, whether your Honor had the right to make such a statement in the presence of the jury; whether it was not proper for your Honor to say that secretly to Mr. Simpson, or to call me up and make a party to this conversation and ask me in the presence of Mr. Press --- not to make that statement in the presence of the jury, to the prejudice of the defendant and in the absence of the defendant.

THE COURT: In the first place, I do not see how it can prejudice this defendant.

MR. MARKEWICH: The jury may think that I am deliberately trying to prolong this case.

THE COURT: This defendant had nothing to do with it.

MR. MARKEWICH: I am as brief as I possibly can be, and your Honor knows it. Your Honor did more cross examination in this case than I did. I have not taken much part in this case. Why should your Honor think that

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I am trying to prolong this case? I am not trying to anything like that, I am trying to get along as best I can, believing my client is innocent and trying as best I can to have him acquitted. Why should your Honor take that stand against me? I cannot understand it. Your Honor and I never had any ill feeling, and your Honor knows no reason why I should make a statement of that kind, or why I should try to help Mr. Simpson along when I am not interested in his case at all and Mr. Simpson never asked me to do it.

THE COURT: When you get through I would like to ask you a question.

MR. MARKIEWICH: I am through.

THE COURT: Did you tell Mr. Press, the assistant District Attorney that you had been requested by Mr. Simpson, a fellow attorney, to prolong the trial of this case as much as possible in order that Mr. Simpson's case would not be reached to-day?

MR. MARKIEWICH: I did not tell that to Mr. Press. Does your Honor want to know what I did tell him?

THE COURT: Yes, - or words to that effect?

MR. MARKIEWICH: I did tell Mr. Press --- Mr. Press asked me how long I would take with the case. I said, "I am going to take, I think, till twelve o'clock, if it starts at half past ten." He said, "Are you sure?" I

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said, "Well, I will tell you; I think I am going to prolong this case for the rest of the day, to give Mr. Simpson a chance to go on with his case on Monday." He said, "Is that so?" I said, "Oh, go on, I am only joking; I am not going to do anything of the kind, I want to get through with this case as fast as I can". It was a surprise to me when I heard your Honor say that I told Mr. Press that I was going to prolong this case. Mr. Press, with that brogue of his, ought to appreciate a joke, and not take things so seriously. I was not talking to a tattler tale.

THE COURT: Gentlemen, the matters that counsel is speaking about have nothing to do with the guilt or innocence of this defendant --- could not possibly affect the guilt or innocence of this defendant. It is mere matter of professional conduct on the part of a lawyer, that's all, and cannot possibly have any bearing upon the guilt or innocence of the defendant. The jury were not called at the time, the case was not called this morning for trial when the matter that the defendant's counsel now mentions and places upon the record took place. Mr. Simpson's case had been called first. Your motion is denied, and you take an exception, and we will proceed with the trial of this case.

MR. MARKEWICH: Exception.

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W I L L I A M D A M, the defendant herein resumes the stand,
and further testifies: (Through Official Interpreter Rosen-
thal.)

CROSS EXAMINATION CONTINUED BY MR. STRYKER:

MR. MARKEWICH: A man (Mr. Press) that gets \$7500 a
year, ought to have more sense.

MR. STRYKER: Your Honor, I insist that if counsel
wants to make any statement about any member of the
District Attorney's staff he should make it out loud and
when the assistant is present.

THE COURT: Mr. Markewich, I would not recommend you
to pursue that matter any further.

Q You were drunk that night, were you? A No.

Q You had not been drinking? A I drank a little.

Q As I understood your testimony yesterday --- won't
you look at me please --- as I understood your testimony yes-
terday, you wanted his Honor and the jury to believe that the
complaining witness and the man with him were drunk, is that
so? A Yes, they were intoxicated.

Q In other words they were drunk and you were not; is
that the situation? A I was not intoxicated.

Q And they were? A Yes, they were.

Q Were you drinking that day in the restaurant, on that
day? A Yes, they gave me to drink.

Q Were you sitting at the same table with them for some
long period of time that day? A No, I was not sitting at the

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table with them. I was sitting at another table.

Q Then when the restaurant keeper told us yesterday that you were sitting at the table with the complainant and his witness, he was not telling the truth on that point, was he?

THE COURT: I wouldn't put it that way.

MR. STRYKER: Question withdrawn on your Honor's suggestion.

Q I call your attention to the fact that yesterday the restaurant keeper himself swore in substance that you were sitting at the same table with Shakko and his witness, or the witness friend, Joseph Katz; in spite of that testimony do you deny now that you were sitting at that table? A There were two tables pushed together; I was sitting at one table and they were sitting at the other table, and they handed me the drinks over to my table.

Q That is your explanation of that. Now, when were you scratched in the face?

THE COURT: Did not the other witness testify that he was sitting at the other table also?

Q I call your attention to the fact that in substance the other witnesses for the defense swore that you were sitting at the same table with the complainant and Katz; do you deny that? A You may perhaps call it the same table, because two tables were pushed together. I was sitting at one table, and they were sitting at the other table.

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Q. How long were you sitting at that table? A. Maybe half an hour.

Q. Is that all the time you were sitting there, a half an hour? A. Only a half an hour.

Q. The restaurant keeper in substance testified that you were sitting there most of the time from eleven o'clock in the morning until the evening; is that so or not?

MR. MARKEWICH: I object to that as not being the testimony.

(Question withdrawn.)

Q. What time were you scratched on the face as you say?

A. Eleven o'clock at night.

Q. Who scratched you? A. Shakko.

Q. Where were you scratched? Point out to this jury the point on your face where you were scratched? Let us see it now; come down in the light and let us have a look at that; come over here. Where is it? A. It is healed up already, but the blood was running at that time.

Q. And when you were scratched in the face what did you do?

A. I ran away.

Q. Then why was it that later on when you say you were struck, you hit a man so hard that he fell to the pavement, if the first time when you were struck in the face you ran away?

THE COURT: That is a little too psychological for him.

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MR. STRYKER: Question withdrawn.

Q You did not strike back when you were scartched, did you? A No.

Q But later on when you were struck you struck back?
A Yes, the second time he struck me and I struck him.

Q Where did he strike you? A On the head. There were two --- more than one struck me on the head.

Q Can you point any place on your head that shows any kind of a mark? A No, there is no mark on my head but he struck me just the same.

Q You were afraid of the complainant, were you? A Yes, I was.

Q If you were afraid of the complainant why didn't you run before you felled him to the ground?

(Question withdrawn.)

A One hit me from one side and the other from the other side and I hit back.

Q You were an innocent man being wrong; why didn't you call for a policeman --- why didn't you cry out instead of running? A I ran away. I didn't see any policeman; had I seen one I would have run up to him.

Q Did you cry out for a policeman even once? A I only made an outcry like "Oh, oh", but I didn't call a policeman exactly.

Q Why did you run to the top of that building and hide

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there in the shadow, between them on the roof? A I didn't hide there, but I was afraid of them because they were running after me telling me that they will show me now what they will do, and I was afraid.

Q You were afraid. Well, if you were afraid weren't you afraid enough to yell for the police? A I was so frightened that I didn't think of calling a policeman.

Q Then when the policeman came you must have been very glad to see your protector in sight? A When I saw that coming with a policeman I didn't think of anything at all. I don't know what I thought.

Q Why didn't you come forward and say, "Here, Officer, these men are assaulting me, help me out?" A I had no opportunity to talk to him. As soon as he saw me he struck me a blow in the face and scared me.

Q Did you at any time on that night tell the policeman that you were assaulted and you wanted their help, or anything of that kind? A I told him a great many things in Russian; whether he understood it I don't know.

Q I ask you if you told him that in Russian or in any other language? A Yes, I did.

Q What did you say? A I told him that I was beaten by several of them, and I struck him back.

Q Why is it, witness, that you did not tell us that on your direct examination? A When?

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Q When your own lawyer was asking you to tell your story. You were told to go ahead in your own way and tell what happened; why didn't you tell us that? A I couldn't speak English to the policeman, and I didn't think I could say that.

Q So you didn't say it to the policeman? A I did, in the Russian Language.

Q Well, when you were on the stand yesterday and were asked to tell your story, why didn't you tell the interpreter that you are telling now? A Because I was not asked that question.

Q You said these men were calling you bad names, is that so? A In the restaurant they called me vile names.

Q While you were sitting at the table with them? A When they spilled the drinks on the table and I came there to clean the table with a rag and I told them not to make so much noise. Then they called me vile names.

Q Then you had quite a little trouble with them there in the restaurant that day, didn't you? A Not exactly. They were drinking and making a noise.

Q You had quite some argument --- talk --- with them about the drink they had spilled and so on? A No, I told them that I only came to clean the table, and there is no trouble about it.

Q And when they called you bad names you did not say anything back to them at all --- you just took it? A No, I

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didn't answer them.

Q At the time that you say these men called you bad names the proprietor was present, and the other men were present in the restaurant, weren't they? A He was near the counter where the money register is --- I don't know whether he heard it or not.

RE-DIRECT EXAMINATION BY MR. MARKIEWICH:

Q You were telling us yesterday about a man by the name of Mitrofon Potapoff. What was it that that man asked you to do on the tenth day of March? A He came to the restaurant at two o'clock, he came from Van Courtlandt Park and he told me that I should come there on a job to work, and then again he told me that ---

MR. STRYKER: I object to this as repetition.

THE COURT: Do not go over anything that we have been over.

Q In what manner of voice did he say it --- loud or a low tone of voice? A In a loud voice --- every one in the place could hear it.

Q Do you know if the complainant Shakko and his friend knew that you were going to Van Courtlandt Park that night?

MR. STRYKER: I object. He could not know the other man's mind. He hardly knows his own.

THE COURT: Objection sustained.

Q Did you tell anything to Shakko and to his friend Katz

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and the other man that you were going up that night to Van Courtlandt Park to the tunnel company, for a job? A I did.

RE-CROSS EXAMINATION BY MR. STRYKER:

Q How much do you weigh? A About one hundred and

I V A N K R A S N O H E R A, called as a witness on behalf of defendant being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MARKEWICH:

Q Where do you live? A 250 Cherry street.

Q What do you do for a living? A Laborer in the tunnel.

Q Were you in my office this morning? A I was.

Q You got a subpoena from me to appear in this court?

A I did.

Q Do you know the defendant? A I do.

Q How long do you know him? A About one year.

Q Do you know one by the name of Shakko --- Ivan Shakko?

A I do.

Q Can you point him out in court, if he is here? A He is sitting over there in the rear.

Q Is this the man you mean (indicating complainant Shakko)?

A Yes.

Q Are you sure that that is the man? A Yes, I knew him.

Q How long do you know him? A A couple of years.

Q Do you know Katz (indicating Witness Katz)? A Yes, I

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know him.

Q How long do you know him? A We come from the same village -- only about half a mile away from one another.

Q And do you remember the tenth day of March, 1912? A I do.

Q Were you in a certain restaurant at No. 218 Madison street on that day? A I was.

Q Will you tell us whether or not you saw the complainant and his friends and the defendant in the restaurant on that day? Did you see them? A I did see them.

Q Are you sure about that? A Yes.

THE COURT: Let him state whom he saw.

BY THE COURT:

Q Whom did you see? A Ivan Shakko, Gregor Kortuk, William Dyn and Pietro Alatka.

Q Anybody else? A Nobody else; there were other people whom I don't know.

BY MR. MARKEWICH:

Q Just tell us what you saw, everything that you saw there done by any of these parties. I was walking till half past nine o'clock, and I came to the restaurant about ten o'clock and I started to eat.

Q Ten o'clock that night? A At night, and I ordered something to eat, and we had for ten cents beer and whiskey and we sat down and we were drinking.

Q You had beer and whiskey? A Yes.

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Q Where did you get it from? A From Horowitz's saloon.

Q Who brought it to you? A People were going out and bringing it in.

Q What did you see Shakko and Dym and Katz do, if anything? A They were also drinking.

Q Where? How? A They were sitting down drinking.

Q Were they sitting together, or did they sit at different tables? A They were drinking with me.

Q Were they sitting at the same table with you, or at another table? A The others were drinking with me, but Dym, the defendant, he did not drink with me.

Q Who was at your table? A John Shakko, and Kortuk.

Q Who else? A Nobody else with me.

Q Nobody else at your table? A And Gregory was sitting at a table near by and we were drinking together.

Q Who is Gregory? A Kortuk.

Q Was Kortuk at your table? A No.

Q Well, who was at your table? A Ivan Shakko.

MR. MARTEWICH: I think Kortuk means Katz.

THE COURT: I wrote down on my notes that Ivan Shakko and Kortuk --- which means Katz --- and himself were at one table, but now he says Katz was at another table.

Q Who was at your table? A Ivan Shakko. With me at the same table was only Ivan Shakko, and Gregory Kortuk was sitting at a table right next to mine.

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Q Where was the defendant sitting -- Dym? A Dym was sitting at another table.

Q And then Kortuk and Ivan Shakko were not sitting at the same table? A Not at the same table.

EDWARD HOROWITZ, called as a witness in behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MARKEWICH:

Q What is your address? A 224 Madison street.

Q You are the proprietor of a liquor saloon on Madison street? A Yes, sir.

Q You have a restaurant connected with that saloon also? A Yes, sir.

Q Now, was I ever at your place of business yesterday? A Yes, sir.

Q I served you with a subpoena? A Yes, sir.

Q And it was testified yesterday by one Shakko that he was never in your place and does not know you. Do you know one John Shakko? A Yes, sir.

Q Can you point him out in court? A Yes, sir.

MR. MARKEWICH: (Addressing complainant) Shakko, stand up.

Q Do you know him (indicating complainant who has arisen)?

A Yes, sir.

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Q. How long do you know him? A. He is my customer for the last two years.

Q. Do you know his friends? A. Yes, sir.

Q. Do you know the defendant? A. I know everybody, yes, sir.

Q. On the 10th day of March, 1911, that being on a Sunday, were the defendant, the complainant, Katz and his friends -- were they in the restaurant attached to your liquor saloon?
A. Yes, sir.

CROSS EXAMINATION BY MR. STRYKER:

Q. What is the license number of your license, - your liquor tax certificate? A. I don't know, sir.

Q. You have a liquor tax certificate? A. Certainly.

Q. Is it now in force and effect --- it is a valid, existing certificate? A. (No answer).

Q. It is a good certificate, it has not been cancelled?
A. Yes, sir.

Q. It has not been cancelled? A. No, sir.

Q. What is the number of your premises? A. 224 Madison street.

Q. Were you running that place on the 10th of March? A. I am a bartender.

Q. And you were selling drinks that night, Sunday, on the 10th of March? A. I refuse to answer.

Q. You refuse to answer on what ground? A. On the ground it might degrade me.

Q Tend to incriminate you? A Tend to incriminate me.

Q I ask you the question whether you were selling drinks there after twelve o'clock on Sunday night, March 10th? Do you refuse to answer that question also? A Yes, sir.

Q I ask you whether you were sending drinks into the adjoining premises, the premises of the restaurant next door, on Sunday? Do you refuse to answer that also? A Yes, sir.

Q Please just state if you do, because you have a right to answer. You refuse on the ground it would tend to incriminate you, is that right? A Yes, sir.

THE COURT: On the ground that his answer would tend to incriminate him?

MR. STRYKER: Yes, sir, not the question.

Q In other words, you cannot give any answer except one which would incriminate you or tend to incriminate you, is that it? A Yes, sir.

BY THE TENTH JUROR:

Q Did this man Shakko -- did he owe you any money that night? A Yes, sir, he didn't pay for the supper, eighty-five cents; I asked him why, and he said, "Next Saturday" he will "pay".

Q He owed you eighty-five cents for supper? A Yes, I always trust up to pay day, and he owed me from before.

BY MR. STRYKER:

Q You told the jury that he owed you eighty-five cents?

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A For supper, yes, sir.

Q Why did he owe you eighty-five cents? What was it for?

A Because next Saturday was his pay day.

BY THE COURT:

Q What did he owe you the eighty-five cents for? A For supper. He gets an order supper -- I make him fish. There was eight men there.

BY MR. STRYKER:

Q He paid the whole thing? A Yes, sir.

Q Eighty-five cents? A Yes, sir.

Q Then it was not for drinks as the other witnesses have testified that he owed you the eighty-five cents? A Not for drinks.

Q As the other witnesses said it was, for which he owed the eighty-five cents? A It was only for supper, it was eight pieces of fish, eighty-five cents. I fried him fish.

Q You want the court and jury to believe that?

THE COURT: Don't put it that way.

A You can ask the complaining witness.

BY THE COURT:

Q What makes you remember that so distinctly? A Well, it was the 10th of March, 11 o'clock, and eight Peles come in my place; there is three here; so I gave them two tables. At one table was sitting five men and at the other table three, and I ordered supper. I said "What?", and they said, "Fish",

because they are not allowed to eat meat, and I made them eight pieces of fish, and they were sitting after twelve o'clock --- it was eleven o'clock, thoroughly drunk, and they started the argument, started to call bad names, and I know them Poles when they start an argument there will be a fight, so I says, "Boys " ---

Q What is that? A So they started to call bad names in Polish.

Q Who? A The complainant and the defendant, and every one. --- the next, you know, the complainant started to call bad names.

Q Who called the bad names to whom? A The complainant to the defendant.

BY THE COURT:

Q Where was the complainant sitting or standing when the complainant called the defendant a bad name? A There was two tables, one near the other one, and they were calling around after, so they started ---

Q You do not answer my question: where was the complainant sitting or standing? A On the one table, and the defendant was at another table.

Q Were they sitting at the same table? A They was near one table.

Q Were they sitting at separate tables? A Five at one table and three at another table.

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BY MR. STRYKER:

Q Was the complainant Shakko and the defendant Dym sitting at the same table? A No, sir.

Q They were sitting at separate tables? A Yes, sir.

Q In your establishment? A Yes, sir.

Q You are sure of that? A Yes, sir.

Q Your memory is very correct on that? A Yes, sir, I know everything.

Q You know everything? A Yes, sir.

Q You have never been convicted of crime? A No, sir.

Q Not yet? A No, sir.

MR. MARKEWICH: I object to that.

THE COURT: Strike out the words "Not yet", and the jury are instructed to disregard them entirely.

MR. MARKEWICH: Defendant rests.

GRAHAM CALDICOTT, called in rebuttal by the People being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. STRYKER:

Q Where do you live? A 614 West 157th street.

Q What is your business? A Cashier for the Pittsburgh Contracting Company.

Q How long have you been cashier for that concern? A Since last June.

Q What is this ticket? A That is the labor ticket that is given to the workman, to identify him, without which he

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cannot get his money.

MR. STRYKER: I ask to have it marked for identification.

(Marked for identification People's Exhibit 1.)

Q Do you see any number on the back of that ticket?

A Yes, sir, No. 435.

Q Did you search your records with regard to No. 435 last night or this morning? A I did.

Q What name did you find opposite that number? A J. Shakko. We have to spell it as near as we can.

MR. MARKEWICH: I object to this as absolutely incompetent. I object to this testimony on the ground that it is incompetent.

THE COURT: Why is it incompetent.

MR. MARKEWICH: The witness cannot state from memory as to an examination of a record, nor can he state anything with reference to a record unless he has it here.

THE COURT: He may refresh his memory from the record which he has that is under his control.

MR. MARKEWICH: He must have the record here.

THE COURT: No.

Q Have you the record here? A No, sir.

THE COURT: It is merely a question of identification.

MR. MARKEWICH: The other man said he got the money---

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we don't dispute that.

THE COURT: Yes, you do. You have introduced evidence here repeatedly that the man did not have a dollar.

MR. MARKEWICH: Exactly, we still maintain it.

THE COURT: And Shakko says he had twenty dollars and he was robbed of it.

MR. MARKEWICH: Would the statement by this man that he got his pay on Saturday show that he had any money on Sunday or Monday morning?

THE COURT: It is for the jury to determine.

MR. MARKEWICH: Does your Honor believe that it is competent?

THE COURT: It certainly is; there is no other way of proving it. The objection is overruled.

MR. MARKEWICH: Exception. Is your witness going to testify that he got his pay on that day?

MR. STRYKER: yes.

MR. MARKEWICH: Very well, we concede it.

MR. STRYKER: It is conceded on the record that the complaining witness received his pay, \$27.25 on the 9th day of March, 1912, as payment for his labor for the Pittsburgh Contracting Company for which he was then working.

Q It is work on the watershed? A Yes.

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CROSS EXAMINATION BY MR. MARKIEWICH:

Q In how many shifts do the men work? A Three.

Q They work day and night? A Not the one man.

Q But your Company does work day and night continually?

A Yes, sir.

Q You never stop? A Excepting on Saturday night, of course.

Q Of course you do not know Shakko personally? A No, I do not.

Q You don't know anything about his habits? A No.

BY THE COURT:

Q Do they work Sunday night? A No, sir.

Q Is your company doing any work at Van Courtlandt Park, or near by? A No, sir, that is another Company. Ours is from 181st street downwards.

BY MR. STYICKER:

Q That is not your Company at all up at Van Courtlandt?

A No, sir.

BY MR. MARKIEWICH:

Q Near where do you do your work? A From 181st street, but I have forget the exact location. It is Jerome Park avenue down to 104th street.

Q Your work starts somewhere near Van Courtlandt Park, doesn't it? How far is it from Van Courtlandt Park? A This

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particular work?

Q Yes, how far is it from Van Courtlandt Park? A I am not well enough acquainted with New York to tell you.

BY THE COURT:

Q Well, you tell us just where it is and we will tell you? A It is Jerome Park avenue, over in the Bronx. I am practically a stranger here; I forget the exact location.

BY MR. STRYKER:

Q Was your Company doing work in this City on or about the 10th day of March, 1912? A This particular man, I can tell you where he was.

Q Yes, where was he? A At 161st or 171st street.

Q 161st or 171st street? A Yes, shaft No. 8 of the Catskill Aqueduct.

Q On the west side of Manhattan? A Yes.

Q On Washington Heights? A Yes, right near the Polo Grounds, wherever that is --- a little way from the Polo Grounds.

Q When you say he was working on the 10th, he was still a laborer there? A Yes.

Q Not working at night on the 10th? A No, sir.

BY THE COURT:

Q Are you on this side of the Harlem River? A Yes, sir.

BY THE FOREMAN OF THE JURY:

Q Do you remember the denominations of the money Mr.

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Shakko got? A \$27.25; he would get a twenty, a five, a two and a quarter.

BY MR. STRYKER:

Q He might get that or he might get others? A No, he would invariably get a twenty.

BY MR. WAKENICH:

Q A twenty dollar bill invariably? A Yes, sir, I never split twenties into tens.

CHARLES CARLTON, called as a witness in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STRYKER.

Q Where do you live? A 1245 Coney Island avenue.

Q You are a member of the police force of the City of New York.

Q You were a member on the 10th and 11th days of March of this year? A Yes, sir.

Q Were you on patrol or beat on the morning of the 11th day of March? A I was on Baxter street from Hester to Bayard.

Q Tell us what you saw in regard to this case, and begin at the beginning? A About 2 a. m. on Monday morning the 11th of March, I was standing at Canal and Baxter street, and I saw two men walking down; and about one hundred feet after that was two more. About two or three minutes after that I heard

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the rap of Patrolman Eiseman's night stick, and I started to run down Canal street, and I seen him going north on Centre, and one of the milk trucks coming up, the man, he says, "The other way", so I ran through Baxter street. At the corner of Baxter street and Hester I met Patrolman Eiseman and the complainant Shakko, and I see he was bleeding very bad; his coat and neckwear full of blood, and he said he had been assaulted and robbed of a watch and twenty dollars, so we figured the man must have been in that block. So I says, "Well, there is only one thing to do", and we started to search --- searched the cellar and couldn't find him.

Q Which premises? A 138 Baxter street.

BY MR. MARKEWICH:

Q You found him on the roof?

BY MR. STRYKER:

Q Tell what you did? A We went up on the roof of 138, five stories up, and we searched that roof, and he wasn't there; we came down, searched the yard and then went to the corner building which is 142. There is a large wire fence which separates 142 from the other buildings, and we went up there and he wasn't there. So I came back again about twenty or twenty-five minutes after and went up on the roof with lanterns and there we found the defendant, and I then asked him, I said, "How did you get up here? You wasn't up here before." And

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he said he had climbed over the iron railing after we had left the roof.

BY THE EIGHTH JUROR:

Q Did he speak English? A Yes, sir. And we then asked him what he had --- where the watch and money was, and he said he didn't take it. And we made a search --- we felt the outside of his pockets for it.

BY MR. STRYKER:

Q What did he say he had done? A He said, "I didn't take it, I only hit him." He speaks in broken English.

Q Was the defendant Dan's face scratched up? A No, sir.

Q Was there any mark on his head or face? A No, sir.

BY THE COURT:

Q Did he call your attention to any mark about him?

A No, sir, he was laying down along the edge of the building, with his coat collar up, and his hands in that shape --- extending forward as long as he could get them, trying to hide his face, and as I was swinging the lantern to the edge of the railing --- there was a railing and you would have to climb under it to get to that part of the lantern, and I see him and I says, "Get up out of there", and I had the night stick in one hand and the lantern in the other, and he showed me both hands like that, and then officer Wiseman came over and he had a gun and a lantern in the other hand, and after we had looked

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him over, I tried to locate the other fellow, and I says to Eiseman, "You take him down one way, and I will go down the other hall, and see if we can get the other lad." So Eiseman went down and continued on to the station house with the prisoner.

Q Was the complainant drunk? A No, sir.

Q Was Katz drunk, the man with him? A No, sir, they were all apparently sober.

BY THE COURT:

Q Was Dym, the defendant drunk? A No, sir. The iron railing, I made an attempt to get over it, and I figured if I got over that iron railing it would be a very hard job. The railing I should think was six or seven feet high --- it was a rickety iron railing.

Q How far was the defendant from that iron railing on the other side of it? A He was two houses from it.

Q Did he point towards the iron railing when he told you he had gotten over it? A Yes, and he laughed. He said, "I climbed over it. I saw you gonna down." He saw us search the buildings on the south side of the railing, he saw us search them buildings, and after we had searched them and gone down then he climbed over the railing into the buildings that we had searched.

BY THE TWELFTH JUROR:

Q Did he make any complaint to you about being hit by

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the complainant? A No, sir. We asked Katz if this was the man, and he said "Yes, that is the man that hit him."

BY THE FOREMAN:

Q Which one of you officers hit him in the face? A Neither one of us.

BY MR. STRYKER:

Q Oh, yes; he testified that you or the other officer had hit him in the face, or struck him. Did you? A No, sir.

Q It was not necessary, was it? A No, sir.

CROSS EXAMINATION BY MR. MARKEWICH:

Q The defendant made no attempt at resistance, did he?
A No, sir. He saw the night stick in one hand and the lantern in the other.

Q And you told us something about his smiling? A After we questioned him and got to the fence.

Q You wore a uniform at that time? A Yes, sir.

Q And he showed no signs of fear when he saw you? When he saw your uniform he showed no signs of fear? A Well, no, he did not.

Q He was talking in Russian or some other language that you did not understand to the complaining witness and Katz, wasn't he? A We stopped him. He said a few words and we stopped him.

Q You stopped him? A Yes, sir.

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Q. Was he saying anything to you in Russian? A. No, sir.

Q. Nothing at all? A. No, sir.

BY THE COURT:

Q. Did he speak in a foreign language to you? A. No, sir.

BY MR. MARKEWICH:

Q. You told us that he told you that he was the man that hit him; that was all that he told you? A. He said, when we questioned him where the other man was, he said that he did not know, and then he said --- we questioned him, "Where is he? Where is he?", and he said, "He ran the other way."

~~Q.~~ He said he ran the other way? A. Yes.

Q. And spoke so plainly that you could understand him?

A. Yes, sir.

T E S T I M O N Y C L O S E D.

MR. MARKEWICH: I move to dismiss the indictment, if your Honor pleases, on the ground that the People have failed to establish a robbery; and I also move that your Honor withdraw from the consideration of the jury the count referring to the robbery.

Motion denied. Exception.

(The Court now declares a recess till 2p. m., first duly admonishing the jury as usual.)

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After Recess, Trial Resumed.

(Mr. Markewich now proceeds to close to the jury in behalf of the defendant.)

During the summation of counsel for defendant counsel states as follows:

MR. MARKEWICH: I say to you that it is the law of this land, and I will ask the judge to charge you -- and I believe that the judge will charge you as the law -- that you Gentlemen in the trial of a criminal action as jurors are the sole and absolute judges of the facts, and that the judge is here to instruct you on the law; you are to take the law from the judge, but not his opinion as to facts. You are here to do your duty, and his Honor, with all due respect and deference to him, is to perform his duty; and his Honor in stating that he did not believe the testimony of a witness, or words to that effect, should not have made a statement of that kind, and I will ask him, Gentlemen, to instruct you to disregard whatever opinion he may have as to that witness's testimony, as to what weight you should give to it, and that you must use your own judgment, that you are the judges of the facts, and I believe that his Honor will charge you on that score.

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MR. STRYKER: I object to this as unfair to the Court.

THE COURT: Well, I am used to that. It is the order of the day.

MR. MARKEWICH: I except to your Honor's remarks.

(Mr. Stryker now proceeds to close to the jury in behalf of the People.)

During the course of Mr. Stryker's summation to the jury, Mr. Stryker said:

"With the high cost of living that restaurant keeper cannot make a living on ten cent meals".

MR. MARKEWICH: I object to that statement.

MR. STRYKER: I do not blame him (Mr. Markewich) for not liking the inference, because it is not a nice inference. Could that restaurant keeper afford on ten cent meals to pay this man thirty-five cents a day for waiting on customers and to sit around and drink, as he said with the patrons of the place? Could he? I never ran a restaurant --- I would probably be a hopeless failure --- but I would be willing to bet that my waiters would not sit around and drink with my patrons, because I would pay them to do something else --- to do the job -- wouldn't you?

That complainant came there with a roll of money and

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he had it out ---

MR. MARKEWICH: Objected to. He didn't exhibit it in the restaurant.

MR. STRYKER: Katz said that he had that money there.

MR. MARKEWICH: No, he said that he knew he had that money. Your Honor asked the complainant specifically.

THE COURT: Katz said that the complaining witness had bills, but that he paid a certain bill in coin. He said he had bills, but he paid a certain bill at the restaurant in coin.

MR. STRYKER: Well, that is my recollection, I may be wrong.

MR. MARKEWICH: You are, positively.

MR. STRYKER: I do not set up to be infallible.

(The summation in behalf of the People is now proceeded with by Mr. Stryker.)

MR. MARKEWICH: I object to the statement that the restaurant keeper was in cahoots with the defendant, if not in this job in such jobs as that, and for that reason he pays the fee to counsel. I object to that as not a fair and reasonable deduction from the evidence, and as prejudicial.

THE COURT: That is his argument, that the restaurant keeper allows a man in there that he says is a kind

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of helper and he pays his counsel fee; that is the evidence. Now, the District Attorney is entitled to tell the jury what he thinks that means. The jury may find entirely differently, but those are the facts as testified to; that a man keeps a ten cent restaurant, that he retains counsel for a man that is arrested and whom he says had kind of helped him; kind of helped him, - was not exactly in his employ. Now, the District Attorney claims that the natural inference, or the logical and proper and necessary inference is as he says. You claim to the contrary. You claim it is a generous act on the part of this man to stand by a faithful employee. The District Attorney contends as he has expressed it. Those are the facts that each of you are entitled to argue from those facts.

The trouble with your argument, Mr. Markewitz, was that you were starting off on an argument that was not based on any fact whatever. For instance, the custom of the Poles --- that they always testified falsely; you had nothing to base it on.

MR. MARKEWICH: I am not arguing at present, your Honor. The District Attorney is trying to convey to the minds of the jury that this restaurant man is practically a thief, that he stands in with thieves, and so on. That



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is an absolute falsehood. The District Attorney knows that there is no evidence on which he can base his assertion and he has no right to go outside of his evidence.

THE COURT: His argument may not appeal to the jury and yours may, but they are both based upon the evidence in the case.

MR. MARKEWICH: I will take an exception.

(Mr. Stryker concludes his summation to the jury.)

(The Court now charges the jury.)

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THE PEOPLE vs. DYM.

THE COURT'S CHARGE, Swann, J.

Gentlemen of the jury: The defendant is on trial for the alleged crime of robbery in the first degree. It is alleged that in the county of New York, at the corner of Lafayette street and Canal street --- a very short distance from here -- on the early morning of March 11th, at or about 2:30 o'clock a. m., the defendant assaulted and robbed the complaining witness in this case, known as John or Ivan Shakko.

The People contend through their witnesses about as follows, as I remember the evidence. But before I proceed I want to tell you that you are the sole judges of what the testimony was, you are the sole judges of what the testimony proved to your satisfaction, you are the sole judges of what witness is telling the truth, and you are the sole and only judges of what that testimony proves to your satisfaction. The probative force or proving force of testimony is entirely for you, together with the veracity of the witnesses, as well as all other facts in the case. The judge is the judge of the law, and you are obliged under your oaths to apply the law to the facts as you find them to be. In my reviewing the evidence in the

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case it is merely for the purpose of instructing you as to the law --- not for telling you at all as to what the testimony was.

As I understand the testimony in the case it is about as follows: The first officer in the case testifies that he was standing near the corner of Canal and Lafayette streets, and that he saw two men pass by, that they were followed about two hundred feet behind by two other men who walked slowly. He said that as the first two men got at the head of the stairs leading down to the Subway at Lafayette and Canal streets, he saw one of the two men who followed the two men in front approach the complainant rapidly and strike him on the back of the head, strike him somewhere on the head. From the distance that he stood he said that he could not tell whether it was in earnest or in jest, but that the man that was struck fell, and he said nothing until he got up in a short space of time, and then he immediately yelled "Police!", and at the same time he said he saw the two men in flight. He said that while he saw the man struck he did not see what else was done to him. There was some shuffling there and he did not see it, and he was very candid to tell you he did not see it, so he says. He says the minute he saw the man rise and call for the

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police that he rapped his nightstick for assistance and he followed in pursuit. He says that the man who was felled to the ground and who afterwards arose and hollered for the police, also followed these two men, but they separated, one went one way and one another way. That he followed the man that the complaining witness followed, that is, the officer followed the man the complainant, the wounded man, followed, and all the time rapping for assistance.

The other officer in the case, who was one of the last witnesses you heard, testified that he was at Barter and Canal street when he saw the two men walking down the street, and two other men following approximately one hundred feet behind. He said they disappeared from him, and the next thing that he heard that attracted his attention was the call for assistance by the rapping of the night stick on the pavement, and he immediately took notice and he saw these men in flight, and he saw the officer pursuing one, and the officer made some remark to him, and they together pursued this defendant.

The defendant, it appears, entered some tenement house, and he ran upstairs, and they got a lantern and they went upstairs also. They went all over the roofs and then they found that they were barred by an iron fence on the top of the roof, and so they went down that skylight

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and came up through the next skylight and pursued their search over the roofs and both of these officers say that they saw this defendant lying crouched against a wall in the shadow, and the last officer said that the defendant had his arms stretched out in front of his head, and illustrated it; the officer's illustration showing the position of a man who is screening his face by the stretching out of his arms, putting his face between his arms. He said that one officer then put the light right above him and presented his nightstick, and the other officer presented a gun, and the defendant then held up his hands to them, and he illustrated it.

Both of the officers say that the defendant spoke English, that is, he spoke "a little English", as they expressed it.

A witness for the defense, Peter Alarka, who said he had employed the defendant, also said that this defendant spoke a little English; that was in answer to a question I put. The defendant claims on his part that he speaks no English at all. He says he has been here going on four years, that he is twenty-one years of age, but that he speaks no English. Those, of course, are among the facts for you to determine from the testimony. Of course, if the defendant speaks no English, then he could

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not possibly have said to the officer that he had only struck the complaining witness, and had not taken his property, but that the other man had taken the property --- had robbed him. If the defendant does speak English, as his former employer says, that he did speak a little English, of course it was then ~~xxx~~ possible that he did state to the officers as the officers have stated to you. Of course, there is a sharp conflict of evidence there. The officer says he did speak English and the defendant says he spoke to him in nothing but Russian. You are to determine whether or not that defendant spoke English. His counsel asked him while he was sitting there his weight, and then his counsel replied and put upon the record what his weight was. Now, you may have observed something in regard to what the defendant did just at that time. Did he correct his counsel when his counsel spoke in English and said that he weighed one hundred and forty pounds? Because his counsel did not speak in any foreign language, but in English, and said "He says he weighs one hundred and forty pounds." Did the defendant correct that? Did the defendant correct his counsel, and then did his counsel say, "He says he weighs one hundred and seventy pounds"? If that was so and the jury observed that, because it was in the immediate presence of the jury,

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that would be an element that the jury could use either one way or the other as in your good judgment you deem best.

The complaining witness says that when he was felled to the earth by the defendant by a blow from behind with some heavy instrument -- he does not know what it was, because he did not see it --- that the other man that was with him immediately robbed him of his watch and chain and twenty dollars that he had in cash; all that he had in cash; and that then they broke and fled.

The officer says that he took the complainant to the hospital, and there the doctor inserted his finger into the wound and under his scalp and all around, as he expressed it, to see if any of the bones of his skull were broken, and that then after that he stitched the wound up.

As I recall the defendant's testimony it is practically like this, but you are always to determine what the testimony was and not as I remember it. The defendant, as I remember his testimony, says that he was in the restaurant. The complaining witness says that he was in there and he says he was there at the same time. He says that he drank with the complainant --- that he had a drink with him --- and he says they were all drunk. His witness, Peter Alarka, said they were all drunk when they left his

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place. The complaining witness says he had not been drinking at all. Both of the officers say that neither Shakko, the complainant, nor Kats were in any way under the influence of liquor, nor was the defendant when he was arrested.

The defendant says he was in this restaurant, and that he had a drink with Shakko and with Shakko's friend, at their request, as I recall it. The defendant says that he did not sit at Shakko's table, but as I recall the testimony of Peter Alatka, his employer, he said he did. Peter Alatka, as I wrote it down, said that they all sat down at the same table, and that they drank beer and whiskey which were brought in from outside. He was particular to say that they brought it in from outside, I remember.

The defendant says he was not at the table with the complaining witness and his friend, but Alatka says that he saw him there. That is his recollection. And the other witness -- for the defendant -- Mike Ziko -- says that at 3:35 o'clock that evening he saw the defendant and the complaining witness and the complaining witness's friend and roommate, Kats, sitting at the same table drinking. William Blocker, one of the witnesses for the defense said that he was at the restaurant and that he saw Shakko,

Katz and the defendant and another man sitting at the same table eating and drinking; there were four at the table, and there was beer before them. That is as I wrote down the evidence, but of course it is your memory that must guide you and not mine, nor my notes. They were all intoxicated, he said, and Shalko could hardly stand on his feet. That is the way I wrote down the testimony of William Clocker, one of the witnesses for the defense. Then for the defense the saloon keeper next door is brought in and he testifies that the complainant had contracted a bill of sixty-five cents in the neighboring saloon and restaurant, and he did not pay it, and he hadn't any money to pay it, and he remembers distinctly that he had no money with which to pay, and he told him he would not get any money until he was paid off the next Saturday, and it was agreed that the saloon keeper should wait for the price of the fish that he had prepared for the complainant until the next Saturday. That is the way I understand his testimony.

As I understood the argument of defendant's counsel, he said he thought the word "fish" meant drink, but my recollection is that the witness said he had cooked fish for him. Defendant's counsel, in arguing for the defense, in his summing up, said that as he understands that that

was equivalent to saying it was the score that he owed for drinks, but I asked the witness if it was for drinks and he said no, he remembered distinctly that they called for fish.

The defendant further says in his testimony that he had been insulted by Shalko, the complaining witness, and that the complaining witness had struck him, and that the complaining witness had taken his hat, and he had to go home and wash himself and get another hat, and he said that the suggestion had been made to him to go up and get a job that early in the morning up at Van Courtlandt Park, and that he had intended to go up there, and was just about to go down to the subway at the time he saw these men lying in wait for him, or standing in wait for him, or he thought they were, and anyway they assaulted him, and that he struck only with his fist in self defense. He says that the time he struck the complaining witness, the complaining witness was within two feet of him, face to face; and he illustrated here at my request, exactly how the blow was struck. He said he did not strike with an instrument, but only with his fist; he illustrated how he did it, and you will remember exactly how he illustrated. Of course, it is for you to determine whether or not such a blow as that could be

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delivered with the fist. You have seen the wound yourselves, and the wound was inflicted on the early morning, as it appears, of the 11th of March. Could that wound be inflicted merely by the fist, by a man standing in front of the complainant? And if you find that it could be inflicted with the mere fist, could a man's fist ever inflict the wound which you saw on that poor woman's scalp? And do you believe the witness's statement that it was stitched up in his presence at the hospital, and that the surgeon at the hospital inserted his hand under the man's scalp and moved it all around to see if any bones in the skull were broken? All of those things are for you to determine, and you alone. If you find that the testimony of the officers and of the complaining witness in this case is true, of course the defendant is guilty as charged.

The defendant is charged with robbery in the first degree. By section 5120 of the Penal Law it is provided that "robbery is the unlawful taking of personal property, from the person or in the presence of another, unlawfully, with means of force, or violence, or fear, immediate or future, to his person." Robbery in the first degree is "the unlawful taking or compulsion,

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if accompanied by force or fear, in a case specified in the foregoing sections of this article, when committed by a person aided by an accomplice actually present".

Robbery in the second degree is defined by section 2123 of the Penal Law as follows: "Such unlawful taking or compulsion when accomplished by force or fear, in a case specified in the foregoing sections of this Article, but not under circumstances amounting to robbery in the first degree is robbery in the second degree when accomplished by the use of violence, or by putting the person robbed in fear of immediate injury to his person."

Robbery in the second degree would be without an accomplice.

Robbery in the third degree is any other robbery.

Section 2, of the Penal Law, in regard to accomplices is as follows: "A person concerned in the commission of a crime, whether he directly commits the act constituting the offense or aids or abets in its commission, is a principal." And it has been said by the Court of Appeals that the presence of the principal in a felony may be constructive, and that constructive presence is made out when it is shown that he acted with another in the pursuance of a common design, and when so situated as to be able to give aid to his associate, with a view

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to insure the success of the common enterprise. In other words, if you find that two men, including the defendant, set out to rob the complaining witness, and that the part that the defendant as to do was to fell the complaining witness to the earth with a blow from some instrument, or thing he had in his hand, and the object of the other was to take the money out of the pocket, one is equally as guilty as the other, because they acted together, they acted in concert, one with the other and one would be just as much guilty of the offense as the other. The man that struck the blow and felled the victim to the earth would be just as much guilty as the man who took the watch and chain out of the complainant's pocket, in case you find that to be the fact. Of course, if you find that this defendant is telling the truth, that he was on his way uptown on a lawful enterprise at 2:30 o'clock in the morning to get a job, and that these men happened to meet him there, either one way or the other, and assaulted him, and that he used only sufficient force to repel that attack which was made upon him, or which was imminent, of course his defense of self-defense would be made out. It is entirely a question for you to determine.

Your verdict in this case will be either guilty or not guilty. Of course the charge is that the defendant is

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guilty of robbery in the first degree, and it seems to me that if anything is made out, any crime, it is robbery in the first degree. However, it is within the province of the jury always that they may find a lesser degree of the crime than the one charged, if they find the facts justify it.

In all criminal actions the defendant is presumed to be innocent until the contrary be shown, and in case of a reasonable doubt that his guilt is satisfactorily shown he is entitled to an acquittal. Every man enters a criminal court with a presumption of innocence in his favor. That continues until the contrary is proved, and then the presumption is rebutted, and does not exist any more. This matter is entirely for you. Furthermore, Gentlemen, if during the course of the trial, in the argument between the Court and counsel in regard to the admissibility or exclusion of evidence, if I have indicated to you in any way that I do not believe that any particular witness or set of witnesses are worthy of credence, of belief, you must eliminate that entirely from your minds and determine for yourselves whether a particular witness or any witness is worthy of belief, and what credence to give it. It is entirely for you, and without reference to anything that counsel says, or that the Court says in

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regard to the credibility of the witnesses or the amount of the weight to be given to his evidence. What you are bound by is the law as the Court lays it down. All questions of fact, all matters of testimony, are for you and for you alone.

MR. MARKEWICH: I would like your Honor to kindly correct that portion of your charge in reference to the testimony as to whether or not the defendant speaks English, by instructing the jury that counsel spoke to the defendant, in asking him his weight, in the Russian language, and not in English. And I will ask your Honor also to tell the jury that the one who asked him to tell the weight later was the interpreter, by the instruction of the court and the interpreter asked him the weight in Russian and it was answered by him in Russian.

THE COURT: I shall have to reply to that because you have spread that upon the record. I saw the transaction. In my immediate presence you asked him, and probably in Russian, because I could not hear -- and I assume you did -- you asked him and he told you his weight. You immediately replied and put it upon the record, that "the defendant says he weighs one hundred and forty pounds." The defendant immediately took you by the sleeve and addressed some conversation to you and then you arose and

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said "The defendant says he weighs one hundred and seventy pounds." Now, that was the way I viewed it, and I shall have to express that upon the record for the reason that you have spread upon the record your statement.

MR. MARKEWICH: That was after the interpreter had asked him in Russian. The reason I had believed that he said one hundred and forty pounds was because he said one hundred and seventy-four and I took the "4" as meaning "40".

THE COURT: My recollection is that I afterwards had the interpreter ask him in Russian.

THE FOR MAN: Do you speak Russian?

MR. MARKEWICH: Some Russian and Polish --- some of it.

THE COURT: It is entirely for the jury to determine. If you did not see it yourselves, then you cannot weigh that in any respect, but if you did, if you saw counsel speak to his client and heard what the counsel said and then saw what the defendant did, you can give it such weight as in your judgment you deem best.

MR. MARKEWICH: I also ask your Honor to charge the jury that the term "a little English", - that "little" is a relative term, and may mean just a phrase or two of the English language.

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THE COURT: I won't instruct the jury as to what is the meaning of the English language; they know better than I do and they may be in a better position to instruct me than I them as to the English language.

MR. MARKEWICH: Exception, inasmuch as your Honor made reference to the statement that he said he spoke "a little English".

THE COURT: And I told the jury that they are the sole judges, and what that means I have told them -- what I think it means or what it means. It is for them to say what it means, like any other testimony in the case.

MR. MARKEWICH: I ask your Honor to charge the jury that in determining the question whether the complainant was robbed, they must first find that the complainant had the sum of twenty dollars in his possession; that in determining whether he had twenty dollars in his possession at the time it is very important to them to know the testimony given by the cashier of the Pittsburgh Contracting Company, who stated that they invariably paid them in a twenty dollar bill, and the testimony being that he had a ten dollar bill and two fives.

THE COURT: What do you think that shows?

MR. MARKEWICH: It is for them to say whether he had it, and for that purpose, and whether he had to

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change it.

THE COURT: Shall I tell the jury that when an employee is paid off on Saturday with a twenty dollar bill there is a presumption that he does not change it between Saturday and Sunday night, or shall I tell them sometimes it happens and sometimes it does not.

MR. MARKIEWICH: No, but they must consider that testimony as of some weight.

THE COURT: I venture to say that they cannot tell anything about that. If a man has a twenty dollar bill in his possession all the time merely because he is paid in it then they will find accordingly. And if they think that a man who is paid on Saturday \$27.25 would not have changed his twenty dollar bill, sometimes think the twenty dollar bill is a little more convenient to a poor man, they will find accordingly. The testimony, so far as his companion stated, was a ten and two fives.

MR. MARKIEWICH: I ask your Honor to charge that if the jury can possibly reconcile any discrepancies in the testimony it is their duty to do so.

THE COURT: What does that mean?

MR. MARKIEWICH: If it possible to reconcile any discrepancies in the testimony it is their duty to do so.

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THE COURT: Does that apply only to one side or both?

MR. MARKEWICH: Both sides.

THE COURT: Very well.

MR. MARKEWICH: That if the jury believe that the defendant struck the complainant in fear of bodily harm, and the complainant fell, it is immaterial how badly he was injured, he must be acquitted.

THE COURT: I have already told them so. That is a fact.

MR. MARKEWICH: I ask your Honor to charge that the jury are not bound to accept all the testimony given by the witness Morowitz, or by any witness; and if they believe that he had reason to conceal the fact that he sold liquor on Sunday, they still have a right to believe the other portion of his testimony and to reconcile that testimony with the testimony given by the other witnesses that liquor was actually sold on the premises on that day.

THE COURT: That is a fact, although it contradicts one of your arguments that "False in one, false in all."

MR. MARKEWICH: I understand, but I will ask your Honor to charge upon that.

THE COURT: The jury may believe that a man is testifying falsely to one part of his testimony, and testifying truthfully in another part of the testimony; it is a matter

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entirely for the jury. They will approach this matter as they would their own more important affairs. How would a juror or you or any other sensible man view the statements of a man that they had caught lying? Now, you may think at the same time that the man is telling you the truth in the other respects. Then they may say, "Now, he has lied in a material matter, and I refuse to believe him as to the other matters that I cannot get any verification of." It is entirely for the jury.

MR. MARKEWICH: I ask your Honor to charge the jury that where they believe a witness wilfully lied on a material point of his testimony, that they have a right to disregard his entire testimony?

THE COURT: That is true, of course.

MR. MARKEWICH: And I shall ask your Honor to charge the jury ---

THE COURT: And that means no matter what his object may be, whether to protect himself or otherwise.

MR. MARKEWICH: But if he wilfully lies.

THE COURT: Yes.

MR. MARKEWICH: I shall ask your Honor to charge that if the jury believes that the complainant actually did know the defendant for some time, and actually did know Morositz, the saloon keeper, and that they did drink on

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that day, they believe that the testimony is material, and they believe that he lied on that point, they have a right therefore to disregard his entire testimony.

THE COURT: That, as I said, applies to both sides. They may disregard his whole testimony, or they may find that a man who lied in that respect yet spoke truthfully in the other respect. I have said all along that the rule applies to both sides. In other words, in very plain English they may find that this complainant deliberately lied about not being in Horowitz's restaurant, and they may find that he spoke truthfully in all other respects. Yet at the same time they may say if he really was in the place, well, he lied about that and we do not believe him about the other things, and they will require a verification of it --- some corroboration --- and they will look perhaps to the other evidence in the case, and the facts in the case as they believe them to be true, to say whether or not he has been corroborated.

MR. MARKEWICH: I shall also ask your Honor to charge that if the jury find that the evidence as to the robbery is evenly balanced they must find in favor of the defendant and find him not guilty.

THE COURT: That is true. That don't mean in the number of witnesses, Gentlemen. A juror may disbelieve

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ten witnesses and believe a few; a juror may think a fact speaks louder than words. What were the acts? What has been proven to your satisfaction? And words may be written in air and may have an object and a motive, but the facts do not; the facts are there and are everlasting.

MR. MARKEWICH: I shall ask your Honor also to charge the jury that if they believe that the witness Alarka ---

THE COURT: I won't charge the jury upon any witness; you have gone far enough. Just as you have already objected to my commenting upon the evidence at all, I cannot charge the jury as to what weight to give to any particular witness. I should have stopped you right at once. I didn't know you were going that far.

MR. MARKEWICH: I ask you to instruct the jury on what a reasonable doubt means.

THE COURT: The United States Court has held as follows, that a reasonable doubt is a doubt based on reason and which is reasonable in view of all of the evidence, and if after ^{an} impartial comparison and consideration of all of the evidence, you can candidly say that you are not satisfied of the defendant's guilt, you have a reasonable doubt; but if after such impartial comparison and consideration of all of the evidence in the

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case you can truthfully say you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt. That is what the Court has held.

Now, you will retire, and your verdict will be either guilty or not guilty, and just as soon as you have arrived at it let me know.

(The jury now retires to deliberate upon a verdict.)

(The jury later return and state that they have not as yet agreed.)

THE COURT: Aren't you able to agree?

THE FOREMAN: I would like to ask a question. Can we agree upon a verdict of less than the first degree?

THE COURT: Yes. If you think the facts justify it you can arrive at a verdict in any degree --- first, second or third.

THE FOREMAN: Could we bring in a verdict of only assault?

THE COURT: Yes, you could, if you think it was only an assault. There is a count in the indictment of assault in the second degree, and you could bring in a verdict of

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assault in the second degree. The verdicts would be assault in the second degree, robbery in the first, second or third degree, or not guilty; any of those verdicts you could bring in.

MR. MARKEWICH: I ask your Honor to charge that if they believe he struck the first ---

THE COURT: I am not going into the merits of the case.

MR. MARKEWICH: Then they also bring in a verdict of ---

THE COURT: You may retire, Gentlemen.

MR. MARKEWITZ: Exception to your Honor not hearing my request to charge.

(The jury now again retires to deliberate upon a verdict.)

(The jury now returns and renders a verdict of guilty of assault in the second degree).

Stewart Liddell,
Official Stenographer.

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COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York, Part II.

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

-against- :

WILLIAM DYM indicted as WILLIAM DAM. :
-----X

New York, April 10th, 1912.

Indictment filed March 14th, 1912.

The defendant is arraigned for sentence before

HON. EDWARD SWANN, Judge.

THE COURT; Would you like to make your motion upon
the record in this case, so as to have your record clear?

DEFENDANT'S COUNSEL: Yes, your Honor. I move to set
the verdict of the jury aside upon the following grounds:
first, that the verdict is contrary to law, contrary to the
evidence; that the District Attorney was permitted in his
address under objection to make improper remarks and deduc-
tions and statements that were not founded upon fact or upon
the evidence in the case; particularly in that he referred
to a witness by the name of Alarka, who testified that he
was in business as a keeper of a place, which is the rendez-
vous for criminals, and he shares in the loot; there being no
evidence to that effect.

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Also upon the ground that your Honor in the course of the trial characterized the testimony of a certain witness as being unworthy of belief.

Also upon the ground that when the jury asked for instructions your Honor refused to hear counsel in his request that your Honor charge the jury or instruct the jury that they may bring in a verdict of assault in the third degree, the jury having asked whether they could bring in a verdict for a lesser degree than charged in the indictment.

And upon all the exceptions taken at the trial.

THE COURT: There is one point that I agree with you on, and that is that the verdict is not according to the evidence. The verdict in this case should have been robbery in the first degree, and the verdict was assault in the second degree. If there was any case of robbery ever tried this was it, and that would render this man liable to a punishment of twenty years in State Prison. As it is, I am limited to imposing five years, and then under the statute I am limited to an indeterminate sentence. And the judgment and sentence of the Court is that the defendant be confined in State Prison for not less than two years and six months, or more than five years.

DEFENDANT'S COUNSEL: My motion, I take it, has been denied.

THE COURT: Yes.

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DEFENDANT'S COUNSEL: Exception. And before your Honor finally sentences him, I ask you to send this case to a probation officer to investigate his previous character.

THE COURT: There is no necessity for that, none whatever. It was highway robbery --- robbery in the first degree. State Prison.

Stewart Liddell,
Official Stenographer.

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