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CASE

CASE # 1797

COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York, Part V.

November Term Continued.

2170

THE PEOPLE OF THE STATE OF NEW YORK, :

-against-

JAMES O'CONNOR.

Before:

: HON. JEREMIAH T. MAHONEY, J.,

: And a Jury.

New York, December 9th, 1913.

Indicted for unlawful injury to property.

Indictment filed November 21st, 1913.

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

For People: ROBERT MANLEY; ESQ., Assistant District Attorney.

For Defendant: F. A. WARE, ESQ.

A jury is duly impaneled and sworn.

DANIEL HENRY DAKIN, called as a witness in behalf of the People, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q What is your address? A 211 West 17th street.

Q Was is your business? A Manager of a lunchroom.

Q Whereabouts is the lunch room? A 522 Eighth avenue.

Q In the county of New York? A Yes, sir, in 36th street.

Q Is it upon the east or the west side of Eighth avenue? A

A East side of the avenue.

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Q How close to the street is it? A It is one door away from the corner, from 36th Street.

Q From the corner of what street? A 36th Street.

Q What is your position in that restaurant? A Manager and night cashier.

Q How long have you been manager and night cashier?

A About three years.

Q Does that mean that you worked there nights? A Yes, sir.

Q Your hours and duties are what? A From seven at night to seven in the morning.

Q Who is the proprietor? A Henry Cohn.

Q And Daniel Weaver? A Yes, sir.

Q And they are co-partners and they do business at that address and conduct that lunch room? A Yes, sir.

Q Some time during the night on the 16th day of November, did you see this defendant, James O'Connor? A Yes, sir.

Q What time was it when you saw him first? A About half past eleven.

Q Did he come into the restaurant? A Yes, sir.

Q Was he alone? A No, sir, another party with him.

Q Another man? A Yes, sir.

Q Had you ever seen him before? A No, sir.

Q Now at the time when this defendant and the other man came into the restaurant about half past eleven, was anybody

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in the restaurant, I mean in the employ, besides yourself?

A Yes, sir, the cook.

Q What is his name? A William Hatch.

Q How many rooms were there in that restaurant? A Just the kitchen and dining room.

Q That means two rooms? A Yes.

Q The dining room, of course, is in front? A Yes.

Q And the kitchen in back? A Partitioned off.

Q Separated by a partition, the partition going away up the ceiling? A Yes.

Q And I suppose there is a door leading from the kitchen into the dining room? A Yes, sir, one door.

Q Is it a door actually on hinges, or is it a swing door?

A No door at all, -- an opening.

Q Just a place for a door, but there is no door there?

A No, sir.

Q What happened when the defendant came in with the other man, about half past eleven? A They came in, sat down and ordered a meal.

Q What did the defendant say or what did the defendant order? Divide them or indicate which one is talking? A Well, both of them, -- the defendant come in and said, "Have you got any good steaks", I said, "Yes, sir", and he said, " Well, give us a sirloin steak, and be sure it is good." The other fellow said, "I will have the same." So I gave them their

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steaks, and they were pretty boisterous and started to sing while they were eating, and I rebuked them, I said, "Don't sing in here, this is not a cabaret show, this is an eating place."

So anyway they kept quiet and ate their meal, and it come to seventy-five cents for the two of them, so they said to me, the defendant said to me, "How much is this?" I said, "Seventy-five cents". He said, "What for?" I said, "For the meal you just had"; and I priced it out to him, I showed him the bill of fare, and he pulled out a dollar bill and he said, "Well, I have got the money, but I ain 't going to pay you", and called me a vile name. I said, "Now, you are going to pay me or there is going to be some trouble." With that the fellow that was with him grabbed me by the throat, by the collar, and the defendant to pummel me.

Q Started what? A To punch me.

Q With his hand and fist? A Yes, sir, with his hands, and he kicked me in the leg. He made a pass for my privates so the other fellow got away then. The table went over, you know, and the other fellow went away.

Q It opens onto the street? A Yes, sir. So I grabbed hold of the defendant, and I gave him a few punches myself and put him out.

Q Onto the street? A Yes, sir.

Q Did anybody assist you? A No, sir. So I put him out

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out and I said, "Now, beat it, have you enough?" He said, "You don't know me," and he put his foot through the plate glass window and his boots through the door window." So with that I blew the police whistle.

Q Did you have a police whistle in your pocket? A Yes, sir. I took it out of the register where it was, and with that the officer from fixed post come.

Q A uniformed man? A Yes, sir, and he held him while I submitted the facts. I says, the man is a pretty old man, to the officer, I says, let him go. Say about half past two.

Q Did he go? A Yes, the officer let him go.

Q Let us get down to this plate glass window. Is the entrance to that restaurant in the centre of the store, or is it over to one side of the store? A One side of the store.

Q That side where the entrance is, is it on the north side or the south side of the store? A The north side.

Q Therefore when you go into the roadway, the plate glass window is upon your right? A Yes, sir.

Q Will you tell us about the dimensions of that plate glass window, give it to us about roughly, that is, I mean how large a window was it? A Well, it is a double glass.

Q What do you mean by a double glass? A It is a double store, you know. It is quite a big glass, a quarter inch French plate.

Q Was it one glass? A One big massive glass, yes, sir.

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Q Cannot you give us some rough idea of its dimensions?

A No, sir, I cannot.

Q Was it two inches or three inches or larger than that?

A Much larger than that.

BY THE COURT:

Q You have an idea what a foot is, haven 't you? A Yes, sir.

Q Well, tell us in feet.

BY MR. MANLEY:

Q Roughly? A I think six by nine feet.

Q That would be six feet high by nine feet broad? A Yes, sir.

Q You say that the defendant put his foot through the plate glass window? A Yes, sir.

Q Did you see him do that? A Positively.

Q Did his foot go through it? A Yes, sir.

Q What sort of a break did it make on the window? Put a hole through the window or just broke a crack in it? A It put the whole corner of it out and put a crack like through the glass.

Q There was a crack through the glass, and the corner came out ? A Yes.

Q Do you mean the corner that is nearest down towards the ground? A Yes, sir.

Q You saw him put his hand through the glass in the window?

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A In the door.

Q Did you see him do that? A Yes, sir.

Q That is the door going into the street? A Yes, sir.

Q Did you see him put it right through? A Yes, sir.

Q How large a glass is that? A Only a small piece.

Q Oh, how large? A Oh, about two feet.

Q Two feet square, two feet each way? A Yes, sir.

Q What happened the next after that, after the defendant was allowed to go at this time? A Everything went quiet until about half past two in the morning, I was just cleaning up the place.

Q What occurred at half past two? A When they come in, the defendant come in with another man.

Q Was it the same man that had been there with the defendant at half past eleven? A No, sir, this was a total stranger, another man altogether. So he came in and said, "Give me a cup of black coffee." So I served both of them the coffee, and I heard the defendant pass a remark, "Now is our chance"; so with that I went out and got the officer and had him arrested.

Q On the charge of breaking the window? A Yes, sir.

Q At the time when the defendant was there at half past eleven, was he intoxicated? A Yes, sir.

Q How much intoxicated would you say? A Well, --

Q Was he very intoxicated? A No, just feeling good;

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just feeling for the argument.

Q You could tell from his actions or his talk that he had been drinking? A Oh, yes.

Q Was he any more intoxicated when he came back at half past two? A No, when he came back he was in pretty sober senses.

Q That is, you would say then he was not so much intoxicated as at half past eleven? A I can 't say he was not intoxicated, he had some in him, but he was in fighting mood. He come back to get me, I suppose.

THE COURT: Strike that out.

MR. MANLEY: Consented to.

Q Did he say anything else to you at half past two, or anything else that you heard that may not have been said to you, besides what you have told us? A No, sir.

Q Did you hear the defendant say ^{anything} to the police officer who arrested him at half past two, about breaking the window light?

A No, sir.

Q Was that window light replaced later on? A Yes, sir.

Q About how many days after was it? A Four days after.

Q Was there an entirely new plate glass window put in there?

A That is something I can't tell, I was not there in the day time, but it was new glass altogether.

Q When you saw that new glass there later on after it was replaced? A Yes, sir.

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CROSS-EXAMINATION BY MR. WARE:

Q What do you have in that restaurant, tables or a lunch counter? A Both.

Q Was this man sitting at a lunch counter? A At the counter.

Q And then several others sitting alongside at that same counter? A No, just the defendant and another party.

Q Only one man? A The defendant and him were sitting at the counter.

Q What night of the week was this? A On a Sunday night.

Q And only two people in the place? A That's all.

Q Is it a fact that you had been quarrelling with several of your customers at the time? A I had quarrelled, no, sir.

Q And that this man came in? A No, sir.

Q Are you sure somebody came in with him? A Positively.

Q What kind of a looking man was that? A Well, he was a little, short German man.

Q Are you sure you served this man with anything to eat? A Positively.

Q Isn't it because you would not serve him that he found a little fault? A No, sir, it is not. He was served his steak, his black coffee, baked apples.

Q How many waiters do you have in that place? A I am the waiter, cashier and all myself at night, all but the cook. I have a cook and myself there at night.

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Q Did you call in the book that night to help you? A Certainly, when the man had hold of me.

BY THE COURT:

Q When what man had hold of you? A When this man.

Q When the defendant? A Yes, sir.

BY MR. WARE:

Q Did this other man, that you describe, assault you in any way? A No, sir.

Q Was he served with anything to eat? A Certainly.

Q Is your cook here now? A Yes, sir.

Q Isn't it a fact that instead of his putting his foot through the window, you threw him through the window? A Positively no.

Q Was he bleeding from any cuts or wounds? A Not at my time, no, sir.

Q You did not see any blood on him at all? A No, sir.

Q You never saw this man before that time? A No, sir, I did not.

Q Was anybody else in the restaurant between the first and second visits that you testified to? A First and second? I don't know what you mean.

Q Well, you say this man visited your place twice? A He did.

Q That means two visits? A Yes, sir.

Q There was not anybody there in between the first and

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second time? A Oh, yes.

Q Did you have any trouble with anybody else that night?

A No, sir, never had any trouble before since I am working in the place.

Q You say that he was arrested inside of your restaurant the second time? A Yes, I called an officer in to take him out.

W I L L I A M M. H A T C H, called as a witness on behalf of the People, being duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. MANLEY:

Q What is your address? A 211 West 17th Street.

Q Upon the night of the 16th day of November, were you the cook in the restaurant at 522 Eighth Avenue? A Yes, sir, employed as extra for two nights, Saturday and Sunday.

Q And you worked at night? A Yes, sir.

Q Upon the night of the 16th day of November, were you there on duty? A I was.

Q Did you that night see this defendant, James O' Connor?

A Yes, sir, I did.

Q Just tell us how you happened to see him that night?

A Well, I should judge between eleven and twelve this man and another man came into the restaurant and ordered two meals of vegetables.

Q Did you hear the order given? A Naturally I did.

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The orders is repeated back to me to the kitchen.

Q Who was it that gave you the order, repeated it to you?

A Mr. Dakin, the night manager.

Q Did you fill the order? A I filled the order, yes, sir.

Q Can you remember at all what the order was that the two men put in? A They called for two sirloin steaks, German fried potatoes. That is the only order I put out to them.

Q Do you remember anything else ? A That's all. That's all that comed out of the kitchen. Coffee is drawn from the front.

Q Are there other things that are kept in front of that place that do not come out of the kitchen? A Yes, sir.

Q And for instance what? A Well, pastry, coffee, apples,

Q They would be served by Dakin in front, that you had nothing to do with? A Yes.

Q What happened after you prepared those things? A I heard a disturbance in front, and I come out and I found this man, Mr. O'Connor had Dakin by the throat.

BY THE COURT:

Q The defendant? A Yes, sir.

BY MR. MANLEY:

Q Go ahead? A And I tried to separate them. Naturally they started a row in the restaurant, one helped the other.

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Q Go ahead, tell what you saw and what you heard, -- you say that you came out and that O'Connor had Dakin by the throat? A Yes, sir.

Q What did you see after that? A Well, I tried to separate him, and he opened the door and broke the door with his fist.

Q Who did? A The defendant. And reached around, and I saw the heel of his shoe strike the plate glass, and break that.

Q Was that from the inside or the outside? A From the outside, the plate glass; the other was in the vestibule door, storm door.

Q What else did you see after that? A After the separation he was calling for the police.

Q Who was? A The defendant, and a police officer came over and I went back to the kitchen, and went on with my duties, cleaned up the refuse there, that 's all I seen of the matter.

Q Do you remember what sort of a hole it made in the plate glass window? A Well, I should judge about three feet high, about two feet and a half broad, and a crack through the centre, -- I cleaned up the refuse afterwards and put the blackboard up in front of it to stop the draft from coming in the window.

Q Did you see the defendant, O'Connor again that night? A Yes, when I started to clean up about half past two.

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Q What happened then? A Well, I seen the two men come in and I said to Mr. Dakin, "I guess we are in for more trouble".

MR. MANLEY: I consent to strike that out.

THE COURT: Motion granted.

Q What did you see, do or say? A I didn't see any more, I didn't pay any attention to him or anyone else, I went back to the kitchen, I had a great deal of work to do, and I always do my own duty.

Q Were you there when the policeman placed O'Connor under arrest? A Well, I didn't take any notice of that.

CROSS-EXAMINATION: BY MR. WARE:

Q Do you mean to say that the officer took the defendant out of your restaurant under arrest? A I don't know whether he took him out or not. I know an officer was called in and outside of that I didn't pay any attention.

Q Did you see an officer in there? A I did, yes, sir.

Q About that time? A About half past two.

Q Was the defendant there at that time? A He was there, seated at a stool.

Q Were there many other people in the place? A There was one other, that the man that was with him.

Q At the time of the first time your attention was attracted to the defendant? A Well, there were four or five in there at that time.

Q Were they sitting at the counter? A They were sitting

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at the table.

Q Did you hear Dakin have any argument with any of them?

A I was out to separate them.

Q I am talking about anybody else, about an argument with Dakin? A Nobody else, no, sir.

Q Did you know why Dakin and this defendant quarreled?

A He refused to pay for his meal.

Q How do you know, were you there? A Yes.

Q How do you know what the quarrel was about? A I was told so afterwards.

Q And that what you are testifying to is what you were told? A I am testifying to the separation of the lot and the breaking of the window, that is what I am testifying to.

Q I ask you again, do you know why Dakin and this defendant quarreled? A He refused to pay for his meal.

Q Do you know that he refused? A Only from what Mr. Dakin told me.

Q I want you to testify only as to what you know, not what you heard? A Well, I am testifying to that, sir.

Q I will ask you for the third time, do you know why Dakin and this defendant quarreled? A I do not.

MR. MANLEY: You mean of his own knowledge?

MR. WARE: Of course, that is all I am asking him about, of his own knowledge, not anybody else's.

Q Was this defendant thrown out by Dakin and you at that time? A He was not throwed out, we tried to put him out

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quietly and he retaliated and resented our putting him out and smashed the window.

Q He let you go out of the door, didn't he, before he could go out and get through the window? A Yes, sir.

Q Did you try to put him through the door bodily? A No, we opened the door and tried to put him out quietly. There is one door rigid and the other opened.

Q Do you know how his arm got cut? A I do not, unless cut by the window.

Q Didn't you see his arm bleeding at that time? A I did not.

Q You didn't see any blood at all? A No, sir, I did not.

Q When he got outside, he was the one that called for an officer, was he? A He called for an officer, yes, sir.

Q Do you know why? A I don't know why. The man was intoxicated, that is all I know about him.

Q He had not been beaten, had he, by Dakin? A Yes, sir.

Q In your presence? A No, sir, nothing to speak of.

Q What do you call nothing to speak of? A Naturally a man who is wrong in the first, you are going to resent it?

Q Well, when two men are resenting it, it is pretty serious and is something to speak of? A Oh, no, there was two men at him.

Q What? A There were two men in there at the time.

Q You said there were five or six? A Well, five or six

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yes, but there was a man with him.

Q How do you know? A Because I seen them whey they come in.

Q I thought you were in the kitchen? A Well, I am. The door open, there is no glass right in there.

Q You saw the defendant come in with another man? A I saw him cone in and sit himself at the counter.

Q What do you charge for a steak at your restaurant?
A Twenty-five cents.

Q Did you hear Dakin say that he asked this man for seventy-five cents? A No, sir, I didn't hear him say anything of the kind, that part of it for me was in the kitchen, I can't hear every word they say in that dining room, unless an order is given to me. That really when an order comes in at that time of the morning, on Sunday morning, we are looking around to see what comes in.

Q What do you mean? A Well, we want to see. I naturally go out there and look out of curiosity, I want to see what work I have got to do, that is the true reason.

Q You are still working? A No, sir, I am not. I worked for the people five years off and on. I quit them last Monday in the Harlem branch of the business,

Q Where do you work now? A I am not working at all at present.

Q When did you see Mr. Cohn, deal with him last? Is that the name of the proprietor? A I saw Mr. Cohn about an

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hour ago in here.

Q Did he ask you to come down here? A He did not. I didn't come down willingly at any stage of the game, I didn't care to come.

Q Did you come down more than once? A I was subpoenaed, I don't know when it was, last Saturday or Friday, somewhere around there.

Q You are frequently with Mr. Cohn, I presume? A Only through a business transaction, not very friendly at the present time.

Q Has he paid you all he owes you? A Oh, yes.

M I C H A E L C A R P E Y (22nd Precinct), called as a witness on behalf of the people, first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. MANLEY:

Q You are a member of the police force of the City of New York? A yes, sir.

Q Did you upon the 16th day of November arrest this defendant, James O'Connor? A No, it was on the 17th, 2:30 A. M.

Q Were you on post in the vicinity of the restaurant, 522 Eighth Avenue? A yes, sir, I was on fixed post, 13th Street and Eighth Avenue.

Q Did someone call your attention to the restaurant during

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the night? A yes, sir.

Q Who called you? A I couldn't say. Someone that was inside in the restaurant, the manager sent him out for me, told me there was some trouble.

Q When you went in anyway? A Yes, sir.

Q When you got in there, did you see this defendant in the restaurant? A Yes, sir.

Q Did Mr. Dakin say anything to you in the presence of this defendant, charging the defendant with having done anything? A Yes, sir.

Q What was it that he said? A He charged him with breaking the plate glass window.

Q Did the defendant make any reply to that? A No, not that I heard. He didn't say anything.

Q Did you notice the plate glass window? A Yes, sir.

Q Did you see any hole through it? A Yes, sir.

Q What was the size of the hole, about? How large a hole was it? A Well, I should judge about a foot.

Q Did you notice the crack in the plate glass window?

A Yes, sir, that was a crack all the way up the centre.

Q Did you see whether or not any window was broken in the door that went into the store? A That I did not notice.

Q Then you placed the defendant under arrest and took him to the station house on that charge, did you? A Yes, sir.

Q What was the condition of the defendant, intoxicated

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or not? A yes, he seemed to be, to have been drinking.

Q Were there signs of it on him? A Yes, sir.

Q How could you tell there were signs of drink about him? Could you tell from his breath or talk or walk, which? A I could tell it from his breath and actions, he acted very troublesome with me to the stationhouse.

Q What do you mean? A Well, trying to fight with me, telling me that he didn't do it, and wanted to get away, and that he would make trouble for me if I arrested him; so by his actions, I thought he had been drinking.

Q Did he claim to know anything at all about the breaking of the window, -- did he have any explanation to give you about it? A Well, he said he didn't do it, that's all.

Q Did he claim for instance that anybody had thrown him through any window or pushed him onto any window or anything of that sort? A Not until this morning in court, he said they threw him through the window.

Q He didn't tell you anything about that until the next morning? A The next morning.

Q Were you present in court at the time certain questions were asked the defendant as to his name and where he lived, and his occupation, and that sort of thing? A Yes, sir.

Q Did you see him sign his name to it? A I did.

Q I will show you this sheet, People's Exhibit 1 for identification, and call your attention to the signature, James O'Connor, did you see the defendant sign that? A Yes, sir.

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Q Did the magistrate afterward ask him about that when he came before him? A Well, I think it was the district attorney that asked him about it.

Q At the time when he signed this, did the clerk say anything to the defendant? A He asked him if he was drunk and he said he was drunk and didn't know what he was doing.

MR. MANLEY: I suppose you have no objection to that?

MR. WARE: We object to that. The defendant says that he knew nothing whatever of that writing; it was not read to him, and he knows nothing about it.

Q Was this read to the defendant when he came before the magistrate, what is written there?

MR. WARE: Wouldn't it be better to ask what was done

Q When the defendant came before the magistrate, what happened there? A Well, the district attorney asked him was that his signature and he said yes; asked him had he been drinking the night previous, and he said, yes, and he was asked what happened, and in the complaint clerk's room he said they threw him through the window.

Q Was he told by anyone that he did not have to make any explanation unless he wanted to, that any explanation he might make could be used against him? A Yes, he was informed to do that I think by the court.

Q Who said that to him? A It was the judge there, not the judge, the attendant, the court attendant.

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Q That is when he was before the judge, the magistrate?

A Before the magistrate, yes.

BY THE COURT:

Q Was it in the presence of the judge and this defendant?

A Yes, sir.

Q The questions were directed to the defendant? A Yes, sir.

THE COURT: It will be admitted.

MR. WARE: Unless the officer heard that read to him, it is not admissible.

THE COURT: Well, he said he heard the question asked.

Q Then did you hear questions directed to this defendant? A Only the questions that are in that paper.

Q Did you see this defendant sign that paper? A I did, I was standing by him.

THE COURT: It may be admitted.

(Received in evidence and marked People's Exhibit1).

BY THE COURT:

Q You saw him sign this how long after he was arrested by you? A Well, it was about 10:30 the following morning, at the Magistrate Court.

Q You arrested him what hour of the night before? A Half past two in the morning.

CROSS-EXAMINATION BY MR. WARE:

Q Were you with the defendant at the time that this paper

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was made out? A Yes, I had the defendant at the window.

Q And did you hear all those questions asked of the defendant? A Yes, sir.

Q Did you hear that last question in regard to his intoxication? A I did.

Q And the answer? A I did.

Q Did you see it written down? A Well, I saw the clerk writing There is a partition between, there is a window where you take the prisoner.

Q And you saw the defendant sign his name under that writing? A Yes, sir, I was standing by him.

BY THE COURT:

Q Was all that writing on this paper, when this defendant signed his name to it? A Yes, it looks just about the same now as it did then.

BY MR. WARE:

Q Did you go to that restaurant more than once that evening? A No, sir.

Q Do you know if any other officer did? A That I don't know.

Q How many people were in the restaurant at the time that you went in? A I think there were two sitting at the table in the rear, there was a man and woman, I can't say, won't say that for sure, because my attention was not attracted to the other people, I was paying attention to the defendant. I

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think there was about two people there.

Q So when you came in this defendant was alone? A No, there was another man with him.

Q Another man with him? A Yes.

Q Where was Dakin? A Dakin was standing on the floor.

Q Did you ask any questions of the other man? A No, I didn't, I could imagine what was the trouble, I asked "What was the trouble here?" and he said, "This" (pointing to the defendant) "This is the man that broke the plate glass window about three hours ago, and I want him arrested. He is back looking for trouble."

Q Did Dakin say that the other man was there three hours before? A No, he said so in the magistrate court, next morning.

Q Then he didn't tell you about the third man? A No, sir.

Q Made no complaint against anybody except this defendant? A No, sir.

Q Was the defendant suffering from any wounds or cuts? A He had a slight cut on his finger, I think it was the right hand.

Q Didn't you see any cuts on his arm? A No, sir, that is the only cut I saw.

Q You do not know the defendant, I suppose? A No, sir, I never saw him before.

Q You have known Dakin, I suppose for some time? A No,

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sir, I never saw him until that morning .

Q You were on that post, weren't you? A Yes, sir.

Q You had been on the post before? A I have been there about two years.

Q On that post? A Yes, sir.

Q And never saw Dakin before? A No, sir, never saw him before.

Q Is there another restaurant on that same block? A Yes, there is two or three restaurants on that block.

Q On the same block? A There is two on the same block.

Q Did you stop in the other restaurant at all that evening?

A No, sir, my post ends at 36th--I never go north of that post.

Q Well, I am talking about the same block? A Well, I didn't go in any of them restaurants.

Q You are positive that this defendant was in the restaurant at which Dakin is cashier and general manager? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. MANLEY:

Q Did the defendant call your attention to any cuts on him at all except what you say you saw on the hand? A No, sir he did not.

Q What became of the man that notified you? A That I couldn't tell you, I don't know.

Q Did he go back to the restaurant with you? A No, sir, I couldn't say that he did. He may have done so, but I didn't notice him going back. I went direct to the restaurant to find

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out what the trouble was.

MR. MANLEY: People rest. I won't bring in value. I will treat it as a misdemeanor.

MR. WARE: No address to the jury in behalf of the defendant.

J A M E S O' C O N N O R, the defendant herein, called as a witness in his own behalf, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WARE:

Q Where do you live? A New Rochelle. I was stopping in the Ellswood, in 42nd street when I came down. I lived in New Rochelle, and I came down to the city on the 14th.

Q How long have you lived there? A Over a month.

Q What did you do in New Rochelle? A I was second cook there.

Q At some place there? A Yes, sir.

Q Where do you work? A I worked in the New Rochelle college.

Q Is that an institution of some kind? A It belongs to the sisters; New Rochelle College, New Rochelle.

Q You worked there as a cook? A Yes, sir, assistant cook.

Q Where did you work before you worked there? A In Monroe.

Q Orange County, New York? A Monroe County, New York.

Q How long did you work there and where at? A From the first of June until the latter end of October.

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Q What did you work at there--as a cook? A A vegetable cook.

Q How old are you? A Forty-eight, going on forty-nine.

Q Have you ever been convicted of any crime in your life? A No.

Q Just tell us what happened from the time you went into this restaurant and talk so we can hear you, and right to the point, just tell us how you happened to go in there and what happened afterwards? A I went into the front room.

Q What time was that? A I couldn't say what time it was.

Q You had been drinking that evening? A I had been drinking a little.

Q Had you been drinking so much that you did not know what was going on? A No.

Q Tell us what happened? A So I went into this lunch counter to get a cup of black coffee before I would go home.

Q Well, were you going home? A To my room in 42nd street. I was stopping at the Elkwood, at 10th avenue.

Q A hotel or lodging house? A A hotel, Elkwood Hotel. So I went in there to get a cup of black coffee, and when I went in there I seen the lunch man was quarreling with two or three men when I sat down. So when he turned his head towards me I asked him to give me a cup of black coffee. He said, "Is that all you want?" I said, "That's all." He said, "I won't serve you." I says, "What's the matter with you, you won't serve me? If those people ain't got the money, I have got the

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money to pay for what I call for." So I pulled out a two dollar bill out of my pocket and showed it to him. With that he came from behind the lunch counter and grabbed me by the collar, and broke my collar in two. So there was two more men worked in the place came over and wanted to know what was the matter. He says, "I want this man put out; he came up here to make trouble for me, because this is my first night on here." So the three of them got hold of me and lifted me up and pushed me against the wall and struck me in the face and took the \$2 bill out of my hand, and said "This will pay for the others." So the three of them pushed me up against the door and then pulled the door out, and half opened the door, and tried to shove me through that half opened door, crushing my arm in two places, and my shoulder.

So when he opened the door one had shoved me out and I fell on the sidewalk, and when I picked myself up I walked over to the curbstone and sat there for a while until I recovered myself. I don't know how long I waited there till an officer came over and he said, "Are you hurt?" I said, "Yes, sir". So he advised me to go and get a warrant for them. So they looked out the window, afterwards, seen I was sitting there holding my arm in my hand, and the officer was speaking to me, and he advised me to go and get a warrant for them.

Q Show your arm, just pull your sleeve up? A (Witness indicates) On my shoulder too.

Q Is there a cut on your shoulder? A No, it is bruised all

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up here.

Q Who put that bandage on your wrist? A I had it put on in Jefferson market.

Q Have they been attending you in the Tombs? A Yes, sir.

Q Ever since you have been there? A Yes, sir. So when I recovered myself I walked a little ways and went into another lunch room, and I asked for a cup of black coffee, the man gave me a cup of black coffee, and I had had half of it drunk when the officer came in and arrested me and took me to the station house.

Q Are you sure you went in another saloon? A I didn't walk very far. I must have gone into another lunch room, I was served with a cup of black coffee, and when I had it half drunk the officer came in and arrested me and took me to the station house.

Q Did you have any man with you at that time? A No, sir, only myself.

Q There were other people in the lunch room, though? A Yes, sir, there was.

Q And they never served you with anything at all? A Only the last place served me with a cup of black coffee.

Q In the other restaurant? A No, sir, I never had anything in there, they wouldn't serve me, wanted me to get out.

Q Did you order any sirloin steak at any time? A No, I asked for a cup of black coffee, that's all I asked for.

Q Are you in the habit of taking a cup of black coffee every

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night? A Yes, sir.

CROSS EXAMINATION BY MR. MANLEY:

Q Is that your signature there on People's Exhibit 1, James O'Connor? A I don't know. It is my name anyhow.

Q Just look at it, you can recall, can't you? A I think so.

Q Is that your signature? A Yes, it looks like it.

Q Aren't you sure about it? A Well, the way with my hand, I couldn't write that day.

Q Well, aren't you sure of your signature? A Well, it is something like it.

BY THE COURT:

Q Do you deny that it is your signature? A That is my writing, I think.

Q You are not sure about it then, is that it? You are not sure about it? A No.

Q Do you remember that you signed something? A Signed something, I don't know what it was.

Q That was the next day in court, wasn't it? A Yes.

Q Did you say, "I was intoxicated and don't know anything about the window being broken"? A I said, they asked me if I know anything about a window, and I told them, I was drinking a little, I didn't know anything about the window.

Q Well, that is what you told them then? A Yes, sir.

Q Did you know anything about a window? A They told me. I didn't make no complaint or anything.

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Q Did you know anything about a window being broken? A Oh, yes. I heard a window break and I fell outside of the door, they slammed the door after me and the glass come over my feet.

Q Was it the next morning you said you didn't know anything about the window being broken? A I don't know anything about it.

Q You don't know why you said next morning you didn't know anything about the window being broken? A I told them I didn't break any window.

Q The next morning in the police court you said "I was intoxicated and don't know anything about a window being broken"; is that true? A No, sir. I know that what I was doing--

Q Just listen to me, is it true that the next morning you said "I was intoxicated and don't know anything about a window being broken"? A They asked me if I was drunk. I told they no, I was drinking a little.

Q Did you the next morning tell them in the police court that you did not know anything about a window being broken? A No, sir, I know nothing about a window.

Q I say, did you tell the next morning that you did not know whether a window was broken? A I didn't tell anybody.

Q What? A I don't remember telling anybody.

Q You don't remember telling anybody about that? A No.

Q Were you intoxicated the next morning? A Well, my arm was paining me.

Q Well, we don't get intoxicated in the arm. I am asking

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you if you were intoxicated the next morning? A No, sir.

Q You were absolutely sober the next morning? A Yes, sir.

Q You can remember everything that took place the next morning? A Yes, sir.

Q Then did you sign a sheet the next morning? A I signed something, I don't know what it was.

Q Which said "I was intoxicated and don't know anything about a window being broken? A They told me not to make any statement if I did not want to.

Q Yes, and in addition did you make the statement, "I was intoxicated and don't know anything about a window being broken"?

A I made no statement at all down there.

Q Let us see. What time was it, O'Connor, that you went into this restaurant the night before? A I couldn't tell you what time it was.

Q Haven't you any idea? A No, sir. I was downtown looking for a--

Q Had you been working that day? A To see some friends.

Q It was Sunday, wasn't it? A Yes, sir.

Q Had you worked on Saturday? A No, sir, I came in on the 14th into New York.

Q You came in on Friday, the 14th? A Yes, sir, from New Rochelle.

Q You had not worked then since the 14th? A No, sir.

Q How long had you worked in New Rochelle? A Over a month.

Q What did you work at before that? A In Monroe.

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Q When you came down to New York on Friday, did you have some money with you? A Yes, sir.

Q Did you begin to drink? A Some, a little, not much.

Q Well, you drank then from Friday probably right up to Sunday night? A No, I did not. I didn't drink very much. I was drinking a little, not much though.

Q I want to know if you were drinking from the 14th up to the 16th? A No, I was not drinking all that time. I went in and had--

Q I am not asking whether you drank all the time, which would mean every minute. Were you drinking during those days? A I was drinking a little those days, yes.

Q Did you drink on Sunday, the day you went into the restaurant? A Yes, sir, I was drinking a little that day.

Q Can you remember that you went into the restaurant alone?

A Yes, sir.

Q You remember that positively? A Yes, sir.

Q You remember everything that happened in the restaurant?

A Yes, sir.

Q You say the first thing you did when you got into the restaurant was to order some black coffee? A Yes, sir.

Q You sat down on a stool? A Yes, sir.

Q Is that right? A Yes, sir.

Q Was it Dakin, the man who testified here, from whom you ordered the coffee? A The lunchman, I don't know who he was.

Q Do you remember seeing him here on the stand, is that the

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first man I called? A It looks like him. He refused me the black coffee.

Q I say, is that the man that you ordered the coffee from?

A Yes, sir.

Q And when you ordered the black coffee what did he say to you? A He said he would not serve me.

Q You had never seen that man before? A No, sir.

Q I suppose there was a place there --, you being a cook must have noticed it--there was a place where coffee could be drawn? A I didn't look around much.

Q Didn't you see any place behind the counter at which you sat where there was coffee? A I didn't see him move.

Q He said that he would not serve you? A Yes, sir.

Q What happened next? A Well, I told him if those people ain't got the money for what they called for I had money for what I called for, and they took the bill.

Q What people was that? A I don't know, he was arguing with them to pay for what they had called for.

Q And somebody said they wouldn't pay for it? A (No answer.)

Q Did somebody say that they wouldn't pay for their food?

A I don't know, but he was asking them to pay for what they called for.

Q And you said you would pay for what you got? A Yes, sir.

Q What did the man say next, Dakin, the manager? A He came right from behind the lunch counter and got hold of me by the neck, tearing my collar in two.

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Q Did he grab you by the neck when nothing else had been said at all, except what you told me? A That's what he said.

Q You had not said anything else to him at all? A Not a thing.

Q Then he came right over and grabbed you? A Grabbed me by the collar and tore it in two.

Q You had not even talked in a disrespectful tone to him, had you? A No, sir.

Q When he grabbed you by the coat, you say he tore the collar? A He took hold of me by the collar, tearing it in two.

Q Then what did he do after he had done that? A The other two men came up, and he said, "I want this man put out of here. He came up here to make trouble for me because he knows it was my first night on here."

Q That is what the man said whom you had asked for the coffee, that you wanted to make trouble upon his first night, is that it? A Yes, sir.

Q Who are the two men that he called over to help him? A They worked there, they had white clothing on, they were waiters there.

Q There were two of them? A Yes, sir.

Q So that altogether there were three people there who worked there? A Yes, sir.

Q When the other two came over, what happened then? A They lifted me off the chair and pushed me up against the wall.

Q Did they strike you? A And one struck me on the face and

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took the two dollar bill out.

Q Did they strike you? A Yes, I mean struck me on the side of the face.

Q How many of the three struck you in the face? A One.

Q After he had struck you in the face you say he took a two dollar bill out of your pocket? A Out of my hand.

Q You had it in your hand? A I had it in my hand.

Q What did he do with it when he took it away from you? A He said "This will pay for the others."

Q Had you come in with the others? A No, sir, I had not. I came in alone.

Q Never seen the others in your life? A Never seen them before in my life.

Q After he had hit you and taken your two dollar bill what did he do next? A He said, "This will pay for the others", and he walked a little ways and then when the others come in and pushed up against the door, he joined them and pushed me up against the door.

Q What happened then? A They opened that door afterwards and tried to shove me through the door and got me jammed in between the door and thereafter the door went in with a crash, and I went up against it. Then he went up against the door and give me another shove and my arm struck the side of the jamb of the door, and I fell on the sidewalk and when they slammed the door after me, the glass came over my feet.

Q The glass from the door came over your feet? A Yes, sir.

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Q You had not done anything to the door and nothing to the window, had you? A Not that I know of. - I don't know nothing about the window, only on my feet and some on the back of my head.

Q And still you were sober enough so that you can recollect everything that took place, is that right? A Yes, sir.

Q Then you went away? A I went over as far as the curb again and sat down on a pile of stones until I come to myself, and then I walked a little ways and I went in, I thought it was another lunch room, and again called for a cup of black coffee.

Q Did you find when you got back that it was the same restaurant you had been in before? A No.

Q You sat down on the curb when you got outside? A On a pile of stones dug up from the street, right next door to the restaurant.

Q How long did you stay there? A Quite a while.

Q You say you stopped there quite a while? A Yes, sir.

Q Did you go somewhere else besides there? A No, I went right into another place--lunch counter.

Q To get some coffee? A To get some coffee. I had the coffee half drank when the officer came in and arrested me.

Q You say that the place where you sat down was how far from the restaurant where they put you out--how many feet?

A I couldn't say. I know I didn't strike very far.

Q Did you get into another block, or did you stay in the same block all the time? A I stayed in the same block.

Q And you sat down on what? A On some stones that were

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dug up from the street.

Q And you sat there until you got up and went to get some coffee? A Until I recovered myself after speaking a long time with the officer.

Q Did you intend going back in the same restaurant where you had been in the first place? A I don't remember that.

Q When you did get into the restaurant in the place where you were arrested, did you discover that it was the same restaurant where you had gone to? A No, sir.

Q Did you discover it was the same lunch room you had been to before? A No, sir.

Q And still you were sober enough so that you can recollect what was taking place? A Yes, it was a few places altogether.

Q You are positive? A I am sure it was a different place, because I remember seeing there when I went in that he was not the man that waited on me.

Q Did you take anybody back into the second restaurant? A I had no body with me.

Q You were alone at that time? A Yes, sir.

Q Did you say anything about "Now is our chance" when you got into the restaurant? A I had nobody with me to say anything about.

RE-DIRECT EXAMINATION BY MR. WARE:

Q Was this paper that you signed your name to read to you when you signed your name? A No, sir, I don't remember anything, only a man came to me says, "You needn't make no state-

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ment if you don't want to."

Q Did they ask you to sign your name? A I know I signed my name to some paper, I don't know what paper it was..

Q That was the following morning? A Yes, sir.

Q A paper was handed to you and you were told to sign your name, is that right? A Yes, sir.

RE-CROSS EXAMINATION BY MR. MANLEY:

Q Were you ever fined for intoxication? A No, sir.

BY THE COURT:

Q Do you deny that this is your signature, that that is not your handwriting? A No.

Q Is it not your handwriting? A No, it looks like my handwriting.

Q Is that your handwriting? A Yes, sir.

Q That is your handwriting? A Yes, sir.

Q That is your signature? A Yes, sir.

Q Did you sign that? A I signed some paper; I don't know whether it is that paper or not.

Q Well, is that your handwriting? A Yes, sir.

MR. WARE: defendant rests.

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Counsel now close to the jury.

The Court now charges the jury as follows:

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CHARGE OF THE COURT, MAHONEY J.

THE COURT: Gentlemen of the jury, this defendant has been indicted of the crime of unlawfully and wilfully destroying property of another.

Unlawfully and wilfully destroying property of another is made a crime by the law of this State which provides that a person who unlawfully and wilfully destroys or injures any real or personal property of another commits the crime known as unlawfully and wilfully destroying the property of another. Therefore, the burden is upon the District Attorney of proving beyond a reasonable doubt that property of another was unlawfully and wilfully destroyed by this defendant. If the District Attorney does prove that this defendant unlawfully and wilfully destroyed property belonging to another, then, of course, you would be justified in bringing in a verdict of guilty in this case. The District Attorney, however, must prove both elements of unlawfully and wilfully destroying of property beyond a reasonable doubt.

Wilfully, of course, ordinarily means with knowledge that you are doing it. Unlawfully means without legal justification. If, therefore, you find that this defendant did destroy certain personal property belonging to

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another wilfully and without legal justification, then of course he would be guilty of the crime with which he is charged.

I am not going to bother dilating upon the facts at length, because you remember them every bit as well as I do. But your recollection of the facts in this case is controlling. You are the supreme judges of the facts; by what you determine are the facts in this case you must be guided in reaching a decision, applying the law to the facts.

In every criminal case a defendant is presumed to be innocent; he is presumed to be innocent right up to the time you reach your verdict in the jury room. This presumption is with him at all times. He is presumed to be innocent, and his guilt must be proved beyond a reasonable doubt.

The District Attorney has the burden of proving every element of the crime beyond a reasonable doubt, and, of course, if in your opinion the District Attorney has not sustained that burden and has not proven the guilt beyond a reasonable doubt then of course it is your duty to acquit. Reasonable doubt has been defined by the Court of Appeals as follows:

"A reasonable doubt is not a mere whim, guess or surmise, nor is it a mere subterfuge to which resort may be had in order to avoid doing a disagreeable thing;

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but it is such a doubt as reasonable men may entertain after a careful and honest review and consideration of the evidence in the case."

There is some evidence in this case as to intoxication. Now, I will just read to you what the law is on that subject, in order that you might also take that into consideration in your deliberations in the jury room:

"No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition."

You gentlemen are the determiners of the credibility of the witnesses in the case. If you believe that any witness in this case has testified falsely wilfully in any material aspect you are justified in disregarding all the testimony given by such a witness.

You are the determiners of the facts; you determine the facts; you are the supreme judges of the facts, applying the law such as given to you, and I want you to reach a conclusion in accordance therewith.

Are there requests to charge?

MR. WARE: I ask your Honor to instruct the jury that if the breaking was done during the struggle at the time that this man was thrown out or excluded from this establishment, and if the breaking occurred because the man was thrown against the window, that it would not

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be a wilful breaking.

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THE COURT: If this breaking was done by this defendant being thrown against the window, then it would not be wilful breaking on his part, and under those circumstances you would have to acquit. Is that what you want?

MR. WARE: Yes, sir.

MR. MANLEY: I ask your Honor to charge that the words "unlawfully and wilfully destroying property" mean intentionally doing it.

THE COURT: I will so instruct the jury.

(The jury now retire to deliberate upon their verdict, and upon their return render a verdict finding the defendant guilty of the crime of injury to property as a misdemeanor.)

Stewart Liddell,
Official Stenographer.

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