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Q Step down here please and just bend your head over towards the jury? A That injury there hurts every day --

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

THE COURT: Just show it.

THE WITNESS: There was four cuts.

MR. O'MALLEY:

Q How many cuts were there on your head? A Four.

Q Where were those cuts? A There is one there, and there and further back there and one right in the front there (indicating), and this was more superficial -- the nastiest cuts were those two, particularly this one here (indicating).

Q Now, you told about getting into the station and an officer coming in and you pointing out the defendant, and he was arrested by this officer, A Yes.

Q That officer was in the employ of whom? A New York Central road, as I understand.

Q Where were you taken after you got to the station? A They tied up my head with towels and got a chair and put me in the chair and got me up to the hospital, and the surgeon there cut off the hair and shaved it and poured in iodine.

MR. MOORE: I object to what the surgeon did. He will testify as to what he did.

BY THE COURT:

Q If you saw the iodine and felt it being applied, you may--
A Yes, sir. I asked him "Why does that hurt so" --

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Q Did you look at it? A Yes.

Q Do you know iodine when you see it? A Yes, sir.

Q And the smell of it? A Yes.

BY MR. O'MALLEY:

Q What else did he do besides pouring in iodine? A He then trimmed -- he then put plaster over the head and fixed up the head. I remember saying to him --

Q Do not say what was said, you cannot testify to that, outside of the presence of the defendant -- what else did he do for you, anything that you remember? A No, there was --

Q How long were you in that hospital? A I sent for some of my friends, and they came. I was there, I should say, about until noon, about four hours.

Q During that time where were you, in bed or sitting up?

A I was lying on the couch there. I remember the surgeon asking me to take a drink of whiskey and I said "I never have touched it" --

Objected to.

THE COURT: Strike that out.

BY MR. O'MALLEY:

Q Where did you go from there? A My friend Captain White came and took me to my apartment in a taxi.

Q Now, were you attended by any one after you got to your apartments? A Yes, sir, I was attended by Dr. Quackenbos and

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have been ever since. I was totally disabled for two weeks.

Objected to as incompetent and motion made to strike out.

THE COURT: Strike it out.

BY MR. O'MALLEY:

Q Were you confined to your apartment any length of time?

A I was confined to my apartment and have been -- been back three times since -- I cannot work -- I go down every now and then and get along the best I can.

MR. MOORE: I move to strike that out.

THE COURT: Just answer the question.

THE WITNESS: About two weeks, the first time.

BY MR. O'MALLEY:

Q How long was it that Dr. Quaakenbos attended your head?

A At least a month.

Q You had never seen this defendant before that night you got on the train? A No.

Q Never had any trouble with him? A No, never had trouble with a colored man in my life.

CROSS EXAMINATION BY MR. MOORE:

Q You were in the Police Court the day following this assault, were you not? A Yes, sir, they managed to get me together and pull me there.

MR. MOORE: I object to that.

THE COURT: Strike it out. Just answer the question.

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BY MR. MOORE:

Q Colonel, on the morning of October 9th, when the defendant came into that compartment there, you were shining your shoes or brushing the dust off? A I was trying with a towel to get some of the dust off my shoes.

Q You felt a little peeved because they had not been shined?

A I don't know just what you mean by peeved.

Q You felt your shoes should have been shined? A Yes.

Q And you thought, when he came in there and asked you if you wanted a brush now, that he simply did that for the purpose of collecting a tip from you? A It certainly looked that way to me.

Q You did not feel very friendly towards the man for not having shined your shoes. A Well, I really believe I felt more indifferent than anything else.

Q When he asked you if you wanted a brush, what did you say to him? A The exact language as near as I can remember "What is the use of dusting me, you have not cleaned my shoes."

Q Did you say to him "What in hell do you want to brush me for when you did not shine my shoes"? A No, I never use such language as that.

Q I just asked you if you said that to him? A I did not.

Q Then what took place there after you had said to him that -- "What do you want to brush me off for when you did not shine my shoes" -- what next took place? A He was behind me at

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the door -- made the remark "I cleaned one pair of shoes in that section." I said "Captain White says you did not clean his shoes" and he said "If he says I did not clean his shoes he is a liar."

Q Then you followed him into the hall? A I followed him because I was through with my job and was going back to -- I could not understand. I said -- I couldnot believe my own ears. I said "What is that you say".

Q At that time you had your sword on? A I did not.

Q You did not? A No, sir.

Q You had your sword with you? A Yes, sir, but it was in the upper berth.

Q You were dressed. A It was all in a case -- we had no occasion to carry swords. It was in its buckskin case where it belonged. I was in fatigue uniform and did not have the necessity for wearing the sword. My dress uniform was in the satchel.

Q What company were you Colonel of? A I was twenty-three years in the Maryland National Guards and was Colonel of the 4th Maryland for nearly -- between two and three years, and Lieutenant Colonel about fourteen years.

Q How long have you been residing in New York City? A Been in New York now nearly three years -- going on three years.

Q This assault took place in that little run-way or that little passage-way between the smoking room and the main body of the car? A Yes, sir.

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Q And the defendant had gone out of the smoking room, and you followed him out? A He -- when he --

Q You followed him out, you were behind him following him out? A Yes, sir, I wanted to understand what -- I never had heard a porter make such a remark and I travel in Pullmans every week in my life -- it was such an astonishment to me, I thought I must be dazed in hearing it. I said "What is that you say."

Q You followed him in the passage-way? A Yes, sir.

Q Then the assault took place? A Yes, sir -- besides I was finished with my task and no reason to stay in the wash room; we were coming in the station rapidly and I wanted to go back to my seat and get my baggage to get off.

Q What part of the road did this take place in? A They had made the first big stop, I think it is 125th street, made the first city stop, they had made that stop and we were coming in.

Q That was before you saw the defendant come into the wash room? A Yes, sir, this was -- we had passed that big stop. We were in the --

Q Might it not have been Kingsbridge? A I don't know --

Q High Bridge? A I know the train came to a stop, which I think is --

Q It was High Bridge, was it not? A I think it is 125th street.

Q After this occurrence took place in this passage-way, did you go into the main body of the car? A No, all I have told

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happened from my leaving the wash room and going up to the main body of the car.

Q After that, after Harrell had gone back? A Do you mean after I was hurt ?

Q Yes? A I said I went into the main body of the car and appealed to the passengers to get the conductor.

Q Did you not say "Some one please help me"? A I think I made that remark or "Won't you please get the conductor" -- what I wanted was the conductor, whose duty it is to protect passengers.

Q Did not Mr. Harrell say "I will assist you if you permit me"? A No, he never made any such remark.

Q Did not Mr. Harrell come into the wash room with you and wash your head off? A My recollection is entirely different, that the Pullman ordered him there -- whatever he did there was under the order of the Pullman, conductor.

MR. MOORE: I object to that, I asked him if he --

THE COURT: Yes, you may answer the question.

THE WITNESS: He did not.

BY MR. MOORE:

Q He had nothing to do with wiping of your head off? A With my head down over a stationary wash stand and somebody pouring water on my head all I could tell, the general remarks I heard around me. If he approached me in any humanitarian way I have no recollection, and yet I have no animus whatever.

Q You won't swear he did not come into the wash room with

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you and wash your head off? A I will swear positively that no one went into the wash room with me. I went there alone.

Q When you appealed to the passengers in the main body of the car, how many passengers were there there? A I should say six or eight at the furthest -- seemed to be down towards the end of the car -- where we were there did not seem to be any passengers -- that is, where my berth was did not seem to be any passengers.

Q You are positive Harrell did not come in there with you? A Absolutely.

Q Do you remember talking to the Pullman conductor in that compartment? A Not that I can recall now -- anything.

Q Do you remember talking to the conductor on the train, the regular railroad conductor? A No, sir, I have no recollection except what I have told.

Q You recollect some of the things that happened there? A Very well as far as I can.

Q Is it not a fact that there was a number of people in that room? A There seemed to have gathered a coterie of people, I couldn't tell you how many, except I noted the Pullman's uniform

Q You were talking there, were you not? A Not any more than I could help.

MR. MOORE: I move to strike out the answer.

THE COURT: Yes.

BY MR. MOORE:

Q You were talking there?

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MR. MEDALIE: I object unless he specifies what time.

BY MR. MOORE:

Q Right after the alleged assault took place and your head was being washed, you were talking during that period? A I have already told some things I said.

Q That was what I said, you remembered those things? A I was as cool as I am now. I was not excited.

Q Do you remember what took place then there? A I have told you all that I can remember.

Q Suppose you tell me again what took place there -- I want to call some things to your attention, if you will just tell what you said? A You mean repeat exactly what was said in the wash room?

Q Yes? A After the assault?

Q After the assault, yes? A I overheard the conductor say to the porter, "you should be ashamed of yourself, you ought to be ashamed of yourself to have struck a man old enough to be your father", and he said "I hope I have not killed him."

Q That is all you remember? A That is all I recollect.

Q Do you remember talking --

MR. O'MALLEY: He was about to say something else.

THE WITNESS: Then of course I have told you when the officer came in to make the arrest, what happened and what Captain White said.

Q I mean immediately after it happened, I want to get that

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part first, I will get to the other later -- do you remember talking to a Pullman conductor by the name of Klein?

MR. MOORE: Mr. Klein stand up.

(A gentleman arises in the court room).

Q Did you see the man standing up there? A You mean that morning?

Q Yes, that morning? A Is that the conductor of the train?

Q I ask you if you talked to that man that morning? A I don't remember his face at all.

Q Do you remember saying to this man that Harrell called you a liar -- that the porter called you a liar, in words or substance, and that you then seized him by the neck and while you had him by the neck he hit you with this black jack? A No.

Q You don't remember saying any such thing at that time? A No such statement was made by me.

Q Did you say the same thing in words or substance to Mr. Lee who was the conductor of the train? A No, sir.

MR. MOORE: Mr. Lee will you please stand up.

(A gentleman arises in the court room).

Q Do you recognize Mr. Lee as the conductor on the train? A No, I have no recollection of ever seeing him.

Q Did you say in words or substance the same thing to Mr. Sour, who is a representative of the Pullman Company. (Mr. Sour stands up in the court room). A I would like to ask Mr. Sour a question through you.

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Q I will ask you questions -- in the hospital that morning, did you say in words or in substance that to Mr. Sour? A No, what I did say was, may it please your Honor --

MR. MOORE: I object to that.

THE COURT: No, you must answer the questions put to you.

THE WITNESS: Cannot I tell about having asked to see the Pullman --

THE COURT: That may be developed, but counsel is entitled to have the questions he asks, answered.

BY MR. MOORE:

Q When you were in the hospital, you remember sending for a representative of the Pullman Company? A Yes, sir, that was what I wanted to bring out, what I said to him.

Q Do you remember Mr. Sour coming to see you? A There were two men came in and I made the remark, I asked the doctor "Won't you please send" --

MR. MOORE: I object to that, I will bring out what I want to bring out.

THE COURT: Answer the question only.

BY MR. MOORE:

Q Do you remember Mr. Sour coming to see you? A I remember two men came to see me. I asked for some one to come.

Q You told them what happened on the train, did you not?

A I made the remark to them --

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Q Did you or did you not tell them what happened on the train? A Certainly I did.

Q You made a statement, did you not? A Yes.

Q You signed that statement? A The statement I signed --

Q Did you or did you not sign a statement? A Yes, sir, which I could not even read.

Q Did you sign two statements? A I made a statement I could not even read.

Q Did you sign two statements? A I have no such recollection. They asked me to make a statement. I said "I cannot even read it, won't you read it to me." May it please your Honor, ain't I entitled to say why I called for a man.

THE COURT: No, this must be brought out by Mr. O'Malley, if it is proper.

BY MR. MOORE:

Q Now, Mr. Supplee, did you in words or substance, tell Detective Hayes that the porter here called you a liar, and that you then followed him and seized him by the throat? A No, sir.

Q And while you had him by the throat he hit you with this instrument? A No, I never made any such a remark.

Q Never made any such, A Absolutely.

Q I show you a paper and I ask you if that is your signature, one signature on each page? A Yes, that is my signature.

MR. MOORE: I offer it in evidence.

MR. O'MALLEY: I object to it as a whole.

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THE COURT: Will you examine it and see if you object to it.

(Mr. O'Malley examines the paper).

MR. O'MALLEY: I wish to ask a preliminary question.

THE COURT: Yes.

BY MR. O'MALLEY:

Q At the time this statement was signed by you, where were you? A I was lying on the couch or cot in the hospital and absolutely could hardly tell anything that was happening around me. The pain was very intense.

MR. MOORE: I object to that as incompetent, irrelevant and immaterial, and ask to have it stricken out.

THE COURT: No, I will let it stand.

BY MR. O'MALLEY:

Q How long was that after you had been brought up there?

A I suppose within thirty minutes.

Q At that time had your wounds been attended to? A They had stopped the flow of blood and had dressed the wounds.

Q Who brought this statement in to you? A I do not know. I thought it was the doctor.

Q At that time you say you were lying down, A Yes.

Q You did not read this statement yourself? A No, he asked me to read it and I could not read it.

Q You did not read it over, A I did not read it over.

Q How many papers were handed to you? A They brought in

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one paper and then seemed to bring in kind of a supplement to it, two papers.

Q You do not know now who it was presented the paper to you? A I have not an idea.

Q Was it this Mr. Sour who has been spoken of here? A I do not know. I should think it was the man attending me, the orderly at the hospital.

Q Was this statement written in your presence? A No, sir. He seemed to go outside and bring it back to me.

BY THE COURT:

Q Was it read to you, was the statement read to you? A I asked him to read it to me, and to tell you the truth I could not understand it. Before I left the hospital I asked if they would not let me see the statement and they said the man had taken it away.

BY MR. O'MALLEY:

Q You were not permitted to see it? A No, I was not permitted to see it.

BY THE COURT:

Q It was read to you before you put your signature to it, you signed it twice? A I signed what seemed to be one page and after awhile they brought another page and saw it fastened to it, as I recollect. I told the man "I am in no condition to know anything about that. I cannot read it." I remember I could not read it.

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Q But despite all that, you did sign it? A Yes.

THE COURT: I will receive it.

The paper is received in evidence and marked Defendant's
Exhibit 1.

(MR. MOORE reads Exhibit 1 as follows)

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Defts. Ex. 1

STATEMENT relative to the personal injury sustained by
FRANK SUPPLEE at Harmon, Oct. 9th, 1913.

My name is Colonel J. Frank Supplee. I reside or have
apartments at the Iriquois Hotel and receive my mail at the
Army and Navy Club, N.Y.

I am 62 years of age and am President Secretary of the
United States Fidelity and Guaranty Company of 45-49 Cedar
Street, New York.

On the morning of October 9th, 1913, I left Rochester
on train #8 en route to New York. Captain M. A. White of
the 7th Regiment, N.G.N.Y. accompanied me. We had section
3 in a Pullman car, I do not know the name. Capt. White oc-
cupied the lower and I the upper.

This morning after I had gotten up, washed and shaved,
I was sitting in the wash room of Pullman car, polishing my
shoes with a soiled towel when the colored Pullman porter
came into the car and asked if I wished to be brushed off.
I asked him why he had not polished our shoes and he replied
that he had polished one pair, but was unable to find the
other pair. I said to him, "Capt. White says you did not
polish the shoes" and he replied, "If he says that he is a
liar". I was stunned for a moment and asked him "What did
you say" and he replied again "He is a liar and you are a
liar too". I stepped forward, grasped him by the throat
and as I did so he struck me three times on the head with a

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black jack, inflicting scalp wounds.

There were none of the train crew in the compartment at the time and they had nothing whatever to do with the assault and did not witness it. I am a Colonel, Maryland Natl. Guard retired.

FRANK SUPPLEE.

Signed at Emergency Hospital, G.C.T., on the ninth day of Oct., 1913.

We saw this statement signed by Colonel J. Frank Supplee and heard him admit it was full, true and correct.

Chas. Howard, 49 Cedar, N.Y.

D. R. Dunn, C.A., do

Colonel J. Frank Supplee continuing states, and at the time of this assault was returning in Uniform from a Fall Field day of The Ancient and Honorable Artillery Company of Boston, which had been held in Rochester and where Capt. White and myself had been parading.

J. FRANK SUPPLEE.

Signed at Emergency Hospital, G.C.T., on the ninth day of Oct., 1913.

We saw this statement signed by Colonel J. Frank Supplee and heard him admit it was full, true and correct.

D. R. Dunn, C.A., N.Y.
Chas. Howard, 49 Cedar.do.

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BY MR. MOORE:

Q Haywood is one of your men? A Howard I presume.

Q You have a man employed by your company by that name? A Yes

Q He was there at the time this statement was made? A He did not hear the statement made, as I recollect.

MR. MOORE: I move to strike that out.

BY MR. MOORE:

Q Was he present at the time this statement was made? A He was in the room some portion of the time. I couldn't tell you when.

Q Could you recognize his signature? A Yes.

Q I show you a signature here, and I ask you if that is his signature on both pages? - A Yes.

Q Did you see him sign this? A Did I see him sign that?

Q Yes? A I couldn't tell you to save my soul.

Q You have begun a civil action in this case for \$25,000.?

A Yes, and I --

Q That is enough, I ask you if you have, yes or no -- now, before this statement was made you had not consulted an attorney?

A Of course I had not. I had not time to consult anybody.

Q But since then you have consulted an attorney and you started an action for \$25,000. against the New York Central Railroad Company, is not that true? A Would you like to ask why?

Q I ask you if that is a fact. I do not want to know the workings of your mind.

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BY THE COURT:

Q Is that a fact? A Hasn't he laid the premises for asking me why?

Q No, he is entitled to develop the case in his own way, and the State's counsel may ask anything that may be necessary to explain it.

(The question is repeated).

A Sure -- I have no right to state any reasons for such an action, based upon what happened that day?

THE COURT: No. These are independent actions. One is a civil and one is a criminal. The People of the State are prosecuting this defendant here, and the other is for damages against the company who employed him.

THE WITNESS: I have no right to say the way the railroad treated me?

THE COURT: No, it does not become involved here.

BY MR. MOORE:

Q Did you say in words or substance in the presence of Wesley S. Marshall, W. R. Purcell, Theodore Johnson, Mr. Odell and Mr. Dunn --

(Several gentlemen stand up in the court room at the request of defendant's counsel).

BY MR. MOORE (continuing)

Q Did you say in words or substance in the presence of these men that the porter here called you a liar, and that you seized

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him by the throat, and while you had him by the throat he hit you over the head? A No, sir.

MR. O'MALLEY: I object unless the time and place is specified.

BY MR. MOORE:

Q That was upon the train before you reached the Grand Central station? A No.

Q Or in the hospital? A No, sir.

RE-DIRECT EXAMINATION BY MR. O'MALLEY:

Q That is your signature to the statement? A Yes.

Q You yourself, I think you have already testified, never saw this statement, you did not read it over? A I did not read that statement over.

Q Who did read it over to you? A The man that brought it to me.

Q Do you know who that was, A No.

Q Was Mr. Howard present at the time? A At the time I signed it?

Q Yes? A According to his signature there, must have been

Q Do you remember personally? A I remember I sent for some of the boys from the office and Mr. Howard was in the room at some time.

Q Do you know if he was there when it was read or not? A I do not think he was.

Q Look at that statement now and see if you recollect that

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statement having been read over to you? A He knows my signature and of course he could attest to it -- I have no recollection of this statement here, this portion of it, if you allow me -- "I stepped forward and grasped him by the throat" -- none whatever. I moved in his direction, in the narrow passage-way, because I was going to my berth and wanted to understand what he had said.

MR. MOORE: I object to this explanation.

THE COURT: Do you ask to have it stricken out?

MR. MOORE: Yes.

THE COURT: Strike it out.

BY MR. O'MALLEY:

Q You were asked about a talk with a Mr. Sour, and counsel for the defendant shut you off -- state what that conversation was? A You mean in the wash room after?

Q No, Mr. Sour, I understand is the person who came upstairs to you in the hospital, wasn't he? A I asked whoever was attending me to please send for some one in authority, connected with the railroad or Pullman, and two men came in and here is the appeal I made to them. I said "You owe it to the safety of your passengers" --

MR. MOORE: I object as not in the presence of the defendant.

MR. O'MALLEY: This is the conversation -- you asked him in regard to Mr. Sour -- I ask him for that.

THE WITNESS: That is what I am trying to give.

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THE COURT: You may state it.

THE WITNESS: I said "I have sent for you because you owe it to the safety of your passengers in the future that this porter shall not simply be discharged, as he will enter the service in some other city under another name, and the next man he assaults he will kill, for he is a very bad man."

MR. MOORE: I object to this as incompetent and immaterial.

THE COURT: Where is the foundation for this?

(The stenographer reads the prior testimony of the witness on that point).

MR. MOORE: I will withdraw my objection.

THE COURT: Do you withdraw it?

MR. MOORE: Yes.

THE COURT: I did not think the foundation had been laid that would warrant it, but if you withdraw your objection the witness may answer.

THE WITNESS: I sent for these two men and I said --

BY MR. O'MALLEY:

Q You have already told us what you said? A I then said "I think you owe it to the public to have a representative at the Magistrate's case, in order that this man may be properly punished." They agreed with me. No such representative was ever present, nor did the road treat me with common humanity.

MR. MOORE: I move to strike out the last part of the answer. That is not a part of the conversation.

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THE COURT: Motion granted.

THE WITNESS: The point I was trying to make was --

THE COURT: You must not state that.

THE WITNESS (continuing) -- to ask this man to send a representative -- that was all -- that was what I asked for.

BY MR. O'MALLEY:

Q That has been stricken out -- that was what you had in your mind? A Is it stricken out that I asked them to send a representative to the Magistrate's Court?

THE COURT: No.

THE WITNESS: That the man might be properly punished.

BY MR. O'MALLEY:

Q That was what you had in mind when you said you wanted to give the reason for signing the statement? A Yes.

Q Do you remember seeing the officer of the railroad company named Hayes, was he there that morning? A Yes, I could remember because --

Q He was the man who put the defendant under arrest? A Yes, he asked "Is this the man."

MR. MOORE: I object to that.

THE COURT: Yes.

BY MR. O'MALLEY:

Q Has the fact that you began an action against the Railroad Company changed your testimony in any way -- what you testified to in the Police Court and here? A No, sir, none whatever.

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Q Now, you have seen all these men stand up from time to time in the court room? A Yes.

Q Did you go around the car that morning and publicly proclaim to everybody the circumstances under which you were assaulted? A I was not able to walk.

MR. MOORE: I object to that.

BY MR. O'MALLEY:

Q Did you or did you not? A No, I did not.

Q Where did the greater part of the conversation that you had in that car take place, out in the main part of the car or in the smoking compartment? A All of it in the wash room.

Q Did you see all these men in there at any time? A I do not believe they could get in there. I don't believe it will hold that many men.

Q What is the size of that wash room? A About, I should say, 8 by 10 feet.

RE-CROSS EXAMINATION BY MR. MOORE:

Q In connection with your conversation with Mr. Sour, did Mr. Sour ask you this question, did he ask you what happened there and did you say "He assaulted me by calling me a liar"? A No, sir, I did not.

Q "And that I then grabbed him by the throat", did you say that? A No.

Q Did you say "That it has been adjudicated in court that if a man calls another man a liar, it is an assault"? A No.

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Q Did you tell Mr. Sour that, A No.

Q Do you know of any case where it has been adjudicated?

A I am not a lawyer.

Objected to. --- Sustained.

Q You have talked over with your civil lawyers the testimony you are going to give here? A My civil lawyers?

Q Yes, you have attorneys who brought an action against the company? A Yes.

Q You have talked over with them the testimony you are going to give here? A I was represented at the Magistrate's case-- it was not necessary to do so.

Q You have talked over with them, you have told them what you are going to testify to here? A I have no recollection of the necessity of doing such a thing.

Q You have told them that? A Yes, if necessary --- we have not gone into any extended thing of that kind. but,

Q You have not said a thing about what you were going to testify to here? A Here?

Q Yes? A We did not have any such coaching.

Q I ask you if you had any conversation? A No, we have not.

Q They do not know what you are going to testify here today, do they? A I am quite sure they do not.

BY MR. O'MALLEY:

Q You were in the Magistrate's Court the next day? A Yes.

Q You testified there fully? A I did.

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Q Was the defendant represented there by this counsel he has here to-day? A No, he was represented by another counsel.

Q Did you testify in full there in regard to this assault?
A I did.

Q Did you there say anything about having grabbed the defendant by the throat? A I did not.

Q Were you asked there by his counsel at any time? A I was not.

MR. O'MALLEY: I offer that part of the minutes in evidence.

MR. MOORE: I object as incompetent, irrelevant and immaterial.

THE COURT: It may be marked for identification. You may have occasion to offer them later, perhaps.

(The minutes are marked People's Exhibit A for Identification).

MAJOR A. WHITE, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q What is your full name? A Major A. White.

Q What is your business? A Insurance.

Q With what company are you connected? A City of New York Fire Insurance Company.

Q Were you with Colonel Supplee on the 8th day of October, in Rochester? A Yes, sir.

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Q And you returned with him to New York the early morning of October 9th. A Yes.

Q What berth did you occupy? A The lower berth. I don't know the number.

Q Colonel Supplee occupied the upper? A Yes, sir, same section.

Q Do you remember leaving the car at any time when you got in the neighborhood of New York, the following morning -- going into some other car? A When I went to breakfast, yes.

Q Where did you leave Colonel Supplee at that time? A I left him in the wash room.

Q Did you later return to your own car where Colonel Supplee was? A Yes.

Q And about what time was that? A I have not any idea of the time, just after finishing breakfast.

Q Do you know where the train was at that time? A Somewhere around Harlem River.

Q Did you see Colonel Supplee when you got back in the room? A When I arrived in the car I went to the main body of the car and did not see him. I expected to find him in his seat, because he had said he would not take breakfast as he did not feel very well. As I did not find him there I started towards the front end of the car and some one spoke up and said "I think your friend is in the wash room. He has had some trouble." So with that I turned around and went back to the wash room and found him there.

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Q Who was in there when you got in there? A Some porter and the conductor was standing at the entrance to the wash room. That was all.

Q Was the defendant in there at that time? A Yes, sir, he was the porter.

Q And the conductor? A Yes.

Q What else did you observe with regard to Colonel Supplee's condition? A I did not hear anything material except that he had been assaulted.

Q What did you observe about him? A At the time I first saw him he was standing over the wash basin with blood pouring out of the top of his head, and this porter was putting water on his head.

Q You mean the defendant? A The defendant, yes.

Q Did you hear any conversation -- did you have any conversation with either the defendant or Colonel Supplee in the presence of the defendant? A I am not quite sure of the conversation. I possibly may have asked him what the trouble was.

Objected to as incompetent, irrelevant and immaterial.

THE COURT: Only state what you recall.

BY MR. O'MALLEY:

Q Do you recall? A I cannot recall any conversation.
the

Q But you heard talk? A I cannot recall any conversation.

Q How long were you in there? A I was in there until the train arrived at the Grand Central -- until the officer came in

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at the Grand Central.

Q Were you with Colonel Supplee then until the officer came in? A All the time.

Q Nobody was in this wash room at the time you went in there except the conductor and the defendant? A That was all.

Q Was it the conductor of the train or the Pullman conductor? A The Pullman conductor.

Q What occurred when you got to the Grand Central station?
A An officer in citizen's clothes, as soon as the train stopped, came in the car and came right by the conductor and asked "Where is that man."

Objected to as incompetent, irrelevant and immaterial.

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

Q This defendant was there? A Yes.

Q Tell what occurred? A The conductor said "There he is", pointing to the defendant, and the officer went over and took hold of him and said "Come with me" and took him out immediately into the hallway, and then I stepped over to the Colonel to help him, as the man had been putting water on his head; the blood had about stopped running at that time.

Q Did you stay with the Colonel until he was put in this chair and taken off the train? A Except for a moment that I went into the little hallway immediately after or shortly after-- immediately after -- before I stepped over to the Colonel; I went over in the hallway, just as I stepped in the hallway I looked

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towards the front of the car and the defendant was standing in front of the little closet, with the officer on the other side of him, and just at that time I saw the defendant pass something to a porter in his rear. I stepped up and said "What is that you are giving him," and the porter -- the one who received it said "Nothing", but he put his right hand in his pocket down deep in his pocket and held it there. Then I ordered the officer to search him, and the officer refused.

Q What officer was that? A The officer that had taken-- I don't know his name.

Q That arrested the defendant? A Yes.

Q Was it Hayes? A I don't know.

Q What did that officer say in the presence of this defendant? A He said "I have no authority to search this man." I was not quick enough to make a complaint against him so he refused to search him.

MR. MOORE: I object and move to strike that out.

THE COURT: Strike it out.

THE WITNESS (continuing) When he said he had no authority to search him and I couldnot search, then the porter went off to the front end of the car.

Q The defendant? A No, the other porter, the one who received something from him.

Q Now, how long did that incident occupy you have just told us about? A It was only a minute or two.

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Q Then you went back into this wash room -- now, were you with Colonel Supplee up until he was taken from the car? A Yes, I went with him.

Q In the chair? A Yes.

Q You went with him? A Yes.

Q Where did you go? A Went out to the station and in an elevator -- that is, the Colonel was in a rolling chair and took him in the elevator up to the Emergency Hospital.

Q Did you stay in the hospital or did you leave? A I stayed there a few minutes until the doctor had taken some care of his head, and then when I thought he was getting along I went -- the officer wanted me to go with him to the Court Building to make a charge against the man, to hold him over night, so I went with him in a stage to the 57th Street Court.

CROSS EXAMINATION BY MR. MOORE:

Q You made the complaint in the Police Court? A Yes.

Q You did not know just what did happen on that train before you got back there, you did not see anything? A No, I did not see any of it.

Q You do not know what part of the journey -- you don't know the location of the train at the time this accident or this alleged assault took place, do you? A No I do not know, because I was not there.

Q Do you remember where the train was when you went in to breakfast that morning? A No, I do not know where it was, some-

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where on the Hudson.

Q You do remember though that when you went into the wash room that morning, that you saw this defendant washing the head of Colonel Supplee? A Putting water on his head.

Q His head was bent over? A His head was bent over.

Q Do you know which Pullman conductor was with him at that time? A I cannot say that I do.

MR. MOORE: Will the Pullman conductor stand up.

(Two men stand up in the court room).

BY MR. MOORE:

Q Which one of those two? A I am not sure, but I should say the man on the left, on my left.

MR. MOORE: What is your name?

The gentleman who is referred to states that his name is Chatfield.

A gentleman by the name of Lee now stands up at the request of counsel.

BY MR. MOORE:

Q Did you see Mr. Lee there in the wash room when you were there? A No, I do not remember seeing him.

A gentleman by the name of Mink stands up.

Q Did you see Mr. Mink there when you were there? A I don't remember him.

Q ~~You do not~~ remember that Pullman porter being there?

(A colored man and a white man stand up in the court room)

A What?

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Q The Pullman man? A One of the men is not a porter.

THE WITNESS: I don't remember him. I couldn't say positively about either of those conductors.

Q You are a close intimate friend of Colonel Supplee? A I am a friend of Colonel Supplee.

Q Your line of business is similar? A Somewhat, it is insurance.

Q You went to Rochester together? A Yes.

Q You came home together? A Yes.

Q You would like to see him win this case? A I do not know that I am particularly interested, except as a friend.

Q As a friend you would like -- I do not mean to insinuate that it is going to change your testimony at all, Mr. White, but you are friendly to Colonel Supplee, are you not? A He is a friend of mine, yes.

BY MR. O'MALLEY:

Q It would not make any difference with your testifying here? A No, sir, not a particle, makes no difference whatever.

BY MR. MOORE:

Q Do you remember any red caps coming in there when the train reached the Central Station? A I don't remember that they came in.

Q Did you see either of those or any of those three men there? (A Mr. Purcell, a Mr. Marshall and a Mr. Johnson now stand up in the court room). Did they come up to the hospital

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with Colonel Supplee? A I cannot be positive.

Q Did they come into the smoking compartment there at the time you were there, when the train came in? A The one on the right looks like the man that stood behind the porter and took the article from him, but I am not sure. He was a light man.

Q You mean the one on the extreme right? A On my right.

Q You do not know what that article was? A No.

Q Might have been a five dollar bill? A I do not think it is at all likely.

MR. O'MALLEY: With the exception of the physician whom we would like to call when he comes, we rest at the present time.

THE COURT: You will call him later?

MR. O'MALLEY: Yes.

THE COURT: Do you object to the order?

MR. MOORE: I do. I would like to have the doctor here to be examined before we go on with our case.

MR. O'MALLEY: He will be here in ten or fifteen minutes.

THE COURT: Why cannot you examine him later?

MR. MOORE: I see no objection to allowing him to testify later.

THE COURT: I should grant an adjournment, but it might make it necessary for us to take it now, if you insist upon the entire case being in.

MR. MOORE: No.

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MR. MOORE: I move to dismiss the complaint upon the ground that the People have failed to make out a cause of action beyond a reasonable doubt.

Motion denied. Exception.

BENJAMIN D. HARRELL, the defendant, being called as a witness in his own behalf and duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOORE:

Q You are the defendant in this case? A Yes.

Q You were the porter upon this Pullman train in question?

A Yes.

Q What is your business when you are not working in the summer time? A Student.

Q Whereabouts? A University of West Tennessee, Memphis.

Q And how many years have you been at school there? A Only one winter to that school, last winter -- one term.

Q Where had this train come from upon which you were porter? A I started from Buffalo.

Q And do you remember Colonel Supplee coming on this train at Rochester? A Yes.

Q And was Captain White with him? A Yes.

Q And were they in uniform, did they have on uniforms? A I do not remember if they had full uniforms -- they had on some uniform.

Q What time did you come through Rochester, if you remember,

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at night? A Well, I don't really remember. I don't remember now what time we are due there.

Q Coming down to the time of this alleged assault, do you remember going into the wash room on that morning? A I do.

Q Just tell the jury in your own way what happened immediately preceding your going into the wash room, what took place while you were in there? A When I was coming into New York, coming into New York City on New York Central 8, and as I was coming into High Bridge, I got my whisk broom out of my linen locker, as I usually do, and went to the fore end of the body of the car. I brushed off my passengers that were within the body of the car and having finished those I went to the wash room to brush off all that were in the wash room of my car. When I got there I only found one man in there which was Colonel Supplee. I walked in the wash room and asked him "May I brush you off now." His reply was "What in hell is the use of being brushed off when you did not shine my shoes."

Q What did you say? A I said "I am sorry I did not get your shoes. I only found one pair and I shined them." His reply was "Captain White says I did not shine them." My reply again "If he said -- if Captain White said I did not shine his" -- my next reply was after he said Captain White said I did not shine his shoes -- my reply was "Sure I did shine one pair, and beg your pardon I did shine one pair of shoes," and his next reply was "You are a liar" if I said I shined any shoes. By the time I

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locked my toilet in the wash room and went out, going into the ladies' toilet to lock the door there, as I passed -- going past the linen locker I opened the linen door and threw my brush in and in the act of closing the linen door and Colonel Supplee caught me, walked up and caught me somewhere about my collar, around here, and I looked around to see what was about to take place or who it was, and at that time he called me a son of a bitch and struck me in the face. I ducked my head, dodging, and he struck me again and frightened me so, I did not know what to do. I actually lost my wits. During the struggle I got my hand on the ventilator stick, the stick you shut up the ventilators in the car with, and I struck him, and he -- after I struck him he let me go.

Q How many times did you strike him? A I really don't know.

Q What happened after that? A He turned me go and went towards the -- went in the direction of the wash room and I locked the ladies' toilet as I had started to do.

Q What happened then? A After I locked the ladies' toilet, came back, the gentleman that occupied the drawing room A, he opened the door and asked me for a drinking cup. I got one out of the linen locker or out of the equipment locker and gave him one, and at that time this gentleman, Colonel Supplee, appeared at the other end of the car again, the man's end, and said "Won't somebody -- won't some of you gentlemen assist me, this man hit me," and I said "I will assist you if you will allow me." He went in

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the direction -- he went to the wash room and held his head over the basin and I followed him and applied water to his head, and I was there when the officer came.

Q Did you see the train conductor while in the wash room there? A At any time during that ?

Q Yes, that morning after the assault? A Yes.

Q Did you see a train man by the name of Mink there? A I don't remember Mr. Mink.

Q Did you see the Pullman conductor, Mr. Klein? A Yes, sir, the conductor was in there also.

Q Did you see conductor Chatfield, Pullman conductor there that morning? A I don't remember.

Q Klein and Lee were the two conductors who came down with you on that train? A Yes.

Q They were in there? A Yes.

Q Did they ask Colonel Supplee some questions in your presence? A Yes.

Q After the train arrived at the station what happened?
A The officer came in and arrested me and searched me.

Q Do you remember calling Colonel Supplee a liar? A I don't remember.

Q Did you call him one, or don't you remember? A I don't remember.

Q You might have called him one there? A Well, it is possible; I might have.

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CROSS EXAMINATION BY MR. O'MALLEY:

Q Is this the ventilator stick? A I don't know if that is the one or not.

Q It was a stick like that? A That is a ventilator stick.

Q Is that the ventilator stick that was in the car? A I don't know. That is a ventilator stick, but I don't know if that is the one or not.

BY MR. MOORE:

Q Is that like the one that was there? A Yes.

Q About the same size and everything? A As far as I can differentiate between the two, they are very near alike.

MR. O'MALLEY: This is the one that was in the car.

MR. MOORE: I don't know, but if it is like it I have no objection to its going in evidence as the stick.

BY MR. O'MALLEY: I understood it was.

BY MR. O'MALLEY:

Q It was a stick just like that, was it? A Looked like it.

Q About that length? A I suppose so.

Q Don't you know, you have been handling them there in the car? A The Pullman Company has many of them.

Q They are all alike? A All seem to be alike in the standard car.

Q All you have ever seen? A In the standard car, yes.

Q This was a standard car in which you were? A Yes.

Q And it had a stick like that? A It looked like that.

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Q Take hold of that stick? A Yes, it looked like that.

Q Did it feel like that? A You mean the stick on my car?

Q Yes? A As far as I know, it felt like that.

Q About that weight? A I don't know about the weight.

Q Is this the stick you hit him with? A I don't know.

Q Did you hit him with a ventilator stick similar to that?

A I hit him with a ventilator stick and it looked like that.

MR. O'MALLEY: I offer this in evidence.

MR. MOORE: I withdraw the objection to it.

The stick is marked in evidence People's Exhibit B.

BY MR. O'MALLEY:

Q How old are you? A My record was not properly kept, but as near as I can get to it, twenty-nine or thirty.

Q Will you stand up -- what do you weigh? A I do not really know. It is some time since I have been weighed. I don't really know my weight.

Q What is about the last weight you had, if you remember?

A The last I can remember is about 166.

Q You are about that now, and did you weigh about that on the 9th of October? A No -- well, I really don't know. I was not weighed.

Q You remember Colonel Supplee and this other gentleman, Captain White, getting on at Rochester? A I do.

Q You showed them to their berth? A Well, they had a ticket to the berth.

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Q They had the ticket, and did you see them in the morning when they got up -- do you remember if you saw them or not? A I don't remember in particular about them.

Q You remember seeing Colonel Supplee in the smoking room sitting down wiping off his shoes? A I remember seeing him in there but I don't know what he was doing.

Q Was he sitting down? A He was sitting.

Q Do you remember seeing him sitting down? A He was sitting.

Q Do you remember whether or not he had anything in his hand? A I don't remember.

Q You say you don't remember what he was doing? A No, sir, I do not.

Q Was he rubbing off his shoes or wasn't he? A I don't remember.

Q Do you remember having testified in the Magistrate's Court? A You mean statement, did I remember any statement in the Magistrate's Court?

Q Yes, do you remember having taken the stand and testified in the Magistrate's Court? A Yes.

Q Do you remember this question being asked you, "By this gentleman you mean the complainant, Colonel Supplee", and was your answer "Yes, and he was in there and he had a towel rubbing off his shoes" -- did you so testify in the Magistrate's Court? A I don't remember now.

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Q If you so testified, was it true? A I don't remember.

Q You do not remember whether what you testified to in the Magistrate's Court was true or not, is that what you mean? A No, I don't remember if I testified so or not.

Q I ask you if you testified to that in the Magistrate's Court, was it true or false? A Well, I am giving -- the statement I am giving now is the best of my knowledge at present.

Q Did you testify to the truth in the Magistrate's Court?

A Did I testify?

Q Yes? A I tried to then just like I am now.

Q Do you know whether you testified to the truth or not in the Magistrate's Court? A Yes, I testified to the truth.

Q Then if you testified that he was in there with a towel rubbing off his shoes, was that true or false? A Well, what I testified --

Q If you did testify in the Magistrate's Court, was that true? A If I testified in the Magistrate's Court it was true.

Q Now, up to the time that you saw Colonel Supplee in there sitting on a chair, you had no talk with him at all, did you?

A Up to the time, you mean before that, before I went in the wash room?

Q Listen to my question, and we won't have any trouble -- up to the time you saw him sitting there in the chair you had no trouble with him? A No.

Q And the first thing that was said by you to him or by him

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to you was when you said to him "Shall I dust you off"? A Yes, that was the first thing I said.

Q Up to that time Colonel Supplee had not said anything to you that morning about cleaning his shoes, had he? A He had not.

Q He did not ask you to clean his shoes but went into the smoking compartment and cleaned them himself? A Well, I don't know what he was doing.

Q He did not ask you to clean them? A No, he did not ask me to clean them.

Q He did not come around to you and scold you because you did not clean his shoes? A You say he did not come around --

Q He had not said anything to you about it? A You mean before I went in there?

Q Yes? A No.

Q What was his reply to you when you asked him that question? A About being brushed?

Q Yes? A He said "Why in hell is the use of being brushed when you didn't shine my shoes."

Q He used the word hell? A Yes, he said the words just like I say.

Q You saw the Colonel on the stand? A Yes.

Q Did you hear him swear that morning before you spoke to him in the car? A Swear how -- do you mean?

Q Do you know what swearing means? A I know, but I don't understand what you mean.

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Q What do you think swearing means? A Swearing means cursing I thought.

Q Did you hear the Colonel curse that morning before you spoke to him there? A I did not.

Q He did not come and curse you because you had not wiped off his shoes? A I did not hear it.

Q The first thing he said to you was "What in the hell is the use of you dusting me off when you did not shine my shoes" after you spoke to him? A Yes.

Q Real angry? A Who?

Q The Colonel was real angry immediately? A I don't know if he was angry or not.

Q What did you say to him? A I said "I am sorry that I did not shine your shoes last night."

Q Had you been in that car that whole morning -- you had not left that car? A I had been in the car from the time we left Buffalo.

Q No other porter had come in there to take charge of the car but you? A May have come through there, but were not in charge of the car.

Q No one relieved you in that car? A No, sir.

Q You immediately said "I beg your pardon", you did shine one pair of shoes in that berth? A Yes, I shined one pair of shoes in that berth.

Q What was the next thing occurred? A After I said I shin-

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ed one pair of shoes in that berth he said "I am a liar if I shined any pair."

Q He immediately said you were a liar? A Yes, sir.

Q That was the next thing -- the first thing he said to you was "What the hell is the use of you dusting me off"? A And did not shine my shoes.

Q You immediately said "I beg your pardon, I did shine a pair of shoes there", is that right? A The next word I said "I am sorry I did not get your shoes last night."

Q You said you did shine one pair there? A Yes.

BY THE COURT:

Q Did you look for the shoes? A Yes.

Q Both pair of shoes? A Yes, all the shoes I get are down on the edge, within reach, and what can be seen I get and shine them.

BY MR. O'MALLEY:

Q Then he called you a liar? A After I said I shined one pair of shoes he did.

Q Then he called you a liar? A Yes.

Q What did you say to him? A I did not say anything to him.

Q Did not say a word? A I looked my toilet and went out and went for the ladies' toilet.

Q Let us confine ourselves to what occurred in this compartment -- he called you a liar while you were still in that compartment? A What compartment -- in the wash room?

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Q Yes? A Yes.

Q Did you say anything to him after that. A No, not to my knowing.

Q Did you call him a liar? A Not to my knowing.

Q If you don't know, who does know? A No one, as I know, but the man who knows all things.

Q You told your counsel you did not know whether you called him a liar or not, is that right? A I did.

Q You told us the first thing you said to him when you went in there, haven't you? A I told you the first thing I said when I went in there.

Q You have already told the jury the first thing you said at the time when you went in? A Yes.

Q You have told us what he replied to you? A Yes.

Q Then you have told the jury what you said in return to that? A Yes.

Q You have told us then that the Colonel immediately called you a liar? A Yes.

Q You are not able to tell this jury whether or not you called him a liar there that morning? A I am unable.

Q You are unable to tell this jury whether or not you called the Colonel a liar that morning? A I am unable.

Q You are unable? A Unable to know whether I did or not.

Q You know the Colonel called you a liar? A Yes.

Q You know the first thing you said to him? A The first thing I said I remember.

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Q And the next thing he said to you you remember? A I remember, -- the next thing I remember.

Q And the next thing you said to him you remember? A The next thing -- how?

Q The next thing you said to him you remember that too, don't you? A The next thing I said to him?

Q Yes; you have told the jury what that was? A Why, I guess so, as far as I know now.

Q What is the next thing the Colonel said to you? A The next thing?

Q Yes? A After I left that wash room?

Q No, after he called you a liar, what was the next thing he said or did? A The next thing he did, he caught me.

Q He caught you? A He caught me.

Q Where did he catch you? A Somewhere about the collar, around this side.

Q Where were you at that time? A Standing at the linen locker door.

Q What did he say to you? A He called me a son of a bitch.

Q Do you remember that -- do you? A I remember that.

Q What else did he call you? A I don't remember anything else he said.

BY THE COURT:

Q Do you remember anything you said? A I did not say -- at that time?

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Q You did not say anything? A I was so shocked, I did not say anything that I know of.

BY MR. O'MALLEY:

Q Have you ever heard the word son of a bitch before? A I have-- you mean on the street and such places?

Q You never use it yourself? A I may have used it -- I guess I used it some years ago.

Q Do you want to tell this jury that Colonel Supplee who was here on the stand, called you a son of a bitch? A Yes, sir, he did.

Q You testified in the Magistrate's Court? A Been some time since the Magistrate's Court.

Q You testified in the Magistrate's Court? A Did I testify there?

Q Yes? A Yes.

Q Did you tell the Judge there that Colonel Supplee called you a son of a bitch? A I don't know what I testified to.

Q Did you tell the whole truth there? A I told the truth.

Q You told it all? A I told the truth as far as I know to the best of my ability.

Q Did you tell the Court there on the preliminary examination that Colonel Supplee had called you a son of a bitch? A I don't know if I did or not.

Q If you did not, do you know any reason why you did not?
A If I did not?

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Q Yes, if you did not, do you know any reason why you did not? A I told it just as it came to me.

Q Did you tell all the truth there? A As far as I know.

Q Are you able to tell this jury now whether you told the Magistrate that he called you that name or not? A I am unable to tell whether I told the Magistrate that or not.

Q When was the first time the word son of a bitch occurred to you in this case? A How do you mean?

Q When is the first time that you thought of the word son of a bitch? A I don't know myself when it came to me.

Q Were you brought down to the Tombs after your hearing in the Magistrate's Court? A Yes.

Q How long have you been in the Tombs? A Well, I was arrested on the 9th.

Q You have had quite a lot of time to think this case over? A I have been in the Tombs for a time.

Q Talked with your lawyer at any time in the Tombs? A Yes-- he came.

Q Have you talked with him -- yes or no? A Yes.

Q Did you tell him what occurred there that morning? A I gave him the statement.

Q Did you tell your attorney what occurred there in the car there that morning? A I gave the statement as best I knew, how things were, how things occurred in the car.

Q Is this the counsel who represented you in the Magis-

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trate's Court? A He is not.

Q Can you read? A Yes, sir.

Q Well, we will proceed -- he grabbed you by the collar?

A He grabbed me somewhere about the collar and neck, around here.

Q And at the same time called you this vile name? A Yes.

Q And hit you in the face? A Yes.

Q Where did he hit you? A Somewhere across here (indicating).

Q How many times did he hit you? A Twice, as far as I know now.

Q Were there any marks on you the next day or that day? A I don't know.

Q Don't you know whether there were any marks on you or not? A If you allow me I will tell you why -- I was arrested --

Q Answer me, do you know if there were any marks on your face? A I have not had a chance to see any mirror, so I don't know.

Q Your answer is you don't know whether there was or not?

A I don't know.

Q Do you know if the Magistrate examined you in the Magistrate's Court? A Yes.

Q Do you remember that he looked at your face, do you remember that? A He looked at my face.

Q Do you remember he stated in your presence "There are no marks on the defendant's face", do you remember that? A I don't remember it.

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Q Do you remember this question having been asked you in the Magistrate's Court, "You have no mark on your face at all made by the fist of Colonel Supplee"?

MR. MOORE: I object as incompetent, irrelevant and immaterial, and as having no bearing on the case in question.

THE COURT: It is with reference to something that was said or something that was stated in his presence, about the occurrence in the Magistrate's Court.

MR. O'MALLEY: Yes.

MR. MOORE: He has not testified in contradiction to that.

MR. O'MALLEY (continuing) "I have not had a chance to look in a glass. I don't know whether I have or not"-- do you remember the Court making this remark "There is no mark there from the fist of the complainant"?

MR. MOORE: I object to the remark of the Court.

BY THE COURT:

Q Do you remember anything like that said by anybody? A I don't remember now.

BY MR. O'MALLEY:

Q You don't remember that? A No.

Q Were there any marks on your face in court there that day? A I don't remember whether there was.

Q You were asked about it? A I don't remember.

MR. MOORE: I object, he has already answered.

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THE COURT: He says he had not an opportunity of looking into a mirror and for that reason could not say.

BY MR. O'MALLEY:

Q You say you don't know whether there were marks on your face, in the court room that day, is that your answer, you don't know? A Yes.

Q Have you stated that you don't know now whether there were any marks on your face in the court room that day? A There is one mark on my face since I was a little fellow.

Q Is that the scar across your nose? A Yes.

Q You did not get that that morning? A No.

Q I say were there any fresh marks on your face in the court room that day, that you know of? A I don't know.

Q Do you remember any testimony in the court about your face, whether or not you had marks on? A I don't know.

Q Did you hear any other witness testify that you had marks on your face that morning? A I don't remember that.

Q Did you testify that you had? A I don't remember.

Q How did the Colonel have hold of you when he caught you?
A Somewhere around my neck here with one hand.

Q Stand up -- stand down here -- you say he had you by the neck? A Yes.

Q With his hand? A With his hand.

Q With this hand? A I don't know which hand it was.

Q How many blows did he hit you in the face? A He hit me once in the face.

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Q Were you standing right up straight? A I had my face to the locker -- take this as the locker door, and I had my face towards the locker, looking into the locker when he came up.

Q Now get back there -- we will suppose this is the door leading out of the smoking compartment into the passage-way?

A Yes, this is the door.

Q Here is where you step out and you step down in the passage-way to go towards the front of the car? A Yes.

Q We will call that this passage-way? A Yes.

Q You passed out and had to go down here to your locker?

A Yes, the locker is down further.

Q Way down further? A Yes.

Q Is not that door pretty near to the entrance of the car?

A The entrance -- that door -- you mean the locker?

Q Yes? A The locker is from the center of the car -- here is the door of the car --

Q Come down and let us see -- here you step out and here is your narrow passage? A Yes.

Q We will assume this is the car out here (indicating)?

A Yes.

Q You make a turn to come out? A There is another turn here (indicating).

Q Tell the jury where that locker is? A That locker is right in here (indicating).

Q That is as you come around this narrow passage and turn in

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here, this locker is about opposite the middle of the car? A No.

Q The center of the car? A No.

Q Is it in view of the car? A You mean the whole locker or just the locker door?

Q The locker door? A The locker door, if a man stands at the locker door he can see into the car, the body of the car.

Q Standing at the locker door, a man out in the car can see in? A The man that is standing at the locker door?

Q Yes? A If he looks back he can.

Q A man who is standing at that locker door, opening it, assuming this gentleman here is a passenger, he can see my back if I stand at the locker door? A He can -- the linen locker door.

Q In plain sight of the passengers in the car, a man standing at the locker door? A I don't know if all the passengers -- some could.

Q Any passenger looking that way can see him? A I don't know if any one would.

Q The door is right there, practically in front of that passage-way? A In front of the passage-way.

Q You were standing at that door? A I was standing at the door, the linen locker door.

Q Opening the door? A Opening the door, and put my whisk broom in.

Q He came down the whole length of that passage and turned in this jog? A I --

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Q Colonel Supplee, he followed you down? A He followed me down.

Q Then he grabbed you? A He grabbed me.

Q And the first thing he said, he called you that vile name and then hit you twice in the face? A The first thing he did, he caught me.

Q And then called you that vile name? A He called me that name.

Q Then hit you twice in the face? A No, he hit me once in the face.

Q Where did he hit you the second time? A Somewhere on the side of my head.

Q What did you do? A What did I do?

Q What did you do then? A I was frightened -- greatly frightened.

Q Did you holler for help? A I don't know as I hollered.

Q You were frightened? A I was frightened.

Q Did you call on the passengers to help you? A I don't remember calling on them.

Q What did you do? A The only thing I done, I got my hand on the ventilator stick and I struck him.

Q You had the whisk broom in your hand? A I put it in the locker.

Q Just threw it in? A Put it in.

Q Where did you get this ventilator stick, in the closet?

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A In the locker.

Q It was in there when the Colonel came towards you? A Yes.

Q The Colonel still hung on to you? A Yes -- you mean after he caught me?

Q After he caught you he hung on to you? A Yes.

Q You reached in this closet and got this stick, is that right? A During this struggle.

Q And got the stick in your hand, is that right? A I did.

Q Which hand did you get it in? A I don't know.

Q Did the Colonel still have hold of you? A He did.

Q Were you hollering to him to let go? A I don't remember saying anything.

Q You were frightened? A I was frightened.

Q You are thirty years old? A Twenty-nine or thirty.

Q The Colonel is 64 or 62, did you know that? A No, sir, I don't know how old he is.

Q You saw him in the compartment there? A Yes.

Q When you got this in your hand, the Colonel had hold of you still? A He had hold of me.

Q By the collar? A Somewhere about the collar.

Q That is where he first grabbed you, is that right? A Somewhere about the collar, grabbed me and held me somewhere in that position.

Q He was standing forward with his hand holding you like that? A I don't know which hand.

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Q Was he shaking you? A He was holding me.

Q Was he pulling you towards him? A I don't remember now whether he was pulling me or not.

Q At any rate when you got this thing in your hand, he still had hold of you? A He had hold of me when I got the stick.

Q What you had in mind at that time was to make him let go?
A Of course any one would like to get rid --

Q That was what you had in mind, to make him let go of your collar? A What I had in mind -- I don't know what I had in mind.

Q You wanted to get away from him, didn't you? A I wanted to get away all right.

Q Did you push him at all? A I don't know if I pushed him or not.

Q Did you grab hold of him and try to shake him off? A I don't know that.

Q Did you try to throw him to the floor? A I don't remember

Q You do remember that you got hold of this stick? A I remember getting hold of the stick.

Q Your memory is good on some things but not very good on others that morning? A All I can remember is all I can remember

Q You don't remember that you hollered for help? A I don't remember hollering for help.

Q You don't remember if you tried to shake the Colonel off or not? A Shake him off?

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Q Try to break away from him with your hands and shove him away from you? A Use my hands?

Q Yes? A I remember using my hands on the stick -- the only thing I remember.

Q Get up and tell the jury how you hit the Colonel over the head with the stick? A I don't know how I hit him.

Q He had hold of you when you got hold of it? A He had hold of me.

Q He had hold of you when you began to hit him? A That is so.

Q As soon as he let go of you, did you quit hitting him? A Yes.

Q So that all the time you hit him with this stick he had hold of your collar, is that right? A I don't know how many times I hit him.

Q That is not the question, during the number of times you hit him he still had hold of your collar? A Whether little or much.

Q He had hold of you still, is that right? A Yes.

Q Now come down here -- come over here -- assume that I am the Colonel, I have got hold of your collar, take that stick in your hand --

MR. MOORE: I object to this.

BY MR. O'MALLEY:

Q Take that stick in your hand?

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THE COURT: I think perhaps you might take one of the officers from the part, instead.

BY MR. O'MALLEY:

Q Tell the jury how you hit the Colonel as he had hold of you this way, with this stick? A I don't know how I hit him.

Q You cannot give any explanation of it? A Only I hit him.

Q Only you hit him? A I hit him.

Q You hit him on the top of the head three or four times?

A I don't know what part -- at that time I did not know what part I hit him.

Q You saw his head here? A I saw his head.

Q You saw him bleed afterwards? A Yes.

Q You know his head was cut? A I know one place on there was bleeding.

Q Pretty badly? A Not so very badly.

Q So bad you had to wipe it off with towels? A I put water on his head.

Q Some person had to wipe the blood off with towels? A What place do you mean?

Q Off of the Colonel's head in the wash room? A Some person other than myself?

Q No, you or somebody had to help the Colonel wipe the blood off his face and head? A I applied water and towels to him

Q So you knew he was hit on the head by somebody? A After that took place.

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Q After you got through hitting him, you knew he was hit on the head, is that right? A Yes.

Q Did you see anybody else hit him on the head? A I did not see any one else.

Q Then you hit him on the head? A Very likely.

Q Is there any doubt in your mind about it, that you hit him on the head? A Do you mean now?

Q Yes, now, or then? A No doubt.

Q No doubt at all -- you cannot tell this jury how you hit him on the head with this stick? A I don't know how I hit him.

Q You are able to tell this jury a great many things that occurred there that morning? A Just as I have knowledge of them.

Q You have a distinct recollection that Colonel Supplee called you a vile name, haven't you? A Yes, I remember he called me that name.

Q You know he called you a liar, don't you? A I remember that.

Q You remember all the conversation that you had with him?
A No, I don't remember all of it.

Q You remember most of it, you told the jury a great deal of it? A I tell just as it came to me, just as I know it.

Q Why didn't you tell them the rest of it, how this striking was done? A I tell you just as I know it.

Q You have not the slightest recollection of how you used this stick on the Colonel? A I don't know how I used it.

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Q You were not bleeding? A I don't know.

Q You don't know whether you were bleeding or not -- look at this jury and tell them whether or not you know that morning whether you were bleeding or not? A Not to my knowing.

Q You know you were not bleeding, you did not see any blood upon yourself? A I did not look for any.

Q You did not look for any? A Not to my knowing.

Q Here is a man that came out and grabbed you by the collar and hit you two or three times in the face -- didn't you look to see if your face was cut? A I did not think about it that I know of.

Q You did not think about it, is that right? A I don't remember anything about it.

Q And the reason you did not think about it is that you were not hit, is not that right, by anybody? A I was not hit?

Q Yes? A I was hit.

F R A N K B. L E E, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:
DIRECT EXAMINATION BY MR. MOORE:

Q What is your business? A New York Central train conductor.

Q Were you conductor on this train in question? A I was.

Q And where did this occurrence take place? A You mean to ask me where I was first notified?

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Q Where were you first notified about it? A About 138th street, New York City.

Q Who notified you about it? A A passenger.

Q Where were you at that time? A I was in the buffet car, the forward part of the train in the first car of the train.

Q Did you go back to the room where Colonel Supplee and the defendant were? A I did not directly, no, sir.

Q When did you go back there? A As soon as I left 125th street. I was coming into 125th street then.

Q Did you have any talk with Colonel Supplee there? A I did.

Q Was that in the wash room? A It was.

Q Did you have any talk with him after that, at any place?

A No.

Q Who was with him in the wash room when you arrived there?

A The porter, Harrell.

Q Any one else? A No, sir.

Q What did he say to you, and what did you say to him, in the presence of Harrell? A He told me that the porter had struck him with a black jack, and that he wanted me to guard the door and not let him go away, which I did.

Q Did he say anything to you about the occurrence leading up to this assault? A He did not.

Q You had no further talk with him than that which you have related? A No.

Q How long were you in there? A From the time I left 125th

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street until I arrived at Grand Central Terminal.

Q Did you hear any conversation between Mr. Supplee and Mr. Klein, the Pullman conductor? A I did not.

Q Was Klein in there? A He was not, at the time I was there.

Q Do you know if he had been in there before or not? A I am quite sure that he had.

Q You have told us all you know about it? A I have.

CROSS EXAMINATION BY MR. O'MALLEY:

Q Were you the conductor of the regular train? A I was.

Q That is, you had charge of the whole train? A Yes.

Q There was a Pullman conductor in charge of this particular car? A Yes.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes a recess until 2 o'clock.

AFTER RECESS. TRIAL RESUMED.

MR. O'MALLEY: If the Court will permit, I will call the doctor now, if there is no objection.

THE COURT: Yes.

HENRY F. QUACKENBOS, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

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DIRECT EXAMINATION BY MR. O'MALLEY:

Q You are a practicing physician and surgeon of this city?

A Yes, sir, I am.

Q You were such on October 9th of this year? A Yes.

Q Do you know the complainant in this case, Colonel Supplee? A I do.

Q Did you see him October 9th of this year? A I did.

Q Where did you see him? A I saw him at his room in the Hotel Iroquois.

Q About what time in the day was it, do you recall? A If I remember it was late in the morning.

Q Did you examine him at that time? A I did.

Q State what you found and observed?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A The Colonel was in bed, and his head had been dressed, and he said that he had--

Objected to.

Q Do not say what he said -- you had a conversation with him? A Yes, I had a conversation with him, and examined him, and the examination brought out the fact that he had four wounds upon his scalp, and that he was suffering from what I took to be --

MR. MOORE: I object and move to strike that out.

Q Can you state in your opinion what you found? A I can state positively what I found.

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Q State positively what you found? A I found him suffering with shock.

Q What else? A And from four wounds of his scalp.

Q Describe the nature of those wounds? A I cannot describe them thoroughly because they had been dressed prior to my seeing him, and I did not remove the dressing.

Q Did you get a view of any of the wounds? A I got a general idea of them, that is to say, I did not get their depth. I had their general direction and place -- I did not open up the wounds.

Q Did you see the outward surface of the wounds? A I saw the outward surface.

Q Will you describe the appearance so far as extent is concerned? A I would say the wounds were from an inch to an inch and a half in length, and were four -- two upon each side in the rear, and then the others were forward, nearer the forehead, from the top of the head to nearer here.

Q Did you do anything with those wounds? A I did not.

Q When did you next see the complainant? A I saw him the next day.

Q And did you again examine him? A I again examined him.

Q How many times did you see him altogether?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A I saw him some four or five times.

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Q Where did you see him each time? A In his quarters.

Q Over what period of time did your visits extend? A A very few days, because I sent him home to Baltimore where he could be better taken care of as soon as he was able to travel.

Objected to.

THE COURT: That will go out.

Q He went to Baltimore, A Yes.

Q Did you at any time examine the wounds to any greater extent than you have indicated? A I did not until a long time afterwards -- that is, until his return from Baltimore.

Q When was that, if you remember?

Objected to as incompetent, irrelevant and immaterial, and too remote. Objection overruled. Exception.

BY THE COURT:

Q You may state when? A About ten days or two weeks after.

BY MR. O'MALLEY:

Q After that time? A Yes.

Q Did you examine his head at that time? A Yes.

Q What did you find so far as the four wounds you have already described are concerned, at that time? A Found that they were healing nicely.

Q You have told us practically all you have done? A No, because on the second day I saw him I changed my opinion --

THE COURT: No.

BY MR. O'MALLEY:

Q What did you find that day? A That day I found he had, in

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addition to the shock, that he had suffered from concussion of the brain.

Q From what wound was that?

MR. MOORE: I object and move to strike that out.

BY THE COURT:

Q You did not examine them, they were bandaged, at that time. A They were covered with collodium.

BY MR. O'MALLEY:

Q You did examine him upon that occasion? A Yes.

Q You examined these wounds you have been speaking about?

A Yes.

Q It was upon that examination you base your opinion that he was suffering from concussion at that time? A No, it was from his general conversation and manner in bed.

MR. MOORE: I object and move to strike it out as incompetent, irrelevant and immaterial, and based upon hearsay.

Motion granted.

BY MR. O'MALLEY:

Q Aside from that have you told us about all you have examined? A I have.

Q Do you know what doctor attended the complainant? A I do not.

Q Do you know that he was one of the doctors of the New York Central? A I did not know to my own knowledge.

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CROSS EXAMINATION BY MR. MOORE:

Q When you say he was suffering from shock, you draw that from external appearances? A No, I drew that from the symptoms the man presented.

Q That is what I say, from the symptoms he presented? A Yes.

Q Nothing subjective there, was there -- was it subjective or objective? A Entirely objective.

J MR. MOORE: Then I move to strike it out.

Motion denied. Exception.

MR. MOORE: The testimony as to shock.

JACKSON B. KLEIN, called as a witness in behalf of the defendant, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. MOORE:

Q What is your business? A Pullman conductor.

Q What was your business the 9th of October, 1913? A Also a Pullman conductor.

Q Were you a Pullman conductor in charge of this car in question? A Yes.

Q Where were you coming from with this car? A I was coming with the train from Chicago -- this car was coming from Buffalo.

Q Do you remember going into the smoking compartment of the Pullman car where this Mr. Supplee and Mr. Harrell, the defendant, were? A Yes, sir.

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Q What time that morning did you go there? A I visited it several times, but the time that --

Q When did you first visit it after the alleged assault?
A I would say about quarter after eight, somewhere around in there, or half past eight.

Q Where was the train then? A Close on to Spuyten Duyvil, somewhere in that neighborhood.

Q Did you see Colonel Supplee there at that time? A Yes.

Q Did you see the porter Harrell? A I did.

Q Did you have a conversation with Colonel Supplee? A Yes.

Q Just tell the Court and jury what that conversation was?

MR. O'MALLEY: I think the Colonel's attention was directed to certain statements, and I think he ought to be asked in regard to that.

BY THE COURT:

Q This was after the transaction?

MR. O'MALLEY: Yes.

MR. MOORE: Yes.

THE COURT: You may answer the question.

THE WITNESS: What was the question?

Q (The question is repeated by the stenographer). A When I entered the room I found Colonel Supplee was injured, and I asked the Colonel, as he was bending over the wash stand, how he came by this injury, and he stated that the porter had black jacked him. I turned to the porter and I said to him "Did you hit this

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man?" He said "I did." I said then to the Colonel, "Colonel, how did this thing happen." He said "Through a conversation about some shoes not being shined." "Did he strike you because he did not shine the shoes, something upon that order?" He said "Well, after I had spoken to him in reference to these shoes not being shined he said I had gone to bed with them."

Q What. A He said he had gone to bed with them, meaning that Colonel Supplee had taken his shoes to bed, and the porter had made such a remark to him. He said "You did not shine my friend's shoes." He said "I shined all the shoes that were in the aisle, or underneath the berth," and the Colonel said -- he told me that he called him some name or other, something like a liar.

BY MR. O'MALLEY:

Q Who did? A The Colonel did -- the Colonel had spoken to the porter and the porter backed away from him and as he did so, they had words between them two and the Colonel told me that he had rushed at him and grabbed him, and the porter had black jacked him. I asked the Colonel where he was at the time, and he said he was in the aisle. I then spoke to the porter -- do you wish me to tell what conversation I had in there?

BY MR. MOORE:

Q I ask for the conversation you had with Colonel Supplee?

A He acknowledged to me that he --

Objected to.

Q What did he say? A He said that he had rushed to the porter on being called a liar, in return to him calling him a liar, and he had grabbed him and the porter in return struck him, and he said it was a damnable shame -- the very words he used.

Q Did you see Colonel Supplee after he was brought into the depot? A Yes.

Q Did you see him in the hospital? A Yes.

Q Did you have any talk with him while he was in the hospital? A Yes.

Q Give that conversation? A The Colonel was brought up by my instructions to the hospital after I notified the New York Central people of the injury. He was taken up to the hospital and he was lying on the cot. As I entered into the room to speak to the Colonel he raised up with a towel on his head. I said "Colonel, how did this thing happen" -- again -- I wanted our official to hear what was going on or what led up to it. He said again "I had grabbed the porter and the porter struck me in return with a black jack."

Q Did you see him after that? A No -- there was a party then by the name of White, a gentleman that was up here who tried to put me out of the room or ordered me out of the room which I did not go.

Q That was while you were in the smoking room? A No, while I was in the hospital -- also in the room.

Q Do you know whether or not Colonel Supplee -- did Colonel

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Supp[er] in your presence ask you to have any of the Pullman people come to see him? A I don't think he spoke of that -- that was my suggestion.

Q You -- A I don't think that he asked me any such question. I know it was my duty to notify the company, which I did by telephone.

CROSS EXAMINATION BY MR. O'MALLEY:

Q You were the Pullman conductor? A Yes.

Q And you were in charge of this car? A Yes.

Q The defendant was under your immediate supervision? A He was.

Q You were responsible for the car, were you not? A Yes.

Q And you were responsible for the porter? A Yes, I was -- not for his actions.

Q You were responsible for his conduct on that car? A Yes.

Q Your company has been sued, has it not? A That I do not know.

Q Don't you know an action has been brought by the complainant against your company? A No, sir, I do not.

Q With whom have you talked about this case? A Simply wrote a statement in reference to it to my superintendent.

Q Where did you write the statement? A To my superintendent Mr. A. J. Grant.

Q He is the superintendent of the Pullman? A No, he is superintendent of my division.

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Q He is superintendent of the Pullman, in one of the departments of the Pullman Company? A Yes.

Q When did you make out that statement? A Immediately after I arrived.

Q What time of that day? A It may have been 10 o'clock -- I don't know, something like that.

Q That same day? A Yes.

Q Did you make that out before the complainant was taken away to the hospital? A Yes .

Q And signed it? A Yes.

Q Did you testify in the Magistrate's Court? A No.

Q Were you subpoenaed to come there? A No.

Q Do you know why you were not subpoenaed? A I was on the road most likely.

Q Do you know why you were not subpoenaed? A No.

Q You were in New York on the 9th of October? A Yes.

Q How long did you stay here? A The next day I left.

Q You were here on the 9th? A Yes.

Q The hearing took place the following day? A That I do not know.

Q How long had the defendant been in your employ under your supervision? A From 10:35 until 9 o'clock next morning.

Q He was not your regular porter, was he? A Not on that line -- there is no regular porter on that line.

Q Didn't you know the defendant was an extra man? A No.

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Q Didn't you know he was an extra man and simply called upon to do extra work now and then? A No.

Q Do you know he was not or do you know, what is your claim about that? A We don't know that -- the porters are put on--

Q Had you ever had him on your train before? A Never met him before.

Q Never met him? A Not as I know of.

Q What time did you go into that wash room? A I should say about -- you want to know after the injury?

Q After the injury, what time did you go in there? A I don't suppose it was five minutes, the time that I could walk the length of four cars.

Q Who was in there at the time you got there? A Colonel Supplee, a stranger and the porter.

Q Did you see the train conductor? A He was not there then.

Q Had he been in there that you know of? A No.

Q Did you talk to the complainant? A Supplee?

Q Yes? A Yes.

Q He was bleeding at that time? A Yes.

Q Bleeding profusely? A Sure.

Q The defendant was there? A Yes.

Q And a passenger or stranger? A Several passengers in there that heard of the accident.

Q Were there several passengers there or was there one passenger, as you just said? A There was one passenger standing

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in there and might have been several others looking in there.

Q I asked you what you saw when you got there? A May be one passenger inside of the room.

Q When you got in there there was the defendant and the complainant and one passenger? A About that, yes.

Q What was the first thing you said when you got in there?
A How did this thing happen?

Q To whom did you say that? A I directed it to the porter and the complainant.

Q Who was the first to reply? A Colonel Supplee.

Q What did he say? A He said the porter had black jacked him.

Q Is that all he said? A I asked him why the porter had black jacked him.

Q Did the defendant say anything when the complainant said he had black jacked him? A He said "I hope I have not injured him so I will kill him," something of that order.

Q Did he say that before you asked the complainant why he had black jacked him? A No, not until I spoke to him.

Q What did the complainant then say? A He said that he had had a conversation with him over some shoes not being shined, and that one word brought another, he called the porter a liar and the porter in return called him a liar, or he said if he was a liar that he was a liar, something of that order, and as the porter backed out of the room he rushed after him and grabbed him.

Q Did the Colonel say he called the defendant a liar? A I

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don't quite catch that.

Q Did the Colonel say he called the defendant a liar? A He said something to that effect.

Q You understood my question? A Yes.

Q I asked you did Colonel Supplee say he called the defendant a liar? A I believe he did, yes.

Q Don't you know whether he did or not? A Well now, the conversation, within fifteen minutes of that kind, taking place, and I had a great deal of work on my mind, attending to both of the men, not to let this man get away, and the injury, the discharge of my duties to put passengers off, and also notifying my company, it took up in fifteen minutes a great deal of my time, and at the same time telephoning down to the company, took up such time in such a small space, I cannot really recall just that answer you ask me about.

Q You cannot recall whether Supplee said he had called the defendant a liar? A Well, I could say that is --

Q Just a moment, you have just given a long explanation to this jury -- I say, and ask you the direct question, do you mean to say now in view of your explanation, that you do not recall whether or not Colonel Supplee said he called the defendant a liar? A He did call him a liar, yes.

Q He did call him a liar? A He did.

Q Did you hear him call him a liar? A I did not hear him call him a liar. The question I asked him, what the --

Q Did you hear me ask the question a moment ago? A Yes.

Q Did you understand the question? A Yes.

Q What did you mean by that long explanation you went into?

A I wanted to explain to you the very fact that I cannot remember certain things you ask me on account of the space of time, that I had to perform --

Q Did I not ask you whether or not Supplee told you he had called the defendant a liar? A Yes.

Q And was not your answer that you could not recall, in view of the many duties that you had to perform there that morning? A Yes.

Q Is that so or isn't it? A Wait a minute -- Colonel Supplee said that he called --

Q Is that answer so or is it not? A It is so.

Q It is so? A Yes.

Q Your answer is that you do not recall whether Supplee said that he called the defendant a liar or not? A You ask me a direct question now.

Q I will have the question read to you? A The Colonel called that porter a liar if he said that he blackened his shoes. Those are the words that were used.

Q What were the words used? A That you are a liar if you did not -- that -- that you did not shine any shoes at all -- meaning either pair of shoes -- of Colonel White or himself -- when I asked him the question.

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Q Did you understand my question a few moments ago? A Yes, I understand your question.

Q What was the reason for that long explanation you gave?

A You asked me a question.

Q What question did I ask you? A Whether I could tell -- whether I could say whether he called him a liar or not.

Q You gave an explanation? A Well, I gave you an explanation on account of your trying to puzzle me and I trying to --

Q You think I was trying to puzzle you, or do you think I was trying to get your answer? A That I do not know. I do not know enough about law in reference to that.

Q You had a good many duties to perform that morning?

A Certainly, every morning, quite a number of duties.

Q In any event you were in that compartment -- how long were you there? A I might have been in there about ten minutes.

Q When did you go out? A Leaving 125th street or going into 125th street.

Q Then you left? A Yes.

Q What did you do then? A I had somebody to telephone to our company in reference to the injury.

Q How long were you out of there? A I was out of there long enough -- I should say about two minutes we remained at 125th street.

Q You got off and telephoned? A I did not telephone.

Q You sent word? A I sent somebody to telephone.

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Q Colonel Supplee told you that he called the defendant a liar? A Yes.

Q Did you ask him why he called him a liar? A I asked him what the altercation was.

Q Did you ask him why he called him a liar? A No, not directly.

Q Did the Colonel tell you that he called the defendant an s.o.b.? A That I did not hear.

Q Did the defendant tell you that the Colonel called him an s.o.b.? A That I did not hear.

Q Did he tell you? A No.

Q Did he tell you at any time that morning that the Colonel had called him an s.o.b.? A No.

Q Did you ever hear until you came here to court that the defendant claimed that Colonel Supplee called him an s.o.b.? A No.

Q You saw the defendant there in the compartment? A Yes.

Q What did the complainant say, or the defendant say that the Colonel had done to him? A He said that he had grabbed him by the collar. He grabbed him.

Q Grabbed him by the collar? A Grabbed hold of him to shake him, or something, that was all.

Q Then he hit him? A He hit him.

Q That was exactly what the defendant said? A No, he said after he had grabbed -- he said after Colonel Supplee had grabbed him, that he struck him in self defense.

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Q The defendant struck him in self defense? A Yes, in self defense.

Q That was all he said practically? A That was about the substance of it.

Q Let me understand you - the defendant told you there that the complainant rushed at him and grabbed him by the coat? A Yes.

Q That then the defendant struck him in self defense? A Yes.

Q And that then he, the defendant, struck him in self defense? A Yes.

Q What did he say he struck him with? A He said he struck him with a ventilator stick.

Q Did he say how many times he hit him? A I never asked him that.

Q Is that about all the defendant told you? A That was about -- yes, that was all he told me.

Q Is that all the defendant has ever told you? A I never was in communication with him after.

Q Did the defendant say that morning that the complainant had hit him in the face with his fist? A No.

Q He didnot tell you that? A No.

Q Did he complain that his face was hurt in any way? A I did not ask him that.

Q You asked him to tell you how it happened? A Yes.

Q That was the reply he made to you? A Yes, sir, he was very nervous.

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Q You had talked over this with Colonel Supplee in the wash room and he told you all about it? A Yes.

Q After you left the train, where did you go? A Upstairs and notified our superintendent.

Q Notified your superintendent? A Yes.

Q Of your division? A Of my division.

Q That was one of your duties? A That was one of my duties.

Q To notify one of your immediate superiors as soon as anything occurs on a Pullman car where the company might be liable, is that right? A Anything out of the ordinary we have to notify him.

Q Where a passenger loses property? A Yes.

Q Or some one suffers injury, you immediately go to your superior? A Yes.

Q Who was your superior? A I met Mr. Sauer and told Mr. Sauer.

Q Did Mr. Sauer go with you to the doctor? A To the doctor.

Q Where the complainant was? A Yes.

Q What did Mr. Sauer say to you? A He had not very much to say to me.

Objected to as incompetent, irrelevant and immaterial.

MR. O'MALLEY: I withdraw the question.

BY MR. O'MALLEY:

Q You went in to where the complainant was? A Yes.

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Q He had already told you all about this? A Yes, sir.

Q You immediately came to him again and asked him how it all happened, is that right? A I certainly did.

Q You got him to tell the whole conversation again? A Yes, he sat up and --

Q Mr. Sauer was present? A I think Mr. Sauer was present at the time or in that room. There was two rooms together.

Q What did you have in mind when you asked the complainant again how it all happened? A My mind was to show that he was just as much at fault as the porter was.

Q You wanted to show he was just as much at fault as the defendant, is that your idea? A Well, certainly.

Q That was what you said? A Yes, certainly.

Q You went in there with the idea of showing Mr. Sauer that the complainant was just as much at fault as the defendant?

A That he had made the statement that he grabbed my porter at the time he was injured.

Q And the defendant had told you that he hit him with that ventilator stick? A Yes.

Q Did you think he was as much at fault as the defendant?

A If a man strikes another man --

Q Did you think at that time --

MR. MOORE: I object to what he thought. Objection overruled.

Q Did you think at that time when you went in to see Mr.

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Sauer, or went with Mr. Sauer, that the complainant was as much at fault as the defendant? A I did not think at all.

Objected to as immaterial. Overruled. Exception.

Q You did not think at all? A No.

Q You had something in mind when you went in, in trying to get the complainant to repeat his story? A Yes.

Q You wanted a witness to it? A I wanted the facts.

Q You wanted the facts? A Yes.

Q Were you there when the statement was signed? A No.

Q Do you know who wrote it out? A No, I did not know there was such a thing in existence until I heard it right here.

Q You knew it was a representative of the railroad company who wrote that statement out? A I cannot say that I did. I did not know the man.

Q Was the statement written there? A No, I did not see it.

Q Who was there when he made this statement to you again that he grabbed him by the coat? A There was an officer, there was -- that is a plain clothes officer, and there was an officer that is not in uniform for the New York Central people, and there was Mr. White; there was one of our representatives -- I think there was two of our representatives and several other men whom I do not know.

Q Did you round them all up? A No.

Q Who rounded them all up? A Well, the minute notification was given to our different heads, naturally they come to the Emergency Hospital.

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Q Did you have in your mind the concern of the complainant at that time, so much as you did the liability of the company? A No

Q I thought not.

MR. MOORE: I object to the remark of counsel and ask to strike it out.

THE COURT: Strike it out.

BY MR. O'MALLEY:

Q You say you were not present? A At the time the statement ?

Q Yes? A No, sir.

Q What did the complainant say he did to the defendant?

A The complainant?

Q Yes? A Did to the defendant?

Q Yes? A He said he hit him with the black jack.

Q What did the complainant say that he, the complainant, had done to the defendant? A Grabbed him, had grabbed hold of him.

Q Those were not his exact words? A The exact words, I will give you the exact words.

Q Tell us? A He said in the hospital --

Q Tell us what he told you in the compartment? A He was leaning over the basin and the porter was wiping his head and I leaned over and I said to him -- I will give you the exact conversation I had with them all.

Q I want it? A As he was leaning over the basin I walked up to him and I said "Who hit you, Colonel?" He said "The porter

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black jacked me." I turned to the porter and I said "It is a damned shame to hit an old man like that." I said "Colonel, how did this thing happen?" He said "I accused him about not taking my shoes or shining my shoes, and words were passed back and forth about a liar and the porter backed out of the room and the Colonel rushed after him and grabbed him, and the porter in return struck him."

Q That was the conversation in the wash room? A That was as near as I could possibly put it together, those are the exact words. Now, when I had gone upstairs --

Q I just asked you about the conversation in the wash room?
A Yes.

Q You have told us all that? A Yes.

Q The Colonel said that he rushed to grab him? A He walked to grab him.

Q Did he say at that time he grabbed him by the throat? A He did not say anything about grabbing him by the throat, he said he grabbed hold of him.

Q Did he at any time in your presence say he grabbed him by the throat? A I did not hear him say anything about any throat. He said he grabbed hold of him.

EUGENE H. ODELL, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

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DIRECT EXAMINATION BY MR. MOORE:

Q What is your occupation? A Assistant station master, Grand Central.

Q How long have you held that position? A About twelve years.

Q Do you remember the 9th of October last? A I do.

Q Do you remember this occurrence we are discussing here?

A I do.

Q When on that morning did you first see the complainant, Colonel Supplee, and where? A In the wash room.

Q At the Grand Central station? A Grand Central station.

Q In a Pullman car there? A In the wash room of a Pullman car.

Q You entered the car as soon as the car entered the shed?

A As soon as the train came to a stop.

Q Did you have any talk with Colonel Supplee in the car there? A None.

Q Where did you go from the car? A I had the Colonel taken up to the hospital room by one of our attendants in a wheeled chair.

Q Did you go to the hospital room yourself? A I did.

Q Did you have any talk with the Colonel in the hospital immediately after he was taken there? A No, I stayed there while he had a conversation with some one else.

Q Did you overhear the conversation he had? A I did.

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Q With whom was that conversation? A It was started on bringing the colored porter in for the Colonel to identify him as the man who struck him.

Q When was that conversation? A That was up in the hospital room.

Q What was that conversation -- what did Colonel Supplee say in your hearing? A This man was brought -- this colored boy was brought in and Officer Hayes asked the Colonel if that was the man who struck him, and the Colonel identified him as -- that he was, and then the Colonel rose up in the cot, sat up in the cot, at least, and told --

Q What did he say? A He said that the porter -- that he upbraided the prter for not shining his shoes and the porter told him he had shined his shoes, and started out of the wash room into the passageway, and as he was going out the Colonel claimed that this porter said he was a liar if he said he had not shined his shoes. The Colonel then said that he grabbed him by the throat and the porter struck him with a black jack.

Q That conversation took place there that morning in the Emergency Hospital? A Up in our Emergency Hospital.

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

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

Q How long have you known the defendant here? A Never saw him before that morning, to my knowledge. I see so many. I do not take particular notice of any of them.

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Q You are with the New York Central? A Grand Central Terminal.

Q Were you present when Colonel Supplee signed that statement? A I was not.

Q Can you tell who the men were who took Colonel Supplee to the Emergency Hospital, the red caps? A Yes, sir, Walter Purcell, an attendant, Theodore Johnson, Marshall -- I do not remember Marshall's initials. He is one of our men.

CROSS EXAMINATION BY MR. O'MALLEY:

Q You did not hear any conversation in the wash room? A No.

Q You did not talk to either the complainant or the defendant? A No.

Q Did you help get the complainant up to the hospital?

A Yes, I had charge of him when they entered the station.

Q Were you with him all the time he was taken up? A Yes, continuously.

Q And took him up in the elevator? A Yes, sir.

Q And saw that he got into the hospital? A Yes.

Q Did you see the doctor attending him there? A No, I went out before the doctor attended him.

Q Did you come back again? A No -- just a minute, excuse me -- I stepped out in the hall -- I was back and forth to the hall giving some orders there. I was not in the room continuously.

Q Did you see the doctor attend him? A No, I did not.

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Q Did the doctor attend him while you were there? A Not to my knowledge, no.

Q Did you see the complainant at all after the doctor had attended him that morning? A I don't just remember whether I saw him with the head bandaged up or not.

Q You don't remember whether you did or not? A I don't think so.

Q Who went in the room with you? A Three attendants and Officer Hayes and Mr. White, Captain White.

Q Was Officer Hayes in the room when you had this talk with the defendant? A I had no talk with the --

Q Well, when this talk with the complainant was had? A Officer Hayes had the prisoner there.

Q Had him in charge? A Yes.

Q And who asked the complainant this question? A Why, when he was asked to identify the man, Colonel Supplee sat up on the cot and gave the statement himself.

Q Who asked him to identify the defendant? A Officer Hayes.

Q Then he sat up? A On the cot.

Q Then what was the next thing asked him after he was asked to identify the defendant? A I don't think anything else was asked him, only that the Colonel went on to narrate the circumstances as I have told you.

Q Nobody asked him a question? A Not to my knowledge.

Q Was he then in charge of Officer Hayes? A The porter was, yes.

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Q Was the porter still there? A Yes.

Q When the complainant made his statement? A Yes -- that is, as far as I can remember -- so much transpired I do not -- I am pretty sure he was though.

Q We ask for your recollection? A Yes.
there

Q The defendant stayed with Officer Hayes? A He was continually in Officer Hayes' charge.

Q While the complainant was talking? A Yes.

Q And the complainant, after he identified the defendant, went ahead and volunteered this statement, did he? A Yes.

Q What did he say? A He said that he upbraided the porter for not shining his shoes, and the porter had said he had shined his shoes, and walked out of the vestibule, and the Colonel said that the porter called him a liar and that the Colonel rushed out or walked out in the passage-way of the car, grabbed the porter by the collar -- this is what the Colonel said -- and while he had him by the collar he claimed the porter struck him with a black jack.

Q The complainant said that the defendant called him a liar? A Colonel Supplee said the porter called him a liar.

Q Did Colonel Supplee say that he called the defendant a liar? A Not in my presence.

Q Did Colonel Supplee say he grabbed the defendant by the throat, in your presence? A Yes, that was the statement he made sitting up in the cot.

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BY THE COURT:

Q Did he say that, or grabbed him by the collar -- you have said both? A I am not just sure whether he used the word collar or throat.

BY MR. O'MALLEY:

Q You said in your direct examination that he said he grabbed him by the collar, was that your best recollection of it? A Yes

Q Do you recall the word "throat" having been used that morning? A I won't be sure that I do.

Q During all this time the defendant was present and Officer Hayes was present -- that is, the defendant was there while the Colonel was talking? A Yes.

Q And he was in charge of Officer Hayes? A Yes, continually.

W E S L E Y S. M A R S H A L L, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. MOORE:

Q What is your business? A Attendant Grand Central station.

Q Were you an attendant there on the 9th of October last?

A I was.

Q Were you one of the attendants that took Colonel Supplee from a Pullman train on the morning of October 9th and took him to the hospital? A Yes.

Q How did you take him up there? A Under instructions from

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Mr. Odell I got a wheeled chair and went in the smoking car and got him out and helped him on the platform with the assistance of attendant Johnson, and placed him in the wheeled chair.

Q Did you overhear a conversation after Supplee had been taken to the hospital, between Colonel Supplee and anybody? A I did.

Q Did you hear a conversation by Colonel Supplee as to how the assault occurred? A Yes, I did.

Q Just tell the Court and jury what Colonel Supplee said?
A He said that he had -- in fact that he had words with the porter, over his failure to shine his shoes, and he said that in the controversy that porter called him a liar, walking out of the door of the smoking car into the aisle, and he said that he went after the porter, grabbed him in the collar, and he said the porter struck him over the head three times with a black jack.

Q That was the statement that he made in the Emergency Hospital in your presence? A Yes, sir, I stood right by the bedside with the wheeled chair.

Q Who were the other porters who went up with you at that time? A Attendants Johnson and Purcell.

CROSS EXAMINATION BY MR. O'MALLEY:

Q You heard the complainant say that the porter had called him a liar, is that right? A Yes.

Q And that he grabbed the defendant by the collar? A Yes.

Q And the defendant then hit him over the head with the

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black jack? A Three times.

Q That was all you heard? A Yes.

Q You were there all the time, were you? A Yes, sir. He further said that he did not want any publicity. That was all I heard.

Q The Colonel said that? A Yes. I was not there all the time, I took the wheel chair out and went downstairs in company with the other two men.

Q You have told us all the conversation and the conversation you remember at the time you were there, when the Colonel was talking? A Yes.

Q What took place after you got up there, tell us the beginning of the conversation, what was first said? A Some one said "Colonel, will you identify this man." He was lying down. I had taken his uniform coat off, and laid it on the bed and helped him up on the cot in the hospital. Some one said -- I am not sure who it was -- "Colonel, will you identify this man" -- whether he said yes, or I will, I am not positive, but I know he raised up and had a towel about his head and he said that -- he gave the story -- he said that --

Q He got up and said he identified him? A He identified the porter.

Q Did not anybody ask him how it occurred? A Yes.

Q Who asked him? A I am not positive, I don't know, I couldn't say.

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Q The defendant was there when he identified him? A Yes.

Q And then the complainant went ahead and made this statement? A He made this statement.

Q The defendant was there? A Yes.

Q Did the defendant say anything at that time about the complainant having hit him in the face with his fist? A I don't remember him having said a word.

Q Did he say anything at that time, after the complainant had got through talking, that the complainant called him an s.o.b?
A Not to my knowledge, I did not hear it.

Q Did the complainant say that he had called the defendant a liar? A Not to my knowledge.

Q Did the defendant say in your presence that the complainant had called him a liar? A No.

BY MR. MOORE:

Q Did the defendant pass you anything in the car as you were taking the Colonel out? A No, sir, it would have been impossible. He was at the further end of the car and I was at the rear end.

BY MR. O'MALLEY:

Q You were not on the train as a Pullman porter? A No.

Q You were one of the attendants? A Yes.

Q One of the red caps, so called? A Yes.

WALTER R. PURCELL, called as a witness in behalf
of the defense, being duly sworn and examined, testified as follows:

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DIRECT EXAMINATION BY MR. MOORE:

Q What is your business? A Red cap at the Grand Central Terminal.

Q What was your business on the 9th of October, 1913?

A To take the General's bag up to the hospital.

Q Were you a red cap there at the Grand Central station on that day? A Yes, sir.

Q Did you assist in taking Colonel Supplee from the Pullman train, from the smoking compartment of the Pullman train, to the Emergency Hospital? A Yes, sir, I did.

Q Did you overhear in the Emergency Hospital, a conversation between Colonel Supplee and anybody else? A I did.

Q And some other person? A I did.

Q What was that conversation? A The statement that he gave lying on his bed.

Q Louder? A It was a statement that he gave on the couch there in the hospital room. He said -- some one asked him to identify this man, and he said "Yes, that was the man" -- wanted to know what was the trouble -- he claimed he and the porter had some words about shoes, before the train arrived in the station, and in the time that -- he -- it seems as though the porter -- he asked whether the shoes were shined and he said then he shined one pair and the other pair must have been on the inside, because he could not be able to find them.

Q He said that was what the porter said to him? A The porter

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said to him -- he said the porter called him a liar on his way out of the wash room, and he turned around to find out did he hear the right word or not, and he asked the porter "What did you say". He said "Why, you are a liar." He said "I shined one pair of shoes and the other -- if your friend says his shoes were not shined he is a liar also."

Q What took place then? A Of course --

Q What did he say then? A He said the porter struck him across the head three times with the black jack.

Q Did he say whether or not he attacked the porter? A He said that he attacked the porter.

MR. O'MALLEY: I object and ask to strike out the question as leading.

THE COURT: Strike it out.

Q What did he say? A He said he struck the porter -- that the porter struck him across the head three times with the black jack.

Q What did he say about rushing at the porter? A He grabbed the porter by the collar --

Objected to as leading. Sustained.

THE COURT: Have you not from the witness what he heard -- has he not said what he heard Colonel Supplee say?

THE WITNESS: I only heard the statement that was given

BY THE COURT:

Q You have stated to the jury that? A Yes.

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BY MR. MOORE:

Q Just tell me what Colonel Supplee said again? A Colonel Supplee said that he asked the porter why didn't he shine his shoes; the porter said he had shined one pair of shoes or the shoes that was found under there, and the porter said that if you did not -- I took one pair of shoes and if he said I did not shine the shoes, you are a liar, and he rushed after the porter to find out if he heard the right truth or not. He said that he asked the porter what did he say, and the porter said he called him a liar and with that the porter -- he grabbed after the porter and the porter struck him across his head three times with a black jack.

CROSS EXAMINATION BY MR. O'MALLEY:

Q The Colonel said he had grabbed after the porter? A Grabbed the porter in the neck.

Q Do you mean the complainant said he grabbed after the porter or the complainant grabbed the defendant in the neck?

A He grabbed the porter.

Q Grabbed the porter? A Yes.

Q He did not say anything about neck? A He said he grabbed the porter in the neck.

Q A moment ago you said the complainant said that he grabbed after the porter, you remember that? A Yes.

Q When I asked you you said the complainant said he grabbed after the porter in the neck? A Grabbed after the porter's neck.

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Q Grabbed after the porter's neck? A Yes.

Q Is that his language? A That is his words, he grabbed after the porter's neck.

Q Did he say he got hold of the porter's neck? A No, he did not.

Q But said he grabbed after the porter's neck? A Yes.

Q You are sure those are the words? A He grabbed after the porter's neck.

Q Are you sure those are the words, he grabbed after his neck? A Yes, that was the statement I heard.

Q You were there all the time he made the statement? A Yes, I was there all the time.

BY THE COURT:

Q Was Mr. Marshall there too? A Yes, he was there also.

Q Standing where with reference to you? A He was nearer the bed than I was.

Q Marshall was? A Yes.

BY MR. O'MALLEY:

Q Did you hear Mr. Marshall just testify? A Yes.

Q Who else was there besides Marshall? A Attendant Johnson; Mr. Odell and an officer in citizen's clothes.

Q Did you hear the complainant say he grabbed him by the throat? A Grabbed at his neck.

Q Did you hear the complainant say that he grabbed him by the throat? A He grabbed after him.

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Q Listen to my question, did you hear the complainant say that he grabbed the porter by the throat? A Yes, I heard that.

Q You did hear that? A I did.

Q Wait a minute, you heard the complainant say that he grabbed after the porter -- you heard that? A I did.

Q You heard the complainant say that he grabbed after the porter's neck? A Yes.

Q You remember that? A Yes.

Q Now you say you heard the complainant say that he grabbed the porter's throat, is that right? A Yes.

Q You heard all those three things? A It was all -- all makes the same sentence.

BY THE COURT:

Q What was it you heard? A I heard him say that he grabbed the porter's neck.

BY MR. O'MALLEY:

Q Are those the words? A Yes.

Q Then you did not hear him say that he grabbed after the porter? A Well --

Q Tell me the exact words, so far as you remember, that you heard the complainant say? A That he grabbed after the porter.

Q Grabbed after the porter? A Yes.

Q Are those his words, so far as you remember? A So far as I remember.

Q That was all he said? A Well, he said that he knocked him

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across his head with a black jack.

Q I mean so far as anything the complainant said that he did to the porter, you understand what I mean? A I understand you.

Q You say you heard the complainant say that he grabbed after the porter's neck, is that right? A Yes.

Q That was all you heard him say? A I heard him say that he grabbed after the porter's neck.

Q And did you hear him say that he grabbed the porter by the throat? A Well, it was all --

Q Did you hear him say that he grabbed the porter by the throat? A He grabbed him by his throat, yes.

THEODORE JOHNSON, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. MOORE:

Q What is your business, A Attendant Grand Central Terminal.

Q Do you remember the 9th of October this year? A I was there, yes.

Q You were an attendant there at that time? A Yes.

Q Were you one of the attendants who assisted in taking Colonel Supplee from the smoking car from the Pullman train that morning, to the Emergency Hospital? A I was the man that carried the luggage for the party.

Q Were you present in the hospital when Colonel Supplee made

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his statement? A Yes, sir, I was. I was in part.

Q Did you hear that statement? A I was in part.

Q You were in part? A Yes.

Q You heard part of the statement that he made? A Yes.

Q Just recite what that statement was? A I heard him say that -- I got into the room at the time he was saying this -- "I rushed at the porter and grabbed him by the throat and he struck me with the black jack."

Q He rushed at the porter and grabbed him by the throat and he struck him? A Yes.

Q Do you know of whom he was speaking at that time? A I do not.

Q Is that all the conversation that you heard? A That was about all, yes.

Q Was the defendant present at that time? A I think not.

Q You do not know if he was or was not? A I think not. I am not quite certain.

CROSS EXAMINATION BY MR. O'MALLEY:

Q You were in the court here when the last witness was on the stand? A I was, yes.

Q You heard me examine him? A Well, I think I did.

Q You heard what he said in regard to what the Colonel said as to what he did to the defendant, didn't you? A I could not hear him very well. He spoke very low.

Q You heard my questions? A Some of them.

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Q You know pretty near what I was getting at? A I don't say that I did.

Q Did you hear me ask him about what the complainant said-- as to his having rushed or having grabbed at the porter and having grabbed at the porter's neck, and having grabbed the porter by the throat, you heard that? A I paid some attention to it, yes.

Q You knew it was quite important here to have the Colonel say that he grabbed the porter by the throat?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

Q With whom did you go up into that hospital? A I went up with the Colonel's luggage following the rest of the party.

Q And how close were you behind the Colonel? A Some little distance.

Q When you got in the hospital room, who was there? A I noticed the Colonel standing up. He had not got in bed yet.

Q Standing up? A Yes.

Q He had not laid down at all? A No, had not laid down, no.

Q Where was the defendant? A I don't remember, I don't know; I don't know whether he was in the room or not.

Q Who was in the room when you got in there besides the Colonel? A I think Mr. Odell and the other two porters.

Q The other two porters? A I think they were.

Q Don't you know -- you were there? A Not everybody, no.

Q You know that you were the last man to go up with the luggage? A Yes.

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Q And you got in there some time, little time after Marshall got in there and after Purcell got in there? A Yes.

Q And at that time the Colonel was not lying down? A No, he had not lied down yet.

Q Where was he? A Standing by the cot.

Q Standing by the cot? A Yes.

Q Who was near him? A I think Mr. Odell was by him. It seemed as if he had just gotten out of the chair.

Q Odell was there? A Yes, I think he was.

Q Was Marshall there? A Marshall?

Q Yes? A I think so.

Q And was Purcell there? A I am certain he was, pretty certain.

Q Who else besides Odell, Marshall and Purcell? A I paid no attention, to tell you the truth; I don't know.

Q Was the Colonel standing up when he made this statement?
A He was, when I heard him make this statement.

Q Who asked the question? A I don't know, because I only got in when he made the remark.

Q To whom was he talking? A That I could not say.

Q How near was Odell to him? A I could not say.

Q Odell was near him? A We were all in the room.

Q You heard the statement? A I did.

Q How near were you to the complainant? A Just going in the door.

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Q How many feet away were you from him -- point to some place in this room where you were, how far you were away? A Well, about as far as from here to the table there.

Q How far away was Odell from him? A Well, you see the room -- he was about standing where the gentleman is here (indicating).

Q This gentleman here (indicating)? A Yes, about that far.

Q About the same distance you were -- and where was Marshall? A I couldn't say.

Q Was he inside the room? A I think he was.

Q How big is the room? A Small room.

Q Let us see how big the room was -- how big was it?

A Well, I guess it is about twelve feet -- 12 by 14, something like that, I guess.

Q That is where you heard the complainant make this statement? A Yes, going in the door.

Q Any statement the complainant made could be heard in that room by everybody who was there -- you were just going in the door? A If he made it loud enough, yes.

Q He made it loud enough so you could hear it going in the door, and at that time Odell and Marshall and Purcell were inside the door? A I think they were.

Q At that time you heard him say distinctly what? A "I rushed at the porter and grabbed him by the throat, and he hit me with a black jack."

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Q Was that the first remark you heard after you got inside the door? A That was all I heard.

Q Did you hear anybody else say anything? A I think --no.

Q Before that was said by the complainant? A No, never heard anything before that time, nothing at all.

Q Did you hear anything said after that was said? A Except that the Colonel was asked to lie down, something like that.

Q How long did you stay in there? A Only long enough for the Captain to give me a little something, and I walked out.

Q Got your tip? A Yes.

Q How much did you get for coming down here? A What -- I beg your pardon --

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

BY THE COURT:

Q Did you get anything for coming down here? A No.

BY MR. O'MALLEY:

Q You have told us everything you heard? A I have.

Q That was the only thing you heard? A Yes, that was what I heard.

Q Did you talk this case over with Mr. Odell? A I have not.

Q Or with Mr. Marshall? A I have not talked it over with anybody.

Q Or with Mr. Purcell? A Nobody whatever.

Q Were you here when they testified? A I beg pardon?

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Q Were you here when they testified, A In the room here?

Q Yes? A I was here, yes.

THOMAS HAYES, called as a witness in behalf of the defendant, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. MOORE:

Q What is your business? A Special officer of the New York Central Railroad.

Q Where are you stationed, A Grand Central Terminal.

Q Do you remember the 9th of October last? A Yes, sir.
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Q Did you on that morning enter a Pullman car which Colonel Supplee and the porter Harrell was, A Yes.

Q Tell all that occurred from the time you entered there until you left Colonel Supplee in the hospital? A I went into the Pullman car on its arrival and met the Pullman conductor outside. He took me in and he pointed to Harrell there. So I took Harrell away, I took him to his locker to let him dress, and I do not know what became of Colonel Supplee in the meantime. I was attending to the prisoner. I let him dress and took him upstairs to the Emergency Hospital.

Q Were you there when Colonel Supplee came out of the compartment? A No, sir.

Q You did not talk with Colonel Supplee there in the smoker?
A No, he was in the wash room when I went in there, and the porter was bathing his head with water, taking handfuls of water

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and bathing his head.

Q Harrell was doing that? A Yes. I took him out to let him change his clothes and dress, and then I took him upstairs to the Emergency Hospital to be identified by the Colonel. I asked the Colonel "Is this the man that struck you?" He said "Yes." Then he told me why he was struck, and where he was struck.

Q What did the Colonel say? A He said he had an argument with the porter over shining of his shoes. He said the porter called him a liar. He said "You are a liar and Captain White is a liar, the other man is a liar" -- I don't know the exact words that he used at this time.

Q What did he say in substance? A He said that he resented it and went at him. He said that he assaulted him with a black jack.

Q That was how long after the Colonel was taken to the Emergency Hospital? A Possibly fifteen or twenty minutes-- about twenty minutes I should say, to give him time to change his clothes and dress.

Q That was all the conversation you had with the Colonel?

A That was all I had at that time.

CROSS EXAMINATION BY MR. O'MALLEY:

Q You had the defendant upstairs there with you, to have the complainant identify him? A Yes.

Q And this conversation that you have related took place at that time in the Emergency Hospital? A Yes.

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Q Odell was there at that time? A Yes.

Q And so was Marshall? A I don't know.

Q And Purcell? A I don't know.

Q At least Odell was there? A I am sure of him.

Q Standing near you? A I am not sure just where he was standing. I saw him about the room from time to time.

Q You heard him testify here? A I caught some of his testimony -- too far away down there.

Q He said he was there at the time you brought the defendant in to have him identified by the complainant, and he testified to a conversation that you had, and what the complainant said in reply. Will you tell us what that conversation was? A I will tell you the conversation I had with the Colonel, what I have already stated before.

Q What did the Colonel say? A He told me that he had an argument with the porter over the shining of his shoes, and that the porter had called him a liar and the other man is a liar -- I don't know just exactly the words he used but he said that he resented it and went at him.

Q Went at him? A Words to that effect.

Q Did he say he had called the defendant a liar? A No, he did not.

Q Did he say that he grabbed the defendant by the throat?
A I did not hear him say that.

Q Did he say that he grabbed the defendant by the collar?

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A I don't remember him.

Q You were there? A I was.

Q You heard all the conversation? A All that I remember, yes.

Q And the only thing that you remember is that the complainant said he went after him? A The impression that he gave me, that he attacked him.

Q Not your impression, what words did the complainant use?

A I have already said that I don't remember the exact words.

Q But what you do remember is that the complainant said that he went after him? A Yes.

Q As you testified -- you testified in the Magistrate's Court? A Yes.

Q Have you read over your testimony since that time? A No.

Q You knew it was taken down? A Yes.

Q You know that none of these other witnesses did testify in the Magistrate's Court, don't you? A None that have testified here, so far --

Q There was just you and who else? A Officer Cronin and for him Captain White and himself.

Q At that time you were asked about this conversation that you had with the complainant, were you not? A Yes.

Q You have told us now the same thing you testified in the Magistrate's Court? A As near as I can remember yes, exactly.

Q You have not told us a word about the complainant saying that he grabbed the defendant by the throat, have you? A I never

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said that, no.

Q Is it because you knew you had testified in the Magistrate's Court? A I could not testify any different here from what I have already said -- when I could not remember it next day-- it is seven weeks ago now.

Q You, and what is the name of the other officer who testified in the Magistrate's Court? A Cronin.

Q Also the defendant and Cronin and yourself testified for the defendant? A I don't know who I was testifying for.

Q You testified there -- there was the defendant called?
A Yes.

Q And then you were called and Cronin was called and nobody else? A That was all.

Q Not one of those witnesses who have been called here today testified in the Magistrate's Court? A That is the lawyer's fault -- he did not call them.

Q At least they did not testify, did they? A No.

BY MR. MOORE:

Q You were subpoenaed by the District Attorney? A Yes.

Q You were down at the office here? A Yes.

Q And told him the same story you have told here on the stand? A Yes, exactly.

BY MR. O'MALLEY:

Q I have not talked with you? A No.

Q Never saw you before? A Never saw you before -- it was another District Attorney, Medalie.

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DAVID R. DUNN, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. MOORE:

Q What is your business? A Claim agent, New York Central & Hudson River Railroad Company.

Q Do you remember the 9th day of October, 1913? A Yes.

Q Did you see Colonel Supplee on that day? A I did.

Q Where did you see him? A In the Emergency Hospital, Grand Central Terminal.

Q Talk up a little louder -- did you take a statement from him there at that time? A I did, yes.

Q Is that statement in your handwriting? A Yes.

Q May I look at that statement -- I show you a statement and I ask you if that is the statement which you took (Exhibit 1)?

A Yes, sir, that is the statement I took.

Q Just recite to the Court and jury the circumstances under which that statement was taken, and who was present, and who signed it? A On that morning I was on duty and I was called around to the hospital room where I went and found Colonel Supplee sitting on a chair being attended by our company's surgeon, Dr. Gillespie, dressing his wounds. Later Colonel Supplee complained of not feeling very well, and Dr. Gillespie laid him down on a table, and finished dressing the wounds there. I went into Dr. Gillespie's office and sat at his desk. I did not see all that, and then Colonel Supplee was removed to an inner room and

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placed in bed and possibly an hour elapsed between the time I went in there first and the time I took that statement. After having a conversation with Dr. Gillespie, asking him if the Colonel was in a condition to make a statement, I went in and spoke to the Colonel. He then told me the facts substantially as contained in that statement. I went outside and wrote that statement on Dr. Gillespie's desk, and then I came back and asked the Colonel to read it. He said he would like to have me read it to him. I read the statement to the Colonel aloud as he lay in the bed, and while I was reading the statement the gentleman who signed as a witness, Mr. Howard I believe, came in. Colonel Supplee addressed him as Charley, I believe, and he addressed Colonel Supplee as Frank, and he sat down, and after I read the statement aloud to Colonel Supplee, I handed it to him and I said "Now, Colonel, don't you think it would be a good thing for you to read that also," and he did so, and I said "Colonel Supplee, is that statement correct." He said "Yes." I said "Would you mind signing it," and in order to make it easier for him I got an extension table which was in the room, brought it over, and lifted it up so as to have it on a convenient level to write, and Colonel Supplee affixed his signature to both of these sheets in my presence, and in the presence of Howard. I then turned to Howard, after I myself had signed as a witness and asked him if he would sign as a witness to the Colonel's signature, which Howard did.

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Q And the Colonel acknowledged at that time the statements therein contained were true? A Yes.

Q The Colonel read the statement over before he signed it?
A Yes, he did.

Q And he said in Howard's presence that the statements contained in that statement were the truth? A He did.

CROSS EXAMINATION BY MR. O'MALLEY:

Q For whom do you work? A New York Central & Hudson River Railroad Company.

Q Claim agent? A Yes.

Q Among your duties is to investigate injuries of this kind? A Yes.

Q And you get on the job just as soon as you can after anything has occurred? A Yes.

Q You get to the complainant just as soon as you can, don't you? A Yes.

Q And you get a statement from the complainant? A Yes.

Q You get just as favorable a statement for the company as you can? A I stick as close to the facts.

Q Answer the question? A Yes.

Q You saw the complainant in the hospital that morning? A Yes.

Q You saw his condition? A Yes.

Q You saw that his head was out in three or four places?
A Yes.

Q You knew the doctor had attended him? A Yes.

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Q You knew he was lying down? A Yes.

Q And you thought that was about as good a time to get a statement for your company as you could find, didn't you? A No.

Q You took it at that time? A I did.

Q You wrote this statement out yourself? A I did.

Q You talked it over with the complainant first? A Yes.

Q Then you retired to another room? A Yes.

Q Where you wrote the statement out? A Yes.

Q Then you came back to the room? A Yes.

Q Where the complainant was still lying down? A Yes.

Q And you first read the statement over to the complainant?

A Yes, at his request.

Q Was Howard there then? A I don't believe he was.

Q Was Howard there at any time when you read this statement over? A I do not believe he was.

Q Did Howard see the complainant read it over? A Yes.

Q And was Howard in the room when the complainant read this statement over? A Yes.

Q Did the complainant read it over? A Yes.

Q You are sure about that? A Positive.

Q Didn't he tell you that he was feeling badly? A No, sir.

Q Didn't he ask you to read the statement over to him? A Yes.

Q And you did read it over to him? A Yes.

Q Why did he say he wanted you to read it over to him? A He was lying down in bed.

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Q Didn't he say he would rather have you read it over to him?

A Yes.

Q What reason did he give for that? A He did not give any reason. He said -- just said "You read it to me" and I did.

Q Did you read it all to him? A Yes, with the exception of that witness clause on the bottom -- that I did not read to him.

Q The body of the instrument? A Yes.

Q Dunn -- did you read this over to him in this way -- just at the point where the Colonel says that he was stunned -- I will begin back further -- this is your handwriting? A Yes.

Q "This morning after I had gotten up, washed and shaved, I was sitting in the wash room of the Pullman car polishing my shoes with a soiled towel when the colored porter came into the car and asked if I wished to be brushed off. I asked him why he had not polished our shoes and he replied that he had polished one pair but was unable to find the other pair. I said to him Captain White says you did not polish the shoes, and he replied 'If he says that, he is a liar.' I was stunned for a moment and asked him 'What did you say', and he replied again 'He is a liar and you are a liar too.'" -- Is that right? A Yes.

Q "I stepped forward, grasped him by the throat, and as I did so, he struck me three times on the head with a black jack, inflicting scalp wounds." -- I am going to repeat that sentence "I stepped forward, grasped him by the throat" -- in reading that over --

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MR. MOORE: I object, let the witness have the statement and he can tell how he read it over.

BY MR. O'MALLEY:

Q You wrote this statement out? A Yes.

Q You know what is in it? A Yes.

Q You do not want this statement, you are satisfied for me to read it? A I am, if you read exactly what is written down there.

Q I assure you I am, "I stepped forward, grasped him by the throat" -- did you read that all to him or did you say "I stepped forward and as I did so he struck me"? A I read it in its entirety.

Q "He struck me three times on the head with a black jack, inflicting scalp wounds" -- are you sure you included that clause "I grasped him by the throat"? A Absolutely positive. I read that statement in its entirety.

Q You read it to him, and nobody was looking at the paper when you read it? A That is true.

Q I want you to tell this jury again on your oath that the complainant read this statement over after you got through? A I do

Q He read it in the presence of Mr. Howard? A He did -- he finished reading it in the presence of Howard.

RE-DIRECT EXAMINATION :

Q In the room in which Mr. Supplee was located, was there anything except beds? A Yes, there were a few extension tables.

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Q Why did you go in another room to write this? A There was no table upon which I could have written it, except one of those extension tables which is more or less shaky -- it is a sort of a bed table and not best adapted for writing.

Q Was there a desk in the other room? A Yes, sir, a double desk, flat top desk.

DAVID H. N. GILLESPIE, M.D., called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. MOORE:

Q You are a physician and surgeon? A Yes.

Q You were such on the 9th of October, 1913? A Yes.

Q You are employed at the Emergency Hospital of the New York Central Railroad? A Yes, sir, part of the time.

Q Did you see Colonel Supplee there that morning? A I did.

Q Did you hear any conversation there, or any statement there by Colonel Supplee? A Why, none that I can remember definitely.

Q Doctor, do you remember the time that Mr. Dunn took the statement from Mr. Supplee there? A I remember that he took a statement.

Q In your opinion as a physician, was he competent to make a statement at that time? A Yes.

Q Was he in his normal senses? A Yes, certainly.

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CROSS EXAMINATION BY MR. O'MALLEY:

Q You dressed the wounds of the complainant, didn't you?

A Yes.

Q Now would you just as soon tell the jury what you found on the complainant at that time? A He had four small scalp wounds on the top of the head. They were skin wounds. I think there were two about here, and probably two back here -- three of them were small -- I should say under an inch long, not very deep. The fourth one was deeper and longer, and was crescentic in shape.

Q What do you mean by that term? A Crescentic?

Q Yes? A Well --

Q It formed a crescent? A More correctly "U" shaped, it was curved, and it was a little deeper than the others, and required a couple of stitches.

Q What did you do for him? A I cleaned the wounds, stitched this one, and applied the usual iodine dry gauze dressing and adhesive dressing on the outside. I did not put any bandage on him.

Q What was the extent of the larger wound? A I should say it straightened out an inch and a half to two inches long, not over that.

Q How deep? A Did not go clean through the scalp.

Q These gentlemen don't understand that -- how far in did it go? A I suppose an eighth of an inch.

Q That is, in the back part of the skull? A It was back here

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as I remember it, all the skull is boney.

Q Are you sure about that -- was not the main wound up here (indicating)? A I am not absolutely sure.

MR. O'MALLEY: Can we have the Colonel step up here to make sure.

THE COURT: Yes.

(The witness examines the complainant's head).

THE WITNESS: There is where (indicating) -- about an inch and a half it straightened out -- that is the one that is the deepest one, from which most of the hemorrhage came.

BY MR. O'MALLEY:

Q On top of the skull? A Yes.

PERCY O. SAUER, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. MOORE:

Q What is your business? A Assistant superintendent Pullman Company.

Q And do you remember the 9th of October, 1913? A Yes.

Q Did you on that day have a conversation with Colonel Supplee? A I did.

Q Where did you have that conversation? A Emergency Hospital, Grand Central station.

Q How did you happen to go there? A The Colonel sent for a representative of the company.

Q Just recite the conversation for the Court and jury that

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you had with Colonel Supplee at that time? A I went to the hospital. The Colonel was lying on the bed or couch, and he told me that he had been assaulted by a porter. I asked him the circumstances and he said that he was in the wash room brushing his shoes off with a towel, and the porter came in and asked him if he would to have him brush his clothes, and he told him no, and asked him why he had not blackened his shoes, and he said the porter said that he had blackened one pair of shoes, and he told the porter that Captain White said that he had not blackened his shoes either, and he said the porter then called him a liar and walked away, and he said "I was so astounded at a porter calling me a liar, that I rushed after him and grabbed him by his neck, and he broke away from me and hit me with a black jack". Then, to proceed, I asked the Colonel, I said "Then Colonel, really you assaulted the porter first." He said "No, I do not construe it in that way. The porter called me a liar which in itself constitutes an assault and has been proven in court as an assault."

CROSS EXAMINATION BY MR. O'MALLEY:

Q What is your occupation? A Assistant superintendent.

Q Of what company? A The Pullman Company.

Q Your duties require your presence there at the Grand Central -- has your company been sued by the Colonel? A Not that I know of, no, sir.

Q You know that he has brought an action? A I heard that he had against the New York Central recently.

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Q Against the New York Central? A Yes.

Q This assault took place in a Pullman car? A Yes.

Q And it was one of your employees? A Yes, sir.

Q So that you know that your company would be liable? A I could not answer that question.

Objected to as incompetent and immaterial, and upon the ground that as matter of fact the Pullman Company is not sued

MR. O'MALLEY: I ask him if he knows.

THE COURT: You may answer.

THE WITNESS: I could not say.

Q Don't you know that a representative of the Railroad Company sits here representing this defendant? A I know that that gentleman represents the Railroad Company. I don't know if he is representing this defendant.

Q Represents the New York Central? A I have seen him in the New York Central.

Q These complaints of anything that happen on your cars come to you? A Not all.

Q The majority of any serious complaints? A Yes, sir.

Q And complaint of this kind? A Anything out of the ordinary comes to me.

Q A complaint of this kind would come to your attention?
A Yes.

Q It is your duty to investigate it? A Yes.

Q Of course you have the interests of your company in mind

to some extent, when you begin an investigation? A I get the true facts and submit them to my superiors, and they take whatever action they want.

MR. O'MALLEY: I move to strike that out.

THE COURT: Strike it out.

BY MR. O'MALLEY:

Q Please answer my question? (The question is repeated)

A Always.

Q And you did this morning? A I had not -- this morning I had not had any information.

Q That particular morning you did have your company's interests in mind the same as you do every morning? A Yes, sir, always when I am working for the company I always have the interests of the company in mind.

Q And you were not talking to Colonel Supplee with a view of establishing a cause of action in his favor against your company, were you? A I was not thinking of any cause of action. I was simply trying to get at the facts.

Q You were not thinking of a cause of action at all? A No, it did not enter my mind. Simply to get the facts and report them to my superiors as they are.

Q What did occur to you when you were called upon to investigate an assault on one of your cars? A Simply to get the true facts.

Objected to. Overruled. Exception.

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Q True facts? A True facts and submit them to my superiors.

Q How long have you been with the Pullman Company?

A Twenty-four years.

Q During that time have you ever known of the Pullman Company to be sued? A I have nothing on that end of it at all.

Q Answer my question, have you ever known of the Pullman Company to be sued? A Not personally, no, sir.

Q You know actions have been brought against them? A Yes.

Q For damages? A Yes.

Q For assaults by porters? A I do not know.

Q Do you know that? A I do not know of one.

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

Q At any rate, that morning, when you learned that a porter in charge of this car was charged by a man of Colonel Supplee's standing with having assaulted him with a black jack, the interests of your company never entered into your mind?

Objected to as incompetent, irrelevant and immaterial, especially as to his standing.

THE COURT: I think that might be eliminated.

BY MR. O'MALLEY:

Q After talking with Colonel Supplee, and after having heard him charge one of your employees with having assaulted him with a black jack, you say the interests of your company never

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entered your mind? A Of course I am working for the company and I always feel that by giving them the true facts, the honest facts, that their interests were best looked after.

Q You did have the interests in your mind, because you were interested in getting them the true facts? A Yes, the true facts.

Q Where did you talk with the Colonel? A In the Emergency Hospital.

Q Was he in the room then? A What?

Q Was he in a room? A Yes.

Q How soon did you see him after he was brought in there?

A I should say about 11 o'clock -- I should think about two hours or two hours and a quarter.

Q Was he then lying down on a cot? A Yes.

Q His head was dressed? A It had been dressed, yes.

Q Did you see Mr. Dunn there, the representative of the New York Central? A No.

Q Had he been there? A I don't know. I did not know he had.

Q Did Colonel Supplee tell you he had signed a statement?

A No.

Q Who was there when you talked with him? A Why, our chief clerk was there.

Q Your chief clerk? A Chief clerk in my office.

Q Anybody else? A No, sir.

Q Nobody else was present in the room? A No.

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Q Officer Hayes was not there? A No.

Q Mr. Odell was not there? A No, no one.

Q The colored attendants, Marshall or Purcell? A No.

Q None of those? A No.

Q And you entered into a discussion of this? A No, sir, I did not enter into a discussion.

Q Let us see what your testimony is, you say the complainant related the circumstances, and then said he rushed after him and grabbed him by the neck, is that right? A Yes.

Q Did he say he grabbed him by the throat? A No, he did not tell me so.

Q Did he say he grabbed him by the collar? A No -- he grabbed him by the neck.

Q You are sure of that? A Yes.

Q That he used the word neck? A Yes.

Q Is that all the Colonel said at that time? A Yes.

Q Now then you said to him then, as I understand your testimony, "You assaulted him first, Colonel", did you use that language? A I did.

Q What did the Colonel say? A He said that he did not construe it in that light. He felt the porter calling him a liar in itself constituted an assault, and he said that it had been proven in court that would constitute an assault.

Q Then you did enter into a discussion of the merits of the case with him? A I simply had to get the true facts of the case so as to submit them.

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Q What did you have in your mind when you said "You really were responsible for this assault" -- did you have the interests of your company in mind at that time? A I was simply trying to verify and see that the facts as I had heard the Colonel say or give them, were in accordance with what -- that is, that he had first grabbed the porter by the neck.

Q You already answered that question? A I wanted to be sure that was -- as I heard.

Q You were anxious to have the facts gibe with the interests of your company? A I was anxious to have them just as they were, to be sure I was right.

Q You asked an additional question after the Colonel answered? A Yes.

Q It was your suggestion "Colonel, it was you who was responsible for this assault"? A Just as I said it.

Q The Colonel said it had been adjudicated in court that calling a man a liar was an assault? A Yes.

Q And therefore he was justified? A Yes.

Q Are you sure of that? A Yes.

Q The Colonel said that in your presence? A Yes.

Q Do you know Colonel Supplee? A Yes.

Q Have you ever had any trouble with him at all? A No, I never met the gentleman until I went to the hospital.

RE-DIRECT EXAMINATION:

Q How long has Harrell worked for your company? A He worked

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for us the summer of 1912 and 1913.

Q Has he ever been in any trouble there? A He has a perfect record with the company. Never hashad any controversy or trouble before.

RE-CROSS EXAMINATION:

Q He was a temporary man, A He worked during the summer and went to school during the winter.

Q He was a temporary man who was sent out on odd trips? A No, he was not a temporary man. He was employed permanently. He resigned each fall.

Q Did he go to school during the winter? A Yes.

Q To your personal knowledge? A Not to my personal knowledge, only from the fact that that is what our records show. I never saw him.

Q You have not any knowledge on it at all? A Only our records.

Q You want to leave the stand with that statement before the jury? A What statement?

Q The statement that he was attending school in the winter time? A Well, that is all that our records show, that is all I can -- I do not go down and see these boys in school. I know our records show he is a school boy.

Q You do not know anything about it except what your records show? A We get our records from our representatives who go down and hire them in the schools. We could probably verify that by the person who was probably in the school and saw him in

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the school, because we sent a man.

Q You did not verify it personally? A No, not this particular one.

Q You heard the defendant testify he went to school one winter? A Yes.

Q Notwithstanding that you want to say to this jury that he went to school in the winters? A That was what our records show.
BY THE COURT:

Q When this talk with Colonel Supplee took place, was anybody else present? A Our chief clerk was present.

Q Who is he? A Mr. Foster.

BY MR. O'MALLEY:

Q Is Mr. Foster in court? A No, he is not in court.

THE DEFENSE RESTS.

MR. O'MALLEY: I would like to recall the defendant.

BENJAMIN D. HARRELL recalled for further cross-examination:

BY MR. O'MALLEY:

Q You remember I questioned you this morning about whether or not you testified in the Magistrate's Court that the complainant called you an s.o.b., you remember my asking you about that?

A What do you mean by s.o.b.?

Q Well, son of a bitch? A Yes.

Q You remember that? A I remember you asked me that.

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Q About it? A Yes.

Q I think your testimony was that you did not know whether you told the Magistrate that he called you that or not? A I don't remember, I don't know. I don't remember now what I said in the Magistrate's Court.

Q You told all the facts there -- you intended to tell all the facts? A Yes.

Q You do not recall that you ever said that the complainant called you an s.o.b.? A Let me hear that question again -- I don't remember what I said fully to the Magistrate.

Q You can read? A Yes.

Q Will you just read over your testimony in the Magistrate's Court? (The witness reads paper handed to him by the District Attorney).

Q You do not seem to have mentioned anything about that name in the Magistrate's Court, do you? A I do not see it there.

Q The rest of this is what you testified to, is it not?

A How is that?

Q What appears here is in substance what you have testified to here to-day? A Well, I do not really know what I -- the part that coincides --

Q There is not much variance from your testimony here in the Magistrate's Court to what you testified to to-day, it is substantially the same? A Very near the same.

Q But there is not mentioned in this testimony of the com-

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plainant having called you an s.o.b.? A I do not see it there in that paper.

Q You read it all over? A I have read that paper.

JAMES FRANK SUPPLEE recalled in rebuttal:

BY MR. O'MALLEY:

Q Did you on the morning of October 9th, when the defendant assaulted you, as you say he did, did you at any time that morning call him a liar? A No, sir.

Q Did you call him a son of a bitch? A I never used that expression that morning or any other time in my life.

Q Did you that morning rush at him and grab him by the collar? A I did not. I could not. It is physically impossible I could not have reached him.

Q Did you hit him in the face with your fist? A I did not.

Q Did you have hold of his collar at the time that he hit you over the head with this ventilator stick? A I did not -- he could not have hit me if I had.

Q Do you remember of seeing the witness Odell that morning?

A I remember asking for a representative of the Pullman or the other company to be sent for, so as to have some one at the Magistrate's Court. I could not recollect the gentleman's face.

Q To come down to this statement -- you saw this paper, Defendant's Exhibit 1 in evidence? A Yes.

Q Which is the statement which you say you signed in the hospital that morning? A Yes.

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Q Was that statement ever read over to you by Dunn? A If he read it, he read it in such a way that no --

Objected to.

BY THE COURT:

Q Did he read it? A He read it.

BY MR. O'MALLEY:

Q He read it to you? A He did, because I could not read it myself.

Q I think I asked you about that this morning?

MR. MOORE: I move to strike that out.

THE COURT: Strike it out.

Q Did you read this statement over that morning? A I tried to, and I could not.

Q Your answer is that you did not? A I did not.

Q Did any one in your presence read it over? A Dunn read it over at my request.

Q Did Mr. Howard read it over? A No.

Q At no time did you read this statement over as a whole?
A No.

Q Did you that morning at any time, in the hospital there, say to the witness Dunn who has testified here, that you grabbed the defendant that morning by the throat? A No, sir, I did not.

Q Did you say at any time that morning, in the hospital, in the presence of any one, that you grabbed the defendant by the neck before he hit you over the head? A I did not.

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Q Did you at any time that morning say in the presence of any one, in the hospital, that you grabbed the defendant by the collar? A No, sir.

Q Do you remember seeing Mr. Sauer on the stand, who has just left here? A Yes.

Q Do you remember having had a conversation with him? A I just recall his features among the many, that is all.

Q Did you in the hospital that morning, in a conversation with him, say in substance "I rushed after the defendant and grabbed him by the neck" -- did you use that language? A No, sir.

Q Do you remember of his having said to you in substance "Then Colonel, you assaulted the defendant first", and you said in reply that you did not consider it so because he had called you a liar, and that in law that constituted an assault, and therefore you were justified in assaulting him? A No, sir, no such conversation. I was unable physically to make any such argument as that.

MR. MOORE: I move to strike the latter part out.

THE COURT: Strike out the latter part.

BY MR. O'MALLEY:

Q Your answer is that you did not? A I did not.

(No cross-examination).

CHARLES HOWARD, called as a witness in behalf of the People, in rebuttal, being duly sworn and examined, testified as follows:

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DIRECT EXAMINATION BY MR. O'MALLEY:

Q Where are you employed? A By the United States Fidelity & Guaranty Company.

Q In the same company with Colonel Supplee? A Yes.

Q You know him? A Yes, very well.

Q Do you remember the morning that he was assaulted? A I do.

Q Did you go to the hospital or Grand Central Terminal any time that morning? A Yes.

Q About what time? A Somewhat early in the morning, I don't know the definite hour.

Q Who was in the room when you got there besides Colonel Supplee? A No one to my recollection.

Q Were you there at any time when Dunn, the claim agent of the New York Central came in, or was there? A Well now I do not know Mr. Dunn.

(The witness Dunn stands up in the court room).

THE WITNESS: I believe that is the gentleman I saw afterwards with this paper, yes.

Q Did you see this paper, people's Exhibit 1, or Defendant's Exhibit 1, that morning? A I presume that is the paper because it has my signature on it.

Q You signed it? A Yes.

Q Under what circumstances did you sign this paper? A We received word at the office that Colonel Supplee was at the hospital and wanted Mr. Leak. He not being there, and being an old

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friend of the Colonel's I went up and he was lying in the Emergency Hospital and seemed to me rather a bit rattled and nervous, and I passed the time of day with him.

MR. MOORE: I object and move to strike out what he seemed to be.

THE COURT: Strike it out.

BY MR. O'MALLEY:

Q You went in there and saw the Colonel? A Yes.

Q At any time did you see this paper? A Yes.

Q When was the first time you saw it? A If you will allow me to tell -- to lead up to how I happened to see this paper. After talking with the Colonel I passed out of this room where the Colonel was lying into the larger room to phone to our manager at the office to have Leak come up as quickly as possible. It took a little time to get connection. I presume I was there probably five minutes, and then coming back into the room where the Colonel was lying, this gentleman was standing in the doorway.

Q You mean Dunn? A Yes, sir. I thought he was a doctor, and the paper was lying in front of the Colonel -- sort of a board like arrangement in front, and the Colonel was up on his elbow signing the paper. He handed it then to this gentleman who was standing in the doorway and in the meantime I took my seat at the foot of the cot and this gentleman turned to me and said "Would you mind witnessing the Colonel's signature." I said "What is it all about?" He said "It is a statement of the as-

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sault." I do not believe I even put my glasses on -- just signed my name, and that was all.

Q You did not read it over? A No.

Q Did the Colonel read it over in your presence? A He certainly did not, because when he signed it I rather commented myself because he didnot have his glasses on.

Q He did not at that time? A No.

Q Does he wear glasses always? A For all reading purposes and signing, yes.

Q You did not read this paper yourself? A No, I simply saw it was made up -- my recollection was -- it don't look like the same paper to me, because I did not use my glasses and I thought it was made up of partially printed matter and then a lot of interlining.

MR. MOORE: I move to strike out what he thought it was.

THE COURT: Strike it out.

BY MR. O'MALLEY:

Q Did you notice any interlining in the paper you signed, that you remember now? A What I wish to convey is, whatever paper it was I signed was made up partially, I thought, of printed matter, and then of writing.

MR. MOORE: I move to strike out what he thought unless he knows.

THE COURT: It shows what he thought he had before him and what he was putting his signature to.

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CROSS EXAMINATION BY MR. MOORE:

Q There is printed matter on these pages, is there not? A I presume so.

BY THE COURT:

Q That is your signature? A Yes, that is my signature.

Q That is the paper that you did sign? A Yes, I signed it with my name and office address.

BY MR. MOORE:

Q That is Colonel Supplee's signature? A Yes.

Q What is your position in the United States Fidelity Company? A Resident assistant secretary.

Q What is Colonel Supplee's position? A Resident secretary.

Q You are his assistant there? A Well, we are co-workers in the office, simply a gradation of rank on salary, that is all.

Q He is your superior in rank there, and you are his assistant? A Yes, as ranking goes.

Q You are a close personal friend of his? A A great many years, yes.

Q And did it occur to you up there that day that it might be a good thing for you to look over this statement that you were signing? A No, sir, because I frequently sign papers and witness signatures without knowing their contents.

Q You say you saw the Colonel there on a cot and without his glasses -- did it occur to you it might be a good thing for you to know what was in that statement? A Not at all -- it didn't occur to me.

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Q You signed it at Mr. Supplee's request? A No, at the request of the gentleman who had the paper in his hand.

Q You signed it nevertheless? A I did, he asked me to witness his signature.

BY THE COURT:

Q Was that his language -- was that the language of this person to you? A Yes, he said "Will you witness the Colonel's signature." That was the interrogation.

Q Nothing else was said? A No, sir.

BY MR. O'MALLEY:

Q You were not asked to read the paper? A No.

THE PEOPLE REST.

TESTIMONY CLOSED.

MR. MOORE: I renew the motion made at the close of the People's case for a dismissal of the complaint upon the ground that the People have failed to make out a case beyond a reasonable doubt.

Motion denied. Exception.

MR. MOORE sums up in behalf of the defense

MR. O'MALLEY sums up in behalf of the People.

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THE COURT'S CHARGE.

MALONE, J.:

Gentlemen of the Jury, the form of your verdict will be either not guilty or guilty of assault in the second degree.

Benjamin D. Harrell has been indicted by the Grand Jury, charged with committing assault in the second degree on the 9th of October of this year in the county of New York; it is alleged that he committed a felonious and wilful assault upon James Frank Supplee. He denies that he is guilty of the offense, and you are now to say in the verdict that you arrive at, what the merits of the case are.

The Legislature defines assault in the second degree in this way "A person who wilfully and wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon, or wilfully and wrongfully assaults another by the use of a weapon or other instrument or thing likely to produce grievous bodily harm, is guilty of assault in the second degree. Under the two sub-divisions which I have read to you, Benjamin D. Harrell has been indicted.

It is maintained by the People of the State that the evidence which you have listened to has brought him within the scope of that definition, and within the penalties of the act.

It is the contention of the defendant that the injuries sustained by Mr. Supplee were sustained by him while the de-

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fendant was necessarily defending himself, and in his own necessary defense.

Under certain circumstances a person may use force or violence and not be guilty of an assault.

"To use or intend or offer to use force or violence upon or towards the person of another is not unlawful when committed either by the party about to be injured or by another person in his aid or defense in preventing or attempting to prevent an offense against his person, or a trespass or other unlawful interference with real or personal property in his lawful possession, if the force or violence used is not more than sufficient to prevent such offense." Under the circumstances stated, a person may lawfully and justifiably use force and violence. The person however using force or violence in his own defense, must take care that he does not employ more violence or force than is sufficient to prevent the offense. If he does, he leaves himself liable to prosecution, to indictment and to punishment. I mean by that a person would not be justified in repelling a blow with the naked fist with the use of a dangerous weapon, or an instrument likely to produce grievous bodily harm. A person would not be justified in repelling a light assault by drawing a pistol and shooting his assailant down, or plunging a knife into his body; nor would he be justified by a light trespass, in using an instrument against his person that would be cal-

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culated to do him serious bodily injury. Under proper circumstances, and within proper limitations -- the limitations I have indicated to you -- a person may use, however, force sufficient to protect himself. He may not go beyond what the circumstances call for.

You have heard considerable during the trial of this case, about a civil suit. This is not a civil suit. It is a suit brought in the name of the People of the State of New York and prosecuted by the prosecutor of the State in the name of the People. The parties involved here are the People of the State of New York and Benjamin D. Harrell, the defendant. Those that you have heard here are witnesses to the issues involved as to whether a public crime has been committed within the scope of the indictment. You will therefore not regard this as a civil suit in any aspect. What might be the result of a litigation in another court, should not concern you. You may consider whether the civil suit has in any way influenced improperly the testimony of any of the witnesses who have appeared here to testify on behalf of the People of the State or the defendant at the bar, and make just and proper allowances therefor.

The issue becomes a narrow one. You have heard the different persons who have had to do with the matter from its inception.

It appears that Mr. Supplee and a friend were returning

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to the city of New York on a Pullman car run over the road of the New York Central Railway; that as they were about reaching the city a controversy occurred in the wash room of the Pullman car. The subject of the difficulty was the polishing of some shoes. Some complaints were made and some language used, and then some acts done that create the important matter for you and your inquiry.

Mr. Supplee has told you that the defendant, without justification or legal right, hit him over the head with some instrument causing cuts upon the top of his head and lacerations; that he delivered no blow, and that the assault was unprovoked.

The defendant has given you his version of the matters and things leading up to the transaction itself, and the injuries sustained by Mr. Supplee. He states that angry words were spoken and harsh words uttered by the prosecuting witness, and that they were returned in kind by himself and that then the prosecuting witness, Supplee, grabbed him by the throat and that he, feeling that it was necessary for him to do something, grabbed a ventilator stick and struck him about the head.

You will find the facts from all this testimony that you have heard here -- what did just take place in the wash room and in that car on the morning of the 9th of October. If you conclude that no blow was struck by Mr. Supplee and

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the defendant was not so put in fear of danger, then you will conclude whether these injuries were serious, and come within the definition of the statute. If you conclude that Mr. Supplee did grasp the defendant about the collar or about the throat, but did no acts which required the use of the ventilator stick, then you may conclude that assault in the second degree has been established, if you find that injuries were sustained by Mr. Supplee, and that they were inflicted by means of an instrument likely to produce grievous bodily harm.

The burden of proof rests upon the People of the State to make out a case against the defendant. That burden rests upon the State from the beginning to the end of the case. It never shifts to the defendant. The proof must establish the defendant's guilt beyond reasonable doubt and that has application to the offense and to the defendant's defense of self defense as well. Reasonable doubt is the term used, and it means what the word imports -- if there is a doubt here upon the evidence in the minds of the jury that is not a capricious one but a doubt that comes squarely and fully from a consideration of all the evidence in the case, that kind of mental uncertainty makes for an acquittal and requires the jury to find the defendant not guilty. The doubt, however, is not the property of a thoughtless juror who wishes to shirk his duty. It is the property of a de-

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fendant and of him only, and that because it is a reasonable doubt which fairly springs from the evidence.

Now, is there a reasonable doubt of the guilt of the defendant, bearing in mind the offense charged and the evidence that you have listened to? You will judge for yourselves.

You have seen all of these witnesses and have had the benefit of the cross-examination; how have they impressed you? How have they borne the cross-examination? Many of the witnesses testifying to the transaction or a portion of the transaction testified somewhat differently. Is that to be expected or not. Is it the observation and experience of the jury that all testimony comes at the risk of imperfect knowledge and imperfect memory? Is it the experience of the jury that witnesses who are equally entitled to credit give different accounts of the same transaction, the difference being in matters of detail rather than matters that are of consequence? It is your duty, so far as you can, to reconcile the testimony of such witnesses with an intention on their part to tell the truth; to reconcile, so far as you can, their statements; where they conflict, to entertain the notion of wilful perjury reluctantly and only because you are constrained to do so from the testimony itself, and the manner and conduct of the witnesses.

If this defendant has committed the assault which is charged against him, he has brought himself within the

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statute, and has committed a serious assault upon a citizen. If he committed it under such circumstances as justified it, your duty goes out to him to pronounce him not guilty.

Both of these parties go to you entitled to even-handed treatment. You will see to it that neither the People of the State nor the defendant suffer injury at your hands.

The case I regard as an important one to both of these parties. Confine yourselves to what the inquiry is, and give both of these parties the best verdict that you are capable of. It will be either a verdict of not guilty or guilty of assault in the second degree.

MR. MOORE: I think your Honor has covered this point, but in view of one of the last statements just made, I ask you to charge the jury that the defendant's acquittal in this case has no bearing whatever upon the civil action which has been mentioned in the case.

THE COURT: Yes, I have asked you gentlemen specially to withdraw from your minds entirely any civil suit. You may limit that consideration to the single inquiry whether that suit influences the testimony of any of the witnesses on either side. I apply it to the witnesses on both sides. Does that cover it?

MR. MOORE: Yes. One more request. I ask your Honor to charge the jury that if Harrell believed he was in danger of great bodily harm, he had a right to use such force as a

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reasonable and prudent man under similar circumstances would use.

THE COURT: Yes, I think I have tried to so charge. That is a proper proposition of law, and I do so charge.

MR. O'MALLEY: That is, reasonable ground to believe.

THE COURT: A reasonable and prudent man.

(It is consented that the exhibit may go into the jury room).

LATER: The jury rendered a verdict of guilty of assault in the second degree with a recommendation to mercy.

I hereby certify that the foregoing is a true and correct transcript of the stenographic minutes

*The Vice Court
of the Stenographer*

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