

# I N D E X.

Names.	Direct.	Gross.	Re-D.	Re-C.
Jury Examination:				
Henry W. Bruce,		2		
Simon A. Heckman,		5		
Frank Dow,	9	9		
Patrick J. Reilly,	13	14		
Charles Fredenberg,	17	17		
James E. Sims,	20	20		
Henry A. Kapp,	23	23		
Leopold Armbruster,	26	26		
Michael B. Commerford,	28	29		
Emil Spindler,	30	31		
Patrick E. Parker,	34	34		
Benjamin E. Doster,	38	38		
William L. Caldwell,	41	41		
Ludwig Hahn,	43	45		
Peter Schaus,	47	48		
Bernard Voss,	49	50		
John Vellely,	51	51		
Daniel R. Kennedy,	52	52		
Emil Meyer,	55	55		
Walter G. Carr,	56	56		
For the People:				
Henry Cammeratt,	59	59	90	92
Leonard Schalkahn,	94	98		
Cornelius R. Glynn,	99	108		

The Court's Charge,

CASE # 262

COURT OF GENERAL SESSIONS OF THE PEACE,  
COUNTY OF NEW YORK,  
PART II.

-----*		
The People	:	Before
vs.	:	
George Darrow,	:	HON. JOHN W. GOFF, R.,
otherwise called Dorsey Doyle.	:	and a Jury.
-----*		

Indicted for attempted Grand Larceny in the first degree.  
Indictment filed February 26th, 1901.

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Tried, New York, May 9th, &c., 1901.  
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APPEARANCES:

For the People,

Assistant District Attorney Stephen S. Blake;

For the Defense,

Maurice Meyer, Esq.

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Frank S. Beard,  
Official Stenographer.

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## EXAMINATION OF THE JURY.

THE CLERK: George Darrow, if you intend to challenge any individual juror you must do so when he appears and before he is sworn. Do you waive the asking of this question as to each individual juror as he appears?

MR. MEYER: Yes.

HENRY W. BRUCE, being duly sworn and examined as to his qualifications as a juror, testified as follows:

MR. BLAKE: No challenge on the part of the People.

## C r o s s   E x a m i n a t i o n :

BY MR. MEYER:

Q Mr. Bruce, what is your business? A Real estate.

Q And prior to this term have you served as a juror in criminal cases? A Never.

Q Have you served before as juror in civil cases? A Never.

Q And so that I take it this is your first term as a juror in any of our courts? A Yes, sir.

Q Have you served as a juror during the present term of this court? A Never.

Q Do you know of the fact that in criminal cases the defendant is entitled to the benefit of every fair and reasonable doubt?

THE COURT: Excluded.

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MR. MEYER: Exception.

THE COURT: That is his duty. Is there any question as to this gentleman's intelligence?

MR. MEYER: No, sir; none in the world. It is as to the general qualification only.

BY MR. MEYER:

Q The defendant is indicted under the name of George Darrow otherwise called Dorsey Doyle. Would the fact that the defendant has been indicted under such name and that the clerk will swear witnesses under the indictment as found create any prejudice in your mind affecting the guilt or innocence of this defendant, that fact only?

A It would not, sir.

Q So that, if selected as a juror, notwithstanding the fact that he is indicted as George Darrow otherwise called Dorsey Doyle, it will create no prejudice whatever in your mind? A None whatever.

Q Assuming that it should appear in this case that the defendant did not take the stand, and his Honor should charge you as matter of law the defendant in all cases may testify as a witness but his neglect or refusal to testify does not create any presumption against him, would you obey the admonition of the Court in that respect?

A I would obey the admonition of the Court in all res-

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pects.

Q Assuming that the defendant did not take the witness stand, as I have put the question, and his Honor should instruct you that that created no prejudice against him, and that no presumption should arise by reason of that fact, would you be governed by his Honor's instructions?

THE COURT: Excluded. The gentleman said that he would obey all the admonitions of the Court.

BY THE COURT:

Q So far as questions of law are concerned you mean, sir?

A Yes, sir.

Q On the law of the case? A Yes, sir.

MR. MEYER: Exception.

BY MR. MEYER:

Q You know the duty of a juror is to weigh the evidence and decide the case upon the facts, do you not? A Yes, sir.

Q And that his Honor has the exclusive right upon the questions of law? A Yes, sir.

Q And if his Honor should advise you upon questions of law arising out of any portion of the case you would be governed entirely by it? A Entirely.

Q Do you know of any reason now why, if selected as a juror, you could not give the defendant a fair and impartial trial? A None whatsoever.

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Q And if selected you would discharge that duty to the best of your ability? A To the best of my ability.

Q Irrespective of any of the questions that I have heretofore propounded to you in reference to the defendant not taking the witness stand and the nature of the indictment?

A Yes, sir.

Q You would decide it entirely on the question of the guilt or the innocence of the defendant and on the evidence alone?

A Yes, sir.

MR. MEYER: Challenge withdrawn. The juror is satisfactory.

(The juror is sworn.)

S I M O N A. H E C K M A N, being duly sworn and examined as to his qualifications as a juror, testified as follows:

MR. BLAKE: No challenge on the part of the People.

C r o s s E x a m i n a t i o n:

BY MR. MEYER:

Q What is your name, sir? A Simon A. Heckman.

Q And what is your business? A Carpenter.

Q Where? A 373 Greenwich Street.

Q Have you ever served before as a juror in criminal cases?

A Yes, sir.

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Q Prior to this term? A No, sir.

Q Did you serve during this term? A Yes, sir.

Q In the case that was just concluded before his Honor?

A No, sir.

THE COURT: No; that jury is out.

MR. MEYER: Yes, that is correct, sir.

BY MR. MEYER:

Q In the case that was tried on Monday and Tuesday of this week were you on that panel? A I was on on Monday.

Q And I take it you are familiar with the duties of a juror?

A Yes, sir.

Q And have you served in the civil courts? A Yes, sir.

Q And often? A No, sir.

Q How often have you served? A Three times.

Q Three times? A Yes, sir.

Q The defendant is indicted under the name of George Darrow otherwise called Dorsey Doyle; and assuming that the witnesses who will be called on both sides---the Clerk of this court should call and swear the witnesses under the indictment describing the defendant as I have related it to you, would that fact of itself create any prejudice against the defendant affecting the question of his guilt or innocence?

A No, sir.

Q You would decide the case entirely on the evidence adduced

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irrespective of how he is charged or indicted under the indictment? A Yes, sir.

Q With reference to his name only, I mean? A Yes, sir.

Q Assuming that the defendant did not take the witness stand, would that fact of itself create a prejudice in your mind affecting his guilt or innocence? A No, sir.

Q It would not? A No, sir.

Q You are positive about that? A Yes, sir.

Q And assuming that his Honor should charge you, as matter of law, that the defendant in all cases may testify as a witness in his own behalf but his neglect or refusal to testify does not create any prejudice against him, would you take the instructions from the Court, his admonition, and decide this case under those instructions?

A In matters of law, yes.

Q You know that you are to decide the facts? A Yes, sir.

Q Then, assuming that his Honor should so charge you, that this defendant would have the right to take the witness stand and that his refusal to do so would not create any legal presumption against him, would you take those instructions from the Court and be governed by them; wouldn't you?

THE COURT: I exclude the question on the ground that the witness has stated that he would obey all the instructions of the Court as to the law.

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MR. MEYER: I didn't hear that, your Honor.

BY THE COURT:

Q Do you say so, sir? A Yes, sir; I will obey the instructions of the Court in all matters of law.

BY MR. MEYER:

Q And, if selected as a juror and you take your seat in this jury box, you will do so? A Yes, sir.

Q And if there is any doubt arising out of the evidence to whom would you give the benefit of that doubt?

MR. BLAKE: Objected to.

THE COURT: Objection sustained.

MR. MEYER: Exception.

THE COURT: These are all questions of law.

BY MR. MEYER:

Q Assuming that his Honor should charge you that in this case the prosecution or the People would have to prove the guilt of this defendant beyond a reasonable doubt, would you accept that admonition from the Court?

THE COURT: I exclude the question.

MR. BLAKE: He has already answered in a way that would cover all such evidence.

MR. MEYER: I except.

BY MR. MEYER:

Q Do you know Henry Cammeratt? A No, sir.

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Q Or Leonard Schalkahn? A No, sir.

Q Or Cornelius R. Glynn, a police officer? A No, sir.

Q You know nothing about this case? A No, sir.

Q So that if you took your seat as No. 2 in this jury box you would decide this case upon the evidence and upon the evidence alone? A Yes, sir.

Q You have no prejudice against this defendant of any kind at the present time? A No, sir; none whatever.

MR. MEYER: He is satisfactory of the defense.

(The juror is sworn.)

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F R A N K D O W, being duly sworn and examined as to his qualifications as a juror, testified as follows:

D i r e c t E x a m i n a t i o n:

BY MR. BLAKE:

Q Do you know Mr. Meyer, Mr. Dow? A I do not.

Q Do you know of any reason why you could not sit as a juror in this case? A No.

MR. BLAKE: Challenge withdrawn.

C r o s s E x a m i n a t i o n:

BY MR. MEYER:

Q You have heard the defendant described as George Dawrow otherwise called Dorsey Doyle, haven't you, sir?

A Yes, sir.

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Q And would the fact that he has been so described of itself create any prejudice in your mind affecting his guilt or innocence? A No, sir.

Q It has created none? A No, sir.

Q Did you hear the questions that I put the other two gentlemen who have been selected, in reference to the indictment charging him, describing him as George Darrow?

A I have, most of them.

Q Have you served before as a juror in criminal cases?

A Only on this term.

Q During this term? A Yes, sir.

Q Have you served before as a juror in any other court?

A Yes, sir.

Q In the civil courts? A Yes, sir.

Q For a number of years? A Oh, once or twice.

Q I take it for granted that you know what the duties of a juror are? A I do.

Q Did I understand you to say that you did heretofore serve on a jury in this term? A Yes, sir; the first day.

Q You served on the first day? A Yes, sir.

Q Of the term? A Yes, sir.

Q Do you know a person called Henry Cammeratt or Leonard Schalkahn? A No, sir.

Q Or Cornelius R. Glynn? A No, sir.

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Q Assuming that the defendant in this case did not take the witness stand, would that fact of itself create any prejudice in your mind?

THE COURT: Excluded.

MR. MEYER: Exception.

THE COURT: There is no question as to the intelligence qualification of this gentleman, is there, Mr. Meyer?

MR. MEYER: No, sir.

BY THE COURT:

Q Would you obey all the instructions of the Court on the law of the case? A I would, sir.

MR. MEYER: I will put the question so that I may have a ruling.

BY MR. MEYER:

Q Assuming, Mr. Dow, that the defendant in this case should not take the witness stand, and his Honor should instruct you as matter of law that the defendant may be a witness in his own behalf, but his neglect or refusal to testify does not create any presumption against him, you would obey that admonition and instruction from the Court, wouldn't you?

MR. BLAKE: Objected to.

THE COURT: Excluded.

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MR. MEYER: Exception.

THE COURT: It is excluded on the ground among others that the witness has already stated that he will obey the instructions of the Court on questions of law, and that being so, the proposition contained in counsel's question involving a question of law in an assumed instruction by the Court, it would be the duty of the juror to obey such instruction.

MR. MEYER: Your Honor will give me an exception to your Honor's definition of the question as propounded.

BY MR. MEYER:

Q Do you know of any reason why if you were selected as a juror in this case you could not give this defendant a fair and impartial trial? A I do not, no.

Q And if so selected you would do it? A Certainly.

Q Who do you understand to be the judges of the fact?

A The jury.

Q And his Honor with reference to the law? A Yes, sir.

Q Do you know what the construction of the word "reasonable doubt" means?

MR. BLAKE: Objected to.

THE COURT: I will allow him to answer yes or no.

A Yes, sir; I do.

BY MR. MEYER:

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Q You do? A Yes, sir.

Q Now, assuming that his Honor should charge you, as matter of law, that the defendant is entitled to the benefit of every fair and reasonable doubt arising out of the evidence, or any portion or branch of the case, you would take that admonition from the Court, or instruction from the Court?

MR. BLAKE: Objected to.

THE COURT: Objection sustained.

MR. MEYER: Exception.

BY MR. MEYER:

Q You don't know this defendant, do you? A I never saw him before, no.

Q And to your knowledge you are unacquainted with the facts or details of the case? A That's right.

Q You haven't heard it discussed in court? A No.

Q So that your mind is totally free and unbiased? A It is.

MR. MEYER: The defendant is satisfied with the juror.

(The juror is sworn.)

PATRICK J. REILLY, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. BLAKE:

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Q Mr. Reilly, are you acquainted with Mr. Meyer, the counsel for the defendant? A No, sir.

Q Do you know of any reason why you could not sit as a juror in this case? A No, sir.

MR. BLAKE: Challenge withdrawn.

C r o s s E x a m i n a t i o n:

BY MR. MEYER:

Q I didn't get your name. A Patrick J. Reilly.

Q What is your business, Mr. Reilly? A Wholesale liquor dealer.

Q Where? A 209 West Nineteenth Street, New York.

Q Have you ever served before as a juror? A Yes, sir.

Q In any of the courts? A Yes, sir.

Q In which court? A Right with his Honor here about two years ago.

Q Have you also served as a juror in civil courts? A No, sir.

Q So that I take it that you are thoroughly familiar with the duties of a juror? A I know a little about it.

Q You have heard the defendant described here as George Darrow otherwise called Dorsey Doyle, have you?

A Yes, sir.

Q And you recollect when you were sworn to be examined as a juror the Clerk swore you under that name? A Yes, sir.

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Q The indictment charges him with a crime under that name, George Darrow otherwise called Dorsey Doyle. A Yes, sir.

Q Now, Mr. Reilly, would that fact of itself, that he is so described in this indictment create any prejudice in your mind as against this defendant? A Not that I know of, no.

Q Well, would it as matter of fact? A No.

Q It would not? A No.

Q Are you positive about that?

MR. BLAKE: Objected to, as already answered.

THE COURT: I will allow him to answer?

A Yes, sir.

BY THE COURT:

Q It would not create any prejudice in your mind? A No, sir.

BY MR. MEYER:

Q Are you sure about that? A Positive.

Q You are quite positive that if you went in the jury box with your fellow jurors the fact that this gentleman is described as George Darrow otherwise called Dorsey Doyle would create no prejudice against him if you were so selected? A No.

Q Assuming that in this case the defendant did not take the witness stand and his Honor should charge you, as matter of law, that the defendant in all cases may testify in his

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own behalf as a witness but his refusal or neglect does not create any presumption against him, would you take such instructions from the Court and obey them?

THE COURT: Before the juror answers that question----

BY THE COURT:

Q You say that you understand the duties of a juror, Mr. Reilly? A I know a little about them, your Honor.

Q You say that you know that it is the privilege of a juror to pass upon the questions of ~~the~~ fact in the case?

A Yes, sir.

Q And that it is the Court's duty to pass upon the questions of law? A Yes, sir.

BY MR. MEYER:

Q And would you obey the Court's instructions on all questions of law in the case?

THE COURT: I exclude the question.

MR. MEYER: And I except. And I also except to the last two questions of your Honor and ask that the answers of the juror be excluded, stricken out.

THE COURT: Motion denied.

MR. MEYER: Exception. And the defendant challenges peremptorily.

(The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure

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and took a recess until two o'clock.)

AFTER RECESS.

CHARLES FREDENBERG, being duly sworn and examined as to his qualifications as a juror, testified as follows:

D i r e c t    E x a m i n a t i o n :

BY MR. BLAKE:

Q    Are you acquainted with the counsel for the defendant?

A    I am not.

Q    Do you know of any reason why you should not sit as a juror in this case?    A    No, sir.

MR. BLAKE:    Challenge withdrawn.

C r o s s    E x a m i n a t i o n :

BY MR. MEYER:

Q    Mr. Fredenberg, have you served as a juror during this term?    A    No, sir.

Q    You have not?    A    No, sir.

Q    In any court prior to this term?    A    During this term?

Q    No. Prior.    A    No.

Q    Then your only jury duty has been during this term?

A    Yes, sir.

Q    You have not served as a juror in any other court?

A    No, sir.

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Q May I ask your age? A Twenty-nine.

Q During this term have you served on some of the juries?

A Yes, sir; I have.

Q You have heard the defendant described as George Darrow otherwise called Dorsey Doyle, have you not? Does the fact that he is so described in the indictment upon which he is now being tried create any prejudice in your mind, or would it create any prejudice in your mind?

A It would not.

Q The defendant is indicted for an attempt at grand larceny in the first degree. Would the fact that the Grand Jury have found such an indictment of itself create any prejudice in your mind detrimental to the defendant's interests? A No, sir.

Q So that, so far as the defendant and the manner in which he is described and the charge that is now pending are concerned, none of those elements have created any prejudice detrimental to his interest? A No, sir.

Q Assuming that the defendant declined to take the witness stand and his Honor should charge you that the defendant in all cases may testify as a witness in his own behalf but his neglect or refusal to testify does not create any presumption against him, would you adopt that suggestion at the admonition of the Court? A I would.

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Q If his Honor should so charge you that that was the law, you would be governed by his Honor's construction of the law?

A I would.

Q And his charge in reference to it? A Yes, sir.

Q With reference to the facts you understand that you are the sole judges of the facts? A Yes, sir; I do.

Q Assuming that a reasonable doubt should arise both upon the law and the facts in the case to whom would you give the benefit of that doubt?

THE COURT: Excluded.

MR. MEYER: Exception.

BY MR. MEYER:

Q Assuming that his Honor should charge you in this case that if you had any reasonable doubt arising from the law or out of the law and upon the facts, that that would be the property of the defendant and that he would be entitled to it, would you obey the instruction of the Court?

MR. BLAKE: Objected to.

THE COURT: Objection sustained.

MR. MEYER: Exception.

BY MR. MEYER:

Q Do you know anybody that is connected with this case?

A I do not.

Q You have not heard it discussed at all? A I have not.

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Q Do you know of any reason why if selected as a juror you could not give this defendant a fair and impartial trial?

A No, sir.

Q And if selected you would? A I would.

MR. MEYER: The juror is satisfactory to the defense.  
(The juror is sworn.)

JAMES E. SIMS, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. BLAKE:

Q Mr. Sims, do you know the counsel for the defendant?

A No, sir.

Q Are you acquainted with him? A No, sir.

Q Do you know of any reason why you should not be selected as a member of this jury to try this case? A No, sir.

MR. BLAKE: Challenge withdrawn.

Cross Examination:

BY MR. MEYER:

Q Do you know Judge Blake, the prosecuting attorney?

A No, sir.

Q Or anybody connected with the District Attorney's office?

A No, sir.

Q I mean personally. A No, sir.

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Q You have met those in charge of this term where your duties as a juror are?

MR. BLAKE: Objected to.

BY MR. MEYER:

Q You have met the District Attorneys having charge of this Part while serving as a juror? A Yes.

Q This defendant is indicted for an attempt at grand larceny in the first degree, and the Grand Jury have found such an indictment, would the fact that the Grand Jury did find such an indictment against this defendant create a prejudice in your mind affecting the guilt or innocence of the defendant on trial? A No, sir; none whatever.

Q None? A No, sir.

Q You have heard him described as George Darrow otherwise called Dorsey Doyle, would the fact that he has been so described and designated in court create any prejudice in your mind against the interests of this defendant?

A No, sir.

Q It has made no impression? A No, sir.

Q And it has made no effect? A No, sir.

Q Assuming that the defendant did not take the witness stand in his own behalf, and his Honor should charge you no presumption can arise against him by reason of that fact, you would obey the admonition of the Court?

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THE COURT: Excluded.

A I don't understand that question at all.

BY THE COURT:

Q Let me ask you here: do you understand that the jurors function is to pass upon the facts in the case?

A Yes, sir.

Q Do you understand that? A Yes, sir.

Q And do you understand that the judge is to instruct the jury upon the law and that it is the juror's duty to accept and obey his instructions on the law; you understand that?

A Yes, sir.

Q Now, if accepted as a juror, would you obey the instructions of the judge in all questions of law? A I should do so most undoubtedly.

BY MR. MEYER:

Q And particularly that instruction?

MR. BLAKE: Objected to.

MR. MEYER: I want a ruling most undoubtedly.

BY MR. MEYER:

Q Have you served as a juror before? A In several courts.

Q More than one term? A For the last twenty-five years off and on.

Q And you believe that you are thoroughly familiar with the duties of a juror? A Yes, sir.

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Q And do you know of any reason why if selected as a juror in this case you could not render a fair and impartial verdict arising upon the evidence? A I don't, no.

Q And if so selected you would? A Yes, sir.

MR. MEYER: The defendant is satisfied.

(The juror is sworn.)

HENRY A. KAPP, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. BLAKE:

Q Mr. Kapp, are you acquainted with counsel for the defendant? A No, sir.

Q Do you know of any reason why you could not serve as a juror in this case? A No, sir.

MR. BLAKE: Challenge withdrawn.

Cross Examination:

BY MR. MEYER:

Q Have you served prior to this term as a juror in any court? A Yes, sir; Supreme Court, Trial Term, Part III.

Q When? A About a year and a half ago.

Q Do you recollect the judge? A Yes, sir.

Q Who was it? A Justice Fitzgerald.

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Q And have you served as a juror during this term?

A On Monday.

Q Do you know Henry Cammeratt? A No, sir.

Q Or Leonard Schalkahn? A No, sir.

Q Or Cornelius Glynn? A No, sir.

Q You know nothing of the facts in this case? A No, sir.

Q And have never heard them discussed? A No, sir.

Q The defendant is indicted for an attempted grand larceny in the first degree, attempting to take property in the night time, would the fact that the Grand Jury found such an indictment against him create any prejudice in your mind? A No, sir.

Q Either for or against the defendant? A No, sir.

Q You have heard him described and designated as George Darrow otherwise called Dorsey Doyle, would the fact that he has been so designated in this indictment create any prejudice or does it create any prejudice in your mind?

A I think not.

Q Well, are you positive about it? A Well, I don't know, I think I will be kind of prejudiced against a man going by two names.

Q And the fact that he has been so designated and described in this indictment you think would create a prejudice and has created a prejudice? A Yes, sir; I think it might.

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BY THE COURT:

Q Is it such a prejudice as would prevent your giving him a fair and impartial trial on the evidence? A No, sir; not if the facts were proved.

Q Now, you know that as a juror you will be sworn to give your verdict on the evidence before you and on nothing else.

Now, can you say whether or not a designation of this defendant by one name and an alias as another name, would so prejudice your mind as to prevent you from giving him a fair and impartial trial upon the evidence? A No, sir; I don't think it would. I think if the facts were proved truly that the man was not proved guilty, I would give him a square answer.

MR. MEYER: I still submit the challenge under your Honor's question.

BY THE COURT:

Q Have you formed any opinion on what you have heard or in any way, whether this defendant's name or anything else would prevent you from giving him a fair and impartial trial upon the evidence? A No, sir.

THE COURT: I overrule the challenge.

MR. MEYER: Exception.

BY MR. MEYER:

Q If selected as a juror you would go into this jury box,

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because the man has been designated and described as----

THE COURT: I will not allow the question to be reopened. You submitted the challenge and I have passed upon it.

MR. MEYER: Does your Honor say that I can't go into it any further? Do I understand your Honor to so rule?

THE COURT: Yes.

MR. MEYER: I except. I have no further questions. The defendant challenges peremptorily.

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LEOPOLD ARMBRUSTER, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. BLAKE:

Q Mr. Armbruster, do you know of any reason that would prevent you from sitting as a juror in this case? A No, sir.

Q Are you acquainted with the counsel for the defendant?

A No, sir.

MR. BLAKE: Challenge withdrawn.

Cross Examination:

BY MR. MEYER:

Q Mr. Armbruster, will you keep your voice up so that I

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can hear you, please. A Yes, sir.

Q Have you served before as a juror? A No, sir.

Q In any court? A No, sir.

Q This is your first term? A First term.

Q Where do you live, Mr. Armbruster? A 901 Brook Avenue.

Q It is above the bridge? A Yes, sir.

Q In Tremont? A In Melrose.

Q Have you heard the defendant on ~~the~~ trial designated as George Darrow otherwise called Dorsey Doyle? A Yes, sir.

Q You have heard him described in court in that way to-day?

A Yes, sir.

Q And would the fact that he has been so described and designated upon the indictment create any prejudice in your mind detrimental to his interests? A No, sir.

Q It would create no impression? A Not at all.

Q Would the fact that the Grand Jury have found an indictment charging him with an attempt at grand larceny in the first degree create any prejudice or impression whatever upon your mind? A No, sir.

Q Assuming that the defendant did not take the witness stand and his Honor should charge you that the defendant in all cases may testify as a witness in his own behalf, but his neglect or refusal to testify does not create any presumption against him, would you take such admonition from the

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Court and instruction on the law? A Yes, sir; I would.

Q And you would be governed by it? A Be governed by it.

Q And you know that the jury are the judges of the facts?

A Yes, sir.

Q So that you would decide the case upon the facts leaving the Court to charge you upon the law? A Upon the law.

Q Do you know of any reason that exists now or that can hereafter exist during the trial of this case that would prevent you from being a fair and impartial juror on both sides? A No, sir.

Q If selected as a juror you will discharge your duty in a conscientious and faithful manner? A I will.

MR. MEYER: I believe it. You may take the sixth seat. Challenge withdrawn.

(The juror is sworn.)

M I C H A E L B. C O M M E R F O R D, being duly sworn and examined as to his qualifications as a juror, testified as follows:

D i r e c t E x a m i n a t i o n:

BY MR. BLAKE:

Q Mr. Commerford, do you know of any reason that would prevent you from acting as a juror in this case?

A Not that I know of, sir.

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Q Do you know of any? A No, sir.

Q Are you acquainted with the counsel, Mr. Meyer?

A No, sir.

Q Counsel for the defendant. A No, sir.

MR. BLAKE: Challenge withdrawn.

C r o s s E x a m i n a t i o n :

BY MR. MEYER:

Q Have you served as a juror often in any one of our courts?

A I served every year----

Q In the Supreme Court? A Yes, sir.

Q How long ago? A A couple of years ago.

Q Have you heard the defendant designated in court here by the name of George Darrow otherwise called Dorsey Doyle?

A No, sir.

Q Well, assuming that the defendant was designated and described under this indictment as George Darrow otherwise called Dorsey Doyle, would the fact that he has been so designated and described in this indictment create any prejudice in your mind? A No, sir.

Q It would not? A No, sir.

Q Are you positive about that, Mr. Commerford? A Yes, sir.

Q You are quite positive that you can take your seat in this jury box and that his designation and description as I repeated to you will create no prejudice and does not create

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any prejudice? A No, sir.

Q Would the fact that the Grand Jury has found an indictment charging him, this defendant, with grand larceny in the first degree, create any prejudice in your mind?

A No, sir.

Q You understand that a man must be first indicted to be placed on trial, don't you? A Yes, sir.

Q Assuming that his Honor should charge you that the defendant in all cases may testify as a witness in his own behalf but his neglect or refusal to testify does not create any presumption against him, you would take that admonition or instruction from the Court?

MR. BLAKE: Objected to.

THE COURT: Excluded.

MR. MEYER: Exception.

BY MR. MEYER:

Q And you would be governed by his interpretation of the law all through this trial, wouldn't you? A Yes, sir.

MR. MEYER: Challenged peremptorily by the defendant.

EMIL SPINDLER, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

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BY MR. BLAKE:

Q Mr. Spindler, do you know of any reason why you cannot serve as a juror in this case? A No, sir.

Q Sir? A No, sir.

Q Are you acquainted with the counsel for the defendant?

A No, sir.

MR. BLAKE: Challenge withdrawn.

Cross Examination:

BY MR. MEYER:

Q Are you acquainted with Judge Blake, the prosecuting attorney? A No, sir.

Q Have you heard this case discussed? A No, sir; only just now.

Q Were you here when some of the other jurors were examined and selected? A Yes, sir.

Q And you were present during the swearing in of these six gentlemen when the defendant George Darrow was described as George Darrow otherwise called Dorsey Doyle? A Yes, sir.

Q You heard him so designated? A Yes, sir.

Q Would the fact that he is so described and designated--- and that is the fact that he is so described and designated---create any prejudice in your mind? A I don't think so.

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Q Well, you ought to know, sir. A It would not create any impression.

Q Has it created any prejudice?

BY THE COURT:

Q As against the defendant? A No, sir.

BY MR. MEYER:

Q Are you sure about that? A Yes, sir.

Q And do you think that you could take your seat in the jury box without any prejudice against him on that account?

A Yes, sir.

Q And the fact that he is so designated has created no prejudice in your mind against him? A No, I don't think it would, I am sure it would not.

Q Well, is it a "think"? Or are you sure about that?

A I am sure about it.

Q And so under the solemnity of your oath you believe that you could take your seat in the jury box and not be prejudiced by the description as I have read it to you? A Yes, sir.

Q And would the fact that the Grand Jury have indicted him for attempted grand larceny in the first degree create any prejudice in your mind against him? A No, sir.

Q Do you know that his Honor is the sole judge of the law?

A Yes, sir.

Q And the jurors are the sole judges of the facts? A Yes,

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sir.

Q Assuming that his Honor should charge you that the defendant in all cases may testify as a witness on his own behalf, but the neglect or refusal to testify does not create any presumption against him, would you take such instruction from the Court?

MR. BLAKE: Objected to.

THE COURT: Objection sustained.

MR. MEYER: Exception.

BY MR. MEYER:

Q Assuming that the defendant did not take the witness stand and his Honor should charge you that no presumption can arise against him by reason of that fact, would you take the admonition or instruction of the Court upon that subject?

MR. BLAKE: Objected to.

THE COURT: Objection sustained.

MR. MEYER: Exception.

Q Assuming that in the trial of this case, after the prosecution have concluded, the defendant should rest and not call any witnesses and that his Honor should charge you, as matter of law, that he was not bound to take the witness stand and that no presumption arises against him on that account, would you take that instruction from the Court?

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MR. BLAKE: Objected to.

THE COURT: Objection sustained.

MR. MEYER: Exception.

MR. MEYER: The defendant challenges peremptorily.

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PATRICK E. PARKER, being duly sworn and examined as to his qualifications as a juror, testified as follows

Direct Examination:

BY MR. BLAKE:

Q Mr. Parker, are you acquainted with the counsel for the defendant? A No, sir.

Q Do you know of any reason why you may not act as a juror in this case? A No, sir.

MR. BLAKE: Challenge withdrawn.

Cross Examination:

BY MR. MEYER:

Q Have you served as a juror before, Mr. Parker?

A Not before this term.

Q Not in any court? A No, sir.

Q This defendant is charged with an attempt to commit grand larceny in the first degree. Would the fact that the Grand Jury found such an indictment create any prejudice in your mind? A No, sir.

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Q Would the fact that he has been described and designated under this indictment as George Darrow otheewise called Dorsey Doyle create any prejudice in your mind? A No, sir.

Q None whatever? A No, sir.

Q Assuming that the defendant did not take the witness stand to testify in his own behalf and his Honor should instruct you that his neglect or refusal so to do does not create any presumption against him, would you take such admonition or instruction from the Court?

MR. BLAKE: Objected to.

THE COURT: I sustain the objection, subject to this 'witness' answers to the questions I am now about to put.

BY THE COURT:

Q Mr. Parker, are you aware that the jurors are the sole and exclusive judges of the facts? A Yes, sir.

Q And that the Court instructs the jury as to the law?

A Yes, sir.

Q And that the jury are bound to take the instructions of the Court as to the law and obey them implicitly? A Yes, sir.

Q Would you accept such instructions on the law?

MR. MEYER: These questions are objected to.

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THE COURT: Objection overruled.

MR. MEYER: Exception.

BY MR. MEYER:

Q Do you know whether if selected as a juror you could give the defendant a fair and impartial trial? A Yes, sir. But the defendant would have to take the stand.

Q Would that be an objection in your mind? A It would be.

Q And would you carry that objection into your deliberation when you entered the jury room if the defendant did not take the witness stand? A Well, that would depend upon the evidence.

Q And would you carry that objection into your deliberation when you entered the jury box if the defendant did not take the witness stand? A Well, that is according to the evidence.

Q Well, assuming that you have heard the evidence as you will hear it and the defendant did not take the witness stand, would you eradicate that objection when you entered the jury room for the purpose of discussing his guilt or innocence? A No, sir; I don't think I would.

Q Well, what do you mean by "No, sir"? You would or you wouldn't, which is it? A I wouldn't.

Q You would carry it into your discussion? A Yes, sir.

Q And argue with your fellow jurors as to the reason why he

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did not take the witness stand?

THE COURT: I think that is going beyond the limit.

I exclude the question.

MR. MEYER: Well, I submit the challenge.

BY THE COURT:

Q Mr. Parker, you have said that you would obey the instructions of the Court on the law? A Yes, sir.

Q Now, if the Court should instruct you that it was the defendant's right to take the witness stand if he so chose to do, and if he did not see fit to do so his failure to testify in his own behalf should not be taken to his prejudice in any way, would you obey that instruction of the Court? A Yes, sir.

Q You would consider the evidence without regard to his going on the witness stand or failing to do so? A I don't thoroughly understand it.

Q Now, let me see. This defendant has the right to go upon the witness stand if he likes. Do you understand that? A Yes, sir.

Q If he does not go on the witness stand in his own defense the law says that it should not prejudice a juror's mind against him because he does not go on the witness stand.

A Yes, sir.

Q Do you understand that? A Yes, sir.

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Q That is the law, and you say you would obey the instructions of the Court on the law? A Yes, sir.

Q And if you should be selected as a juror and it should turn out later on in this trial that the defendant did not go on the stand as a witness in his own behalf, and you were instructed by the Court that his failure to do so ought not to affect your consideration of the case, would you obey that instruction? A I don't understand, sir.

THE COURT: I sustain the challenge.

BENJAMIN E. DOSTER, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. BLAKE:

Q Mr. Doster, are you acquainted with counsel for the defendant, Mr. Meyer? A I am not sir.

Q Do you know of any reason that would prevent your serving as a member of this jury during this case? A No, sir.

MR. BLAKE: Challenge withdrawn.

Cross Examination:

BY MR. MEYER:

Q What is your business, sir? A I am a salesman, sir.

Q With whom? A Arnold Constable & Company, 81 Broadway.

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Q You have heard the defendant George Darrow otherwise called Dorsey Doyle designated and described under such name in court, haven't you? A I have.

Q Would the fact that he has been so described and designated create any prejudice in your mind? A Yes, sir; somewhat.

Q Do you understand my question? A I do.

Q So that the designation and description of George Darrow otherwise called Dorsey Doyle does create some prejudice, and if witnesses were sworn and examined and the Clerk of this Court were to designate and describe the defendant undersuch name, you would carry that prejudice into the jury box, wouldn't you? A I would not.

Q How would you get rid of it? A Well, as I understand you I am not prejudiced as I have heard questions asked the other witnesses.

Q Well, I don't care to put any catch questions. All the defendant wants is a fair and impartial trial. Is that your answer or definition of it? A I would like to have the question repeated.

Q You have said in answer to my question that because the defendant is designated as George Darrow otherwise called Dorsey Doyle that would create a prejudice in your mind against him? A The two names you mean of the one man?

BY THE COURT:

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Q If it should turn out to be so? A That the one man is going under two names.

Q No. The point that counsel seeks to elicit from you is this, to find out the condition of your mind. The defendant has been designated as one name otherwise Dorsey Doyle. Now, would that description of itself prejudice you against him so that you could not give him a fair and impartial trial on the evidence in the case? A Oh, if the man was using two names, sir, if the man ~~was~~ assumed two names.

Q No, that is not the question. The question is: Would the designation now given---- A Not now, no.

Q You do not know what may appear in the evidence. It may appear in evidence that this name is all wrong. The counsel wants to know the condition of mind that you are now in regarding the present description of the defendant by two names, and he asks you would that description of the defendant by two names prejudice you so that it would interfere with your giving him a fair and impartial trial upon the evidence and upon the evidence alone? A Yes, sir.

MR. MEYER: I submit the challenge.

THE COURT: I sustain the challenge.

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WILLIAM L. CALDWELL, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. BLAKE:

Q Do you know of any reason, Mr. Caldwell, that would prevent your serving as a juror in this case? A I do not.

Q Are you acquainted with the counsel for the defendant?

A No, sir.

MR. BLAKE: Challenge withdrawn.

Cross Examination:

BY MR. MEYER:

Q Have you served, Mr. Caldwell, prior to this term, as a juror? A On Monday.

Q And have you ever served before as a juror in any court?

A No, sir.

Q Are you a resident of the City and County of New York?

A Yes, sir.

Q And reside where? A 63 Bank Street.

Q In the Ninth Ward of this City? A Yes, sir.

Q And your business? A It is glass staining.

Q The defendant on trial has been designated as George Darrow otherwise called Dorsey Doyle, and so described in the indictment for which he is now on trial, would the fact that

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~~he has been so designated and described and indicted under~~  
that name create any prejudice in your mind? A No, sir.

Q It would have no weight with you at all, would it?

A No, sir.

Q So that if you were selected as a juror in the trial of  
this case you would enter the jury box with reference to that  
fact with a mind unbiased? A Yes, sir.

Q The fact that the defendant has been indicted by the Grand  
Jury for an attempt to commit grand larceny in the first  
degree would not create any prejudice in your mind?

A No, sir.

Q You understand that before a man can be placed on trial  
before a petit jury the Grand Jury must find an indictment?

A Yes, sir.

THE COURT: That is a matter of course. There is  
no use of wasting time in answering those ques-  
tions.

BY MR. MEYER:

Q Assuming that his Honor should charge you as a matter of  
law in this case that the defendant in all cases may tes-  
tify as a witness in his own behalf and his neglect or re-  
fusal to testify does not create any presumption against  
him, you would obey that instruction upon the law by the  
Court?

MR. BLAKE: Objected to.

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THE COURT: Wait a moment.

BY THE COURT:

Q Are you aware that the jurors are the exclusive judges of the facts? A Yes, sir.

Q And that the judge is the exclusive judge of the law?

A Yes, sir.

Q And that the jurors are bound to accept his instructions upon the law? A Yes, sir.

Q And would accept such instructions upon the law of the case? A Yes, sir.

THE COURT: I exclude the question.

MR. MEYER: Exception.

BY MR. MEYER:

Q Do you know of any reason why, if selected as a juror, you could not give this defendant a fair and impartial trial?

A I do not.

Q And would you do so if selected? A Certainly.

MR. MEYER: Challenge withdrawn.

(The juror is sworn.)

L U D W I G H A H N, being duly sworn and examined as to his qualifications as a juror, testified as follows:

D i r e c t E x a m i n a t i o n:

BY MR. BLAKE:

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Q Mr. Hahn, are you aware of any reason why you cannot serve as a juror in this case? A I am.

Q You are aware of some reason? A Yes, sir.

Q Well, I will ask you-----

BY THE COURT:

Q What is it? A The assumed name of the defendant in the case.

Q Well you do not know that it is an assumed name, do you? This name here is a matter of description---these two names. You do not know whether it is true or not. A Well, of course I don't know.

Q Well, of course that should not prejudice a man's mind because there is nor proof of it. It is simply reading out the title of a paper. That should not prejudice a man's mind. It is simply calling out the title of a criminal action, the People v. John Smith otherwise known as John Jones. Do you think that you could try this case fairly and impartially without regard to this designation by name, try it upon the evidence alone? A I could try the case on the evidence alone, but I am rather prejudiced on account of both names being described here in the indictment.

Q But that is not proved. A Well, if it is not proven I will render a verdict according to the facts.

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Q And on the facts before you and upon nothing else?

A Yes, sir.

Q Without regard to this calling of two names? Could you do that? A I think I could.

Q Well, are you acquainted with counsel for the defendant?

A No, sir.

MR. BLAKE: Challenge withdrawn.

MR. MEYER: I submit the challenge under the testimony as adduced now.

BY THE COURT:

Q Do you believe that you could give this defendant a fair and impartial trial without any regard whatever to his being called by two names on the indictment as read by the clerk? A I would.

THE COURT: I overrule the challenge.

MR. MEYER: Exception.

Cross Examination:

BY MR. MEYER:

Q Assuming that----

THE COURT: Oh, no, you have submitted your challenge.

MR. MEYER: I submitted the challenge of the District Attorney, and asked for a ruling upon it.

THE COURT: Oh, no.

MR. MEYER: Well, I want to get the record straight.

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The District Attorney withdrew his challenge---I submitted, I mean, his challenge under the testimony adduced under Mr. Blake's challenge.

THE COURT: Under Mr. Blake's questions?

MR. MEYER: Yes, under his questions.

THE COURT: And the challenge is overruled.

MR. MEYER: Can I examine him under the challenge of general disqualification?

THE COURT: It is not in order but I will allow it.

BY MR. MEYER:

Q Now, Mr. Juror, or Mr. Hahn, do you know that the defendant, designated and described as George Darrow otherwise called Dorsey Doyle, has been indicted under such designation and description in ~~xxx~~ an indictment found in this court on the 26th day of February, 1901? A I don't know it.

Q Assuming that I have read correctly from the record of this court, and assuming that it should appear that there is such an indictment on file in this court upon which this indictment is now on trial, do I understand you to say or did I understand you to say that that of itself created a prejudice in your mind?

THE COURT: Excluded as not pertinent to this challenge..

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MR. BLAKE: I object. I submit that the counsel has submitted his challenge on that line of examination.

THE COURT: Excluded.

MR. MEYER: Exception.

BY MR. MEYER:

Q Assuming that the Grand Jury have found an indictment against the defendant for attempted grand larceny in the first degree under the indictment of George Darrow or Dorsey Doyle, would that fact of itself prejudice you against the defendant?

THE COURT: I now find as matter of fact on the appearance of the juror and on all his answers that he is qualified to serve as a juror under the section of the code pertaining to this subject.

MR. MEYER: And to that we except, your Honor, and challenge peremptorily.

PETER SCHAUS, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. BLAKE:

Q Mr. Schaus, are you acquainted with the counsel for the defendant, Mr. Meyer? A No, sir.

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Q Do you know of any reason that would prevent you from serving as a juror in this case? A No, sir.

Q You know of no reason? A No, sir.

MR. BLAKE: Challenge withdrawn.

THE COURT: What do you challenge for, Mr. Meyer.

MR. MEYER: General disqualification.

C r o s s   E x a m i n a t i o n :

BY MR. MEYER:

Q Have you served as a juror before? A Yes, sir.

Q In criminal cases? A No, sir.

Q Do you know of any reason why if selected as a juror in this case you could not give the defendant a fair and impartial trial? A I do not.

Q Do you know Henry Cammeratt? A No, sir.

Q Or Leonard Schalkahn? A No, sir.

Q Or Cornelius Glynn? A No, sir.

Q Would the fact that the Grand Jury indicted the defendant for grand larceny create any prejudice in your mind?

A No, sir.

Q Or that he is described and designated as George Darrow otherwise called Dorsey Doyle? A No, sir.

Q It does not, does it? A No, sir; it does not.

Q Do you know that the judge has the sole and exclusive province as to the law with reference to instructing the

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jury and that the jury are the judges of the facts?

A Yes, sir.

Q And assuming that the defendant did not take the witness stand in his own behalf and his Honor should instruct you as matter of law that no presumption can arise against him in view of such fact, would you take such instruction from the Court?

MR. BLAKE: Objected to.

THE COURT: Objection sustained.

MR. MEYER: Exception.

BY MR. MEYER:

Q Do you know of any reason why, if selected as a juror you could not give this man a fair and impartial trial?

A I do not.

Q And would you if so selected? A I would.

MR. MEYER: He is satisfactory to the defendant.

(The juror is sworn.)

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B E R N A R D V O S S, being duly sworn and examined as to his qualifications as a juror, testified as follows:

D i r e c t E x a m i n a t i o n:

BY MR. BLAKE:

Q Mr. Voss, are you acquainted with counsel for the defendant, Mr. Meyer? A I am not.

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Q Do you know of any reason that would prevent you from acting as a juror in this case? A No.

MR. BLAKE: Challenge withdrawn.

Cross Examination:

BY MR. MEYER:

Q You have been present in court-----

THE COURT: What is your challenge, Mr. Meyer?

MR. MEYER: General disqualification.

BY MR. MEYER:

Q You have been present in court during the examination of the other jurors? A Yes, sir.

Q And have listened to such examination? A Yes, sir.

Q Do you know of any reason why, if selected as a juror in this case, you could not give this defendant a fair and impartial trial? A No.

Q You have thoroughly understood all the questions put to the other gentlemen selected? A Yes, sir.

Q And if selected as a juror in this case you would give this defendant a fair and impartial trial? A Yes, sir; I would.

MR. MEYER: Satisfactory to the defense.

(The juror is sworn.)

-----  
JOHN VALLEY, being duly sworn and examined as to

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his qualifications as a juror, testified as follows:

D i r e c t   E x a m i n a t i o n:

BY MR. BLAKE:

Q   Mr. Vallely, are you acquainted with Mr. Meyer, the counsel for the defendant?   A   No, sir.

Q   Do you know of any reason that would prevent you from serving as a juror in this case?   A   None.

MR. BLAKE:   Challenge withdrawn.

MR. MEYER:   Challenged for general disqualification.

C r o s s   E x a m i n a t i o n:

BY MR. MEYER:

Q   Have you ever served before as a juror?   A   Yes, sir.

Q   In a criminal court?   A   Yes, sir.

Q   How long ago?   A   This term.

Q   This term?   A   Yes, sir.

Q   Not before?   A   No, sir; not before.

Q   Ever in a civil court?   A   Yes, sir; in the civil court two years.

Q   And would the fact that the defendant has been designated as George Darrow otherwise called Dorsey Doyle and so described under this indictment create any prejudice in your mind?   A   No, sir.

Q   Or that the Grand Jury found an indictment against him for an attempt at grand larceny in the first degree?

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A No, sir.

Q You know the duty of the jury to be---that is that they are the sole judges of the facts? A Yes, sir.

Q And the Court administers the law? A Yes, sir.

Q And that you should take such instructions from the Court as to the law? A Yes, sir.

Q Do you know of any reason now why you could not serve as a fair and impartial juror in this case? A No, sir.

Q You have no prejudice in the matter? A No, sir.

Q And no opinion or impression as to his guilt or innocence?

A No, sir.

MR. MEYER: We are content.

(The juror is sworn.)

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D A N I E L R. K E N N E D Y, being duly sworn and examined as to his qualifications as a juror, testified as follows:

D i r e c t E x a m i n a t i o n:

BY MR. BLAKE:

Q Mr. Kennedy, are you acquainted with counsel for the defendant, Mr. Meyer? A No, sir.

Q Do you know of any reason that would prevent your serving as a ~~juror~~ member of this jury? A No, sir.

MR. BLAKE: Challenge withdrawn.

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Cross Examination:

BY MR. MEYER:

Q Mr. Kennedy, you were in court----

THE COURT: General disqualification?

MR. MEYER: General disqualification. Yes, I intended that. I would like to have it noted as to all challenges.

Cross Examination:

BY MR. MEYER:

Q You have been in court during the examination of the other jurors? A Yes, sir.

Q Those who have been selected and those who have been rejected---excused? A Yes, sir.

Q And you have listened to the questions that have been propounded? A Yes, sir.

Q And do you know of any reason---? A I do.

Q ---why you can't be a fair and impartial juror in this case?

A I do.

Q And what is it, sir? A The mere fact of his having two names.

BY THE COURT:

Q Well, how do you know that he has two names?

A Well, upon the indictment read by the Clerk.

Q Well, that may not be true. A That might be so. I

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have only formed that impression though.

Q But that may not be true. This is simply a designation of a particular individual, simply an indorsement upon the indictment, a designation in the indictment of a particular individual. Now, he is accused here of an attempt at a certain crime, not of having two names. Would you assume it as true simply because of what was here read out by the Clerk? A No, sir; I would simply go by the evidence.

Q Now, I ask you and I put the question that I know that the counsel would put to you under the circumstances: If you were accepted as a juror and sworn to try the issues in this case, would you be prejudiced against this defendant because you heard him designated here by one name and otherwise another name, in giving a verdict upon the evidence?

A I should do my duty, sir.

Q And well, what do you conceive to be your duty? I only want your impression or understanding. A Of course, the charge of the Court and the facts before the jury would, of course, control me, but there might be a little feeling there.

Q Now, would there arise such a prejudice in your mind from the fact of the defendant having been designated by two names here, in the Clerk's administration of the oath and counsels' questions, would that statement create such a

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prejudice in your mind as would prevent you from giving him a fair and impartial trial upon the sworn evidence in the case? A That would depend upon the evidence.

MR. MEYER: I submit the challenge.

THE COURT: I sustain the challenge.

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EMIL MEYER, being duly sworn and examined as to his qualifications as a juror, testified as follows:

D i r e c t    E x a m i n a t i o n :

BY MR. BLAKE:

Q Mr. Meyer, are you acquainted with Mr. Maurice Meyer, the counsel for the defendant? A No, sir.

Q You are not at all acquainted with him? A No, sir; I never saw him before I saw him here.

Q Do you know of any reason why you could not make a fair and impartial juror in this case? A No, sir.

MR. BLAKE: Challenge withdrawn.

C r o s s    E x a m i n a t i o n :

BY MR. MEYER:

Q You heard the questions put to the other jurors?

A Yes, sir.

Q Now, bearing those in mind, do you know of any reason why, if selected as a juror, you could not give this defendant a fair and impartial trial? A I would.

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Q And the fact that he is called by two names, George Darrow otherwise called Dorsey Doyle, in the indictment, would not affect your judgment of the evidence? A No, sir.

Q You would convict on the evidence and the evidence alone?

A Yes, sir.

Q And you have no impression now as to his guilt or innocence?

A None, sir.

MR. MEYER: We are content.

(The juror is sworn.)

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W A L T E R C. C A R R, being duly sworn and examined as to his qualifications as a juror, testified as follows:

D i r e c t E x a m i n a t i o n:

BY MR. BLAKE:

Q Mr. Carr, are you acquainted with the counsel for the defendant, Mr. Meyer? A I am not.

Q Do you know of any reason that would prevent you from serving as a juror in this case? A I do not.

MR. BLAKE: Challenge withdrawn.

C r o s s E x a m i n a t i o n:

BY MR. MEYER:

Q Mr. Carr, were you present during the morning session and this afternoon when the other jurors were examined?

A Yes, sir.

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Q You heard the questions? A I did.

Q Do you recollect the answers of the other jurors?

A Yes, sir.

Q Those that were disqualified or excused? A I do.

Q Do you know of any reason now after having heard all that has transpired why you could not give the defendant a fair and impartial trial? A I would like to state that, bearing in mind the questions and answers that have been given, that the designation or description of the defendant by two names does not in itself create any prejudice in my mind---may I go further?

THE COURT: No, that is the answer.

BY MR. MEYER:

Q But assuming that the indictment for which he is now on trial, does so designate and describe him, which indictment charges him with an attempted grand larceny in the first degree. Would that fact create any impression on your mind, that designation or description of itself?

A No, sir.

Q So that if the witnesses were sworn in this case and the defendant so described as George Darrow otherwise called Dorsey Doyle, that of itself does not create any prejudice?

A No.

Q Would the fact that he has been indicted under that descrip-

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tion, would it create any prejudice in your mind?

A No, sir.

Q Now, assuming, Mr. Carr, that designation and description are given and that the defendant should not take the stand as his Honor will instruct you he has a perfect right to do

BY THE COURT:

Q His failure to do so should not create any prejudice against him.

BY MR. MEYER:

Q Would you be prejudiced in the face of any instruction from the Court? A No, sir.

Q And so that you could enter the jury box entirely without impression or opinion in the case? A Yes, sir.

Q And upon the evidence you would render a perfectly just verdict? A Yes, sir.

Q Irrespective of how he is described in the indictment?

A Yes, sir; irrespective of any description or designation.

MR. MEYER: We are content.

(The juror is sworn.)

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THE PEOPLE'S CASE.

MR. MEYER: I ask your Honor to exclude all the witnesses for the People while the complainant is testifying.

MR. BLAKE: And I ask that all the witnesses be excluded.

THE COURT: Yes; on both sides.

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

Direct Examination:

BY MR. BLAKE:

Q Mr. Cammeratt, please speak loud enough for the twelfth gentleman to hear you. Where do you live? A 211 East Ninety-second street.

Q And what is your business? A Conductor.

Q On what road? A Third avenue electric line.

Q Do you remember the 15th of February last, Mr. Cammeratt?

A Yes, sir.

Q I will ask you, by the way, how long you have been in that employment?

A Five years as conductor, and five years before, inside.

Q And do you remember the house between half-past eleven and

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twelve o'clock on the night of February 15th last? A Yes, sir.

Q Where were you then? A I was on the rear end of car 521, going south.

Q And who was the motorman? A Leonard Schalkahn.

Q He is here in court? A Yes, sir.

Q Did you see the defendant that night? A Yes, sir.

Q Where? A Standing right near the rear door.

Q Well, now, will you please commence, Mr. Cammaratt -- when did you go on that car, by the way, as conductor? A At sixty-fifth street, at 11.45.

Q Did you change cars there? A Yes, sir; the conductor changed and I took the car.

Q Now, what occurred from that time to the end? State what you saw and what occurred. A Well, when I took the car at sixty-fifth street there were seven or eight passengers in the car and one outside on the platform. The one outside on the platform had the Evening Telegram in his hand, holding the paper up all the time.

I went inside of the car to take the money and see how many fares were registered, and then went out on the platform and shut the door.

The fellow out on the platform asked me, "What street we are at?" and I said, "Sixty-third street." In the mean-

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time another fellow came outside from the car and he stood on the platform, and the defendant was standing in the rear end of the car inside next to the door, and he put his head out and he asked the other fellow, "What street we are at?"

MR. MEYER: I object to that, and move to strike out the answer. The question was directly as to the defendant and did not ask for a conclusion of the witness's mind.

THE COURT: Motion denied.

MR. MEYER: Exception.

A (Continued) Then I had nineteen dollars and sixty-eight cents change in my pocket, which I took out and put in my inside pocket, when I buttoned up my coat like this (illustrating).

MR. MEYER: That I object to, and I move to strike out all this as not responsive.

THE COURT: Strike out the testimony about the change.

BY THE COURT:

Q Now, you can go on and state that you buttoned your coat.

A Yes, sir. And I looked inside of the car, and I saw a man sitting alongside of a man in the corner, that was asleep. He unbuttoned his overcoat and unloosened his watch chain from the button hole here (indicating), pulled the watch out half ways, and I then slammed the door and

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shouted "Police," and the fellow on the platform said, "Hurry up, Johnny, open the door. What for do you close the door?" and I said, "I will not open the door until the officer comes."

MR. MEYER: I object to that, and move to strike out the latter part of the answer as not responsive, and as not being said in the presence of the defendant.

THE COURT: Motion denied.

MR. MEYER: Exception.

BY MR. BLAKE:

Q Now, before you pass from there -- you saw this man sitting beside the sleeping man in the car?

MR. MEYER: Objected to, as leading.

THE COURT: Allowed.

MR. MEYER: Exception.

A Yes, sir.

BY MR. BLAKE:

Q Where was the defendant then at that time?

MR. MEYER: Objected to, as leading.

THE COURT: Objection overruled.

MR. MEYER: Exception.

BY MR. BLAKE:

Q Now, tell us where the defendant was at the time this was

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being done in the car. Please state first, where was the defendant?

MR. MEYER: Objected to.

THE COURT: Allowed.

MR. MEYER: Exception.

A standing inside of the car, near the door of the car.

BY MR. BLAKE:

Q Where was he, relative to the man that was asleep?

MR. MEYER: Objected to.

THE COURT: Objection overruled.

MR. MEYER: Exception.

BY MR. BLAKE:

Q Well, you saw where the man that was asleep was, didn't you?

A Yes, sir. The man was asleep, sitting right in the corner of the car.

Q And where was the defendant then? A Standing right in front of him, like this, pulling his coat up like this (illustrating).

Q The defendant was spreading his coat out as you have described? A Yes, sir.

MR. MEYER: Objected to. And I move that the answer of the witness and the description of the witness be stricken out.

THE COURT: Motion denied.

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MR. MEYER: Exception.

BY MR. BLAKE:

Q Where were his hands at the time? A In his coat pockets (illustrating).

MR. MEYER: Objected to, as leading.

THE COURT: Objection overruled.

MR. MEYER: Exception.

BY MR. BLAKE:

Q Please tell us where his hands were at the time. A In his overcoat pockets at the time (illustrating).

Q And what was the defendant doing? A Spreading out his overcoat like this (illustrating).

Q In front of the man who was asleep, you say?

MR. MEYER: Objected to, as leading. The witness speaks so fast that I can't get a chance to object. And I want to object because I think all these questions are leading.

THE COURT: Objection overruled.

MR. MEYER: Exception.

BY THE COURT:

Q Where was the defendant at the time that he was spreading out his coat, relative to the sleeping man? A Right in front of him; not more than a foot from him.

BY MR. BLAKE: Q Now, when the defendant was spreading out his

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coat in front of the sleeping man, what was the man doing who was sitting at his side?

MR. MEYER: Objected to, as there is no connection shown between the defendant and the unknown man or men not arrested.

THE COURT: Objection overruled.

MR. MEYER: Exception.

BY MR. BLAKE:

Q Now, please state what this man was doing at this time when the defendant was standing in the position you have described? A Opening his overcoat.

Q Whose overcoat? A The man who was asleep; opened his overcoat and pulled it one side, like this (illustrating), and opened his vest button then and loosened the chain, which had a kind of buckle on and which was through the button hole of the vest, and pulled out the watch half ways.

When I seen that I shut the door and shouted for "Police."

Q Could you see what sort of a watch it was, Mr. Cammeratt?

A Yes, sir.

Q What kind of a watch was it? A A gold watch.

Q You shouted "Police"? A Yes, sir.

Q And what door did you close? A The rear door.

Q And where were the other two men that were on the platform at that time? A They were standing still on the plat-

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form, asking me to open the door, which I refused to do.

Q Now, what else did you do? A I shouted for "Police."

When I seen the two men inside of the car run up to the front door, which was locked, too, I giving in the meantime the motorman the signal of danger, three bells.

Q And what was the character of that signal?

MR. MEYER: Objected to, as immaterial.

BY THE COURT:

Q Well, describe what you did. A I gave three short bells.

MR. MEYER: Objected to.

THE COURT: Allowed.

MR. MEYER: Exception.

BY THE COURT:

Q You rang three short bells? A Yes, sir, and the motorman then turned around and opened the front door, and unlocked the front door. And in the meantime the man who attempted to steal the watch jumped through the window, and the defendant jumped over the front platform, and I seen him running east on Fifty-ninth street.

BY MR. BLAKE:

Q You say he jumped over the front platform? A Yes, sir.

Q Do you know whether the gate of that front platform was closed or not? A Yes, sir, it was closed.

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Q And how did he get over the rail? A He sprang over the dash board and jumped into the street, and I saw him running east on Fifty-ninth street. And as soon as I saw I could not catch him I went back on my car.

Q Did you run after him at all? A Yes, sir.

Q How far? A Across the avenue and back again.

Q And you were unable to catch him? A Yes, sir.

Q Now, did you see the defendant after that?

MR. MEYER: Objected to. I think the District Attorney ought to ask him what he did, not what he saw or whom he saw. I object. The question is leading.

THE COURT: Objection overruled.

MR. MEYER: Exception.

BY MR. BLAKE:

Q I ask you, did you or did you not see the defendant after that?

MR. MEYER: Objected to.

THE COURT: Allowed.

MR. MEYER: Exception.

A Yes, sir.

BY MR. BLAKE:

Q Where? A In the police station.

Q Did you see this gentleman who was asleep after that?

A He rode down to the City Hall.

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Q Yes. A And there I tried to wake him up, which I could not do.

MR. MEYER: That is objected to.

THE COURT: Objection sustained.

BY MR. BLAKE:

Q Did you see the watch afterwards more fully? A Yes, sir.

Q Where, and under what circumstances?

MR. MEYER: Objected to.

THE COURT: Objection overruled.

MR. MEYER: Exception.

A Right at the City Hall, sir, after we woke him up.

BY MR. BLAKE:

Q How did you see it? A He pulled out his watch and looked at the time, and the motorman seen the watch, too.

MR. MEYER: That is objected to, and I move to strike out what the motorman saw.

THE COURT: Yes, as far as the motorman is concerned, strike it out.

BY MR. BLAKE:

Q Did you see the watch? A Yes, sir.

Q What kind of a watch was it? A A gold watch.

Q And is that the last that you saw of that gentleman?

A Yes, sir. I tried to get his name, but could not get it.

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MR. MEYER: Objected to, as not responsive, and I move to strike it out.

THE COURT: Motion granted.

BY MR. BLAKE:

Q Did you see the defendant after that? A Yes, sir, in the police station.

Q Were you present at any conversation between him and anybody respecting this case? A No, sir.

Q You have told all that you know about this case? A Yes, sir.

Cross - Examination:

BY MR. MEYER:

Q Mr. Cammeratt, you have been examined before as a witness, haven't you?

THE COURT: Before you begin, Mr. Meyer, I would like to ask a question.

BY THE COURT:

Q When you ran across the avenue what became of the two men that were on the rear platform of the car? A They ran in different directions, sir.

Q And you have described the man that drew the watch partly from the man's pocket as jumping out of the window? A Yes, sir.

BY MR. MEYER: Q You have been examined before as a witness

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in this case, haven't you? A Yes, sir.

Q In the police court? A No, sir; here in Part ---

Q I didn't ask you that. In the police court? A Not in the police court, sir.

Q You were not examined there? A No, sir; only made a statement there.

Q Don't you call that an examination? A Well, if you ---

Q Well, some questions were asked you, weren't they? A Yes, sir.

Q And you were examined in a different branch of this court, weren't you? A Yes, sir, about the first of last March.

Q And your memory is as good today as it was last March?

A Yes, sir.

Q Do you recollect whether or not you testified last March at any time, in any one of the branches of this court, that you saw the watch at the City Hall? A No, sir, I did not.

Q You did not? A No, sir.

Q You were asked by Mr. Blake to narrate all the circumstances in connection with this case, weren't you? A Yes, sir.

Q You were told to tell all you knew? A Yes, sir.

Q And your memory was just as good as it is now? A Yes, sir.

Q And you didn't say a word about it then, did you, on the last trial? A I was not asked about it, sir.

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Q Weren't you asked to tell all that you knew about the case?

A Yes, sir, and so I did.

Q And did you say anything about seeing the watch at the City Hall? A I was never asked so far.

Q And did you say anything about trying to get the man's name on the last trial?

THE COURT: Well, that is stricken out, unless you want it in.

MR. MEYER: Yes, I asked to strike it out, but the impression was before the jury.

THE COURT: Then it remains in, if you ask the question.

BY MR. MEYER:

Q Do you recollect that you did not so testify? A I was not asked anything about it, sir.

Q And is that the best answer you can make? A Yes, sir.

Q You got on the car at sixty-fifth street and Third avenue?

A Yes, sir.

Q And when you got on the car there were seven or eight other passengers; isn't that true? A Inside of the car, yes.

Q Inside of the car? A Yes, sir, inside of the car.

Q Were there any passengers on the outside of the car? A One on the rear platform.

Q And how near was he, the one on the rear platform, to the first passenger in the car inside? A Only so far away

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as the thickness of the door.

Q Only so far away as the thickness of the door? A Yes, sir.

Q The unknown man whose address you tried to get was in the corner of the car asleep? A Yes, sir.

Q So that when you got on the car all of the persons, those that jumped out and the unknown man, were all upon the car; is that right? A Yes, sir.

Q How many persons were towards the rear of the car, the rear platform? A There was one man sitting right across from the man that was asleep, a colored man. The next passenger was a colored lady. She was sitting about the middle of the car. The man who tried to do the stealing---

MR. MEYER: That is objected to. I move to strike that out. I am asking for descriptions and locations.

THE COURT: Strike it out.

A (Continued) And the other passengers were sitting up in the front part of the car.

BY MR. MEYER:

Q So that directly opposite the man who was asleep in the car was a man or woman, colored? Which was it? A A colored man.

Q Now, relative to the position of the man on the back plat-

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form, was it on the east side or west side of the car that the colored man was sitting? A On the west side.

Q And the passenger who was asleep? A On the east side of the car.

Q In the rear? A Yes, sir.

Q Now, the other five passengers were at different portions of the car, extending to the upper door? A Except one, who was sitting right alongside of the man who was asleep.

Q And he was directly alongside of him? A Yes, sir, right alongside of him.

Q And this defendant was standing up towards the rear door, wasn't he? A Yes, sir.

Q With his hands in his pockets? A Yes, sir.

Q Now, at the time you got into the car and took your car at Sixty-fifth street and Third avenue -- which is the railroad depot, is it not? A Yes, sir.

Q Now, where was the defendant? A Standing in the door.

Q In the very same place then? A Yes, sir.

Q And so, from Sixty-fifth street to Fifty-ninth street the defendant was on the car? A Yes, sir.

Q And in the same position all the time? A Only when he put his head out and asked what street we are at.

Q And with that exception he occupied the same relative position from Sixty-fifth street down to Fifty-ninth street,

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standing up with his hands in his pockets? A Between Fifty-ninth and Sixtieth streets, yes.

Q Now, you are quite positive about that? A I am sure, yes.

Q You can't be mistaken? A No, sir.

Q Now, when you got on the car the man on the back platform had a newspaper? A Yes, sir.

Q Did he buy it after you got on the car? A No, sir. He had it when I got on at Sixty-fifth street.

Q Anybody else reading in that car? A Not that I know of.

Q You were there, and you want the jury to know if all, don't you? You were there? A Yes, sir.

Q Now, can't you tell whether more than one passenger was reading? A I can't recollect that.

Q You cannot? A No, sir.

Q How large a man was the man on the rear platform? A About five feet three.

Q As tall as you are? A Oh, no, sir.

Q How much smaller? A About this much smaller than I am (illustrating).

Q And so, when he held up the paper, you could see clearly and distinctly over his head? A Yes, sir.

Q And you could see right through the door? A Yes, sir.

Q And you want the jury to understand from your testimony that

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the man who was on the back platform tried to cover your eyes, don't you? A Yes, sir, and so he was.

Q And he did not succeed? A No, sir.

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Q And the reason was that you were so much taller? A Yes, sir.

Q Now, you stood alongside of this man, didn't you, on the rear platform of the car? A The man stood in front of me, and I stood by the opposite rail, at the dash board.

Q And you want to have this jury understand that that man stood opposite you from Sixty-fifth street to Fifty-ninth street?

A Until we came to Sixtieth street.

Q This man stood in front of you? A Yes, sir; and asked me what street we are at, and I told him.

Q And how long did that take? A How long did it take?

Q Yes, for him to ask you that question? A Just as if you ask me now, and I would return it.

Q Just a moment? A Yes, sir.

Q And did he ask you anything else? A No, sir.

Q And so that was all that occurred between Sixty-fifth street and Sixtieth street? A Yes, sir.

Q Well, can you tell the jury that he did not read the paper?

A No, sir.

Q He had it in front of you? A Yes, sir.

Q And of himself? A Yes, sir.

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Q Now, describe to the jury how wide this rear platform on a Third avenue car is. A As wide as this, sir (illustrating).

Q And how long? A Eight feet long, from eight to ten.

Q And from three and a half to four feet wide? A Yes, sir.

Q And this little man, reading the paper, was standing in front of you, out on the platform, reading a newspaper?

A Standing to my left hand side, in front.

Q Well, I want to know whether he was in front or not?

A Well, not direct in front of me, but sideways of me.

Q And didn't you move from the position that you took at Sixty-fifth street, until you got to Sixtieth street?

A As I told you, when I came out on the platform, I went right up with my hand to give the signal. That is the reason I stood under the bell strap, and at Sixty-third street the same way, because at Sixty-third street there is a fire mark where we have to stop or slow up.

Q You started to pull the bell and give the signal when you boarded the car at Sixty-fifth street? A Yes, sir.

Q And then did you put the money in your pocket right away?

A No, sir.

Q Where was that done? A In Sixty-third street, sir.

Q Now, who started the car at Sixty-fifth street? A After we left?

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Q No, at sixty-fifth street? A The motorman started the car after he got the bell from me.

Q From you? A Yes, sir.

Q And where were you then? A On the rear platform.

Q And was the man reading the paper on the back platform then?

A Yes, sir.

Q And then you closed the door behind you when you went in?

A Yes, sir.

Q And when the man inside asked you what street it was did you open the door? A No, sir. The man came out between sixty-third and sixty-fourth streets and stood on the platform.

Q What did he say? A Nothing at all.

Q Did those two men on the rear platform talk together?

A I didn't see them.

Q You know whether they did or not, don't you? A They didn't speak that I know of.

Q Well, this was a very important thing for you, was it not?

A I don't see why it was.

Q Well, you saw a man being robbed in your car that night, and it did not create any impression on your mind? A Afterwards it did.

Q Well, the man from inside went to the rear platform, between sixty-fourth and sixty-third streets? A Yes, sir, and

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he remained on the car.

Q To Fifty-ninth street? A Yes, sir.

Q Now, do you want to tell this jury that you don't know now or can't recollect whether those two men had any conversation on the rear platform? A No, sir.

Q They did not have any? A No, sir.

Q Now, that you are sure about? A That I am sure of.

Q They had no conversation? A Not that I know of.

Q Well, you never left that platform, except to close that door, did you? A No, sir, I never left it. But you must understand ----

Q I don't want what I must understand. You never left that platform except to close that door, did you? A No, sir; I didn't hear any conversation at all between them.

Q And who was the man, or where was the man situated, that asked "What street are we at?" A The man stood right near the rear door, and put his head out and asked the man on the platform, "What street we are at?"

Q Well, now, at that time you were on the back platform?

A Yes, sir.

Q And two other men were there? A Yes, sir.

Q Who had not spoken together? A Yes, sir.

Q And was it anything unusual to ask, "What street are we at?"

A No, sir. I answered it right away, "Sixty-third

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street."

Q Was it Sixty-third street? A Yes, sir; between Sixty-third and Sixty-fourth.

Q And when you answered that it was sixty-third street, you answered the truth? A Yes, sir.

Q Now, leaving Sixty-third street and Third avenue, you have two men on the rear platform with you? A Yes, sir.

Q And yourself? A Yes, sir.

Q One of these men is reading a newspaper? A Holding the paper up.

Q What? A Holding the paper up. If he was reading, I don't know.

Q Where was the other man? A Standing alongside of him.

Q Now, in which direction? On the east side of Third avenue, or the west side? A East side.

Q And you are in the centre? A No, sir; I am on the west side of both of them.

Q So that you are nearest to the western gate or entrance of the car, so that the passengers can get in? A Yes, sir.

Q And the other two passengers are east of you? A Yes, sir.

Q Aren't they? A Yes.

Q Now, was the little fellow who was still holding the paper still on the platform? A Yes, sir.

Q And was the gate closed on one side? A Yes, sir.

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Q And did any passengers get off or on between Sixty-fifth street and Sixtieth street? A No, sir.

Q Wasn't it cold that night? A No, sir; it was a mild night.

Q A mild night? A Yes, sir, a mild winter's night.

Q And you didn't feel cold on the platform? A Not a bit.

Q And these persons on the back platform had their coats buttoned up, hadn't they? A I don't know. I didn't notice.

Q Well, did you notice whether the little fellow that was reading had his coat buttoned up or not? A He had it open.

Q And the other fellow that you say was with him, or that was with him? A I didn't notice.

Q And how about the little fellow's clothes? Did you notice how he was dressed? A He wore a gray coat, with a black collar on it.

Q And how was the other man dressed? A That is more than I can tell you.

Q You did not notice him? A No, sir.

Q Can you tell the jury how the colored man was dressed that night who sat on the opposite side of the car? A How the colored man was dressed?

Q Yes. A In black clothes.

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Q How many people got off at Fifty-ninth street? A Only the four.

Q Only these four men? A Yes, sir; and the others remained on the car, the other passengers.

Q Only four people got off? A Yes, sir.

Q Two fellows who were on the rear platform, one of whom was reading or had a paper? A Yes, sir.

Q And two who had been in the car? A Yes, sir.

Q Now, when you were asked "What street is this?" somebody on the back platform -- I think it was you -- said, "It is Sixty-third street"? A I answered the question first to the man that read the paper, "Sixty-third."

Q And after that the door remained open? A Yes, sir, it remained open.

Q Now, so that the jury may understand: From Sixty-fifth to Sixty-third streets the door was closed? A Yes, sir.

Q And when you left Sixty-third street the door remained open?

A Yes, sir.

Q Until you shouted "Police"? A Yes, sir; and then I shut the door.

Q And so that the defendant all that time was standing near the rear door; isn't that correct? A Yes, sir.

Q Just three or four feet from you? A No, not three or four feet.

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Q Well, how close was he to you? A Just as I told you before.

Q Well, how close was he to you? A He was standing right near the door.

Q The rear door? A Yes, sir.

Q And how close was that to you? A Well, about three feet.

Q That is what I have said. You told the jury that it was about — A Three feet and a half in width.

Q And about seven or eight feet in length? A Yes, sir.

Q And the defendant was standing near the rear platform?

A Yes, sir.

Q With his hands in his coat pockets? That is correct, is it not? A Yes, sir, inside of the car.

Q So that at the time you got to Sixty-third street he was within about three or three and a half feet of you?

A Yes, sir.

Q And in the same position in which you saw him when you first got on the car? A Except when he moved at Sixty-third street, yes.

Q Now, when was it that you first saw this young man who sat next to the man who was asleep, and saw that he commenced to attempt to do anything to the sleeping man? A After we passed Sixty-third street.

Q You were going at the ordinary rate of speed, weren't you?

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A Yes, sir.

Q And up to that time there had been nothing that took place that had attracted your attention? A Nothing whatever.

Q Now, in passing from sixty-third street to sixty-second street something took place that attracted your attention, did it, going downtown? After leaving sixty-third street something occurred that attracted your attention? A Yes, sir, when he asked me what street it was.

Q Now, we are nearer Fifty-ninth street. Now, in going down south what first attracted your attention, and where?

A Well, I saw the man alongside of the sleeping man unbutton his coat and unfasten the chain from his vest and he took the watch half out.

Q Now, Where was that? That is what we want to know.

A Between Sixtieth and Sixty-first streets.

Q Now, the colored man was still in the same relative position, sitting opposite in the car, wasn't he? A Yes, sir.

Q And the defendant still remained in the same position?

A Yes, sir.

Q And the man who was alongside of the unknown man, he was in the same position as when you first saw him? A Yes, sir.

Q Sitting there? A Yes, sir.

Q And the man who was in the corner was asleep? A Yes, sir.

Q Just as when you first saw them? A Yes, sir.

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Q Now, you saw the unknown man asleep, and the party next to him unbutton his overcoat, did you? A Yes, sir.

Q And the car was lit up? A Yes, sir, with the electric light.

Q How, how much space was there between the man who unbuttoned the coat and this defendant, who was standing up?

A How much?

Q Yes. A He was right in front of him; about a foot or a foot and a half from him.

Q Now, get this right, Mr. Cammeratt. A Yes, sir, right in front of him.

Q Now, the defendant is standing in front of the two men?

A The defendant was standing between the two men until he has gone off the car, and the colored man is sitting in one corner ----

Q Now, don't let me misunderstand you. You use the word "between"; do you mean that? A Yes, sir; between the two corner passengers, the man that was asleep and the colored man.

Q So that, as I understand it, the colored man also had a corner seat? A Yes, sir, so he did. So I always said.

Q Directly facing the man who was attempted to be robbed?

A Yes, sir.

Q So that the defendant now was between both of these men,

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standing up? A Yes, sir, so he was.

Q Is that right? A Yes, sir.

Q Between the colored man and the man who was asleep?

A Yes, sir.

Q We will put it down that way? A Yes, sir.

Q Now, the man that was asleep and the man next to him covered the space of four or five feet, didn't they, when they were sitting down? A Both of them together, yes.

Q Now, how much of that four or five feet was covered by the defendant? A Well, about four feet.

Q About four feet? A Yes, sir.

Q And you want the jury to understand that the defendant, standing up, covered four feet of this five? A Yes, sir, with his ----

Q Well, what distance ----

MR. BLAKE: Let him finish his answer.

THE COURT: He may finish his answer.

BY THE COURT:

Q You say "with his"? A With his coat straight out (illustrating).

BY MR. MEYER:

Q Now, what was the distance between the man who was asleep on the west side and the defendant, who was standing up?

A The man was asleep on the east side, sir.

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Q Well, on the east side. What was the distance between him and the defendant? A About a foot and a half.

Q And have you got that right now? A Yes, sir.

Q So that the two men occupied five feet, and the distance between the respective men was about a foot and a half?

A Yes, sir.

Q Now, you were on the opposite side of the car when you saw this, weren't you? A Yes, sir, right under the bell strap.

Q And you told the jury that you were on the west side of the car? A So I was, on the west side of the car.

Q And the man that was asleep was on the east side of the car?

A Yes, sir.

Q And the defendant was near the door, with his hands in his pockets? A Yes, sir.

Q Now, will you tell the jury how you saw from east to west when two of the passengers took up five feet, and there was only a foot and a half between them? A How I saw it?

Q Yes. A Well, I buttoned up my coat this way (illustrating), and I simply turned around to button the button up, and I could see right on the man's belly who was asleep there, and I seen the transaction.

Q And then it was by reason of your raising your head up to button your coat that you were enabled to see across from

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west to east, over the man who had his coat -- his hands in his coat pocket; is that so? A Well, that I was unable to see over him; is that it?

Q No; that you were able to see over him? A That I was able to see over him?

Q Yes. A No, sir. I seen sideways, right to the man who was asleep, sir.

Q Well, you have just told the jury that the defendant was standing at the door, haven't you? A So he was.

Q And this was a heavy, stout man who was asleep? A Yes, sir, portly.

Q And to use your own words, he was a portly man? A Yes, sir.

Q And a man that was as stout as he was took up at least two or three feet of the seat, didn't he? A Yes, sir, about that.

Q And the man that was next to the man that was asleep took up some room, didn't he? A Yes, sir.

Q Now, the defendant stood near the door, didn't he?  
A Yes, sir.

Q Near the rear door? A Yes, sir.

Q With his hands in his coat pockets? A Yes, sir, spreading his coat out (illustrating).

Q And they were on the east side of the car, and you were on

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the west side? A Yes, sir.

Q And when you started to button your coat you could look at them easily? A Yes, sir.

Q And after you saw that which you say you saw, that was the time that you closed the door and gave the motorman the bell? A Yes, sir.

Q Or the danger signal, as you call it? A Yes, sir.

Q And in closing the door did you lock it? A I locked it.

Q What did you lock it with? A With the lock on the door.

Q With the lock on the door? A Yes, sir.

Q And as soon as you gave the signal you shouted -- was it before, or after you closed the door -- "Police"; which was it? A In the same time; just closed the door and commenced to shout "Police."

Q And at what street was that? A Near Fifty-ninth street.

Q And your car was thoroughly lit up? A Yes, sir.

Q And were the other passengers in the car in the same positions as when you first saw them? A Yes, sir.

Q And the two men were still on the rear platform?

A Yes, sir.

Q And the colored man was still sitting opposite? A Yes, sir. He rode to Forty-second street.

Q And as soon as you shouted "Police", that did not wake up or disturb the sleeping man? A No, sir.

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Q And what did the defendant and the other man inside try to do, the other man? A They tried to open the door, the rear door.

Q And then what? A They ran up to the front door of the car.

Q And that door was closed already? A Yes, sir.

Q And you say the defendant jumped over the dash board, as you put it, and ran away? A After the door was opened. The door was opened by the motorman.

Q And the other man went through the window? A Yes, sir.

Q What window? A The front window of the car, next to the front door.

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- Q And you saw him run, the defendant? A Yes, sir.
- Q You only watched those two that ran in front, didn't you, you were watching those two principally? A I jumped off the rear platform and tried to catch the man that jumped through the window, but I wasn't able to do it.
- Q That is the one that tried to get the watch? A Yes, sir.
- Q And that is the reason you were after him? A Yes, sir.
- Q And your eyes were upon him? A Yes, sir.
- Q Weren't they? A Yes, sir.
- Q And you wanted to catch him if you could? A Yes, sir.
- Q And in doing that you saw the defendant jumping over the front dashboard of the car? A Yes, sir.
- Q Now, did this affair happen before you got to Fifty-ninth Street? A Yes, sir.
- Q And that is a transfer station on your line, is it not?
- A No, sir; not on our line.

R e - D i r e c t E x a m i n a t i o n :

BY MR. BLAKE:

- Q Did the defendant and these other parties run before or after you shouted "Police"? A No, sir; two shouted as soon as I shouted "Police."
- Q Now, when you spoke of the five feet that this defendant covered, you say he covered four or five feet by spreading out the tails of his coat? A Yes, sir.

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BY THE TWELFTH JUROR:

Q Did the man who read the paper read it with the light shining directly in his eyes? Or was he facing the dash board? A Yes, sir.

Q And the light was burning inside? A Yes, sir; and there is a light outside, right over the door on the platform.

BY THE ELEVENTH JUROR:

Q When you were buttoning your coat and first saw what was going on in the car, did you turn all the ways around?

A Turned half ways around, and buttoned my coat in this way (illustrating,) those uniform coats have a button away up at the top (illustrating.)

Q And in buttoning your coat you turned around? A Yes, sir; halfway.

Q And that's the way you claim to have seen into the car?

A Yes, sir; and I buttoned my coat and looked right inside (illustrating.)

BY MR. BLAKE:

Q Well, why did you button up your coat? Because it was a cold night? A No, sir; I always keep it buttoned.

Q Then why did you button up your coat? It was not cold?

A No, sir.

MR. MEYER: Objected to, as leading; and I move to strike out the answer.

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THE COURT: It is allowed to stand.

MR. MEYER: Exception.

BY MR. BLAKE:

Q Now, just a question---if your Honor will indulge me. When this man held the paper up in front of you will you please tell us where you were standing then; near the rail, the dashboard or the door? A All the time nearly under the bell strap.

Q And in what direction was your back? A In the same direction. I was facing south.

Q Against the dash board? A Yes, sir.

Q And where was the man who held up the paper; in front of you? A Yes, sir.

BY THE SECOND JUROR:

Q Where is the bell strap? A Right on the west side of the car; about a foot and a half from the end.

R e - C r o s s     E x a m i n a t i o n :

BY MR. MEYER:

Q Did you understand Judge Blake's question when he asked you if the man who read the newspaper was in front of you and you said he was? Did you mean that? A No, he was sideways in front of me, as I said before, not in front of me; sideways in front of me.

Q Didn't you testify in answer to my question that you

nearest the gate on the west side of the car? A Yes, sir.

Q And that alongside of you was the little fellow apparently reading a paper? A Yes, sir.

Q And then came the other man but east of him? A Yes, sir.

BY THE COURT:

Q I wish you to tell the jury how the man who was reading the paper was facing. A Facing me, sir.

Q Facing the dashboard? A Yes, sir.

Q And with his back to the door entrance to the car? A Yes, sir.

BY MR. MEYER:

Q I thought that you had your back to the dashboard?

A So I did.

Q Did the little man have his back to the dashboard?

A No, sir.

Q Now, which way was he facing, that is what I want.

THE COURT: And that is what he has testified already.

BY MR. MEYER:

Q Which way was he facing? A Facing me.

Q And reading a paper? Where was the other man? A On the east side of him, against the east side gate of the car.

Q Against the gate? A Yes, sir.



Q

A: So it does.

Q Well then, which way was he standing, north or south?

A This is the gate here (illustrating,) and he was standing right this way against the gate (illustrating.)

Q And then he was facing west? A Yes, sir; but not the man reading the paper; he wasn't facing him.

Q That's all. A But that wasn't the man that was reading  
the paper.

LEONARD SCHALKAHN, called as a witness,  
half of the People, being duly sworn, testified as fol-  
lows:

## Direct Examination:

BY MR. BLAKE:

Q. Mr. Schalkahn, where do you live? A 1027 First Ave.

Q And what is your business? A Motorman.

Q. Motorman? A Yes, sir.

Q Employed by what company? By what road? A  
nue Division.

Q And how long have you been so employed? A Five  
and a half.

Q Five years and a half? A Yes, sir.

Q And were you so employed on the fifteenth of February?

A Yes, sir.

Q Were you in charge of a car on that day? A Yes, sir.

Q Were you employed as a motorman on that day? A Yes, sir.

Q What was the number of the car? A 521. That night.

Q Well, who was the conductor of the car? A Henry [unclear]  
att.

Q The gentleman who has just left the stand as a witness?

A Yes, sir.

Q Now, did anything attract your attention on that night  
between Sixty-fifth and Fifty-ninth Street? A Yes, sir.

Q Well, please state what it was. A Well, after passing  
Sixtieth Street I received three balls from my conductor.

Q Well, what does that mean? A To stop short. It was  
danger.

MR. MEYER: I object to that, as incompetent.

THE COURT: Objection overruled.

MR. MEYER: Exception.

BY MR. BLAKE:

Q Well, what do you say about it? A That is the  
danger, to stop short.

MR. MEYER: Objected to.

THE COURT: Allowed.

MR. MEYER: Exception.



BY THE COURT:

Q Apart from being a sign of danger it is a signal from the conductor to the motorman to stop immediately? A Yes, sir.

THE COURT: Then that is all about that.

BY MR. BLAKE:

Q And what did you do? A I stopped my car as soon as I could, and I turned to open the front door, which was locked, and the defendant came out to me, and I asked him, "What's the matter?" and he said, "Call a policeman."

Q Yes, that is what he said? A Yes, sir. I turned around to open the gate, and just as I opened the gate the defendant jumped over the dashboard and run towards Fifty-ninth street and run after a Fifty-ninth street car that was going east at the time.

Q And is that as far as you could follow him with your eyes?

A Yes, sir.

Q Did you follow him, that is, did you run after him?

A I got off the car and went only a few feet, and then I went back again.

Q Did you pursue him? A No, sir.

Q And did you hear a shout of "Police" from the crowd?

A At the time I got the three bells I heard that.

Q Was that before you opened the door? A Yes, sir.

Q Did you see anything further? A No, sir.

Q Did you see any other parties running? A No, sir.

Q As soon as you opened the door you say that the defendant came out and jumped over the dashboard? A Yes, sir.

Q And you watched him as he ran through Fifty-ninth street?

A Yes, sir.

Q By the way, you went down to the City Hall that night with your car, didn't you? A Yes, sir.

Q Did you notice a gentleman in the car, an old gentleman, who was asleep? A Yes, sir.

Q Did you see him asleep? A No, sir; he wasn't sleeping then.

Q Did you see a watch in his possession that night?

MR. MEYER: I object to that. I object to what

happened at the City Hall in the absence of the

defendant after the alleged commission of the

offense or attempted offense.

THE COURT: Objection overruled.

MR. MEYER: Exception.

BY MR. BLAKE:

Q Did you see a watch in his possession that night?

A Yes, sir.

Q You did see a watch in his possession? A Yes, sir.

Q What kind of a watch was it? A A gold watch and chain.

Q Did you see anybody chase---how long did you watch them?



defendant when he ran? A About two and a half or three minutes.

Q Did you see anybody chasing him? A No, sir.

Q You didn't see the police officer at that time? A No, sir.

C r o s s E x a m i n a t i o n :

BY MR. MEYER:

Q Now, Mr. Schalkahn, how many blocks will your car go at an average rate of speed in two or three minutes? A Ten blocks in three minutes.

Q And you want this jury to understand that you watched the defendant for two or three minutes, and yet during that time your car could have gone ten blocks; is that so?

A Yes, sir.

Q You saw him running for two or three minutes? A Yes. But I mean we stopped about three minutes.

Q You mean you stopped about three minutes? A Yes.

Q And during all that time you watched him? A Yes.

Q And he was running? A All I seen of him was just the corner, that's all.

Q Well, but that didn't take two or three minutes? A We stopped. We didn't know what to do first off.

Q But you don't mean to say that you saw the defendant running for two or three minutes? A No, sir.

Q All that you know about it is that you got a signal?

A Yes, sir.

Q And opened the door and the defendant said, "Call a policeman," and he jumped over the dashboard? A Yes, sir.

Q And then he said to you "You had better call a policeman?"

A No, "Call a policeman quick."

Q And that was after you heard your conductor call out "Police"? A Yes, sir.

Q And after you got the bell? A Yes, sir.

C O R N E L I U S R. G L Y N N, called as a witness  
behalf of the People, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n:

BY MR. BLAKE:

Q Mr. Glym, are you a member of the police force of City of New York? A Yes, sir.

Q Attached to what precinct? A Twenty-fifth precinct.

Q How long have you been on the force, Mr. Glym?

A Five years and two months.

Q Now, Mr. Glym, I have asked you---you say you are attached to the Twenty-fifth precinct? A Yes, sir.

Q Where were you on the night of February 15th last?



A I was at Fifty-ninth street and Third avenue, on the east side of Third Avenue, in a restaurant, three doors from the corner.

Q And about what hour was this? A Between ten minutes to twelve minutes or a quarter after twelve.

Q Did anything attract your attention at that time?

A Yes, sir.

Q Please state what it was. A I was standing there in the door, inside of the door of the restaurant, looking towards the north-west corner of Fifty-ninth street and Third avenue, when I noticed a man jump over the front dashboard of a car, and turning towards Second avenue and Fifth street. I came directly out of the saloon---the restaurant, and ran through Fifty-ninth street after the man. The man had stopped at the time, but when he seen me coming the corner he started to run again.

MR. MEYER: That is objected to, that the man was turning the corner. How does he know that?

MR. BLAKE I don't claim that unless he looked back.

BY MR. BLAKE:

Q Did you see him look at you? A When he stopped he turned around and looked to see if anybody was following him.

Q Did you see him turn around and look at you? A Yes, when he was in the street he turned around and looked back.

MR. MEYER: That is objected to, and I move to strike it out as to the man seeing him, your Honor.

THE COURT: Yes, strike it all out. Motion granted.

BY THE COURT:

Q Just state what the defendant did. A I noticed the defendant jump over the front dashboard of a car and run on the east side of Third Avenue and around the corner on Fifty-ninth street, and when he thought nobody was after him---

MR. MEYER: I object to that and move to strike it out.

THE COURT: Motion granted.

BY THE COURT:

Q You saw him run into Fifty-ninth street? A Yes, he ran through Fifty-ninth street towards Second Avenue; he ran after a car going east in Fifty-ninth street, and managed to get up to the car after him getting on the car. I grabbed him by the coat tail, and the car started quicker, and his coat tail slipped out of my hands. When I had a hold of him by the coat tail he made an attempt as if he was going to kick me in the face.

MR. MEYER: That is objected to, and I move to strike it out, that he made an attempt.

THE COURT: Motion granted.



BY THE COURT:

Q What did he do? Did he move his hand or foot or body?

Simply describe what he did. A He had hold of the two bars on the car.

Q Well, what did he do? A That's what he did.

Q Well, that is not a statement of the fact. That is your conclusion. But what did he do with his foot or hand or body? A He raised his foot off the platform of the car.

Q And in which direction? A He moved his foot as if he was going to make an attempt to kick me.

MR. MEYER: I object to that and move to strike

that portion of the witness' answer, "as if he

he was going to make an attempt to kick"

THE COURT: Yes, I strike it out.

MR. MEYER: And your Honor will instruct the jury

disregard that statement?

THE COURT: Yes. I will allow it to stand

raised his foot and directed it towards

portion of the witness' answer will stand

other part must be stricken out.

BY MR. BLAKE:

Q Proceed. A I hollered to the conductor, who was on the side of the car---

Q What did you holler to the conductor? A I hollered

him to stop the car, and the car stopped ten or fifteen foot ahead of me, in front of me going east. There was a car going west through Fifty-ninth street, and the defendant jumped off the back of the car going east, and ran in front of the car coming west, to the north side, to go around the way around the car, and I was after him all the time, and a citizen happened to grab him in between the two cars. I went up to the citizen---I saw the citizen act as though he were going to strike him, and I grabbed a hold of the defendant and brought him to the north side of the sidewalk, and I held him there and asked him what the trouble was, and he said he was in a hurry to get home and that he lived over at Sixty-first Street and First Avenue, and I took him back to Third Avenue, and on his way to Third Avenue I took him by the coat collar, and he broke away from me, and as he started to run towards the south, in the street there was a pile of dirt in the street and he fell over the pile of dirt. So I hit him with the stick, and he fell out in the middle of the car tracks, and I started to go back to Third Avenue again with him, and somebody in the crowd I heard them say that he had--

MR. MEYER: Objected to.

THE COURT: Objection sustained.

A (continued) Well, I got back to Third Avenue



Fifty-ninth street, and I told him I would take him home now for breaking away from me, and so I walked him up to the station house with two other officers, and at the station house I told him I brought him in on suspicion. I then went around to the depot afterwards at half-past three and inquired---

MR. MEYER: Objected to.

BY THE COURT:

Q You went around to the depot? A Yes, sir.

Q And you made some inquiries there? A Yes, sir; starter.

Q Now, do not say what you said to him or what the starter said to you. You made some inquiries? A Yes, there was----

Q No. After you had made inquiries at the depot what did you do next? A I waited until the car come up and then I got on the conductor on it.

Q What conductor? A This Henry Cammeratt.

Q He that has testified here today? A Yes, sir. I waited there until the car come up that this afternoon and then I got on.

MR. MEYER: That is objected to, and I move the court to strike it out.

THE COURT: Motion granted, as to the statement.

witness as to the car that this affair happened on.

BY THE COURT:

Q You waited until the car that this conductor was on came up? A Yes, sir; and I asked him to go around to the station house and identify the man.

MR. MEYER: That is objected to, and I move to strike out what he said to the conductor.

THE COURT: It may stand, that he asked the conductor to go around to the station house, but not that he asked him to go around for.

MR. MEYER: To which I take an exception, your Honor.

BY THE COURT:

Q Did the conductor go around to the station house? A Yes, sir; he went around to the station house and identified the man.

THE COURT: No; strike that out.

BY THE COURT:

Q You went around to the station house with the conductor.

A Yes, sir.

Q Now, when you got to the station house with the conductor, was this defendant brought into your presence? A Yes, sir.

Q Now then, state what took place there when this defendant



was present? A This defendant was in the presence of the conductor, and the conductor stated to the

MR. MEYER: Objected to, what the conductor stated.

Let him tell what occurred.

BY THE COURT:

Q What did the conductor say? Give us his words as nearly as you possibly can. A Well, the conductor stated in the station house----

MR. MEYER: Objected to.

A (continued) When the prisoner was before me and the conductor was there the conductor stated that he gave money to the sergeant at the desk.

MR. MEYER: Objected to.

THE COURT: Yes, strike out that he stated that he gave money to the sergeant at the desk.

BY THE COURT:

Q Can you tell us what the conductor said? A Well, the conductor said that he was in the car, standing in front of a man who was apparently asleep in the back of the car, sitting down, and there was another man sitting down next to the man who was asleep, and that he had his coat over his head, and that he rung the bell quick at Fifty-ninth street, when the door in the back was closed, and that there was two more men that jumped off the back of the

form, and that this man had run through the---that the defendant had run through the car and jumped over the dashboard, and the other man had jumped through the window on the west side of the car. The conductor said that the watch was found on the seat after the man going through the car on the west side of the car, and he gave it back to the passenger that was asleep in the car, and he tried to get his name and address, but the man was apparently under the sign of liquor, and he refused to give his name, and went down as far as the Brooklyn Bridge and got off there.

BY MR. BLAKE:

Q Now, this was said in the presence of the defendant?

A Yes, sir.

Q And, officer, were you in uniform that night? A Yes, sir.

Q And is this locality, where you saw him jump over the dashboard, the corner of Fifty-ninth street and Third Avenue in the County of New York and the Borough of Manhattan?

A Yes, sir.

Q Now, you have mentioned the address as given by the defendant. Did he give any other address that night?

A Yes, sir.

Q Please state what it was. A He gave one address at First Avenue, and Sixty-first Street and First Avenue.



Seventy-first Street and First Avenue, and 213 East Eighteenth Street.

Q Well, were you present before the police magistrate when he was arraigned there? A Yes, sir.

Q Do you remember what address he gave there as his place of residence or where he lived? A 781 First Avenue.

Q He mentioned that address, did he? A Yes, sir.

Q Do you recall whether he mentioned East Eighteenth Street at all? A He gave that down in the Detective Bureau, 213 East Eighteenth Street.

Q Was it 212 East Eighteenth Street? A Yes, sir.

Q And then how many addresses did he give altogether?

A Four addresses.

Q Four addresses to your knowledge? A Yes, sir.

Q Now, did you have any further conversation than you related with the defendant? A No, sir.

C r o s s   E x a m i n a t i o n :

B Y M R . M E Y E R :

Q Now, officer, you were finishing your supper, is that correct, about to go on post? A Sir?

Q Now, officer, you were finishing your supper, is that correct, about to go on post? A No, sir; I was on from six o'clock that night until twelve.

Q And you were going into the station house? A Yes, sir.

Q And then were you going on again at six o'clock on the following morning? A Yes, sir.

Q And the restaurant is on the east side of Third Avenue?

A Yes, sir.

Q The next door above Hyman's store, furniture store, is it not? A Yes, sir.

Q The car that you saw a person jump from was proceeding down Third Avenue? A Yes, sir.

Q And the party that jumped over this dash board ran in easterly direction? A Yes, sir.

Q And you pursued him? A Yes, sir.

Q And a citizen caught him? A Yes, sir.

Q That is correct, is it not? A Yes, sir.

Q You took him to the station house? A Yes, sir.

Q After being there for an hour or three quarters of an hour this conductor made his appearance? A Yes,

Q You asked him why he made certain statements in the presence of the defendant, is that true? A Yes, sir. is right.

Q To which you have already testified? A Yes, sir.

Q Now, did I understand your testimony correctly when you stated that the conductor said in the presence of the defendant, that this man, the unknown man who had



asleep, got off at the Brooklyn Bridge. Did you so testify to-day? A That's what he said up in the station house.

Q And did you so testify to that to-day? A I am just after saying what the conductor said up in the station house.

Q Well, did you say to this jury to-day that the conductor in the station house said that the man had got off at the Brooklyn Bridge? A Yes, sir; I did.

Q And did you also testify to-day before this jury that the conductor told you in the station house that he found a watch on the seat and gave it back to the unknown man?

A That's what he stated in the station house.

Q That's what the conductor said in the station house?

A Yes, sir.

Q That he found the watch on the seat? A Yes, sir.

Q And that he gave it back to the unknown man? A Yes, sir.

Q That is what he stated? A Yes, sir.

Q You heard the conductor say that in the station house?

A Yes, sir.

Q And you have testified to it here to-day? A Yes.

MR. BLAKE: The People rest.

MR. MEYER: I will ask your Honor to advise the jury

to acquit, and I am as well prepared to answer

motion now as I will be at any time.

The defendant moves the Court to advise the jury to acquit on the following grounds:

First---because the People have failed to make out their case against the defendant.

Second---because the evidence introduced is insufficient to warrant a conviction of the defendant.

Third---because the evidence fails to show that any crime has been committed.

Fourth---because the evidence fails to connect the defendant with the commission of any crime.

Fifth---because no overt act on the part of the defendant having been shown by the evidence, the defendant cannot be found guilty of the offense of attempted larceny.

Sixth---because the theory of the prosecution necessarily being a previous conspiracy between the defendant and the person who did the overt act and committed the larceny, and the overt act having been shown on the part of the person who committed the larceny, and it appearing from the evidence that the person who committed the larceny was acting in concert with the defendant to accomplish which the alleged conspiracy



entered into had failed of performance, no crime whatever has been proven to have been committed by the defendant.

Seventh---because from the very nature of an attempt no person can be guilty of a conspiracy, or can be an accomplice to attempt the commission of a larceny.

Eighth---because the evidence fails to establish close any sort of connection between the defendant and the person who did the overt act.

Ninth---because from the undisputed facts it does not appear that any concert of action or collusion has been shown to exist between the defendant and the three unknown persons not arrested or either of them, or the defendant as an accomplice of said persons or either of them, and under the case of the People against [redacted] this being a proposition of law and not a question of fact to be submitted to the jury.

And I rest the defendant's case on that.

THE COURT: I shall render a decision in this case. Will you not hand me up a memorandum of the cases that you referred to in your argument?

MR. MEYER: Yes, sir; I will hand it to you and leave the court room, your Honor.

May 10th, 1901

TRIAL RESUMED.

THE COURT: As I understand the case, last evening it rested upon the defendant's motion to advise the jury to acquit, upon the various grounds stated by counsel to the Court, and the Court denied the motion upon each and every ground.

MR. MEYER: To which counsel excepts. Now, I make no further motion, and ask your Honor to advise the jury to acquit, upon the ground that under the indictment the defendant is charged with being a principal, and under the proof submitted the defendant is guilty of anything he is guilty of as an accomplice, acting in concert with others, and therefore there is a material variance between the proof and the indictment.

THE COURT: Motion denied.

MR. MEYER: Exception. The defendant rests.

THE COURT: Any further testimony on the part of the prosecution?

MR. BLAKE: I would like to offer the original in evidence, if your Honor will permit me.

MR. MEYER: I understood that the case was closed yesterday.



THE COURT: If it be a matter of rebuttal, of course.

MR. MEYER: There is nothing to rebut, as I understand.

MR. BLAKE: Well, I will not insist upon it, because

the proof before the Court and the jury is that

he did say that he lived in East Eighteenth

street.

MR. MEYER: So we go to the jury, then?

THE COURT: Yes.

(Counsel on both sides then summed up.)

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(The Court then admonished the jury in accordance with

Section 415 of the Code of Criminal Procedure

and took a recess until two o'clock.)

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AFTER RECESS.

THE COURT'S CHARGE.

There are some general rules which it is necessary that you should be instructed upon, and should observe. They apply to the trial of this case, as to the trial of all other criminal cases.

The defendant is presumed to be innocent until the contrary is proved to your satisfaction beyond a reasonable doubt.

The burden of proof rests upon the prosecuting attorney, and it rests upon him throughout the case.

Where there is a reasonable doubt as to the defendant's guilt, the defendant is entitled to the benefit of that reasonable doubt, and to an acquittal.

The law gives to a defendant who is on the stand a right to take the witness stand in his own defense. He can exercise that right or not, as he thinks best; and, if he does not exercise that right, it must not be taken to his prejudice by the jury, or raise a presumption against him.

~~These are general rules which, of course, apply to this case and all other criminal cases.~~



You are the exclusive judges of the facts.  
The Court is the exclusive judge of the law. You must abide by the instructions of the Court upon the law of the case. Even though your opinions differ from the judge's opinion on the law, yet you must abide by what he instructs you as to the law of the case.

The defendant is indicted for the crime of attempted grand larceny in the first degree.

The indictment charges that, on the 15th of February last, in this county, at night-time, he attempted to steal a watch from the person of a man, whose name is unknown to the Grand Jury. That is the gist of the indictment.

You will, therefore, observe, gentlemen, that the defendant is not indicted for the full crime of grand larceny in the first degree, but is indicted for an attempt to commit the crime of grand larceny in the first degree.

The statute defining the crime of larceny is very brief, in so far as its terms apply to this case on trial. It is as follows: A person who, with the intent to deprive the true owner of his property, takes from his possession any

personal property, or article of value of any kind, steals such property and is guilty of larceny.

Larceny is divided into three degrees, grand larceny in the first degree, grand larceny in the second degree, and petit larceny.

Grand larceny in the first degree is defined as follows: A person is guilty of grand larceny in the first degree who steals property of any value by taking the same from the person of another in the night-time.

That means, gentlemen, that if a person takes from another any personal property, no matter how trifling the value, in the night-time, it is grand larceny in the first degree.

An attempt to commit that grade of crime is what is charged against this defendant.

The law defines an attempt to commit a crime in these words: "An act done, with intent to commit a crime, and tending but failing to effect the commission, is an attempt to commit that crime."

I will not refer to the evidence in this case because you are the judges of that evidence and its value, except in so far as to illustrate the law.



application of the rules of law to the question  
of fact which arise before you on this evidence.

It is claimed by the prosecution to have been  
established by the evidence that, on the night in  
question, the defendant, in company with three  
other men, whose names are unknown, were acting in  
concert for the purpose of committing a crime,  
that the defendant and these three men were in a  
street car, and that one of the four men attempted  
to take from the person of a passenger the  
his gold watch.

It is not claimed by the prosecution that  
this defendant did the act of attempting to take  
the gold watch from this unknown man's person,  
it is claimed by the prosecution that this  
defendant was one of the four men who were engaged  
in the commission of that crime; and I will  
instruct you what constitutes participation in a  
crime, where more than one individual is concerned.

Section 29 of our Penal Code provides as fol-  
lows: "A person concerned in the commission of a  
crime, whether he directly commits the crime, or  
aiding the offense, or aids and abets in the com-  
mission, is a principal in that crime."

If, as the prosecution claims to have shown by its evidence before you, this defendant and three others were on that car, and, if they acted with a common purpose, if they were actuated by a common design to aid or abet or give assistance to each other in stealing that watch from the person of that passenger, then every one of the four would be equally guilty with the other three if the watch had been stolen from the passenger.

If those four men, including the defendant, acting in concert, had, either by express agreement or by implied understanding, come to a point where they would aid, abet or assist each other in stealing that watch, then each and every one of the four would be guilty of stealing that watch, no matter which one of them stole it.

If it was part of their agreement, or of their concerted action, that one of the four should engage the conductor in conversation, that another should appear to ask questions, that another should appear to hold a paper in front of him, that a third should stand in front of and immediately opposite the man against whom the design was entertained, and hold his overcoat in such a way as to



observation, while the fourth man was to do the physical act of taking the watch, then I charge you, as matter of law, that the man who spoke to the conductor, for the purpose of engaging him in conversation, if that was done, and the man who read the paper for the purpose of obstructing the view of the conductor, if that was done, and the man who held his overcoat in front of the person who had the property, if that was done, were all and all as guilty as the man who physically took the watch upon the person of the unknown man, and attempted to draw it from his pocket.

There is no distinction whatever between the test being, gentlemen: Were these men in concert, in the pursuit of a criminal design, and while in the pursuit of that criminal design, did they aid or abet each other in its commission?

I charge you, as matter of law, that if you find that there was such a concert of men in the pursuit of a criminal design, and that the defendant was one of those who entered into that concert of action, and had that criminal design, and he aided or abetted his colleagues in the accomplishment of that criminal design, then he is

equally guilty with all the others.

Where two or more persons enter into a common agreement or understanding, having for their object the accomplishment of a criminal purpose or design, the act of one is the act of all. What one does in the pursuit of that criminal design, they all do. Each one acts as the representative of the others, and every one concerned in that common action is responsible for the acts of all his fellows. They are all principals in crime, in that crime be committed, and if it be the object of their common design and purpose.

So that you will first determine the question whether the defendant, with three other men referred to in the evidence, entered into a conspiracy of action, a common agreement or understanding for the purpose of committing the crime of assault upon the person of this passenger in the street car.

Was there a crime committed?

The prosecution does not claim that the crime of larceny was committed.

The charge is that there was an attempt to commit that crime, for the reason, gentlemen,



there was not a complete crime committed.

According to the evidence one of the men  
leaned over the sleeping passenger and took the  
vest  
watch partly from his pocket, but did not remove  
the watch from the person of the passenger. The  
law requires, where personal property is taken  
stolen from the person of another, that it must be  
actually separated from the person, in order to  
constitute the larceny.

It appears here that the watch was not  
ally separated from the person, in that the  
ductor testifies that he only saw half of the  
watch out of the pocket, when the man who  
watch out of the pocket heard the signal  
and desisted.

So that, in the eye of the law, there  
the complete crime of grand larceny in the  
degree, because the watch was not absolutely  
completely separated from the person of the  
ing passenger.

If the watch had been taken out of the  
and the chain removed from the vest, even  
by an inch of distance, or an instant of time  
crime would be complete. But, so long as

watch remained attached to the person, or any part of it, and it was not wholly removed from the person, the complete crime could not be committed.

Therefore, the indictment charges, and the prosecution claims that the defendant committed what, in law, is known as an attempt to commit the crime of grand larceny in the first degree.

On the question of an attempt at crime, I refer again to the reading of the statute which I have given you, as to what constitutes that grand crime.

If the man who seized the watch and partially drew it from the vest pocket of the sleeping passenger did that act with the intent to steal, even though finally he did not accomplish his purpose, then he committed the crime of attempt to steal the watch; and, if, in doing that, he was aided and assisted by the defendant in the accomplishment of his purpose, with knowledge on the part of the defendant of his purpose, and participation in that design, then the defendant is guilty of an attempt to commit the crime, the same as if he himself pulled the watch from the vest pocket of the sleeping passenger.



I cannot illustrate to you in what consisted the attempt better than by citing a case that was tried in these courts, some time ago, and which is referred to by the learned counsel in his speech and with his permission I will read the citation that he quoted from the opinion of the Court on Appeals in that case.

It arose in this way: One afternoon two detectives were patrolling Grand street, in this city. Opposite one of the stores a number of women were standing, looking at the show window, and, while they were so standing, the detectives observed a man go up to one of the women who were looking in the window, and put his hand in the woman's pocket. The woman was unaware that anyone had put his hand into her pocket.

The detectives saw the man draw his hand from the woman's pocket, and there was nothing in his hand. He did not take anything out of her pocket.

The woman was lost in the crowd. Her name was not discovered.

The detectives arrested the man, and he was indicted for an attempt to commit grand larceny. He was tried in the General Sessions and was

and his case was appealed to the Court of Appeals and that court, the highest court in our state, whose declarations as to the law must be complied with, must be obeyed as the law of the land, expressed themselves in the following language in that case -- I cite from the case of the People against Moran -- "To constitute the crime there must be a person from whom the property be taken; an intent to take it against the will of the owner; and some act performed, tending to accomplish it, and when these things concur, the crime has, we think, been committed, whether the property could, in fact, have been stolen or not. In such cases, the accused has done his utmost to effect the commission of the crime, but failed to accomplish it for some cause not previously apparent to him. The question whether an accused has committed a crime has been made, is determined solely by the condition of the actor's mind and his conduct in the attempted consummation of the crime." sign."

Therefore you will observe that the Court of Appeals, in effect, said that, even though there was no property or money in the woman's pocket,



Moran could steal, yet he was unaware of that, and did everything in his power to steal from the woman, and it was not his fault that the pocket did not contain something that he could steal. He did what he could, so far as it lay in his power to carry into effect his design to take whatever he found in the pocket, and, because he did not find property there, it matters not, because he did all in his power to carry his intent into effect.

So that if the man partly took the watch from the sleeping passenger, and he did it with the intent to steal the watch, and something occurred which prevented him from carrying out his intention to its fullest extent, that is, the locking of the doors and the ringing of the signal or the call by the conductor, yet if he did all that he could under the circumstances, to carry his intention into effect, the mere fact that something occurred, which he did not take into consideration, and which he was not prepared for, which prevented him from carrying his intention into effect, would not excuse him, in law, from being guilty of an attempt to commit a crime.

I charge you, gentlemen, that if the defendant and those three men were actuated by a common purpose and moved in conformity with a common design to steal the watch from that man, then everything that each one of those four men did in carrying out such purpose and design is chargeable to all, and for every act that any one of them did tending to effect the commission of the crime intended, the whole four are responsible. If you find that there was such a common purpose and design, and that the defendant was concerned in it and actually participated in its execution, he is just as responsible for the attempt to take the watch as though he himself had placed his hand on the watch and had done what is claimed to have been done by the fourth man.

The Court of Appeals says, to constitute this crime, first, there must be a person from whom property may be taken.

The prosecution claims to have established evidence that there was a passenger in the car asleep, with that gold watch on his person.

That is the first element: Was there a person from whom the property may be taken?



Second: An intent to take it against the will of a person, that is, the will of the owner.

The law would construe that the taking of a watch, with criminal purpose, from a sleeping man, would be taking it against the will of the owner, because he, being asleep, was not in possession of his faculties, and could not exercise his will, and, therefore, could not manifest opposition to the attempt to take his watch, so the law will say that that was taking it against his will.

And the third element: "And some one intending to accomplish it," that is, the act.

Was the act of the man, if the testimony is true, in putting his hand on the chain and taking the watch from the sleeping man's pocket, done with the purpose of carrying the thing into effect, and to accomplish the purpose intended?

If so, it would constitute in law an attempt to commit the crime of grand larceny in the first degree.

So that these three elements must concur, and the prosecution claims by the evidence to have

established here that these three elements all concur, on the occasion in question.

And a further extract from the opinion of the learned Court, which it is necessary for you to bear clearly in mind, is that "the question whether an attempt to commit a crime has been made is determinable solely by the condition of the defendant's mind and his conduct in the attempted consummation of his design."

In determining the conditions of the defendant's mind, that is, the question of his intent, which is one of fact for you, you can infer from all the circumstances in the case.

You may take into consideration the time of the night, the place, the taking of the car, the new conductor at the depot, the inquiry addressed to the conductor, the reading of the paper by the man, the opening of the door by another, the standing in front of the person upon whom the attack was made and the covering of the person of the man by the defendant by the spreading of his coat, if that occurred, and the attempt to take the watch from the person of the unknown man, the closing of the door by the conductor and his



the alarm, the flight of the two men from the platform of the car, when the conductor called for the police and shut the car door, the flight of the man who attempted to take the watch through the window of the car, and the flight of the defendant from the dash board of the car, and the running of the defendant through Fifty-street and his dodging around two cars and being caught finally by a citizen; all these circumstances for you to consider, to determine whether or not these four men were engaged in a common design to steal this sleeping man's watch. If you find that such a common intent existed, and you find that the defendant stood in front of the sleeping man, with his coat extended, aiding, abetting or assisting the man who was attempting to take the watch, then the defendant is guilty of the crime of attempted grand larceny in the second degree.

I need not remind you, gentlemen, that each of you has sworn that you knew it was your duty, and that you recognized that duty, and that you obeyed the instructions of the Court on the part of the judge, and that it is your duty to bear that in mind in your deliberations.

erations upon these questions of fact, submitted to you for your determination.

The defendant is entitled to the benefit of reasonable doubt. That reasonable doubt, gentlemen, is not a mere guess or surmise or speculation. It must have its foundation in the evidence adduced before you. It is, as the phrase implies, a reasonable doubt, not a thing of no price. If you have such a doubt, upon a consideration of the evidence, give the defendant the benefit of it. If you have no such reasonable doubt, but believe him to be guilty of the crime charged, then it is your bounden duty to render a verdict of guilty accordingly.

Your verdict will be either guilty or guilty of attempted grand larceny in the first degree.

The case is with you.

MR. MEYER: I except to that portion of your charge in which you charge, as matter of fact, that the act of the party attempting to take the money was the act of all four. I do not except to the language, but that is how you state the facts in substance, and then your Honor went on



THE COURT: Of course, Mr. Meyer, that was presented upon the jury finding that there was a common criminal agreement and design to commit the crime charged.

MR. MEYER: Exception. And I except to your saying that the jury can infer the intent from the following facts.

THE COURT: Of course, if the jury find that they are facts they can consider them.

MR. MEYER: Exception. And I ask your Honor in the language of the case of the People v. Moran, that that was the act of the principal who was convicted, and the Court of Appeals so held and not the act of any accomplices or co-defendants.

THE COURT: I decline to so charge. It is for the jury to determine whether the act of the defendant was a part of a common design and conspiracy to effect the commission of the crime charged.

(The jury found the defendant guilty of attempted grand larceny in the first degree.)

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May 30th, 1901.

MOTION IN ARREST OF JUDGMENT AND FOR A NEW TRIAL.

MR. MEYER: If your Honor please, the defendant moves for a new trial, upon the following grounds:

First. Because the verdict is contrary to law.

Second, contrary to evidence.

Third, against the weight of the evidence.

Fourth. Because the Court erred in denying the defendant's motion to advise the jury.

Fifth. Because the Court, at the trial, admitted illegal and improper evidence against the defendant's objection and exception, and excluded legal evidence offered by him, and the defendant at the trial excepted to such admission and exclusion.

Sixth. Because the Court, at the trial, directed the jury in matters of law, and refused to instruct them as requested by counsel for the defendant, to which exceptions were taken.

THE COURT: Motion denied.

MR. MEYER: Counsel for the defendant moves for a new trial, for legal and prejudicial errors appearing upon the face of the record.



And because it is apparent from the evidence  
that the defendant has not committed any crime  
whatsoever.

THE COURT: Motion denied.

MR. MEYER: I take an exception, to each and every  
of the denials, and on each ground.

THE COURT: I sentence you, George Darrow, to  
Prison for four years.

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COURT OF GENERAL SESSIONS OF THE PEACE

**CASES 261 *con't.* TO 262**