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CASE

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0012

New York, Monday, April 1, 1918.

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0011

COURT OF GENERAL SESSIONS OF THE PEACE
IN AND FOR THE COUNTY OF NEW YORK
PART FIVE.

2932

FILED

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

B e f o r e :

-against-

HON. CHARLES C. NOTT, JR., J.,

M I C H A E L M A Y O.

And a Jury.
-----X

New York, Monday, April 1, 1918.

THE DEFENDANT IS INDICTED FOR MANSLAUGHTER IN THE
FIRST DEGREE.

INDICTMENT FILED March 1, 1918.

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

JAMES E. McDONALD, Esq., Assistant District Attorney,

For the People.

CHARLES E. LEBARBIER, Esq.,

For the Defendant.

(A jury is duly impanelled and sworn.)

Amos G. Russell,
Official Stenographer.

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THE PEOPLE'S CASE

Mr. McDonald opens the case to the jury on behalf of the People, as follows:

Your Honor and gentlemen of the jury, the People expect to prove by their witnesses that the defendant and the deceased were employed by C. F. Piel & Company, carting away ashes from different hotels.

That the defendant and the deceased were at the Hotel Martinique on this 28th day of January, carting away ashes. They had been there some time.

And then that the deceased directed the defendant to proceed to another hotel in Park Avenue. The defendant then refused to go, and words ensued. The deceased struck the defendant in the nose, causing blood to flow.

That then the defendant put his hand in his pocket and took therefrom a knife; that he opened it. That then the deceased, Cleary, saw it, and ran away.

That the defendant ran after him a distance of about one hundred and fifty or two hundred feet and caught the defendant on approximately the corner of Thirty-third Street and Broadway. That he there stabbed him in the right side with this knife, penetrating the lung.

The deceased got away then from the defendant, and the defendant still continued to run after the deceased. The deceased then ran to the home of a brother of his, and

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there an ambulance was called. The deceased would not go to the hospital.

The defendant returned to the Martinique Hotel and remained there. Later the deceased was taken to Bellevue Hospital, where he died on the 23rd day of February.

The people will prove to you that the deceased died as a result of this stab wound inflicted by this defendant on the 23rd day of January, 1918. Those are the facts, in a general way, against the defendant.

Is Dr. Schultze here? Martin - Robert Martin.

ROBERT MARTIN, called as a witness on behalf of
The People, being first duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. McDONALD:

Q Where do you live? A 233 West One Hundred and Forty-third Street.

Q What is your business, Mr. Martin? A Chauffeur.

Q And by whom are you employed? A Piel's.

Q And what is their business? A Riding ashes, and things like that, contracting.

Q Keep your voice up. A Contracting. He is a contractor.

Q How long have you been working for Piel & Company?

A About three months.

Q Three months before January the 28th? A Yes, sir.

Q Did you know the deceased, William Cleary? A Yes, sir.

Q Was he working for Piel at that time? A Yes, sir.

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Q Was he working for Piel before you went to work for Piel? A Yes, sir.

Q Was he working with you on the 28th day of January, 1918? A Yes, sir.

Q Where did you go with your truck that night? A To the Martinique Hotel, where we loaded the ashes, and then ride them from there to Long Island.

Q Did you go to the Martinique Hotel that night? A Yes.

Q And what entrance to the Martinique, what part of the Martinique, the Thirty-second, or Thirty-third Street side?

A Thirty-third Street.

Q Do you remember what time about it was when you went there? A I got there around eight o'clock, I suppose, when I got there; it took me quite some time to load the truck, you know.

Q Was Cleary there when you got there? A Yes, sir.

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

Q Was he there when you got there? A Yes, sir.

Q How long did you remain there? A I remained there until about, I suppose about ten or half past ten, somewhere along about that, in the neighborhood of that.

Q Was the defendant Mayo working there? A Yes, sir.

Q He was helping to load your truck? A Yes, sir.

Q Now, then, before you left with your truck, did any thing happen? A Yes, sir.

Q Just tell us what happened? A William Cleary came

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up and told Mayo -

Q You mean the deceased, William Cleary? A Yes, sir.

Q Keep your voice up. A Came up and told him -

Q Told who? A Giglow, we call him Giglow.

Q This defendant? A Yes, sir.

Q What did he say to him? A Told him the foreman give him orders to go to the Park Avenue Hotel to load the other truck.

Q Yes? A Then they got in a few words.

Q Tell us what was said by each, if you remember?

A Yes, sir. Well, William Cleary came up and told the defendant that the foreman give him orders to go to the Park Avenue Hotel and load the other truck. They had my truck about loaded, and they commenced quarreling a little bit, cursing.

BY THE COURT:

Q Tell us what they said when they quarreled? A Then the defendant, Giglow, said, the hell with that, he wasn't going to load that truck now, he already loaded Martin's truck, and when he said that, my radiator was leaking, and I went down on the elevator, and when I came back up the two men was fighting with their fists.

BY MR. McDONALD:

Q Who was fighting? A Giglow and William Cleary.

Q This defendant? A Yes, sir.

Q And the deceased? A Yes, sir, William Cleary hit him in the nose, and his nose was bleeding.

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Q Yes? A And then William Cleary started to run.

Q Before William Cleary started to run, did you see anything? A Before he started to run Sullivan grabbed him, and then he jerked loose from Sullivan.

Q Who did? A William Cleary.

BY THE COURT:

Q Who is Sullivan? A One of the witnesses; he is over there (indicating). And then Giglow pulled his knife from his pocket.

Q You mean Mayo? You call this defendant Giglow? A Yes, sir, that is what we called him; that is the name I knew him by.

Q All right? A He pulled his knife from his pocket, and he ran.

Q Did he open it? A Yes, sir.

Q What kind of knife was it? A It was a kind of brownish knife, with a ring in the end of it, in the handle.

Q When you saw the defendant open his knife, or take the knife out of his pocket and open it, did you see what Cleary was doing? A Yes.

Q What was he doing? A He was running.

Q And then what happened? A And Giglow started in behind him, saying, "I will get the son-of-a-bitch".

Q What? A Giglow started in behind him, saying, "I will get the son-of-a-bitch," and Whitey run right behind Giglow.

Q Who is Whitey? A That is another witness.

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Q Robert White? A Yes, sir; so he hollered to William to look out, Giglow was coming, and they got faster, and all I could see - then I saw him about four foot from him.

Q Saw who? A Giglow.

Q You saw this defendant four feet from Cleary? A Yes, sir, they was running right along then.

BY THE COURT:

Q Which way did they run? A They run west towards Broadway.

BY MR. McDONALD:

Q What happened then? A Then I walked on down the sidewalk and met the cop.

Q Did you see Cleary get any nearer to - at least, the defendant get any nearer to Cleary? A When I saw him he was about four foot from him, and they was running to beat the band then.

Q Then did you lose sight of them? A I lost sight of them then.

Q Afterwards did you see the defendant? A Cleary?

Q Did you see the defendant, Giglow? A Oh, yes, sir, yes, sir, he came on back and went to work, when I and him and the cop brought him back. No, the cop brought him back and made him pull the knife from his pocket.

Q Did you see anything on that knife? A Well, I saw a little blood on the knife, but we thought it was from his nose.

Q You didn't see Cleary again that night, did you? A No.

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Q Did you see Cleary at any time after that? A I saw him once; he said he was going to the hospital.

MR. McDONALD: Never mind what he said. Your witness.

CROSS-EXAMINATION BY MR. LeBARBIER:

Q Had you been working all that day? A No, sir.

Q When did you go to work? A I went to work about six o'clock.

Q And was it your day off? A I work at night.

BY THE COURT:

Q Where was it that you saw Cleary? A Cleary?

Q After. A After? I saw him at Mr. Piel's barn; he came up and said he was on his way to the hospital.

Q Never mind what he said. Where is the barn? A The barn is on Fifty-fourth Street.

Q Between what avenues? A Between Sixth Avenue and Broadway.

Q On Fifty-fourth Street between Sixth Avenue and Broadway? A Yes, sir.

Q And what time did you see him? A I don't know just what time. It was about - it must have been about ten or eleven o'clock.

Q It was about ten o'clock that this thing happened, wasn't it? A No, sir, that was the next day.

Q The next morning, or evening? A Evening.

Q The next day? A The next day, next morning.

Q The next morning? A Yes, sir.

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Q You saw him at ten o'clock the next morning? A Yes.

Q Walking? A Well, I don't know whether he walked there, or not. He said he was on his way to the hospital.

Q When you saw him, was he on foot? A He was on foot; he had just come inside the barn.

BY MR. LeBARBIER:

Q You went to work at six o'clock that night? A Yes, sir.

Q What did you have - a truck? A Yes, sir.

Q And you were driving that truck? A Yes, sir.

Q Were you the only one who attended to driving that truck? A Yes, sir.

Q And you started from where to go to Broadway and Thirty-third Street? A I started from Fifty-fourth Street, Mr. Piel's barn.

Q Who is Mr. Piel? A C. F. Piel, that is all I know.

Q What is his business? A He is a contractor.

Q He is the fellow who carts ashes? A Yes, sir.

Q You had been working for him for some time? A Yes, sir.

Q How long? A About three months.

Q And do you know whether the defendant had been working for him? A Yes, sir.

Q And he was working all the time that you had been working? A He was working all the time I had been working, and they all said he had been working there all the time.

Q You heard others speak about him? A Yes, sir.

Q Do you know what his reputation was for peace and quiet?

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A Yes, sir.

Q What was it? Good, or bad? A I have always heard it was good.

Q And did he always work as a good workman? A Yes, sir.

Q Then you came down from Piel's place and arrived at Broadway and Thirty-third Street, did you not? A Yes, sir.

Q What kind of cart did you have? A Automobile, cart.

Q Just describe it; in what way - A It is a delivery truck, a five-ton delivery truck, a delivery truck.

Q And when you arrived at Broadway and Thirty-third Street you got there at about what time? A I got there about 6:30.

Q When you got there did you see the defendant? A They was all there.

Q No, when you got there, did you see the defendant?

A Yes, sir.

Q He was working in the street, was he not? A He was getting the ashes up from down below in the basement, up on the sidewalk.

Q In the basement of the hotel? A Yes, sir.

Q Was there anybody working with him? A Yes, sir.

Q Who was working with him? A Joe, a fellow by the name of Joe.

Q Is that Sullivan? A No, sir.

Q Joe who? A He is back over there (indicating); I don't know his other name.

MR. LeBARBIER: What is your last name, Joe?

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A PERSON: Guilfoil.

Q Guilfoil? A Yes, sir.

Q Was he working with the defendant? A Yes, sir.

Q They were both taking the ashes out from the hotel?

A Yes, sir.

Q Was there any truck besides yours there at that time?

A Not when I arrived there.

Q Was your truck filled? A Yes, sir.

Q And did these two men help you fill your truck? A Yes.

Q Did they finish filling it? A Yes, sir.

Q Did a second truck come along? A Yes, sir.

Q Whondrove that truck? A I can't remember his name.

Q It was not Cleary, was it? A No, sir; it was not Cleary driving it.

Q The man came along with the second truck, - and why do you call the defendant Giglow? A Why do I call him Giglow?

Q Yes. A That is what they all call him ever since I work there, they called him Giglow.

Q Then did the defendant help fill the second truck?

A No, sir.

Q Was the second truck filled? A No, sir.

Q Was it halp filled? A No, sir.

Q Was there anything in the second truck of the ashes?

A There wasn't any chance at all. He just had come from the dump, I think.

Q What were you putting in the truck? A Well, that truck

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came up to go to the Park Avenue Hotel for to be loaded there.

Q Oh, it was just passing? A Yes, just passing, and stopped to get some of the men to take to the Park Avenue Hotel.

Q Who else besides Guilfoil was there? A Guilfoil?

Q That fellow Joe? A They was all there, Guilfoil and Joe and Giglow and Sullivan and Whitey, and I can't remember them all. Them is the ones that was there.

Q When this truck that you were working on was filled, what did you do? A What did I do? I went down and got a pail of water to put in the radiator to get ready to pull out for Long Island, to the dump.

Q Just before you went down to get that pail of water, did you see Cleary? A Did I see him?

Q Yes. A Yes, sir.

Q How long before you went down had you seen him? A He just came up.

Q Did he come up with any truck? A No, sir.

BY MR. McDONALD:

Q He came up from the cellar, you mean? A Come up from the cellar.

BY MR. LeBARBIER:

Q From the cellar of the hotel? A Yes, sir.

Q And when he came up did he say anything to the defendant? A Yes, sir.

Q What did he say? A He said he got orders from the foreman for him to go to the Park Avenue Hotel to load the other.

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truck.

Q He said what? A He got orders from the foreman to go to the Park Avenue Hotel and load the other truck.

Q To whom did he say that? A He said it to Mr. Giglow and the rest of the fellows that was loading the truck.

Q Then when he said that what did Giglow say, the defendant say? A He said he wasn't going there to load the truck; he said, "To hell with loading it".

Q Talk out. A He said he had loaded Martin's truck, and he wasn't going there.

Q And what did he do then? A What did he do? Well, I went on down in the basement then.

Q Just before you went down in the basement is that all that you heard Cleary say? A That is all I heard him say, because I -

Q Never mind that. When the defendant said, as you say now, "To hell with that," did you see him do anything? A No, sir, not then.

Q Did you see Cleary do anything? A Not at that time.

Q At that time did it look to you like any fight? A It didn't look to me like any fight then.

Q And that is why you went downstairs, isn't it? A Yes, sir.

Q You remained downstairs about how long? A Oh, I was there about - I wasn't there over about three minutes, I guess.

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Q You came up with a pail of water? A I came up with a pail of water.

Q And what did you do with the pail of water? A When I first got up the men was fighting; I set the pail of water down until I seen the fight out.

Q You wanted to see the fight out? A Sir?

Q You wanted to see the fight? A No, I was looking at it. I didn't want to see the fight.

Q But you stopped to look at it? A Yes, sir.

Q Did you see the deceased, Cleary, hit the defendant?

A Yes, sir.

Q Did he hit the defendant before he did anything? A Sir?

Q Was he the first one to hit the defendant? A He was the first one I saw hit him.

Q And where did you see the blow land? A On his nose.

Q Did you see blood spout from his nose? A Yes, sir.

Q And when the defendant got this hit on the nose and what the blood spouted from it, did you see him do? A, The defendant?

Q Yes. A Well, then, Cleary -

Q What did you see the defendant do? A He pulled his knife from his pocket.

Q Just at that time, where was Cleary? A Cleary? He started to run, and Sullivan grabbed him.

Q He ran then? A Yes, sir.

Q Did he run before the knife was opened? A Yes, sir, he started to run before the knife was opened.

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Q You saw that, didn't you? A Yes, sir.

Q And Cleary is a pretty good runner? A He is.

Q And he did run, as you say, to beat the ~~bad~~? A Yes, sir,
he ran.

Q And you saw him run? A Yes, sir.

Q And at no time while you were looking did the defendant
get near to Cleary? A I only saw him -

Q Now, did he?

MR. McDONALD: Let him answer.

A I saw him get, I should judge, ^{within} about four foot of him.

Q How far away from you was that? A How far was I away
from him?

Q Yes. A I guess I must have been 65 or 70 feet.

Q When? A Sir?

Q When. A When they was running.

Q Did the deceased run towards Broadway? A Yes, sir.

Q And Thirty-third Street? A Yes, sir.

Q Did he get as far as Broadway? A Yes, sir, they got
as far as Broadway.

Q Now, Martin - and the defendant was running after
him? A Yes, sir.

Q Well, you saw a police officer there, didn't you?

A Yes, sir, I met -

Q Didn't you?

MR. McDONALD: Let him answer.

MR. LeBARBIER: I am going as quick as I can.

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MR. McDONALD: Suppose you let the witness answer?

Q Didn't you see a police officer there? A Yes, I saw him.

Q And didn't you see the police officer stop the defendant? A No, sir.

Q Did this man pass the police officer? A That I couldn't tell you.

Q Why not? You were looking? A I couldn't see from where I was, I couldn't see whether they passed him, or not.

Q Was there a crowd in the street? A No, sir, but it was a little dark.

Q This was about half past ten? A Yes, sir.

Q It was all lit up there electrically, wasn't it? A Yes.

Q Can you state to this Court and jury that you didn't see the defendant, or did see the defendant, pass the officer? A I didn't see that; I couldn't say that.

Q How far did you see Cleary, the deceased, run? A About 65 or 70 feet, I saw him.

Q And was he still running when you left off looking at him? A Yes, sir.

Q And the defendant had never gotten up to him, had he? A He was about four foot from him.

Q He had never caught up with him? A I lost sight of him then.

Q But at the last moment when Cleary was running away he was still about four feet ahead of the defendant, isn't that

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so? A Yes, sir.

Q Isn't that correct? A That is correct.

Q Now, when he was four feet ahead of the defendant, was the police officer there? A I didn't see him.

Q Now, did you at any time see the defendant strike the deceased with the knife? A No, sir, because I lost sight of him.

Q Well, now, Martin, why do you say, "because I lost sight of him"? Has anybody made any suggestion to you? A No, sir.

Q Has anybody made any suggestion to you about your testimony? A Suggestion?

Q Yes. A No, sir.

Q Has anybody said, "Well, then say, 'I lost sight of him' "? A No, sir.

Q If it was lit up like that, and you say it was, and you had been noticing the fight, can you account how it is or how it was that you did not see the defendant get nearer to Cleary? A Well, I will tell you. The light might be shining along here, and over in that corner it is dark, and you can't see there then (indicating); that is how it was. He ran through a dark place.

Q What dark place is there at the corner of Thirty-Third Street and Broadway at that time? Where is there a dark corner?

A The darkness comes before you get on the corner.

Q But he was running into the light, wasn't he? A Sure, he was running--

Q And you saw him? A Yes, sir.

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MR. McDONALD: Let him answer.

Q You saw him running into the light, didn't you? A I saw him running into the light, but when he run through the dark place then I lost sight of him.

Q Now, listen, Martin. Has anybody anywhere at any time said to you that if you were pressed with questions like this to say, "I lost sight of him"? A No, sir.

Q Are you sure about that? A I am sure about that.

Q Was it possible to lose sight of him? A Yes, sir.

Q You saw the officer there, didn't you? A I didn't see the officer - I saw the officer after everything was over, coming on back, with the deceased, as you call him.

Q The defendant, you mean? A Yes, sir, the defendant.

Q This is the live one here (indicating defendant)?

A Yes, sir, that is right. I saw him coming on back with him.

Q You saw the officer come back with him? A Yes, sir.

Q Did you see the officer take hold of him? A Yes, sir.

Q When the officer took hold of him, Cleary was still running, wasn't he? A Was still running?

Q Yes. A I don't know. I didn't see him. I couldn't tell at that time whether he was running, but the officer - when the officer took hold of him he was gone; Giglow was coming back; the officer was coming back; he didn't take hold of him while he was running after him. I didn't see him take hold of him then. If he had taken hold of him then I didn't see it.

Q Did he have the knife in his hand then? A When?

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Q When the officer had him. A No, sir; the officer made him put his knife in his pocket.

Q Isn't it a fact that the officer told him to take the knife - searched him, and he took the knife out of his pocket?

MR. McDONALD: Who took the knife?

Q The defendant took the knife out of his pocket? A Yes.

Q Eh? A Yes, sir.

Q Then it was pretty dark there, wasn't it? A I could see him.

Q How close were you? As near as you are to the stenographer? A A little bit closer.

Q A little bit closer? A The cop was on one side and I was on the other.

Q You saw the defendant take the knife out of his pocket? A Yes, sir.

Q Did he open the knife? A Yes, sir.

Q Who opened the knife? A The deceased, he opened the knife.

Q No, the defendant; he is still alive? A Yes, sir.

Q He opened the knife, did he? A Yes, sir.

Q And you were looking right at that knife, weren't you? A Yes, sir.

Q Was there blood over the defendant? A Over the - yes, sir, there was blood on his nose.

Q On his nose? Hadn't gone down to his lip? or had he a stream of blood from his nose? A It was on his nose, running

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down there.

Q Over his chin? A Yes, sir.

Q Did he have any blood on his shirt? A I didn't notice his shirt.

Q You are now within less than two feet from where the defendant was? A I didn't look -

Q Now, wait. About within that distance, did you see blood on the defendant's shirt? A No, sir, I didn't notice it.

Q Didn't the officer take his shirt and pull it out and look at it, and it was all bloody? A I didn't see him do that.

Q Was there blood on the defendant's hand? A I didn't notice his hand.

Q Didn't you see him put his hand up to his nose and mouth? A No, sir, I didn't notice him do that.

Q Was the blood still streaming down from his nose?

A Not very much; just a little.

Q Was it? A Yes, sir.

Q Where was it dripping to? A It was all on his face.

Q What was he doing, drinking in the blood as it came out of his nose? A I don't know whether he was, or not. I didn't pay any attention to that.

Q What? A I didn't pay any attention to that.

Q But he put his hand up to his face sometimes then, didn't he? A I don't know, sir. I suppose he must have, but I didn't see him. If he did, I didn't see him.

Q Didn't you see blood on his hands then? A No, sir.

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MR. McDONALD: He has already answered that. He said no, he didn't see it.

Q When he took the knife out of his pocket, what kind of a knife was it? A It was a bone-handled knife.

Q What? A A kind of bone handled knife, brownish, with a ring in the end of it.

Q When he opened it, did he put it in his teeth? A No, sir, I didn't see it in his teeth.

Q Didn't see him open it with his teeth, did you? A No.

Q What did he do - hand it to the officer? A The officer taken it and looked at it.

Q Did he take it and hand it to him? A Yes, sir.

Q Where did you see blood on the knife? A On the blade, just a little smear around on the blade.

Q Whereabouts, the end of the blade? A About the middle, about middle ways on the blade.

Q Did you look at the knife? A Yes, sir.

Q Did you touch what you say was blood on the knife?

A Did I touch it?

Q Yes. A No, sir.

Q Did the officer touch it? A No, sir, he didn't touch it.

Q Was it wet blood, or dry blood? A It looked to be wet blood; it must have been wet, because the blood just came from the man.

Q What? A I say, it must have been wet blood; I didn't

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touch it, but it must have been wet.

Q Why do you say wet? A Because it was fresh blood.

Q What? A Because it was fresh blood.

Q Yes, but you didn't see anybody get cut, did you? A No.

Q Did he say he had cut anybody? A Sir?

Q Did the defendant say he had cut anybody? A He didn't tell me he cut anybody.

Q Didn't the officer ask him if he cut the deceased?

A I didn't pay any attention to what the officer said. The officer said, "My, this is an awful rib-sticker you have got here," and he asked me did I know the two men, and I told him yes, I knew the two men. He said, "I don't think there is anything serious. If it is, we will know."

Q Did the officer, in the presence of the defendant, ask him whether he had cut anybody with that knife? A I don't remember whether he did, or not.

Q Why do you say you don't remember? A Well, I don't.

Q Don't remember? A No, sir, I don't remember hearing him asking him that.

Q Do you remember the defendant saying anything? A Yes, sir, he said something.

Q Didn't he say he cut this man? A No, he didn't say he cut him.

Q Sure about that? A I am sure about that.

Q Did he say he had drawn his knife and had cut him with it? A No, he didn't say that.

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Q What did he say? A I understood him to tell the cop he ought to lock the black son-of-a-bitch up, he hit him in the nose.

Q That is what this fellow said? A Yes, sir.

Q He said to the officer, "Lock the son-of-a-bitch up; he hit me in the nose"? A No.

MR. McDONALD: No, he said, "Black son-of-a-bitch".
Get it all in.

Q He said, "Lock the black son-of-a-bitch up; he hit me in the nose"? A Yes, sir.

Q That is what this fellow said? A Yes, sir.

Q In other words, the defendant made a complaint against the deceased, didn't he?

MR. McDONALD: I object to that, sir.

THE COURT: Yes, that is calling for a conclusion.

MR. LeBARBIER: I take an exception.

Q When the defendant said that to the officer, what did the officer say? A He said, "You got an awful rib-sticker; you ought not to have such a thing as that after a man," and he looked at it, the officer looked at it, and we thought there wasn't nothing much- nothing serious about it.

MR. LeBARBIER: I move to strike that out.

THE COURT: Yes, motion granted, strike out the latter part of the answer.

Q And even then, when he was looking at it, did you say there was blood there and he didn't ask him if he had cut

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the deceased, did he? A Who, the officer?

Q Yes. A I don't remember him asking him did he cut him.

Q How long did you work for Piel Brothers? A About three months.

Q Are you working for them now? A No, sir.

Q Since when? A Since - oh, it has been - I can't recollect just exactly; it has been about five or six weeks ago.

Q Were you laid off? A No, sir.

Q Discharged? A No, sir.

Q What happened to you? A Well, I just wanted to get a job near-by.

Q And did you get a job near-by? A Yes, sir.

Q Then, did you see the deceased the next morning, Cleary?

A Cleary, yes, sir.

Q You have no feeling against the defendant, have you, Giglow? A Neither one of them.

Q When you saw the deceased the next morning, where did you see him? A At Piel's barn.

Q You had been working all night? A Yes, sir.

Q And had he been working all night? A No, sir.

Q You don't know whether he had, or not, do you? A He hadn't been working there.

Q That is, you say you didn't see him work with you?

A No, he was not working there, because I was around with all of them.

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Q When you saw him the next morning, was the defendant there? A No, sir.

Q Just Cleary alone? A Yes, sir.

Q Did you see any blood on Cleary? A No, sir.

Q Sure about that? A Sure about it.

Q Now, that is not a question that you do not remember, is it? You are now positive that you saw no blood on Cleary?

A That is right.

Q Front or back? A Front or back.

Q Sure? A Sure.

Q That is to say, there is no doubt at all in your mind; is that right? A That is right.

MR. McDONALD: I object to that, sir. I think we have got enough on that.

THE COURT: Yes, he said he is sure there was none.

Q How long did you see him? A About - I suppose he was there about three or four months.

Q Did you see him after that at any time? A No, sir.

Q Didn't you see him about a month after that? A No, sir.

Q Anywhere? A No, sir.

Q Did the defendant continue to work all that night?

A Yes, sir.

Q And did he continue to work for how long afterwards?

A Right along.

Q For how long? A Well, he worked until they arrested him.

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Q Cleary was known as a fighter, wasn't he? A No, sir.

Q Wasn't he? A No, sir.

Q A violent fellow? A Violent?

Q Yes. A No, sir.

Q Didn't he get in fights? A No, sir, I never seen him in a fight since I have been working there.

Q Well, you saw him strike this man, didn't you? A Yes.

Q Didn't you consider that violent? A Well, that was the onliest time I saw him in a fight.

Q Do you know he came out of a saloon that night? A Out of a saloon?

Q Came out of a saloon? A No, sir, I didn't know if he came out of a saloon, or not. I didn't see him come out of a saloon.

Q What say? A I didn't see him come out of a saloon.

Q You say that he was sober? A Yes, sir.

Q And then when this fellow - when the defendant told him to go to hell he turned around and hit him in the face, is that right? A When he told him to go to hell he turns around and hit him in the nose.

Q Yes? A They was fighting; I went down after the pail of water, and they was fighting when I came back up.

Q Did you see this man hit Cleary at all? A This man here?

Q Yes. A I couldn't tell whether he hit him, or not. I seen him hitting at him with his fist, like that (illustrating)

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Q Did you see the defendant at any time hit Cleary?

A No, sir, I didn't see him hit him, but they both was fighting and scratching, but I didn't see his blow land, but I saw Cleary's land.

Q You didn't see this man land? A No, sir.

Q And when that fighting was going on there was no knife in his hand at all? A No, sir.

Q Was the defendant facing Cleary when you say you saw his fist up? A Yes, sir.

Q You were right there, weren't you? A Yes, sir.

Q You said that you didn't see the defendant hit Cleary?

A No, sir, I didn't see him hit him, but I seen him hitting at him, like that (illustrating), but I didn't see the blow land.

Q It did not land? A No, sir.

Q You were close enough to see that? A Yes, sir.

Q Did you try to stop them? A No, sir, I didn't try to stop them.

Q Why? A Because I didn't have time. Clearly started to run, he jerked loose and started to run, and Sullivan caught him.

Q Where did Sullivan catch him? A Sullivan pulled them apart, right in front of my automobile, the one I was driving.

Q Were they both kind of locked together? A They was kind of locked together? A Yes, sir.

Q And the deceased was punching the defendant; is that

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right? A He only give him one blow in the nose.

Q But that was such a good punch that it drew blood, didn't it? A Yes, sir.

Q Did Sullivan get hold of the deceased, Cleary? A He got hold of Cleary.

Q When he caught hold of Cleary, where was the defendant? A He was standing right behind him, kind of, like.

Q By himself? A Yes, sir.

Q Did you see a knife in his hand then? A When he was standing?

Q Yes. A No, sir.

Q Did you see - question withdrawn. Where did Sullivan catch hold of Cleary? A Right in front of the machine.

Q But around Cleary's body? A No, it was not around Cleary's body. Cleary started to run.

Q How did Sullivan catch hold of Cleary? A How did he catch him?

Q Yes. A He grabbed him in the back.

Q And held him? A He tried to hold him, and he jerked loose from him and run.

Q Sullivan couldn't hold him, and Cleary ran away, didn't he? A Yes, sir.

MR. LeBARBIER: That is all.

REDIRECT EXAMINATION BY MR. McDONALD:

Q I show you this knife and ask you if that is the knife that you saw the defendant take out of his pocket on the 28th

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day of January, 1918 (handing knife to witness)? A Yes, sir,
that is the knife.

MR. McDONALD: May I have it marked for identification?

THE COURT: If he identifies it, it may be marked
in evidence.

MR. LeBARBIER: Do you offer it in evidence?

MR. McDONALD: Yes.

MR. LeBARBIER: I object to it as improper, immaterial
and irrelevant.

THE COURT: Objection overruled.

MR. LeBARBIER: Exception. I move to strike out
the answer as improper.

THE COURT: Motion denied.

MR. LeBARBIER: I take an exception.

(Knife received in evidence and marked People's Ex-
hibit No. 1, of this date.)

MR. McDONALD: That is all. May I take Dr. Schultze
at this time, sir, out of the regular order?

THE COURT: Yes.

O T T O H. S C H U L T Z E, called as a witness on behalf
of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Doctor, you are a duly licensed physician and surgeon?

A Yes, sir.

Q And how long have you been practicing? At least, how

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long have you been a licensed physician? A Since June, 1889.

Q And during that time have you been - what offices have you held? A Coroner's Physician of the County of New York in 1896 and '7 and Coroner's Physician of the Borough of Manhattan from December, 1902, until April, 1915, and from that date to the present time medical assistant to the District Attorney of New York County.

Q During that time, have you performed a number of autopsies to find out the cause of death? A I have.

Q And about how many autopsies have you performed? A Over five thousand.

Q And did you perform an autopsy upon the body of one William Cleary? A I did.

Q And when and where? A On February 25, 1918, at the mortuary, at East Twenty-ninth Street, New York.

Q And was William Cleary identified to you by anyone? A He was identified to me by Officer Michael Compos, of the Twenty-second Precinct

Q You say you did perform an autopsy upon the body of William Cleary? A Yes, sir.

Q And are you able to tell us what was the cause of the death of William Cleary? A I am.

Q Please state it.

MR. LeBARBIER: Objected to as incompetent.

THE COURT: I think you better first ask him to describe the conditions he found, and then ask him to express

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his opinion as to the cause of death.

Q What did you find, Doctor? A He was a colored man, measuring five feet nine inches in height, with muscles fairly well developed; the body was somewhat emaciated. On the right side there was a wound four inches in length that extended from the seventh rib on a level with the nipple and downward and forward to a point over the eighth rib, in a line dropped from the middle of the arm-pit. From the lower end of the wound there was a second wound connecting with it that measured an inch and a half, passing downward and forward. Through this wound the seventh and eighth ribs had been resected; that is, a part of the seventh and eighth right ribs had been taken out. A drain of gauze extended into a pus cavity in the chest between the lung and the chest-wall. In the lung opposite to the wound there was a scar measuring one inch in depth between the upper margin of the lower lobe and the lower margin of the upper lobe of the right lung. The thickness of the chest-wall was one inch, so that the entire depth of the wound through chest-wall and through lung was two inches. The sac in which the heart is contained, contained pus one pint in amount. The rest of the organs, with the exception of the colon, the large intestine, which showed a catarrhal inflammation, were in a normal condition. The cause of death was a stab -

MR. LeBARBIER: Objected to as incompetent, irrelevant and immaterial.

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BY THE COURT:

Q Can you express, with reasonable certainty, an opinion as to the cause of death? A Yes, sir.

Q You may do so. A A stab wound -

MR. LeBARBIER: I would like to cross-examine him before he does.

THE COURT: No, you can cross-examine afterwards.

MR. LeBARBIER: Very well, sir.

A (Continuing) A stab wound of the right lung, empyema, which means pus in the right pleural sacs, and suppurative pericarditis; that means inflammation of the pericardial sac.

Q The pericardium is the sac the heart is inclosed in? A Yes, sir.

Q And suppurative pericarditis means an inflammation accompanied by pus? A Yes, sir.

MR. LeBARBIER: I move to strike out the answer as incompetent.

THE COURT: Objection overruled. Motion denied.

MR. LeBARBIER: I take an exception.

CROSS-EXAMINATION BY MR. LeBARBIER:

Q Was the wound or the opening in the front or the back part of the body? A On the right side of the body.

Q Forward, right side forward? A It extended from a line that would correspond to the back line of the arm-pit over the seventh rib and on a level with the nipple, extended downward and forward to a point over the eighth rib.

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Q Never mind repetition. You have given that? A It was distinctly on the right side of the body.

Q Those incisions you say you observed, are you able to state what caused them? A The operation for the resection of the seventh and eighth ribs for drainage of the pleural sacs.

Q And not any knife in the hand of the defendant? A (No answer).

Q Did you hear my question? A I did.

Q Now, what is it? "Yes," or "no"? A I don't think that question can be answered in that form.

BY THE COURT:

Q How many incisions did that cause? A There were two, one measured four inches, and the other at the lower angle of the first one, going downward and backward, measured an inch and a half.

Q Were both of those surgical? A It was my opinion, from the wound in the lung that the wound on the right side ~~was~~ of the chest was originally a stab wound. That was enlarged for the purpose of operation and resection of the ribs, for drainage.

BY MR. LeBARBIER:

Q That wound had healed? A No, this wound was open. The wound through the lung had healed. There was some tissue there for the depth of an inch.

Q That had healed? A Yes, sir.

Q Do you know how long this man was in the hospital?

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A I was informed. I don't know just how long, of course. He was stabbed on the 28th of January, according to the hospital report. I think he was admitted to the hospital on the following day.

Q Is the scar of the lung that you speak of a wound originally given by, we will assume, a stab wound? A Yes, sir.

Q Do you state positively that that wound on the lung was healed? A Yes, sir. There was some tissue.

Q And a scar means that it was healed? A Yes, sir.

Q And do you state that the wound - that the instrument that had inflicted that wound which had healed and over which there was a scar had been a mortal wound? A From the result -

MR. LeBARBIER: Now, may I call for an answer there on that question?

MR. McDONALD: Let him answer, and if you don't like it you can object.

MR. LeBARBIER: I don't like these remarks of the District Attorney.

THE COURT: That question is not correct. You begin asking about the instrument and end by asking about the wound. You say, "Was the instrument a mortal wound?" He can't answer that.

Q I say, was the wound you saw on the lung that was healed and the scar of which you observed, was that or not a mortal wound? A If you will pardon me, you are referring to the lung alone?

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MR. LeBARBIER: Yes. May I call for a categorical answer there, your Honor?

THE COURT: If he can make one.

Q Was that a mortal wound? A As the result showed in this case -

MR. LeBARBIER: Now, I respectfully ask if I may have a categorical answer.

THE COURT: Can you answer it categorically?

THE WITNESS: I can't answer it categorically.

Q You can't answer that? A No, sir.

MR. McDONALD: He says, "categorically".

BY THE COURT:

Q Where was this pus cavity? A In the pleural sac.

Q Was that connected with this wound? A Yes, sir; that is the sac that surrounds the lungs and has one border or surface on the inner side of the chest wall and the other surface is the lung surface, and that sac was converted into a large pus sac.

BY MR. LeBARBIER:

Q From inflammation? A Yes, sir.

Q Now, was that inflammation produced by a stab wound?

A It was.

Q Were you aware that the deceased had been discharged from the hospital? A I was not. He died at Bellevue Hospital.

Q Were you aware that he had been discharged from that hospital? A I was not.

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Q Were you aware that he had reported for work in the latter part of the month of February? A I was not aware of that.

Q Were you aware that he had gone out - question withdrawn - Were you aware that he had not reported to the hospital immediately upon - assuming that to be so - upon receiving a stab wound? A I think my information from the police was to the effect that after he received the stab wound he received some treatment at his home, and thereafter -

Q Are you sufficiently familiar with the history of this case to state what he was suffering from in the hospital during that month? A Yes, sir.

Q Did you see him in the hospital? A I did not.

Q You are only concerned with the autopsy; is that so?

A Exactly.

Q Couldn't that inflammation around the heart that you speak of in that pus sac be produced from a cause other than the stab wound? A Such inflammations can be produced by causes other than stab wounds.

Q In this particular case, will you answer the question?

A In this particular case, from the fact that there was a pus inflammation, a purulent inflammation of his pleural sac, and the pericardium is frequently secondarily effected from that.

Q Take, plain, every-day, ordinary English. Here is a man whom it is said was stabbed, his lung was healed, but there was a scar on the lung; wouldn't that denote that inflammation

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had passed? A As far as the lung was concerned, yes, but not as far as the pleural sac was concerned.

Q Wouldn't denote that it had nothing to do with the pleural sac that you speak of? A Not necessarily.

Q Not necessarily, but isn't it ~~xxx~~ within the realm of ordinary common sense that it would? A No, that is not true, because it may be infected through such a sac, the pleural sac might be, and again the pleural sac might be infected directly through the chest wound.

Q Well, apart from all the "might-bes" or "might-have-beans" take this particular case that we are concerned with here. It is said that the man was stabbed in the lung, the lung has healed, and there was a scar showing that the wound had healed. Now, I am asking you does that have anything to do with the inflammation in this sac around the heart, assuming that the wound of the lung had healed and that there was a scar of the lung, showing that it had healed? A As I said before, the pericardial sac inflammation was secondary to the inflammation of the pleural sac, and that in turn was secondary to the inflammation of the stab wound.

Q I am asking you plainly upon a simple statement of assumption, you might say. If the lung wound has healed, and the scar shows that it has healed, did that have anything to do with the pus in this pleural cavity? A It might have been the source of infection.

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Q That is the best you can say, it might have been, is that right? A Yes, because there was another source of infection through the chest wall.

Q Was the wound in the lung which you saw there and the scar healed, was that wound necessarily a mortal wound? A No, not necessarily a mortal wound.

MR. LeBARBIER: That is all.

REDIRECT EXAMINATION BY MR. McDONALD:

Q You said, Doctor, something about, in answer to questions put by counsel for the defendant, that you heard what the defendant was suffering from at the hospital. You found out in some way. What was that? A The police officer made the statement when he identified the body that the man had first went to his home and was treated there by an ambulance surgeon.

MR. LeBARBIER: That is objected to, and I move to strike it out.

THE COURT: He is simply repeating what he said in answer to you. He said it was a police officer's information.

Q Proceed. A That he went to his home and was seen at his home by an ambulance surgeon who treated him there and left, and thereafter he was taken to the hospital. I think he also stated that the deceased had gone from home to the police precinct.

Q Did you have sufficient information to determine what this man was suffering from at the hospital?

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MR. LeBARBIER: Objected to as incompetent and already answered.

THE COURT: Yes, objection sustained.

MR. LeBARBIER: I take an exception.

THE COURT: I sustained the objection.

MR. LeBARBIER: Oh, pardon me, your Honor.

BY THE COURT:

Q You spoke of another penetration of the chest wall; at least, I understood you to so testify? A No, sir, just one. There was only one wound, that measured four inches, and then another adjoining it, an inch and a half, and beneath that wound and through it the seventh and eighth ribs had been resected; that is, part of the rib removed, and in that opening there was a gauze drain that communicated with the pleural sac, so there was one large opening in the side of the chest wall.

MR. LeBARBIER: Now, I respectfully move to strike out all the testimony of the doctor that goes to show incisions. I respectfully submit they have no relation at all here to the wound which he states was through the lung, or the lung was affected. That was healed, but there was a scar. Apparently, these other things are what was done to him by way of exploitation in the hospital.

THE COURT: Motion denied.

MR. LeBARBIER: I take an exception.

Q Apart from the stab wound, did you find anything that

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accounted for the condition of emphysema or pus in the pleural cavity? A No, sir.

RECROSS-EXAMINATION BY MR. LeBARBIER:

Q Well, did you find any condition that might have arisen from other than this wound on the lung and the scar that you observed? A No, sir.

Q That might have produced that? A No, sir.

Q Well, you are not familiar with the history of the man's case, were you? A I was not.

Q So, therefore, when you say, "No, sir," you really do not mean to say that you know whether you do know, or not?

A I am basing my answer upon the examination of his body at the autopsy.

Q Only that? A Yes, sir.

Q Without a knowledge of the history of the man in the hospital? A Yes, sir.

Q That is right, is it? A That is right, that is correct.

Q Take that scar that you observed that was healed on the lung, that was the only scar that you did observe, wasn't it? A Yes, sir.

Q How big was that scar? A It was one inch in depth and retracted from the surface for a distance of half an inch across a space that measured a quarter of an inch.

Q One inch in depth? A Yes, in the actual substance of the lung it measured one inch in depth.

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Q In depth? A Yes, sir.

Q And how long or how large an opening was it, assume that it was a scar, how big an opening would it have been?

A It measured about a quarter of an inch in width.

Q In width? A Yes, sir.

Q And in length? A In length, one inch.

Q One inch? A Yes, sir.

Q And in depth? A Length and depth.

Q Now, that wound was healed, wasn't it? A That was healed. That was scar tissue.

Q That was scar tissue? A Yes, sir.

Q And when you say you have been a physician for a number of years, you of course have had many occasions to observe the tissues in autopsies, haven't you? A Yes, sir.

Q Now, confining yourself solely to the question of that scar which you say was healed, in so far as the scar was concerned -

THE COURT: He has already said that a great many times.

Q (Continuing) - the patient was all right, wasn't he? A Yes, sir.

MR. LeBARBIER: That is all. Now, I respectfully move to strike out the testimony of this witness on all matters of testimony concerning that autopsy, except that which related to the wound of the lung and the scar.

THE COURT: Motion denied.

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MR. LeBARBIER: I take an exception.

J O H N G U I L F O I L, called as a witness on behalf of
The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Where do you live? A 493 East One Hundred and Fifty-
sixth Street.

Q What is your business? A Working in the ash business.

Q Are you in business for yourself now? A No, sir.

Q For whom are you working? A Norman Coleman.

Q Were you working for C.F. Piel & Company on the 28th
day of January, 1918? A Yes, sir.

Q And did you know William Cleary? A Yes, sir.

Q Did you know this defendant? A Yes, sir.

Q Did you see them there on the 28th day of January
1918? A Yes, sir.

Q Did you see anything happen? A Yes, sir.

Q Just tell us what you saw happen? A Well, I was there
with three other men, loading up a truckload of ashes, and
Cleary came along and said three of us were supposed to go
over to the Park Avenue Hotel.

Q Cleary said that? A Orders from this here foreman
I am working for now, he was Piel's foreman. He is in business
for himself now.

Q Yes? A And he had orders for three of us to go
over to the Park Avenue Hotel. That is what Cleary told

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this Mayo.

Q Told you and the defendant? A Yes, sir.

Q And anybody else? A He didn't mention. Three men was supposed to go over.

Q Just tell us what happened then? A Well, then this Mike Mayo begins saying he wasn't going over, he was going to see Norman -

Q Mike Mayo, you say? A Yes, sir.

Q Which man? A We used to call him Giglow.

Q Is that the defendant here? A Yes, sir.

Q Tell us exactly what was said between Cleary and the defendant? A Well, he begins kicking, saying he wasn't going over after loading up this truck.

Q What did he say? A God damned if he was going to load up a truck and go and load another one, and the truck was pretty near ready, and the next thing I knew I seen this Cleary haul off and hit him a punch in the nose.

Q And then what happened? A His nose started to bleed.

Q Whose nose? A Mike's here.

Q The defendant's? A Yes, sir.

Q And what happened then? A After Sullivan parted them, this Bill runs around the truck.

Q Did they clench? Were they locked together, Mayo and Cleary? A Yes, sir, they were locked together, like.

Q You say Sullivan separated them? A Yes, sir.

Q And then what happened? A Cleary run around the truck

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and stood in the main entrance of the Martinique Hotel for a while.

Q How long? A Oh, maybe a minute or so.

Q Then what happened? A And Mike got ready with his knife and started to run after him.

Q What do you mean, he got ready with his knife?

A He wiped off his nose and went in his pocket for his knife.

Q Did you see him take out his knife? A Yes, sir.

Q And what did he do? A Both of them started to run.

Q Did he open it? A I couldn't tell you whether he opened it, or not; I couldn't say.

Q You say Cleary was then in the entrance? A In the main entrance of the Martinique Hotel, standing there.

Q And how far away was he from the defendant, Mayo?

A At that time he was about twenty or twenty-five feet, I should judge, from the elevator.

Q And did Mayo go over towards where Cleary was standing?

A Yes, that is what started him running.

Q That is what started who running? A Cleary.

Q What happened then? A I don't know what happened then. I see the two of them run off.

Q Where did they run to? A Run as far as Sixth Avenue and Thirty-third Street and Broadway.

Q And did you see what happened? A No, sir, I saw nothing more.

Q How long did you remain there? A Remained there

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probably an hour and a half after that. We got that load on and another load from the cellar.

Q When Mayo was running, did you see anything in his hand? A I saw his knife when he was starting off.

Q Did you see - how did he hold it? A All I know - all I could tell ^{that} ~~it~~ it was his knife was by the ring in the end of it.

Q Did he have it open? Did you see the blade? A No, I did not.

Q Is that the knife (handing witness People's Exhibit No. 1)? A That is the knife, yes, sir; that is what I noticed that ring, in the end of it.

Q Now, then, did you see how near they were together - I withdraw that. How far away was the defendant, Mayo, from Cleary when they started to run, when Cleary started to run?

A About 20 or 25 feet, I should judge.

Q And did you see then Cleary ^{and} the defendant, running?

A Yes, sir.

Q Running west towards Broadway? A Broadway and Sixth Avenue, there.

Q Now, then, did you see the defendant get any nearer to Cleary than 25 feet? A Oh, yes, he was gaining; he gained on him before he hit Sixth Avenue.

Q Did you run after them? A No, sir.

Q You remained there? A I remained there, loading up the truck.

Q Did you - about how far away were you when you saw them

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nearest to each other? A About at the end of Thirty-third Street and Broadway.

Q How near were they to each other at that time? A I should judge it was over 6 or 7 feet away.

Q And Cleary was in front? A Cleary was in front.

Q And the defendant about 6 or 7 feet away from him at that point? A Yes, sir.

Q Do you remember about what time it was, about what time it was? A I couldn't just tell you, but we used to generally hit there about ten o'clock, from that until twelve.

Q It was between ten and twelve, you say? A I should think it was around between ten and eleven; something like that, I couldn't just tell you; it was within half an hour or an hour.

Q Did you afterwards see the defendant? A No, sir.

Q Come back to the hotel, the defendant, Mike Mayo?

A Oh, yes, he come back.

Q And did he come back with an officer? A Yes, sir.

Q Tell us what happened then? A When he come back with the officer he wanted me to tell what happened.

Q Who did, the officer? A Mayo, and I told him I wasn't going to talk for nobody, I had all I could do to talk for myself, for him to state his own case.

BY MR. LeBARBIER:

Q What is that? A He wanted me to tell the officer what happened, what I saw, and I told him to state his own case, that I had all I could do to mind my own case - my own battles.

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BY MR. McDONALD:

Q Did you see anything else? Did you see the officer get a knife from the defendant? A The officer, yes, sir.

Q What? A The officer had the knife in his hand.

Q When he came back? A Yes, sir.

Q At least, when you saw him? A Yes, sir.

Q And is that the knife (handing witness People's Exhibit No. 1)? A This is the knife.

MR. McDONALD: That is all.

CROSS-EXAMINATION BY MR. LeBARBIER:

Q How long had you been working - you had been working for Piel? A Yes, sir.

Q How long had you been working? A For about three months

Q And you knew Mike, the defendant? A Yes, sir.

Q He had been working there, too, hadn't he? A Yes, sir.

Q And was he a good workman? A Pretty good workman, yes, sir.

Q I mean, a peaceable, quiet man? A He seemed to be all right with me. I never had no trouble with him.

Q On this night in question, did you see Mike and Cleary before Cleary struck him in the nose? A Yes, sir.

Q How long before? A It was about five minutes, I guess.

Q The defendant had helped load that truck, didn't he?

A Yes, sir.

Q He was doing his work, wasn't he? A Yes, sir.

Q And was ^{he} started in to load another truck? A No, sir,

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the other truck pulled up in front of his.

Q To be loaded? A To be loaded.

Q And was the defendant about to help load that truck?

A That was the time he got the orders from this here Bill Cleary to go to Park Avenue to load the other truck.

Q Did you see Cleary come out of any saloon there?

A That night?

Q Yes. A I seen him come out of saloons in the early part of the night.

Q About how early in the night? A Well, that I couldn't tell you, just how early it was.

Q I mean, nine o'clock? A Nine o'clock. It might have been after nine o'clock, for all I know.

Q Or half past nine or ten o'clock? A I couldn't indicate any certain time, because we go in and out all night.

Q What? A We go in whenever we have a chance to go in there.

Q He had been drinking that night? A Not any more than any other night.

Q I mean the deceased, Cleary? A He had a drink or two, the same as myself, first thing.

Q But didn't it make the deceased ugly? A I couldn't tell you that.

Q Didn't he come out and order him up there in a very violent way? A Just told him what orders he got from the foreman.

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Q And what do you say as to how Cleary was at that time, drunk, or sober? A I couldn't tell you; I wouldn't call him drunk; I couldn't gauge whether he was sober, or not.

Q You have seen a drunken man? A Yes, sir.

Q You know what a drunken man is? A I do.

Q You have lived some years here in New York? A Yes.

Q And you are not prepared to say now that Cleary was not drunk, are you? A I couldn't say the man was drunk, no.

Q When the defendant made this answer to Cleary, what did Cleary do? A He punched him in the nose.

Q You saw him haul off and punch him in the nose; is that right? A Yes, sir.

Q Square on the nose, and called him some vile names? A I couldn't tell you; I didn't hear him call any names; I was busy wrestling cans.

Q What is that? A I was busy making a noise with the cans; those cans make a lot of noise.

Q But you saw Cleary give him a blow? A Yes, sir.

Q And you saw it land on the defendant's nose? A I couldn't say that.

Q And you saw blood there? A Yes, sir.

Q And did you see the defendant try to wipe off the blood? A Yes, sir.

Q With his hands? A Yes, sir.

Q And there was blood on his hands? A Sure.

Q Did Cleary knock Mike down? A No, sir.

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Q Did you see Mike, the defendant, hit Cleary? A No, sir, he did not.

Q Because he was not near enough, is that why? A He didn't get a chance.

Q Cleary immediately ran away, didn't he? A Yes, sir.

Q And you saw him running down toward Thirty-third Street and Broadway, didn't you? A Yes, sir.

And

Q /All the time that you saw him Cleary was ahead, wasn't he? A Yes, sir.

Q And you saw a police officer there, didn't you? A No.

Q Didn't you see a police officer? A No, sir.

Q What was the last you saw of Cleary going away in the distance? A Going off the other side of Broadway, towards Sixth Avenue going west.

Q And the defendant stopped him? A The defendant was after him.

Q But he stopped? A Stopped?

Q Yes, when he got a certain distance. A He got out of my sight; I couldn't tell you when he stopped.

Q He did he get out of your sight? A Yes, sir.

Q Did Cleary get out of your sight? A Yes, sir.

Q How far had they gone before they did get out of your sight? A Across Broadway, under the elevated structure there, it is kind of dark there, they get out of your sight when they get under that, unless you are watching pretty closely.

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Q But, as far as you could see, Cleary was still ahead of the defendant; is that right? A Yes, sir.

Q When was it the defendant first took out a knife?

A Right there at the elevator, when he started to run after Cleary.

Q Cleary was ahead of him then, wasn't he? A Yes, sir.

Q He didn't take out his knife where the fight took place, did he? A Well, it was right there along side of the truck.

Q Did he take the knife out there? A Right there along side the truck, between the truck and the elevator, where we were working.

Q And he opened the knife? A I couldn't tell you any thing about the opening part; I just noticed the handle; that I now I know he had a knife, going after him.

Q How long was it then before the defendant came back?

A I guess about five or ten minutes, something like that.

Q And he went to work for the rest of the night, didn't he? A Yes, sir.

Q Did he say that he had got away and cut Cleary?

A I didn't hear him say a word about that.

Q You heard the police officer speak to him, didn't you? A Yes, sir.

Q Did the police officer ask him if he had cut Cleary?

A No, I didn't hear him ask him anything like that.

Q What is that? A I didn't hear him ask him anything like that.

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Q Did you hear him tell the police officer that Cleary had struck him in the nose? A No, I did not.

Q What? A No.

Q Did you see the knife at any time open? A I saw it open when the officer brought it back, I saw it in the officer's hand, that was when he came back to the side of the truck.

Q Were you right there? A I was right there, working, loading up the ashes on the truck.

Q Did you see anything on the blade of the knife? A I didn't notice anything. I wasn't wancing as sharp as that.

BY MR. McDONALD:

Q What? A I say, I wasn't watching as sharp as that, to look for any blood.

BY MR. LeBARBIER:

Q What did the officer do? A The officer didn't do any thing.

Q Did he do anything? A No, sir.

Q Did you see Cleary after that? A No, sir.

Q Didn't see him the next month? A No, sir, aint seen him since.

MR. LeBARBIER: That is all.

MR. McDONALD: That is all.

J O H N S U L L I V A N, called as a witness on behalf of The People, being first duly sworn, testified as follows:

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DIRECT EXAMINATION BY MR. McDONALD:

Q Where do you live? A 949 Third Avenue.

Q What is your business, Sullivan? A Laborer.

Q And by whom are you employed? A C. F. Piel.

Q And what is their business? A Private ash business.

Q Keep your voice up? A Private ash business.

Q Do you know, or did you know, William Cleary? A Yes.

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

Q Were you working with these two men on the 28th day of January, 1918? A Yes, sir.

Q And where were you working? A Thirty-third Street, the Martinique Hotel.

Q And what were you doing? A Loading ashes on a truck.

Q Did you hear Cleary say anything to the defendant? A Yes.

Q Were you downstairs working with Cleary? A Yes, sir.

Q In the basement of the Martinique Hotel? A Yes, sir.

Q You and who? A William Cleary, the deceased, and the foreman.

Q And anybody else? A And the foreman.

Q And the foreman? A Yes, sir.

Q Is that Norman? A Yes, sir.

Q Just answer this "Yes," or "no." Did Norman tell Cleary to do something? A Yes, sir.

Q And then did you and Cleary leave the basement? A Yes.

Q Did Cleary say anything to the defendant when he came up from the basement out on to the street? A Yes, sir.

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Q Just tell us what he said? A He told the defendant to go the Park Avenue Hotel and put on another load over there.

Q Yes; now, then, did the defendant say anything? A He refused to go.

Q Just tell us what he said; never mind saying what he refused to do. Just tell us what he said? A He told him to go and fuck himself.

Q Did anything else happen then? A Three cans of ashes come up on an elevator.

Q What? A Three cans of ashes come up on an elevator. I was taking them off, and I saw the two in a scuffle.

Q Who? A William Cleary, the deceased, and Michael Mayo.

Q And this defendant? A Yes, sir.

Q And what did you do? A I separated them.

Q What then happened? A A few minutes later William Cleary walked towards Broadway, and Michael Mayo run after him with a knife.

Q Did you see Mayo do anything? A Yes.

Q Did you see him take the knife out of his pocket? A Yes.

Q Where was he when he took the knife out of his pocket?

A Right at the Martinique Hotel, on the sidewalk.

Q And did he open that knife? A Yes, sir.

BY THE COURT:

Q Did you hear him say anything before he followed him?

A No.

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BY MR. McDONALD:

Q What happened then? A He followed him towards Broadway.

Q Did Cleary do anything? Did he walk, or run, or what?

A Cleary run.

Q And did Mike run after him? A Yes.

Q Mayo? A Yes.

Q With the knife in his hand? A Yes, sir.

Q Now, tell us just what did you do then? A I run after him.

Q Anybody else run with you? A White.

Q Where did you run to? Just tell us what happened? A Michael Mayo stuck him with the knife at Thirty-third Street and Broadway.

Q Counsel can't hear you. Talk up loud? A I say, Michael Mayo stuck the deceased on Thirty-third Street and Broadway.

Q And where did - how far away from the defendant and Cleary were you? A About ten or twelve foot.

Q Right behind him, and Cleary was running west? A West on Thirty-third Street.

Q And what did you see the defendant do? A I saw him stick him with the knife.

Q Where did he stick him? A Right here, on the right side (indicating right side).

Q How did he strike him? Did you see the defendant strike the blow? A Yes, sir.

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Q How did he strike him? A This way (illustrating).

Q Now, then, what happened after that? A The deceased kept on running west. He put on more speed then. And Michael Mayo continued after him.

Q The defendant continued after him? A Yes, sir. The officer caught him on Sixth Avenue and Thirty-third Street and brought him back.

Q Did you go up to where he was stopped by the officer?
A Yes, sir.

Q And then what happened? A The officer brought him back to the Martinique Hotel..

Q Yes? And made him pull out the knife, so the officer looked at the knife.

Q Is that the knife (indicating People's Exhibit No. 1)?
A Yes, that is the knife.

Q What happened then? Did you see Cleary after that?
A No, I never seen Cleary since.

Q Now, when you saw the defendant take the knife out of his pocket on the second occasion, when he came back with the knife, just tell us, did you notice the knife? A Yes, sir.

Q Any marks on it? A There was blood stains on it.

Q You say that the defendant struck the deceased at Thirty-third Street and Broadway? A Yes, sir.

Q What part of Thirty-third Street and Broadway? A In the middle of the street, on Thirty-Third Street.

Q The middle of Broadway. Had the deceased crossed the

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south-bound tracks at Broadway when you saw him? A Yes.

Q The defendant had crossed the south-bound tracks, had he? A Yes, sir.

Q When you saw him strike the deceased? A No.

Q Tell us just exactly where each one was when the blow was struck? A The blow was struck before he reached the north-bound track of Broadway on Thirty-third Street.

MR. McDONALD: That is all.

THE COURT: We will take an adjournment now. (To the jury) Gentlemen, the law requires in a criminal case that on every adjournment of court the judge presiding must request the jury not to form or express any opinion as to the defendant's guilt or innocence until the case is finally submitted to the jury, and not to discuss the case among themselves or with other people. The law does this for the purpose that the jury may keep their judgment evenly balanced until they come to discuss the case in the jury-room. That is to say, during the trial of a case you should simply exercise your memory, make your memory a storehouse of the facts, and go into the jury-room with an impartial mind, and then begin to argue about it, so that you do not go to the jury-room with your minds made up in advance, or go as partisans of one side or the other. Therefore, on each adjournment of this case, I shall be obliged to repeat that caution.

A adjourned until 10:30 tomorrow morning

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(The Court thereupon accordingly adjourned the
further hearing of this trial until tomorrow, April 2,
1948, at ten-thirty a.m.)

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THE PEOPLE, ETC., - Against- MICHAEL MAYO.

New York, Tuesday, April 2, 1918.

TRIAL CONTINUED

JOHN SULLIVAN, resumed the stand.

CROSS-EXAMINATION BY MR. LeBARBIER:

Q For whom were you working on the night of the occurrence?

A For C. F. Piel & Company.

Q How long had you been working? A About a year and a half.

Q And had the defendant also been working? A He was working that night, yes.

Q Just where did you see the defendant stabbed? A On Thirty-third Street east of Broadway.

Q That is east of the north bound tracks? A Yes, just right at the north bound tracks, on the east side of it.

Q And right there it was light, wasn't it? A Yes.

Q Very light? A You mean bright?

Q A bright light, yes. A Yes, it was kind of bright.

Q And there were a number of people there? A Well, only just as usual.

Q Well, as usual at that time of night in that section of the city it is pretty crowded? A Well, not quite extra crowded.

Q Well, there were at least a dozen people there, wasn't there? A Well, about that, yes.

Q Well, would you say two dozen or more? A Well, maybe.

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Q In fact, the usual crowd going up and down? A Yes.

Q And how far away from that particular spot at that moment were you? A About ten or twelve feet.

Q Clary had been running ahead of the defendant, hadn't he? A Yes.

Q Did you see the defendant catch up to Clary? A Yes.

Q And get in front of him? A Not in front of him.

Q But up at him? A Just at him, yes.

Q Where did you see the police officer? A On Sixth Avenue and Thirty-third Street.

Q And how near to you was he? A He come right up to me.

Q Just at that moment? A Not at that moment; when he run across over from Broadway to Sixth Avenue.

Q Did you have a talk with the police officer? A I was talking to him, yes.

Q Did you tell him you saw this man stab him? A No, I didn't tell him I saw him stab him.

Q Did you tell the police officer at that time, when you say ~~he~~ you had just seen a man stabbed, did you tell the police officer, "I saw him stab Clary"? A Yes, I told the police officer that the defendant stabbed the deceased.

Q You told him that? A Yes, sir.

Q Why did you say "no" just a moment ago? A I didn't understand what you said.

Q What? A I didn't understand what you said.

Q Is the officer here in court? A Yes, he is here (in-

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dicating Officer Donaldson).

Q Is that the officer? A Sir?

THE COURT: He has already said that was the officer.

MR. McDONALD: He has already answered that.

Q Is that the officer?

MR. McDONALD: I object to that as already answered.

THE COURT: Objection sustained.

MR. LeBARBIER: I object to the District Attorney constantly interrupting.

THE COURT: There is no objection to the District Attorney objecting.

MR. McDONALD: I objected, and the objection has been sustained.

THE COURT: Mr. McDonald, simply make objections to the Court.

MR. McDONALD: Yes, sir.

Q What I want to know is, did you tell Officer Donaldson that you saw the defendant stab Clary; "yes," or "no"; "yes," or "no"? A I didn't tell him.

MR. LeBARBIER: Now, pardon me, your Honor, may I get a categorical answer?

THE COURT: Did you tell the officer that you saw him stab Clary?

THE WITNESS: Yes, sir.

Q You told him that? A Yes.

Q What did you tell him? A I told him he stabbed him.

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Q Did you say you saw him stab him? A Certainly, I saw him stab him.

Q Did you tell that to the officer? A I told him he stabbed him.

(xQ And did you subsequently see the defendant with the officer there? A What is that?

Q (Question read by stenographer, as follows: "And did you subsequently see the defendant with the officer there?")?

A Yes, I seen the defendant, yes.

Q And did you see the knife in the defendant's hand?

A Yes.

Q And was it then that you told the officer that you saw him stab the defendant? A I saw him, yes; I told him when I seen the officer.

Q And no arrest was made, was there? A (No answer).

Q And no arrest was made, was there? A I didn't understand you.

Q Was the defendant arrested? A No, the defendant was not arrested.

Q And did you continue to work that night? A The defendant worked that night, yes.

Q How long did the officer stay there with the defendant while you were there? A He stopped there about five minutes, I guess.

Q Did you hear the officer ask the defendant any question?

A Yes.

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Q What did he ask him? A He told him to show the knife.

Q What else did he say? A He said the knife was a rib tickler.

Q What else? A That is all I heard the officer say.

Q Did you hear the officer ask the defendant if he had stabbed Clary? A No.

Q Did the defendant ask him that? A Well, I don't remember

Q Did you not say to the defendant himself that you did not see him use any knife upon Clary? A See who?

Q (Question read by stenographer, as follows: "Did you not say to the defendant himself that you did not see him use any knife upon Clary?")? A No.

Q At no time? A No.

MR. LeBARBIER: That is all.

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

DIRECT EXAMINATION BY MR. McDONALD:

Q Where do you live? A 102 West Fifty-fourth Street.

Q What is your business, Mr. White? A I work for C. F. Piel & Company.

Q Speak loud. A C. F. Piel & Company.

Q How long have you been working for C. F. Piel & Company?

A About ten months.

Q Were you working there on the 28th day of January, 1918? A Yes, sir.

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Q Did you know the deceased, William Clary? A Yes, sir, I knew him since he has been working for Piel.

Q And you know this defendant? A Yes, sir; we all worked there together.

Q What? A Yes, sir.

Q Where were you working on the 28th day of January, 1918, what particular place, I mean? A We were working at the Martinique Hotel when the fight came up.

Q What time did you go to the Martinique Hotel? A Well, I disremember; it was between ten and eleven o'clock, I know, when this fight came on.

Q Between ten and eleven o'clock at night? A Yes.

Q Now, then, just tell us what you saw happen? A Well, I just came back from the dump with the other truck, with the empty truck.

Q Yes? A From Long Island.

Q Yes? A Well, Michael Mayo and a bunch of men was loading this other truck.

Q What? A A bunch was loading this truck, another truck, when we came up. Me and the chauffeur gets off the truck. This here Clary came upstairs on the elevator. He said -

Q You mean from the basement up to the street? A From the basement, and said that the foreman said Go to the Park Avenue Hotel and put on a load. Well, they commenced chewing the rag.

Q What is that? A They commenced arguing around there.

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Q Who? A I wasn't paying no attention who was arguing, because I was cold, trying to get down stairs.

Q Yes? A And after a while I seen Clary punch this man in the face, and they scuffled around there a while.

Q Who scuffled? A Clary.

Q Clary, the deceased, and Mayo, the defendant? A Yes, sir, and Sullivan parted them.

Q That is the last witness? A Yes, and some cans was there, some ash cans was on the elevator, on the left hand side of them, Sullivan goes there to take these cans off the elevator, and Michael Mayo was standing there at the side of him, wiping some blood off his face.

Q Yes? A Clary was standing at the far end of the truck, near the Martinique main entrance, with one foot up on the curb and at that time Mayo wheeled, reached his hand in his pocket and pulled his knife out, and at that time both of them lit out down the street towards Broadway.

Q Did you see the defendant with a knife in his hand?

A Yes, he opened the knife.

Q Is that the knife (handing witness People's Exhibit No.1)?

A That is the knife, with the ring in the handle.

Q What happened then? A They went running towards the west side, towards Broadway, on this side; before they got to the corner between the McAlpin and the cigar stand on the corner, Mayo caught up with Clary. I run behind him and

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hollered to Clary to watch out, look out, because he is coming behind him.

Q You hollered that out? A Yes, I was right behind him. Mayo was in between me and Clary.

Q Yes? A And at that time Mayo caught up to Clary; Clary must have stopped to get something to hit him with, and before he could get it this man stuck the knife in him.

Q Clary had his back to him all the time, did he? A Yes, Clary had his back to him all the time.

Q Where did you see Mayo strike him, strike Clary? A He had the knife in his right hand.

Q Yes? A He must have stabbed him in the right side, because he had the knife in his right hand. I was as close as you and I apart now. I got those close to them.

Q What happened then? A They kept agoing.

Q Who? A Mayo and Clary kept agoing.

Q After that blow was struck by Mayo, did Clary then after that continue on? A Oh, he got a little faster.

Q And did you continue on then? A No, sir.

Q Did Mayo? A No, sir.

Q What happened then? Did you see anybody stop Mayo?

A No, sir. I see the cop bring Mayo back up the street; I was standing up in front of the main entrance when Mayo and the cop came up.

BY THE COURT:

Q Did you hear the defendant say anything when he drew

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his knife, or before he went after Clary? A No, sir, I didn't hear him say a word.

BY MR. McDONALD:

Q When the officer brought Mayo back, you say that you had gone back to the hotel? A I was standing back up there by the truck, near the main entrance.)

Q And just tell us what happened then? A The cop had this knife in his hand; he looked at it and he said, "That is a good rib-sticker- that is a rib-sticker you have got there; you better be careful about that knife"; that is all I heard the cop say about the knife. I think he takes this knife out of Mayo's pocket.

Q Have you seen Clary since that night? A No, sir.

Q Had Mayo and Clary gotten to the west side of Sixth Avenue before the blow was struck? A No, sir, they was on the east side of the car tracks, the Broadway-car line.

Q And that is in the County of New York? A Yes, sir.

MR. McDONALD: Your witness.

CROSS-EXAMINATION BY MR. LeBARBIER:

Q Where was Sullivan all this time? A I don't know; I wasn't looking for Sullivan.

Q Was Sullivan back with the officer when the -- A I don't know. I seen the officer and Mayo come up the street together.

Q I know, you saw the officer, and you came up the street back, didn't you? A Yes, sir.

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Q And they came up to where? A Which?

Q They came up to where? A They came up back to the Martinique Hotel, where the fight started.

Q And went and bought cigars? Oh, where your car was? Was Sullivan there at that time? A I don't know where Sullivan was. Sullivan was there. I seen him part the men, but where he was then I don't know.

Q Was Sullivan at any time close up by the defendant and the officer? A The defendant and the officer?

Q Yes? A Not as I knows of. I wasn't noticing that part of it.

Q How far was Sullivan away? A When the fight started?

Q No, after the officer brought Clary back - after the officer came back with Mayo to where you say they did, and were together, how far was Sullivan away from them? A I I never noticed that part of it.

Q Did you see Sullivan there, White? A I seen Sullivan part them.

Q What? A I seen Sullivan separate Mayo and Clary.

Q When? A When they started to fighting.

Q And you saw the beginning of the fight, didn't you?

A Yes.

Q And Clary commenced to fight, didn't he? A Yes, sir.

Q And he punched the defendant in the nose? A Yes, sir.

Q Did the nose bleed? A Yes, sir.

Q And you saw blood over the face and shirt of the defend-

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ant? A Yes.

Q And over the hands of the defendant? A Yes.

Q And it was after all this that the defendant took the knife out of his pocket, wasn't it? A Yes.

Q And did you see him open the knife? A Yes.

Q Did you at any time hear the defendant say to the officer that he had stabbed Clary? A Did I hear what?

Q Mike say at any time he had stabbed Clary. A Did I hear him say so?

Q Yes. A No, I didn't hear him say so.

Q Well, you were near enough to hear it? A I could have heard it, I guess; I was close enough.

Q When you were close enough, as you say now, to that, was Sullivan there at that time? A I didn't notice; I didn't look for Sullivan.

Q At all events, you didn't hear the defendant say that he had stabbed Clary? A I never heard him say that.

Q When the officer came up - question withdrawn. What then happened? A Just while the officer and Mayer were there, what happened?

Q Yes. A I don't understand what you mean?

Q Well, did you tell the officer that you saw the defendant stab Clary? A I said nothing to the officer about I seen him do nothing.

Q Did I understand you to say now that you didn't say that to the officer because you say you said you saw nothing?

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A How is that?

Q I withdraw the question. Did you say to the officer at that time, while the officer and Mayo were present, that you did not see him do anything? A I didn't say a word to the officer.

Q Did the officer ask Mayo if he had stabbed Clary? A I didn't hear that part, either.

MR. LeBARBIER: That is all.

S A M U E L S W I N T F L, called as a witness on behalf of The People, being first duly sworn, testified as follows

DIRECT EXAMINATION BY MR. McDONALD:

Q Where do you live? A 102 Sixth Avenue.

Q Where did you live on the 28th day of January, 1918?

A On Twenty-ninth Street, sir.

Q What? A Twenty-ninth Street, sir.

Q 214 West Twenty-ninth Street? A Yes, sir.

Q With whom did you live there? A I lived with Clary, sir.

Q With whom? A I lived with Clary.

Q Joseph Clary? A Joseph Clary, yes, sir.

Q A brother of William Clary? A Yes, sir.

Q On what floor did you live? A On the top floor, sir, west side.

Q At any time that night did you see William Clary?

A Yes, sir, he came to the house, running, I heard him at the door, sir.

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Q Did you open the door? A I opened the door, sir.

Q Was anybody else in the apartment at that time? A Joseph Clary's wife was home at the time.

Q Tell us what - A After I opened the door he came in and I asked what the trouble was, and he said he got stabbed-

Q Never mind telling what he said. He told you something? A Yes, sir, he told me something.

Q Did you notice anything about his appearance? A No, sir, not at the time being, but after a while he asked me to go and get the doctor, to ring up the Bellevue Hospital.

THE COURT: Don't tell what you said. Just tell what you did.

Q What did you do after he told you something? A I went to the Thirtieth Street Station House, and they wouldn't ring there for an ambulance at the time.

Q Then you went to another station house? A I went on Eighth Avenue and asked the officer will he ring, and he said "no", and I went to the Thirtieth Street - Thirty-seventh Street Station House.

Q Then after you went to the Thirty-seventh Street Station house did you go back home? A Yes, sir.

Q And did you see Clary there then? A Yes, sir.

Q Did you notice anything about his appearance at that time? A When the doctor came.

Q Well, later a doctor came? A Yes, sir.

Q And did Officer Campo come there, too? A Yes, sir.

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Q Did you notice anything about the appearance of Clary that night? A I noticed his appearance after the doctor was fixing the wound, sir.

Q Did you see anything? A Yes, sir.

Q What did you see on Clary? A I saw on the right side.

Q What? A Stabbed with a knife in the right side.

Q What? A He was stabbed in the right side.

Q How long did he remain there? A You mean at the house, sir?

Q Yes, at your house. A He remained there, I guess, a little over half an hour.

Q Did the ambulance surgeon take him away? A No, sir.

Q What happened? A He sat there a little while, and after that I took him to the car, sir.

Q And put him on the car? A Yes, sir.

Q Did you see Clary again after that? A I didn't see him any more, sir.

MR. McDONALD: That is all.

MR. LeBARBIER: I move to strike out the testimony of this witness, on the ground it is not competent, relevant or material.

THE COURT: The motion is denied.

MR. LeBARBIER: I take an exception.

CROSS-EXAMINATION BY MR. LeBARBIER:

Q What car did you put Clary on? A On the Eighth Avenue car, sir, surface car.

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Q Do you know the defendant? A No, sir.

Q Never had any talk with him? A No, sir.

Q That is all you know about this case? A That is all, sir.

MR. LeBARBIER: That is all.

J O H N W. D O N A L D S O N, Police Officer, shield No. 8534, attached to the Twenty-third Precinct, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You were a member of the Police Force of the City of New York on the 28th of January, 1918, and you still are? A Yes.

Q On that day, between the hours of eight and twelve in the evening, were you on post, any particular post? A Yes, sir.

Q Where were you on post? A Sixth Avenue from Thirty-second Street to Thirty-sixth Street.

Q During the course of your period on post on the evening of that day, did you see anything? A Yes, sir.

Q Do you remember seeing this defendant at any time?
A Yes, I do.

Q Just tell us what you saw? A About somewhere around the neighborhood of ten or ten-thirty or thereabouts, I was on Sixth Avenue between Thirty-second and Thirty-third Streets. I was standing alongside of some chauffeurs, regulating the line,

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when I heard sort of shout. I looked about towards Thirty-third Street, from which direction it came. I saw a colored man running across the Broadway tracks, across the Sixth Avenue tracks, and running through Thirty-third Street, towards Seventh Avenue. Immediately behind him, about twenty-five or thirty feet, was another man with brown overalls on. I looked for a moment, and they continued on running. I took a quick step, walked to the corner, and looked down, and I saw them still running. I concluded that there was something the matter, and I ran after this man who was in the rear. I stopped him and asked him, "What is the matter?" I saw he had blood on his face. He says, "The God damned black son-of-a-bitch hit me in the face". I said, "What for?" He said, "I don't know nothing. The black bastard," he said. He said, "What is the matter, you no lock him up?" I said, "Where is he?" He said, "There." Another man, who appeared to me to be a colored man, whom I had seen pass before him, was almost down near Seventh Avenue at the time. I says, "Where did the fight happen?" He says, "Down there," pointing in the direction towards the Martinique Hotel. I says, "Come on back here a minute and we will see what is the matter"; so I started to walk him back across the Sixth Avenue tracks and across the Broadway tracks. A few people came up to me and told me there was a fight and that this colored man ran away, that hit this Italian, so one man came up along side of me and says, "Say,

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officer, I think he has got a knife in his pocket". I turned around to this man along side of me and I says, "Have you got a knife?" He says, "Yes." I says, "Let me see it." He put his hand in his pocket, pulled it out, at the same time opening it up. I took the knife away from him, walked towards the Martinique Hotel, the main entrance, where there was some ash-cart drivers, quite a crowd about, I should say about a dozen or a dozen and a half people gathered around.

Q Keep your voice up, please. A About a dozen and a half people gathered around me, when I started to question some of them. One man came over to us and says, "Say, Officer, I think that man has been stabbed." I says, "Which one?" He said, "The man that run away".

MR. LeBARBIER: I move to strike that out as incompetent.

THE COURT: Yes. Never mind what other people said to you. Just confine yourself to what the defendant said. Was there any blood on this knife?

THE WITNESS: Yes, there was blood on the knife, but there was also blood on the Italian's hands, as he was putting his hand up every once in a while and wiping his nose with both hands, and the blood was running down his face in a slow manner, but it didn't appear as though he had taken a handkerchief out of his pocket; he used his hand; and I thought at the time that the blood on the knife

Q Never mind, Officer, what you thought. You saw blood on

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the knife, did you? A Yes, sir.

Q Is that the knife (indicating People's Exhibit No. 1)?

A Yes, sir.

Q What happened then, Officer? A I again questioned people around there who had seen the fight, to see if I could ascertain what was the cause or what was the trouble. Some people said they didn't see it, some people said it was only -

MR. LeBARBIER: That is objected to.

Q You can't tell us what you said to others or what others said to you, unless it was in the presence of the defendant. A Yes, he was there at all times.

Q All right, go on. A I asked the door-keeper, or the footman at the Martinique Hotel -

THE COURT: Unless he took part in the conversation that wouldn't make it competent, the mere fact that he was present would not make it competent. Recent decisions in the Court of Appeals along that line have cut down the former practice in the matter so that it is not safe to take it.

Q Don't tell us what you said to anybody else, or what anybody else said to you. Tell us what happened after that.

A After examining the knife I closed it up and handed it back to the defendant and told him that if he could not fight with his hands that a knife was not to be used, and there was no reason why he should use a knife at any time.

Q And then you went back to your post, did you? A After

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I had conversation with a few other people, then I returned to my post.

Q Did you see Clary at all? A Only at the time he ran past, at a distance.

Q And ^{all} you know is he was a colored man, running in front of Mayo? A Running through Thirty-third Street.

MR. McDONALD: That is all.

CROSS-EXAMINATION BY MR. LeBARBIER:

Q No arrest was made, was there, Officer? A Not at that time.

Q Did Sullivan state to you, in the presence of the defendant that night, that he saw the defendant stab Clary?

A Well, that I am unable to say, because there was a number of people spoke to me, but I couldn't identify any certain ones.

Q You heard Sullivan testify? A I did.

Q Getting your memory back as well as you can, refreshing it, did you state that Sullivan said to you that night that he saw the defendant stab Clary? A Well, it was not put in that way. It was told that the man -

Q No, by Sullivan? A Well, that I really couldn't say, Sullivan; somebody said to me, but who it was, I really could not state.

Q Now, when you saw Cleary running, where did you see him? A Crossing the Broadway tracks, running west.

Q Had he crossed the Broadway track yet? A He was on the tracks, crossing.

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Q On the north bound track? A Well, he was just crossing all the tracks, the four tracks together.

Q I mean, on Broadway? A Crossing the Broadway tracks.

Q And at that time, if I understood you correctly, and I ask you whether it is correct, there were some twenty-five or thirty people behind him? A Well, about that.

Q Did you at any time ever see the defendant catch up to Clary? A No.

Q Do you know whether an investigation was made that night by the police in the West Thirtieth Street station? A At the West Thirtieth Street station?

Q Yes. A I do not know.

Q Where is the station house there? A Our station house is in West Thirtieth Street.

Q Do you know whether any investigation was made that night about this matter? A I never heard of any.

Q How long after this, if you remember, was it that the defendant was arrested? A I don't know.

MR. LeBARBIER: That is all.

N I C H O L A S C A M P O, Police Officer, shield No. 9214, attached to the Twenty-second Precinct, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q On the 28th day of January, 1918, you were an officer

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of the Municipal Police Department of the City of New York, were you? A I was.

Q Did you on that night, on the night of that day, see Swintel? A Yes, sir.

Q What station house are you attached to? A West Thirty-seventh Street station house, Twenty-second Precinct.

Q And that is between what avenues? A Ninth and Tenth Avenues.

Q Did you see Swintel at the station house? A I did.

Q You had a talk with him? A I did.

Q And after you talked with him did you go any place?

A I did.

Q Where did you go? A To premises 214 West Twenty-ninth Street, top floor, rear.

Q Did you see anybody there? A I did.

Q Did you see one William Clary? A I did.

Q Just tell us what you did and what you saw? A Clary was lying in the kitchen, the centre of the kitchen, on his stomach, and groaning. He told me he had been -

Q Never mind; you can't tell us what he told you. He told you something? A Yes, sir.

Q And after he told you something what did you do?

A I raised his shirt and undershirt in the rear and saw a stab wound in his back, on the right hand side, and I immediately summoned an ambulance from the New York Hospital.

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Q And what happened then? A The ambulance arrived about twenty minutes later, which would be about ten minutes past midnight. Dr. Sevier treated Clary for the stab-wound in his back. Clary dressed himself and left the apartment with me, saying that he was going.

Q Never mind; you can't tell us what he said. Did you leave Clary then later? A Yes, sir.

Q Did you see Clary again after that? A I did.

Q Where? A In the Mortuary, at the foot of East Twenty-ninth Street.

Q And you there identified Clary to Dr. Schultze, the Medical Examiner? A Yes, sir.

Q Medical Assistant to the District Attorney? A Yes, sir.

Q When was that, Officer, do you know? A On the 25th day of February, 1918.

MR. McDONALD: That is all.

MR. LeBARBIER: No questions.

B E R N A R D A. D I T S C H, Police Officer, shield No. 78, attached to the Second Branch Detective Bureau, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a member of the Detective Bureau of the City Police Force? A Yes, sir.

Q And did you arrest this defendant? A I did.

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Q When and where? A On February 24th, 1918, in front of 134 West Fifty-fourth Street, at about six-thirty p. m.

Q Later, did you have a talk with him? A I did.

Q What did the defendant say? A Upon my questioning him if he knew that Clary had died, he said, "Yes, I heard it". I said, "Did you have a fight with him on January 28th?" He said, "Yes, he struck me". I said, "What did you do then?" He says, "I didn't do nothing atvall". I said, "Did you stab him?", he said, "No, I didn't". Then I searched the defendant and found a knife in his right pocket, which I took out. I asked him, "Is this your knife?" He said, "Yes". I said, "How long have you got that knife in your possession?" He said, "Right along". I said, "You mean you had it for some time?" He said, "Yes". I said, "Did you carry that knife on January 28th, 1918, when you had a fight?" He said, "Yes".

Q At that time, were you showing him this People's Exhibit No. 1? A Yes, I had taken the knife out already when I showed it to him.

Q That is the knife, is it (handing witness People's Exhibit No. 1)? A Yes, my partner marked it for identification with the letter "N". That is the knife, yes, sir.

Q Tell us what else happened? A I made White, who was present at the time, repeat what had taken place on January 28th, and I said to him, "What have you got to say?" I says, "Did you have the knife in your hand? Did you open the knife?"

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And he said, "Yes, I opened the knife." I said, "Did you stab Clary?" He said, "No, I didn't stab him. I run after him, but I couldn't catch him, because before I had a chance to use the knife a police officer intercepted me and brought me back; I didn't stab him at all".

BY THE COURT:

Q What was the date of this arrest? A February 24, 1918, at about 5:30 p. m. - that is to say, 6:30 p. m.

BY MR. McDONALD:

Q Did you have any further conversation with him? A No.

MR. McDONALD: That is all.

MR. LeBARBIER: No questions.

J O S E P H C L A R Y, called as a witness on behalf
of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Where do you live? A 102 West Fifty-fourth Street.

Q Where were you living on the 28th day of January, 1918?

A 214 Twenty-ninth Street.

Q Lift your voice up, please? A 214 Twenty-ninth Street.

Q East, or west? A West.

Q Were you in your home that night? A No, sir.

Q Did you see your brother at your home that night? A No.

Q Did you see your brother after the 28th of January? A

Yes, sir.

Q Where? A In the hospital.

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Q What hospital? A Bellevue Hospital.

Q Do you know when that was that the officer came there?

A Not exactly; I taken sick during the time; not exactly.

Q About when? A It was about six or seven days afterwards, I guess.

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

Q Where? A One Hundred and Thirty-third Street, an undertaker's, No. 4.

Q You mean you saw his dead body afterwards? A Yes, sir.

Q Do you know where William worked? A Piel's, C. F. Piel.

Q Did you work for C. F. Piel at one time, too? A At that time I was not working.

Q At what time? A I left a week before this occurred.

Q Up to a week before the 28th of January, you worked with Piel, did you? A Yes, sir.

Q And your brother worked with Piel, too? A Yes, he continued.

Q And he was known as William Clary? A Yes, sir.

MR. McDONALD: That is all.

MR. LeBARBIER: No questions.

MR. McDONALD: The People rest, with the exception of putting in the two doctors, if I may be permitted.

THE COURT: They are very important witnesses. When will they be here?

MR. McDONALD: I expect Dr. Sevier any minute, and

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Dr. Petiska is a practicing surgeon, and he couldn't possibly get here--He is in the midst of an operation this morning--- until two o'clock.

THE COURT: Well, Mr. LeBarbier, the People say they rest except for the medical testimony. You may reserve any motions until after they have rested entirely. Of course, as to any medical features of the case, you better reserve that until after their medical testimony is here.

MR. LeBARBIER: Does your Honor say reserve the motion on the People's case?

THE COURT: Yes, until after it is all in.

MR. LeBARBIER: Very well.

AT THE DEFENDANT'S CASE

CHARLES YOUNGQUIST, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Where do you live? A 232 East Sixty-fourth Street, New York City.

Q What is your business? A I am a chauffeur.

Q And in the month of January, were you a chauffeur?

A I have been an ash-handler as well.

Q What? A I am a chauffeur by profession.

BY THE COURT:

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Q What were you doing in January, he wants to know. A I beg pardon?

Q He wants to know what you were doing last January? A Oh, I was a helper.

BY MR. LeBARBIER:

Q Where? A For Piel Contracting Company.

Q Do you recall the incident of the night of the fight with Clary and the defendant? A Yes, sir.

Q Were you present at that time? A Yes, sir.

Q Please state to the Court and jury what you saw? A Well, we had a few words about who was going to finish loading -

Q Speak out. A We had a few words about who was going to finish loading this truck what we were loading at the time, and this fellow, this colored man -

Q Clary. A He came and he wanted us to go and start loading another truck, over in Thirty-second Street, and we said no, we will finish loading this truck what we are loading now, it will only take a few minutes, and then we would go over there. Didn't have very much to say about one thing or the other, and at last me and another man by the name of Joe, I couldn't mention his last name, we were ready to start off. Mike Mayo, he got his overcoat on his arm, on his left arm, and turned around to walk away, and Bill, he jumped on his back and started punching him on the right and left side from the back, started punching his face from the right and left, and he got him down on his hands and knees, and he couldn't

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move. Sullivan, he pulled Mike Mayo off. He pulled Bill off Mike Mayo's back, and Bill started off towards Broadway. Mike got up on his feet and turned around and he started off after Bill.

Q Did you see where they went? A (No answer).

Q Did you see where they went? A They went towards Broadway.

Q Were they running? A We were working east of Broadway, at the Hotel Martinique, and Broadway and Sixth Avenue is to the west of the Hotel Martinique.

Q How far did you see Bill Clary run away? A As far as Broadway.

Q Did you see him cross the tracks? A I seen him going across Broadway.

Q Across the tracks? A Across the car tracks.

Q Across the car tracks? A Yes, sir.

Q Now, at that time, did you see the defendant, Mike - where was Mike? A Mike was quite a little distance behind him.

Q How much behind him, do you say? A Well, about the length of this court room here.

Q Well, very many feet behind him, is that right? Many feet behind him? A Yes, more than that.

MR. McDONALD: "Many feet," he said.

Q Fifty feet, about? A It could be around forty feet.

Q Sir? A Around forty feet.

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Q When you say the length of this court room, you don't know the length of this court room, do you? A What is that?

Q When you say the length of this court room, do you know the length of the court room? A No, sir.

Q But you do say it was about forty feet? A Around that.

Q Mike was behind Clary; is that right? A Yes.

Q How long had you been working with the Piel people?

A Since last Thanksgiving, up to that time.

Q With whom are you working now? A For the Empire Carting Company.

Q Did the defendant work with you? A At the time we were working mostly together.

Q Do you know what his reputation was for a quiet and peaceable fellow? A Well, the quarrel was on account of this -

Q Is the defendant a quiet, peaceful, fellow? A No, sir.

Q Is he quiet and peaceful, or does he fight? A No, he is very quiet.

Q Just listen, and don't shake your head, because you will give me a terrible answer if you do. Now, did you understand what I asked you, whether the defendant was a fellow of peaceful, quiet habits, or does he fight? A I always found him quiet.

Q Working well, doing his work? A Always doing his work.

MR. LeBARBIER: Your witness.

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CROSS-EXAMINATION BY MR. McDONALD:

Q Just tell us where you were when Clary started to run?

A I didn't -

Q Where were you when Clary started to run? A Right alongside the truck what we were loading.

Q And the truck was where? A Standing right outside the Hotel Martinique.

Q And the place where the truck was standing was how far away from the corner of Broadway and Thirty-third Street?

A Well, pretty near half of an ordinary block.

Q Now, then, did you run after Mayo? A No.

Q You remained right at the wagon? A Stayed right where I was.

Q At the truck? A Yes, sir.

Q And did any of the fellows that were working with you there run after Mayo? A I didn't see any one running after him.

Q You didn't see anybody running? A No, sir.

Q Wasn't White working there that day, or that night - White? A Yes.

Q Wasn't Martin working there? A Yes, sir.

Q And Sullivan? A Yes, sir.

Q Did you see any of those men running towards the corner?

A No, I didn't see any of them run.

Q Did you see the defendant open his knife? A -I didn't see him with a knife in his hand.

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Q Didn't see him with a knife in his hand? A No, sir.

Q Did you ever see this knife (indicating People's Exhibit No. 1)? A I seen his knife.

Q What? A I seen his knife several times while we had been working together.

Q Is that the knife (handing witness People's Exhibit No. 1)?

A The knife I seen was an old knife.

Q Which knife are you talking about now, the knife that you saw, you say, which knife? A I always seen him with an old knife.

Q Did you ever see him with this knife (handing witness People's Exhibit No. 1)? A No.

Q You are sure about that? Take a look at it (handing witness People's Exhibit No. 1)? A (After examining People's Exhibit No. 1) Yes, this is the knife, yes, sir.

Q That is the knife, is it? A Yes, sir; from a distance it looks new.

Q Did you see him with it that night? A No, I didn't see him with no knife that night.

Q Did you see him take the knife out of his pocket when he started to run after Clary? A No.

Q Did Clary run? A I seen Mike running.

Q Did you see Clary running? A Yes, I seen him running.

Q And how far was he away from Mike? A Around forty feet.

Q Forty feet? A Around that.

Q Did you lose sight of them at any time? A I don't under-

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stand your meaning.

Q Well, did you - when was it that you couldn't see them any more? A Well, after they crossed Broadway, after they crossed the cartracks, the Broadway cartracks there, then I couldn't see where they went after that.

Q And the nearest you ever saw Mike, the defendant, to Clary, was how many feet, the nearest that you ever saw the defendant to Clary? A That was around forty feet.

Q Forty feet? A Around forty feet, the nearest, from the time that Mike got up on his feet.

Q Did Clary start to run -- were you going to say something then?

THE COURT: No, he was through.

Q What did Mike do? At least, what did Clary do when Mike Mayo got up, as you say, from the ground? A When Mike got up off his feet - got up on his feet, Joe - Bill, rather, this colored man, he walked across in front of the truck, across the street, and started off down in the middle of the street.

Q But Mayo hadn't done anything, he was going after him, he didn't pull a knife out on him, did he, at that time? A I didn't see him with a knife.

Q Well, if he did you would have seen it, wouldn't you?

A I would have seen the knife.

Q Now, Clary didn't start running then, did he, as soon

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as he got up, or as soon as he let go of Mayo, did he run?

A As soon as he let go of Mayo he started off out towards the middle of the street and started off and only got a couple of feet away when he started running.

Q I see. Now, then, did you see Mayo with anything in his hand at that time? A No.

Q Now, you say that Clary came from behind and struck Mayo from behind? A Yes, sir.

Q That is right, is it? A Yes, sir.

Q He didn't get in front of Mayo and punch him in the nose, did he? A No. From behind.

Q From behind? A Yes, sir.

Q Did you see Mayo's nose bleeding that night? A Yes, sir.

Q When was that? A When he came back.

Q Did you see it before he started running after Clary?

A No, he had his back towards me; he had his back towards me when he got up on his feet. I didn't see his face.

Q Where do you work now? A Empire Carting Company.

Q When Clary came up from the basement, what was it he said? — A He said, "You fellows," that means us that was loading this truck.

Q That is, you and Mayo? A Me, Mayo and another man by the name of Joe; his last name I don't know.

Q Guilfoil? A I couldn't tell his last name -

Q He is a white man? A Yes, a white man; there were three white men loading, me, Mike and this Joe.

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Q What did he say? A Bill told us to go over with the other truck, over to Thirty-second Street, and load that.

Q Did he want you to switch jobs, what you were doing?

A Yes, wanted us to leave this truck and go over with the other one and load that one, in Thirty-second Street. We didn't agree to that. We wanted to finish loading this truck what we were loading.

Q Why did you want to finish this truck that you were loading? You were not paid for the loads that you loaded, were you? A No, we got paid by the night, but we didn't see the idea of loading one truck - or pretty near loading one truck and then when there is only a few cans left, they come up and take our places and finish loading this one, and we was to go and start on an empty one.

Q It is not that you wanted to finish the job that you were on, is it? A Exactly.

Q You wanted to finish the job that you were on? A Yes.

Q Rather than go into another new job? A Yes, that was our work.

Q Who were the fellows you were afraid were going to take your end of it at that time, who were the fellows that were coming to relieve you, that you thought were going to relieve you on that last load? A That was not the last load.

Q The last load you had there before the fight? A Yes, that was the last load we had in the Hotel Martinique.

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Q Who were the fellows that Clary told ^{to take} your job of loading up that last two or three cans on that wagon? A That I couldn't say, who told him.

Q Sullivan was there, wasn't he? A Sullivan was there.

Q And White? A Yes, sir.

Q Martin? A Yes, sir.

Q What happened then when Clary said he wanted you fellows to go over there to Park Avenue and load up the other truck?

A We stayed there, and we said, "No".

Q What? A We stayed there where we were. The cans were on the sidewalk. We stayed there, and we said, "No, we will finish loading this truck".

Q Is that all you said, just "No"? A Yes, "We will finish loading the truck what we are doing".

Q Who said that? A Mike Mayo said it.

Q Who? A Mike.

Q The defendant? A Yes, sir, he said, "We will finish here what we are doing".

Q What did you say? A I didn't say nothing, because I took everything in what was going on.

Q And then what did Clary say? A He mentioned something about telephoning to the foreman, or something like that, and he went away, and come back again, and he said, "If you don't go over to the other truck and load it you can go home".

Q Well, what did you say? You still said nothing?

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A Personally, I didn't say nothing, and the other white man, Joe, he didn't say nothing, and Mike, he says, "Well, we will finish loading the truck, and we will go home," or , "I will go home", whatever it was.

Q Well? A Well, we stayed there for another minute or two.

Q Did you finish loading the truck? A No, we didn't finish it before this happened. We stayed there for a minute or two, and then Mike picked up his overcoat, slung it on his left arm, and turned around and was going to walk away, walked over towards Fifth Avenue.

Q Yes? A When Bill jumped on his back and started punching him right and left from the back.

Q From the back? A Yes, and whether he tripped him I couldn't say, but Mike went down on his hands and knees, and that is the time that Sullivan pulled Bill off Mike's back.

Q What did Mayo do with the overcoat? Did he still have it on his arm when he was chasing Clary? A No, I couldn't say whether he dropped it when he was down, or whether he still had it on his arm, I couldn't say.

Q Did he have it on his arm when he was chasing Clary?

A No.

Q You waited there until the officer brought him back, you waited until the officer brought him back, didn't you?

A Yes.

Q He did bring him back, didn't he? A I couldn't get that

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question.

Q Bring. You waited there until the officer brought him back to the truck in front of the Hotel Martinique?

A Yes, he came back, but he didn't have no overcoat on his arm when he came back, when he came back to the truck.

Q Did you work there all night then? A Yes, sir.

Q And Mayo? A Yes.

Q Weren't you going home? A No, we didn't go home.

Q Weren't you told to quit your job? A No, we quit the job in the morning, finishing up work.

Q And didn't Clary say, "If you don't load that truck you can go home"? A He was not the foreman, so we couldn't take his word or his orders for that.

Q You were going to take it anyway, weren't you, because the defendant had his coat on his arm, ready to go home?

A Yes, but we couldn't take his word for that. The foreman came down, and he didn't send us home.

MR. LeBARBIER: All right; that is all.

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W.R.L.

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N O R M A N C O L E M A N, called as a witness on behalf of the defendant, being first duly sworn testifies as follows:-

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Where do you live? A 152 West 54th Street.

Q What was your occupation in the month of January, 1918? A I was night foreman.

Q Night foreman of what? A Of the Ash Contracting Company, C. F. Piel & Company.

Q And did you know Clary, the deceased? A Yes, sir.

Q And did you know Mike Mayo, the defendant? A Yes, sir.

Q Were they working for you that night? A Yes, sir.

Q Had you given any instructions to Clary to order themmen to go to another hotel? A No, I hadn't seen him that night.

Q Well, it has been testified to here by some of the witnesses for the people that an order was given by Clary by the men should go to another Hotel. Had you given any such orders that night? A No, I hadn't given any orders. If the orders were given I would give the orders myself, and I would follow the men up.

Q And you were the boss of that job that night?

A Yes, but I wasn't there at the time.

Q How long have you known Mike Mayo? A I have known him for about a year. Even when he wasn't working for us he was working for the Empire Carting Company.

Q Do you know what his reputation is for a peaceful

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man and a quiet man?

MR. McDONALD: I object to that. No foundation has been laid.

Q Do you know others who know him? A Yes, most of those men know him.

Q And do you know what his reputation is for a quiet, peaceful man? A As far as I know, I never seen anything of him.

Q What is it, good or bad? A Well, as far as I know of the man.

Q My learned adversary holds me to a technical rule. So far as you have observed, it is good, is that right?

A Yes, sir.

Q Do you know his family? A Only since this trouble occurred, his wife came to the office.

Q You know he is married? A Yes, sir.

Q And he has a number of children? A Seven children he has, she says, two of them I have seen.

Q What is that? A I saw two of her children.

MR. McDONALD: Of course, this is not character testimony.

THE COURT: Well, if any objection is made, I will rule on it.

MR. McDONALD: I object to it.

THE COURT: Objection sustained.

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MR. LeBARBIER: Not on the question of character, but on the credibility of the witness.

THE COURT: How does it affect this witness's credibility that this man has seven children?

MR. LeBARBIER: It will be for consideration with your Honor and the Jury, because I shall certainly ask your Honor to charge that a man married with a family is not liable to be given to acts of this kind. Not upon the question of character. It is upon the question the of credibility that your Honor will give to the defendant and you will permit the jury to consider that testimony.

THE COURT: I never heard that a man's credibility was proportionate to the children he has.

MR. LeBARBIER: Well, I would like to establish the fact that a man with many children is apt to consider twice what he does. Your witness.

CROSS EXAMINATION BY MR. McDONALD:

Q You don't know anything about this? A No, I was not there at the time it happened.

Q You were not there? A No.

Q You mean you were not on the street? A I weren't on the job at that time.

BY THE COURT:

Q You were not down in the cellar? A No.

Q Was there any foreman in the cellar? A There wasn't any foreman there. There was only one foreman, and

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that was myself.

BY MR. LeBARBIER:

Q Did you answer his Honor that you were not down in the cellar that night, you were not down in the cellar?

A No, sir.

BY MR. McDONALD:

Q Why don't you keep your voice up so Mr. LeBarbier can hear you? A I weren't in the cellar at that time.

MR. LeBARBIER: That is all.

Q How long was William Clary working for Piel & Company? A He was working there, I guess he worked there a couple of months steady while I taken charge of the foremanship; he worked there longer, but he quit and came back after I had taken the foremanship.

Q Did you hit the Martinique that night at all?

A I came down about an hour after they had had this fight.

Q What time did you get there? A I judge it was about twelve o'clock when I got down there.

Q About twelve? A Yes.

MR. McDONALD: That is all.

JAMES J. DEVINE, police officer, shield No. 4305, attached to the Sixth Precinct, called as a witness on behalf of the defendant, being first duly sworn testifies as follows:-

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Are you attached to the Municipal Police Force of the

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City of New York? A Yes.

Q And for how long a time have you been such police officer? A Twenty years.

Q Twenty years? A Yes, sir.

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

Q How long have you known him? A Around fifteen years.

Q Do you know other people who know him? A Yes, sir.

Q Do you know what his reputation is for peace and quiet?
A Very good.

MR. LeBARBIER: Your witness.

CROSS EXAMINATION BY MR. McDONALD:

Q How do you know him, Officer? A Well, he has worked for my mother for over eight years. She is in the same line of business, in the contracting business.

Q You say this defendant worked for your mother and she is in the same line of business, the contracting business?

A Yes, sir.

Q This ash removing? A Yes, sir.

Q And is that how you come to know the defendant?

A Yes, sir, I knew him before that, before he come to work for us.

Q When did he work for your mother? A He is working for her now, up until the day of the trial, since he got out on bail.

Q He was not working for your mother at the time this

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thing occurred? A No, sir, he was away about three years, and then he worked--

Q From the time that he quit working for your mother, was when? A About three years.

Q Three years ago? A Yes, sir.

Q And have you seen him frequently since that time?

A Yes, sir.

Q Come over there to call upon you? A Well, I used to meet him on the street, sometimes, run across him.

Q What precinct are you attached to? A Sixth precinct.

Q That is where? A Elizabeth Street.

Q You say that he is working now for your mother?

A Yes, sir.

Q Since this occurred? A Since he got out on bail.

MR. McDONALD: That is all.

F L O R A M A Y O, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Where do you live? A 236 North Fifth Street, Brooklyn.

Q Are you the wife of the defendant? A Yes, sir, I am the wife of Michael Mayo.

Q And do you know other people who know Mike? A Yes.

Q Do you know what his reputation is? Is he a quiet, good man? A He always was a good man.

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Q Where did you live in January, 1918? A Brooklyn,
where I am living now.

Q With him? A Yes, sir.

Q What does your family consist of?

MR. McDONALD: That is objected to as immaterial.

THE COURT: The objection is sustained.

MR. LeBARBIER: I take an exception.

Q Did you have a talk with Sullivan in this case?

A Yes, sir, my husband told me that he was--

MR. McDONALD: I object to what her husband told
her.

Q Did you have any talk with Sullivan? A No, sir.

Q Did you have any talk with White in this case?

A Yes, sir, he asked me if I was Mike Mayo's wife, up in
the office, Piel's office.

Q And what was said? State the conversation?

MR. McDONALD: I object to this, sir, unless it is--
White

THE COURT: Did you ask ~~her~~ if he had had a talk with
her?

MR. LeBARBIER: I think -- I am not quite certain--
I asked her if that was all that happened.

THE COURT: It is not admissible unless you
directed his attention to statements, and asked him if
he made them.

MR. LeBARBIER: It may be possible that technically

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I did not lay that foundation. I am not prepared to say.

THE COURT: Well, I will allow you to recall White.

MR. LeBARBIER: Before I proceed further with this witness?

THE COURT: Yes, which ever you prefer.

MR. LeBARBIER: Then, I will ask this witness.

Q Please state, then, your conversation with White?

THE COURT: No, you can't go on with that, because White may admit it.

MR. LeBARBIER: I will ask to recall White, then, your Honor.

THE COURT: Very well.

W I L L I A M W H I T E, being recalled, testified as follows:

BY MR. LeBARBIER:

Q Mr. White, do you remember having a talk with Mrs. Mayo about this matter? A Yes, sir.

Q Did you say to her that you didn't know anything about the matter at all, that you didn't see any stabbing?

A No, sir.

Q You did not? A No, sir.

MR. LeBARBIER: That is all.

F L O R A M A Y O, resumes the stand:

DIRECT EXAMINATION (Continued) BY MR. LeBARBIER:

Q Now, you saw White on the stand just now, didn't you?

A Yes, sir.

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Q Is that the man you had a talk with? A Yes, sir.

Q And did you talk about this case? A He asked me if I was Mike Mayo's wife. I never knew the man, and I answered "yes, I am Mike Mayo's wife". I asked him if he was against my husband, and he said -- he told me that he wasn't against my husband.

Q Did he say that he didn't know anything about the case?

MR. McDONALD: I object to that as being suggestive.

THE COURT: Yes, let her tell what he did say.

Q Very well, proceed? A I asked him did he see about the case. He says he wasn't against my husband at all, and while I was walking down the street, going home, he stopped me again, called me back, and asked me-- and I asked him did he know anything about it, and he answered me that he wasn't against my husband at all. After that Norman's wife passed--

THE COURT: Well, that does not contradict the last witness.

MR. McDONALD: No, sir.

Q Did he say anything else? A That is all I remember

Q Do you know the foreman's wife? A Yes, sir.

Q Was she there at the time? A While I was talking to White she passed, and she asked him did he know anything about it, and he answered her that it was not my husband's fault, that he wasn't against my husband, and there is the woman right there (indicating)

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Q But he said it was not your husband's fault?

A Yes, sir.

MR. LeBARBIER: All right. Your witness.

MR. McDONALD: That is all, Madam.

----- called
F I L O M E N A N O T A R F R A N C E S C O, as a witness
on behalf of the defendant, being first duly sworn testifies
as follows:-

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Where do you live? A 644 East 17th Street.

Q Are you the sister of the last witness? A Yes, sir.

Q Do you know Mike Mayo? A Yes, sir.

Q Have you known him a number of years? A Yes, sir.

Q Do you know other people who know him? A Well, I
know plenty, but they aint here.

Q Do you know what his reputation is for peace and quiet?

A Very good.

MR. LeBARBIER: Your witness.

CROSS EXAMINATION BY MR. McDONALD:

Q You are a sister-in-law of Mayo's? A Yes, sir.

MR. McDONALD: That is all. Thank you, Madam.

S A V A R O N O T A R F R A N C E S C O, called as a witness
on behalf of the defendant, being first duly sworn testifies
as follows:-

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Where do you live? A 644 East 17th Street.

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Q What is your business? A I am a stable man in the street Cleaning Department.

Q How long have you been a stable man? A About thirteen years.

Q And you have always worked with the Street Cleaning Department? A Yes, sir, been in the street Cleaning Department going on twenty-two years.

Q And the last woman was your wife? A Yes, sir.

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

Q And have you known him for a number of years? A I know Mike Mayo for 16 years.

Q And do you know other people who know him? A Yes.

Q Do you know what his reputation is as a good, quiet man? A A good, quiet man.

MR. LeBARBIER: Your witness.

MR. McDONALD: That is all.

Q E R T R U D E C O L E M A N, called as a witness on behalf of the defendant, being first duly sworn testifies as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Where do you live? A 152 West 54th Street.

Q You are a married woman? A I am.

Q And who is your husband? A Norman Coleman.

Q The witness who was on the stand a little while ago?

A Yes, sir.

Q As the foreman with Piel on that job? A Yes, sir.

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Q Were you present at a conversation that Mrs. Mayo had with a man named White? A I came up during their conversation.

Q And did you hear that conversation? A I heard part of it, yes.

MR. McDONALD: I object to it, sir. There was nothing in Mrs. Mayo's conversation or statement of the conversation that she had with White that tends to impeach White in any way.

THE COURT: Well, I will allow it.

Q Please state what you heard? A Mrs. Mayo was talking with the man Whitey, whom I had never known before, and I came up, and she had been to my house before, and I asked her if everything had been seen to that she was there for, and she said "yes", and they started to tell me about Whitey accosting her and telling her--

THE COURT: Never mind what she told you about it.

MR. McDONALD: I object to this testimony.

THE COURT: The objection is sustained.

MR. LeBARBIER: White was there, your Honor.

THE COURT: She started to say what Mrs. Mayo told her White said.

Q Was White present at the time? A White was present at the time.

Q Please state what was said while White was there, and

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don't go so quick? A White said that Mike Mayo wasn't in fault, and I said "Is that so?" He said "yes". I said "was you there at the time it happened?" He said "yes"; and that was all that was said.

MR. LeBARBIER: Your witness.

CROSS EXAMINATION BY MR. McDONALD:

Q Is that all that she said? A That is all that she said while I was there.

Q Was anything said about the death of Clary?

A Nothing was said about the death of Clary.

Q What? A Nothing was said about the death of Clary.

Q Did you understand what they were talking about?

A I did, yes.

Q That it was the death of Clary they were talking about? A Yes, I understood it was that.

Q Mrs. Mayo had already seen you, though, had she?

A She had been to the office to see Mr. Piel, that was all.

Q Did she come to see you? A She didn't come to see me. I simply called Mr. Piel to see her and the officers at the house.

Q Were you working for Mr. Piel? A No, I was simply taking telephone messages for him at the house.

Q And Mrs. Mayo came there? A She came there to see Mr. Piel, to collect Mike's pay.

Q And what did you do? Did you call out Mr. Piel?

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A I called Mr. Piel to ask if he would see her, and he called the office, called Mrs. Mayo in the office.

Q What else happened? A Nothing else at that time.

Q Then did you follow Mrs. Mayo out? A No, I had been to the store, and on my way back I met her on her way out, and she was talking to Whitey.

Q And you remained and listened to the conversation?

A I simply asked her if she had seen Mr. Piel, and was everything all right, and she said yes. Then he started to talk.

Q What was it he said? A He said he had been there, that Mike wasn't in fault, that he was there at the time, he made that statement. I said "Is that so?" He said "yes".

Q And that is all he said? A That is all he said, and I passed on.

Q I beg your pardon? A That is all he said, and I passed on.

MR. McDONALD: That is all.

MR. LeBARBIER: We have reached the point now, your Honor, where I am about to offer the defendant, but before doing so I would respectfully request a ruling upon certain motions I ~~have~~ think should come before your Honor for decision.

MR. McDONALD: I have one doctor here, sir.

THE COURT: Well, put on the one doctor that you have.

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C H A R L E S E D W I N S E R V I E R, called as a witness on behalf of the people, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. McDONALD:

Q Where do you live? A Eight West 16th Street.

Q You are a physician, licensed to practice medicine in the City and State of New York? A I have no State board license, no, sir. I am an interne in a hospital.

Q You have passed your medical examinations?

A Yes, sir.

Q A graduate of what college? A Johns-Hopkins Medical School.

Q And when did you graduate? A 1916.

Q And you are now attached to the New York Hospital?

A Yes, sir.

Q And how long have you been so attached? A Since November 1st, 1917.

Q As a result of a telephone call, did you visit the premises 214 West 29th Street on the 28th day of January, 1918? A I did.

Q And did you see anybody there? A I saw -- yes, I did, I saw a patient.

Q And was he a colored man? A A colored man.

Q Did you find out his name? A I don't recall the details. The officer recalled it to me as I came in. I

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mean I have notes of it, but I don't recall the details.

Q Where are your notes? A At the office.

Q At the hospital? A At the hospital.

Q Did you treat anybody there at this address for anything? A Yes, sir.

Q What did you treat -- was he a colored man? A Yes.

Q What did you treat this colored man for? A My notes state a stab wound of chest.

Q What? A A stab wound of the chest.

Q Chest? A Yes, sir. I have on my notes stab wound of chest.

Q Is that all that you remember about it? A That is all that I remember.

Q Do you know what part of the chest it was? A Between-- no, I couldn't recall; I don't remember.

Q Do your notes state? A They do not.

Q Have you got any recollection of where this wound was? It was on one side of the chest; I don't remember that; it was somewhere between the ribs, as I remember.

MR. LeBARBIER: Indicating the left side.

THE WITNESS: I don't remember which side it was.

Q You indicated the left side, according to Mr.

LeBarbier. Did you mean anything by that? A Not a thing.

Q Do you know which side it was on? A I don't remember.

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Q Did you take this patient to the hospital?

A No, I treated him and left him.

Q Do you know what you did for him? A I think I applied simply some iodine and a plaster over it.

Q Some iodine and what? A A plaster over it, an adhesive plaster.

MR. McDONALD: That is all.

CROSS EXAMINATION BY MR. LeBARBIER:

Q And whatever you did do was successful? The wound healed, didn't it? A I don't know.

Q Don't you recall that the wound healed? A I saw the patient only once. It didn't heal while I was there, no. That is the only time I have seen the patient.

Q What is Empyema? A Empyema is a formation of pus within the cavity of the lung, or the covering of the lung.

Q Does that word and definition recall anything to your mind? A Of my connection with this case?

Q In regard to this case? A None whatever.

Q Is a cavity of the lung a cavity of the pleural sac?

A Not necessarily.

Q Can they not be altogether separate and distinct?

A Yes, they can.

MR. LeBARBIER: That is all.

RE DIRECT EXAMINATION BY MR. McDONALD:

Q Can what be altogether separate and distinct?

A A cavity of the lung and of the pleural sac. They are two

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different things.

Q. Could you have a stab wound of the pleural sac and also through the lung? You could have that? A. Of course, you could.

Q. A stab wound? A. Yes, sir.

Q. What is the pleura sac? A. The pleural sac is the covering of the lung and the covering of the chest wall, the interior of the chest wall, the space between is the pleural sac.

Q. In other words, in order to reach the lung with a stab wound with any sharp instrument, you would have to go through the pleural sac? A. In this vicinity you would, yes.

Q. At the side, a stab at the side? A. Yes.

MR. McDONALD: That is all.

THE COURT: Is your motion directed to the medical side of the case? If it is, I think you better reserve it until after the doctors have testified.

MR. LeBARBIER: The point I desire to raise, -- the testimony as suggested by the learned assistant goes to the point that I desire to raise.

THE COURT: I say, why can't you reserve your motion until he testifies?

MR. LeBARBIER: Because, in my opinion, I think the motion is of sufficient importance to be passed upon before the defendant be called upon to make any explana-

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tion. In other words, I shall make at least two motions, your Honor. One will be under the case of the people against Dumas, 106 New York, one will be under the case of the people against King, 213 New York, and at the present time I should like to set forth specifically in words the actual motion that I shall present to your Honor.

THE COURT: I understand, but why can't you make that motion after the defendant has taken the stand? How does his testimony affect the medical aspect of the case. If there is any good reason he should not, I will adjourn now until two o'clock.

MR. LeBARBIER: I don't like to ask for an adjournment if I can help it. Just one moment. We will put him on, your Honor.

M I C H A E L M A Y O, the defendant herein, called as a witness in his own behalf, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. LeBARBIER:

Q How old are you? A Thirty-nine.

Q Married? A Married, seven children.

Q What? A Seven children.

Q Where do you live? A 236 North Fifth Street, Brooklyn.

Q And what is your occupation? A Drive a truck.

Q For whom? A I have been driving for Mr. Piel,

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and I have been driving for Mr. Devine for about seven years;
I drive for the Empire three and one half years or four.

Q The Empire Trucking Company? A Yes, sir.

Q So that you have been busy right along for a number
of years, have you? A Yes, sir.

Q Do you recall this night in January? A 30th of
January?

Q Yes, when you and Frank Clary had some kind of
trouble? A Yes, sir.

Q William Clary? A Yes, sir.

Q About what time of the day was it? A I couldn't tell
you the time. It was probably about twelve or half past
twelve, something like that.

Q Don't talk too quickly? A I couldn't tell you the
time, see.

Q Don't talk too quickly, Mike, and state to the Court
and to this jury what took place that night? A We were in
front of the Martinique Hotel, loading up a truck, and we
were pretty nearly finished; four men were together loading
one truck; we were nearly finished, and the other gang sitting
down, so Clary come along and told the gang we should go to
another hotel, to load another truck, see? At last they
come to me. I said "No, we do our work; you do your own
work; we load two trucks; this is the second truck we loaded;
you go ahead and when we are through we will help you". We

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had our own route, and they had their route. He said "If you don't want to go, go home". I said "no, I will tell you, Mr. Clary, you can't send me home, it is up to Mr. Norman, the foreman, when he comes down from his office and sends me home, I will go."; so he stood there a while. We were pretty near through with the truck. I put the coat on my arm and walked over to the other truck, so he come back and hit me both sides of the face and kicked me, and I fall down, and still kicking me, and Sullivan got hold of him and took him off me, so when I got off the ground he was running, he was nearly a block away. I was over on the corner of the Martinique Hotel and he was over towards Broadway. I started running after him. I wanted to get him locked up. I saw a police officer.

Q Why did you run after him? A I wanted to get him locked up, if he hit me for nothing.

Q For having beaten you? A Yes, sir.

Q That was your object in running after him?

A Yes, sir, I wanted to get him locked up. I went as far as the corner. I met a police officer. He asked me where I was going. I said "I run after that fellow; he smashed my face for nothing at all", and the police officersaid to come with him, and he brought me back, and he wanted the other fellows to explain it, and they wouldn't say nothing. The police officer said "you wash your nose and go back

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to work". I said "I will take your orders; I will do that". I washed my face and went back to work, and I didn't see Clary any more that night; so I still worked until the 22nd of February.

Q How long did you work? A I worked for Mr. Piel about three months. After it happened I worked about a month.

Q And did you hear anything from this man in the meanwhile? A No, I didn't see him at all; I didn't hear nothing.

Q It has been testified to here that you opened a knife and ran after him? A I didn't open my knife. I run after him to get him locked up, because he smashed my nose. My nose is broken yet. He hit me for nothing, so I run to call an officer, to get him locked up.

Q Sullivan says he saw you take out a knife and stab Clary. Now, did you do that? A No, sir. When the cop brought me back he asked me if I had a knife. I said "I got a knife in my pocket. I didn't use it. I didn't take it out at all". So I took it out and I had my hands full of blood.

Q And you showed him the knife? A And I took the knife out of my pocket.

Q You showed him the knife? A I showed the officer the knife. He seen the knife, and he gave it back and said "put it in your pocket".

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Q And you went back to work? A Yes, and I worked until the 22nd of January, the same place.

Q You worked until you were arrested? A I worked until I was arrested, yes, worked there all the time, never quit.

MR. LeBARBIER: Your witness.

CROSS EXAMINATION BY MR. McDONALD:

Q Have you seen Clary since that night? A Never seen him any more since.

Q Weren't you curious to find out why he didn't come back to work? A No, because I don't care if he comes to work or not, because I don't mind anybody's business, only my own. He run away that night. I didn't see him any more, and I didn't care for him, didn't ask for him.

Q Didn't even ask for him? A What?

Q Didn't even ask for him? A I didn't even ask for him, no. I mind my business.

MR. LeBARBIER: Just answer the questions. Don't give us a half hour talk.

MR. McDONALD: I don't mind it.

Q You say you didn't pull your knife out at all?

A No, didn't pull my knife out at all. I run after him to get him arrested.

Q That is all? A That is all there was to it.

Q The cop didn't stop you with the knife in your hand,

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did he? A When he stopped me I didn't have no knife. I said I had it in my pocket. He said "let me see the knife", when we got back to the Martinique Hotel.

Q When the cop stopped you, you didn't have the knife in your hand? A I had it in my pocket.

Q When the cop stopped you, did you have the knife in your hand? A No.

Q Are you sure about that? A I am sure.

Q Do you remember making a statement up stairs in the District Attorney's office? A I remember, yes.

Q Was that the same day that you were arrested?

A The same day I was arrested, yes, sir, I made a statement.

Q Do you remember saying this to the Assistant; "as soon as you got up you took this knife out of your pocket? A Yes, sir, and I couldn't catch him". Do you remember that?

A I didn't say that at all. They asked me when I made a statement, he said "did you have a knife?" I said "I had a knife in my pocket; I run after him to get him locked up"; that is what I said up there.

Q Do you remember answering this question: "And you took this knife out of your pocket, didn't you? A Yes, and run after him". Do you remember that? A I run after Clary; I had no knife; I wanted to get him locked up.

Q Do you remember answering this question: "Q And you opened it and ran after him? A Yes, and when I got on the corner of Broadway and Sixth Avenue, you know, that is near there, there was an officer there stopped me right there, and he was a block away, near Seventh Avenue, kept on running".

A Kept on running, yes, sir.

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Q Do you remember saying that? A I did say that, yes.

Q Was that true, or false? A That was true. He kept on running. He was a block ahead of me all the time, until the cop stopped me.

Q Do you remember answering this question: "Q. What did you open that knife for and run after Clary?"? A I didn't open the knife at all.

Q Now, wait. A All right.

Q Do you remember being asked this question and making this answer: "Q. What did you open that knife for and run after Clary?", and you replied, "If I catch him I will cut him, because I was so mad, he punched me all my face and nose and everything, and I didn't do anything to him"; do you remember that? A I didn't say if I catch him I would punch him; I didn't say I wanted to cut him at all. I said I run after him, all right, I said that.

Q What is that? A I said I run after him, but I didn't say I had the knife open.

BY THE COURT:

Q Did you say you were mad at him and would have cut him if you had caught him? A No, I didn't say that.

Q Was there a stenographer there when you talked with the man up stairs? A No, I didn't say that, your Honor.

Q When you talked to the District Attorney, was there a stenographer there? A Yes, sir, he was writing.

Q Writing? A Yes.

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BY MR. McDONALD:

Q Do you remember being asked this question and making this reply: "Q. Why did you run after him with the knife?

A Well, I can't fight with him". Do you remember saying that? A I didn't say that, because I don't look for fight. I have got a big family to support. I don't look for any fight at all.

Q Do you remember being asked this question: "Q. What were you running after him for? A Well, if I catch him I will hit him"; do you remember that? A I didn't say that.

MR. LeBARBIER: That is objected to as irrelevant, incompetent and immaterial.

THE COURT: Objection overruled.

MR. LeBARBIER: I take an exception.

Q Do you remember saying that? A I don't remember, no.

Q Do you remember being asked this question and making this reply: "Q. If you got him, do you mean that you would have stabbed him?", and then you said, "Yes, if I catch him. I was all full of blood and bust up, and the bone is busted there, without doing anything, and before I got him the officer stopped me and asked me, 'Where are you going?', and I said, 'I am running after that fellow,' and then he says to me, 'What for?' and I says, 'See what he done to me?' and he says, 'There's no use running after him; it's done now; he's

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gone' and I says, 'If you don't believe me come back with me and I'll let you explain to all them people that seen it'; and the cop run back with me and let me go. Because if I hit the fellow and I stabbed him there was a sergeant and a cop there holding me up, wasn't there?" A I said, "Yes".

Q Just the last part of it? A I said this part of it.

Q What? A I said this part of it.

MR. LeBARBIER: Before he answers, I ask to get in my objection, on the ground it is incompetent, irrelevant and immaterial, on the ground that this man was arrested, he was in custody at the time, and was not advised - as to his rights.

THE COURT: Motion denied.

MR. LeBARBIER: I take an exception. Now, I make a motion to strike out all the testimony that has been given, on those specific grounds, your Honor.

THE COURT: Motion denied.

MR. LeBARBIER: I take an exception.

Q You say that Sullivan separated you and Clary?

A Sullivan took Clary off me, and before I got up off the ground I was weak and all kicked in the side and my face, and when I got up I asked him who hit me.

Q Asked who? A I asked all the crowd there, and they told me this man down the block who kept on running, he punched you, so I ran after him, to get him locked up. I didn't catch him. The cop stopped me off on Broadway, and he asked me

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where I was going, and I said I wanted to get that fellow locked up, so the cop says, "He is gone now, no use making any more trouble; you go back to work"; and he come back with me, and when we got there he asked me if I had the knife; so I said, "Yes, I have a knife in my pocket"; so I took it out of my pocket and give it to him, and when I took it out my hands were all blood, and blood was running like a spring, and the knife was full of blood, handle and all, I felt the blood on my face, it was full of blood, so he opened the knife and give me the knife back, and said, "Go back to work," and I never saw Clary since.

Q At the time they stopped you, the officers stopped you, did they see the knife, the time that they stopped you, when you were running after Clary? A Yes, sir.

Q When was it they saw the knife? A They saw the knife on the way back to the Martinique Hotel.

Q Do you remember telling the District Attorney, in answer to this question: "Q. Clary? A Yes, so I run after him; I had that knife, and I ran after him, and then on the corner of Sixth Avenue and Thirty-third Street there was a sergeant and an officer there, a cop stopped me, see, and when they stopped me he was a block further from me, and I said, 'See that fellow down there, he knocked me down'. I was all full of blood, see, both sides of the nose. So he said, 'Well, there is no use running after him; let him go; he has gone'; because they seen

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me with the knife, see, and I say, 'If you don't believe me, there is the bunch there by the truck, and they will tell you.'" Do you remember saying that? A I said that, yes.

Q Did the officers see you with the knife? A No.

Q What did you mean when you said, "Because they seen me with the knife"? A I didn't say that upstairs at all.

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

Q Did you say the other things? A I didn't.

Q You did say, though, that he knocked you down; that part of it is true? A Yes, sir.

Q And that you were all full of blood, that part of it is true? A Yes.

Q And both sides of the nose were bleeding? A Yes, sir.

Q That is true, is it? A Yes, sir.

Q But that part where you said, "Because they seen me with the knife" is not true? A Not true.

Q How near did you get to him, to Clary? A He was over a block ahead of me.

Q What? A He was ahead of me over a block all the time.

Q Ahead of you over a block? A Ahead of me over a block, sure. When the officer stopped me he was ahead a block, he was nearer Seventh Avenue, still running.

Q The officer came from behind, didn't he? A He came from behind, yes, sir, the officer was standing there in the middle of the track, and the crowd was still running down, and when the officer stopped me he was a block and a quarter

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or a block and a half away.

Q Had you passed the officer? A No.

Q Had you gotten into Thirty-third Street past Sixth Avenue? A No, the cop stopped me off right away.

Q Where? In the middle of Sixth Avenue? A In the middle of Sixth Avenue and Broadway at Thirty-third Street, there was two of them there, and they stopped me. Sixth Avenue and Broadway and Thirty-third Street they are nearer, so they stopped me there, and Clary was still running, he was nearer Seventh Avenue.

Q Was anybody else running? A No.

Q Did you see Sullivan behind you? A No, nobody else moved out of the crowd; they remained there, everybody; I was the only one running after him, and when I got there the officer stopped me; I was all alone.

Q Did you see White running after you? A White was standing with the crowd, and Sullivan was standing with the crowd, over by the Martinique Hotel.

Q They didn't follow you? A No, they didn't follow me. Sullivan was there, Martin was there, all the colored men and everybody was there. His brother wasn't there at all.

Q What? A His brother, Joe Clary, wasn't there at all.

Q Joe Clary didn't say he was there, did he? A I don't know if he said he was there. He wasn't there at all.

Q He didn't say he was there, did he? A No, ^{and} all the

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crowd stayed there when I run after Clary.

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Q Didn't you have the knife in your hand then? A No.

Q You wouldn't use a knife? A No, I wouldn't use it.

When I got up off the ground I run to catch him, to get him locked up, because when I got off the ground he was a block ahead of me; he was on the corner of Broadway.

Q Did the officer take the knife out of your pocket?

A I gave it to him over at the Martinique Hotel, I gave it to him.

Q Do you know why he asked you if you had a knife? A If I had the knife open, he would lock me up right on the spot.

Q Do you know why he asked you if you had a knife? A When I come back there, he asked me if I had a knife.

BY THE COURT:

Q Do you know why he asked you if you had a knife? A He asked me if I had a knife in my pocket.

Q Do you know why he did that? A Because White told him I stabbed Clary, and the officer says, "He didn't stab Clary, because he didn't catch him; I stopped him".

BY MR. McDONALD:

Q And that is the time the officer asked you to look at your knife? A Yes, sir, when Whitey asked him that.

Q Whitey told the officer in your presence that you had stabbed Clary? A Whitey told the officer I stabbed Clary in Broadway, and Clary was a mile away, because Whitey went to

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the truck, didn't move, Sullivan neither.

BY THE COURT:

Q As you were running, did you hear anybody shout to Clary that you were following him? A No.

Q Did anybody behind you call out to Clary that you were following Clary? A No, nobody was after me.

Q You don't pay attention to what I say. Now, listen. While you were running after Clary, did you hear anybody behind you call to Clary that you were following Clary? A No.

BY MR. McDONALD:

Q Did you hear anybody say, "Look out, Clary"? A No.

Q Wasn't there any noise there at all? A No, nobody hollered.

Q Didn't they tell Clary to beat it? A No. Clary beat it himself without anybody telling him anything.

Q He beat it himself? A Yes, sir.

Q After he saw you getting up? A What?

Q After he saw you getting up? A He was away before I got up. When I got up he was a block away from me.

Q And you wanted to run after him then? A When I got off the ground I asked my partner who hit me, because I didn't have no fight with Clary at all, and then my partner told me, "He is the man down below, a block away, he is the one that hit you"; so I started to run after him right away. I wanted to get Clary locked up.

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Q Tell us all you said to the officer?

THE COURT: Wait. We will take a recess now. (To the jury) Gentlemen, please do not form or express any opinion as to the defendant's guilt or innocence until the case is finally submitted to you. Please do not talk among yourselves about the case, or permit anybody to talk to you about it, or in your presence. We will take a recess until two o'clock.

(The Court then accordingly took a recess until 2 o'clock p. m.)

A F T E R R E C E S S

M I C H A E L M A Y O, the defendant, resumes the stand.

CROSS-EXAMINATION (CONTINUED) BY MR. McDONALD:

Q Now, did White, when he told the officer that you had stabbed Clary, did White say anything else? A He asked the officer, he says, "I seen him stab Clary," so the officer answered him -

Q Keep your voice up. A The officer asked him, he said, "How could he stab Clary? Clary was one block ahead, and he didn't have no knife in his hand to stab him".

Q What is that? A The officer says, "How could he stab Clary, when Clary was one block ahead of him, and he had no knife in his hands at all? I caught him before he caught Clary." The cop says he catched me before I reach Clary.

Q That was Donaldson, this officer here (indicating)?

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A Yes, sir.

Q Said that to Whitey? A Said that to Whitey, yes, sir.

Q What did Whitey say? A He said I stabbed Clary; he even said so all the time.

Q What? A Whitey says that I stabbed Clary, and the officer answered him, "No, he didn't stab Clary, because he didn't catch him; he didn't have no knife in his hands." He said, "I catch Mayo before he catch Clary; Clary was a block ahead of Mayo".

Q You are sure the officer said that, are you? A I am sure.

Q Do you remember being asked -

MR. McDONALD: I am sorry, sir, to interrupt, but the doctor is here, and he is very busy.

THE COURT: Any objection to withdrawing the defendant while the doctor is put on?

MR. LeBARBIER: No, sir.

MR. McDONALD: Thank you, sir.

M E Y E R J. K U T I S K E R, of Bellevue Hospital, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Doctor, you are a physician, licensed to practice medicine in the State of New York? A Yes, sir.

Q And how long have you been licensed to practice?

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A Since September, 1917.

Q You have been a physician how long? When did you graduate from the medical school? A June, 1917.

Q And what medical school? A Bellevue Hospital Medical College.

Q Do you remember a patient being in Bellevue Hospital some time - at least, between the 31st of January and the 23rd of February, 1918? A A patient?

Q Yes. A Which one?

Q William Clary - by the name of Clary. A Yes.

Q How frequently did you see this William Clary? A Daily.

Q Daily? A Yes, sir.

Q Do you remember when he was admitted, offhand?

A No, I couldn't say the day.

Q Could you refresh your recollection from the record of the case? A Yes, sir.

MR. McDONALD: Any objection to the Doctor refreshing his recollection?

MR. LeBARBIER: No.

Q (Handing paper to witness)? A (After examining same) Yes, sir.

Q When did he enter the hospital? A The 31st of January.

Q Did you see him that day? A I saw him that day, but not at the time he entered.

Q Did you see him that day? A Yes.

Q Did you examine him? A No, sir.

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Q Did you examine him at any time? A I examined him later.

Q Later? A Perhaps the next day, or the day after.

Q Can you refresh your recollection by anything from that chart which you have there? A Yes, sir.

Q Read it over, and then just tell us what you did, and please have it loud enough so that counsel for the defendant can hear you. Did you examine him? A Not when he came in.

Q When did you examine him? A I examined him just the day after.

Q What did you find his condition to be? A I found just what the chart here says.

Q Tell us what you found. A A wound -

Q Keep the chart until we finish with you, Doctor (handing chart to witness). A Can I read it off the chart?

Q Yes. A Over the rib, just in the axillary region, at about the seventh rib, there was a ^{round} wound about one-quarter of an inch in depth, with some pus, more or less dungless, in the area surrounding it, and some moist rales; that means the sound when you listen with the stethoscope.

Q Did you do anything that day? A No, it was just dressed with a sterile dressing.

Q You say you visited him every day? A I make the round every morning, and at the time I make the rounds I look at the patient. It doesn't necessarily mean that I look at the wound,

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because the wound is dressed daily by the doctor who has charge of the wards. I make rounds and prescribe the necessary treatments.

Q Did you see him on the 2nd of February? A After that I saw him -

Q Look at your chart? A I don't make any note at the time I see the patient, but I am supposed to make rounds every day; therefore, I probably saw him on that day.

Q If you will look at your chart you will see that your chart says that you performed an operation on the 2nd of February? A Yes, sir.

Q Tell us what operation you performed? A The operation was one for the liberation of blood in the pleural cavity.

BY THE COURT:

Q What date was that operation? A On February 8th.

BY MR. McDONALD:

Q February 8th? A February 8th. There was an incision of the eleventh rib on the right side in the posterior mid axillary line, one and one-half inches, of the sixth and seventh ribs removed. The pleural cavity was full of blood clots. The cavity was drained with a rubber tube tied to the skin. The operation was preceded by aspiration of the right pleural cavity, obtaining the blood.

Q What is that last? A Obtaining the blood; that is, before we operate we make sure there is necessity for opera-

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tion, by aspiration with a needle and drawing off the fluid in the chest.

Q You say you did operate? A Yes, sir.

Q And what did you find? A Found this blood.

Q That is not what you call pus? A Well, it is hard to say whether it was pus, or not.

Q Was there a poisoning there, an infection? A There probably was. It is hard to say. I don't think we examined the fluid for any organisms; therefore, there might have been and there might not have been.

Q Did you see Clary after that operation? A Daily.

Q Do you know when he died? A On February 23rd, according to the records.

Q And what did he die of? A He died of acute suppurative pleurisy.

Q Acute suppurative pleurisy? A Yes, sir.

Q What does that mean, in ordinary terms? A It means a pussy fluid in the chest.

Q In the pleural sac? A In the cavity between the lung and the chest wall.

Q Is that what you call the pleural sac? A Yes, sir.

MR. McDONALD: That is all.

CROSS-EXAMINATION BY MR. LeBARBIER:

Q Do you recall the case, Doctor? A Yes, sir.

Q Do you recall that when he was - - question withdrawn. Do you recall what day he was admitted? A Ac-

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according to the chart, I do, by seeing the chart.

Q What? A I say, by looking at the chart, I do.

Q That was when? Just look at it? A January 31, 1918.

Q In the morning, or in the evening? A That I can't say. Ten p. m.

Q Now, do you recall an examination of the right lung?

A At the time of his admission?

Q Yes. A I didn't examine him at the time he came in. The doctor on the ward examines the patients when he comes in.

Q Are you aware there was a little anodyne put over the wound on the right lung? A A little what?

Q A little iodine? A Oh, yes.

Q Do you recall whether after that that had healed up?

A Whether the wound itself had healed?

Q Yes. A I don't think it was quite healed when we operated on him.

Q It had healed some time later, did it not? A We enlarged it at the time we operated; I think we enlarged the original stab wound; that is, we went in over the site of the stab wound.

Q By cutting it? A Yes, sir.

Q How much did you enlarge it? A Oh, I should say two inches.

Q Do you know what the extent of the original stab wound was? A Yes, sir; one-quarter of an inch. It says here one-

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quarter of an inch in size.

Q What was that, a slight puncture of the lung? A I couldn't say about the lung part of it. The skin is the part we see. We can't see the puncture of the lung at all.

Q You don't know whether the lung was perforated? A No, we can't see the lung by looking at the patient. We see the puncture of the skin.

Q And then, as far as the lung is concerned, what observation have you to make in that respect? A Can't make any.

Q Could you see that the lung was in any way affected?
A We can't see the lung by looking at a patient.

Q Well, by any process that you have there? A By X-ray we may.

Q But you didn't do that, did you? A We did.

Q And did that show that the lung was affected? A I will read the X-ray report if you want me to.

Q What is that? A I will read the report.

Q Does it show that the lung was affected? A I will read the report. I don't remember what it showed.

Q Just look at it. A Do you want to hear it?

Q Just generally. A Fluid in the right pleural cavity.

Q The right pleural cavity; that is not the lung cavity is it? A Well, it is the lung cavity. There are no cavities in the lung normally.

Q But outside of normally there can be a lung cavity?

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A Oh, yes, people with tuberculosis have cavities in their lungs.

Q Now, then, this right lung, had it healed up? A Had what healed up?

Q The puncture in the lung, or where the lung was, had it healed up. A Oh, I couldn't say that.

Q What? A I couldn't say that. That can only be -

Q Determined by the ~~exam~~ autopsy? A By the autopsy examination.

Q Assume that an autopsy had been made? A Yes, sir.

Q And it appeared from the testimony that that wound had healed, that there was a scar there? A Yes, sir.

Q And, if I understand correctly, had entirely healed, that would dispose of any question about the lung, wouldn't it? A Well, it would show that it has healed, that the lung is healed.

Q It would show that there was no danger arising from the lung itself, wouldn't it? Would it not? A It probably would. You can't tell.

Q Now, as a matter of fact, would it not? A I can't say.

Q You can't say? A No.

Q Well, can you state, upon that assumption, as shown by the autopsy, that it had healed, and the scar was there, and the scar had healed, wouldn't that denote to your mind that all danger - that there was no danger in so far as the

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lung was concerned? A Well, the only thing -

Q Would it not? A I can't say that; I can't answer that.

Q Assume that the lung had healed and there was a scar on it, that would not produce any suppuration in the pleural cavity, would it, because of it having been healed; isn't that so? A It might be the cause of it, though. It might be the cause of the suppuration in the pleural cavity.

Q Wouldn't that come from the operation that was performed? A Very well.

Q Just as well? A Yes, sir.

Q You recall the month of January was a very cold month, wasn't it? A Yes.

Q Very cold weather here? A Yes.

Q And a person having received a wound in the lung on the 28th and was not admitted to the hospital until the 31st, that was quite some time after, an exposure of the wound? A Four days - or three days.

Q If a wound had been made in the lung and it had healed - question withdrawn. Now, then, if, on admission to the hospital at that time, or some time afterwards, do I understand you to say that the operation that was performed there could well have brought about a pleurisy that he subsequently died of?

A He had pleurisy. That is what we operated on him for. That is, pleurisy with an effusion of fluid in the chest.

Q But from a lung that was apparently not wounded, but

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had healed, and the scar had also healed, can you not say that it would be an independent cause of injury to him derived from the operation? A The thing I could say is this -

Q Could it, Doctor? A No.

BY THE COURT:

Q This operation that you performed, did that cause the pleurisy, or was the pleurisy there when you operated?

A He had pleurisy with effusion when we operated on him.

Q Was the pleurisy in a suppurated condition when you operated on him? A Probably suppurated when we operated on him, although that can't be definitely known.

BY MR. LeBARBIER:

Q Did that suppurated pleurisy come from any wound in the lung? A I can't say that.

Q With the records of the hospital before you, you are unable to state that, are you? A No, sir.

Q So, am I right in possibly assuming that this suppurative^{pus} condition might have come from the operation? A You can very well assume that.

Q And the fact was not brought about by any wound in the lung? A That part I can't say.

Q You can't say that, can you? A No, the latter part I can't say. Just as the pus can come from the lung part of it, it may come from the inside of the lung, or the outside. Where it came from I can't say.

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Q But if the lung was healed and there was no pus in the lung, naturally there was nothing to suppurate through any puncture of the lung? A No.

Q There was not, was there? A No.

Q Therefore, if the lung was healed and there was nothing to suppurate through, the suppuration then that you found in the pleural cavity, which is outside of the lung, must have come altogether from some independent matter? A It came from the outside.

Q It came from the outside? A The suppuration -

Q But not in any way -

MR. McDONALD: Now, let him answer, please.

Q But not in any way connected with the lung, is what I want to get at? A I can - the thing is this: Suppuration in the chest may come from the lung, or from the outside. Whether it came from the lung, or from the outside, I can't say.

Q That is the point I want to get at. A The fact that the lung was healed and there was a scar on the lung, as shown by the autopsy, which I did not see, would point towards the fact that the infection came from the outside.

Q And not from any wound perhaps of the lung? A It would point towards that, yes, but no one can say definitely whether that is the case.

Q From your examination, isn't it your belief that that is so? A I haven't seen the autopsy examination, nor the report.

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Q But assuming that it did state that way, isn't it your belief then that the pleural suppuration was altogether distinct from any suppuration from the lung, as a physician wouldn't you say that, Doctor? A Well, you would assume it.

Q What? A You can assume that.

Q I say, assuming that? A Yes.

Q You would say "yes", would you not? A Yes.

Q So that, if I am right in assuming also it may very well be said, may it not, that the wound, if any, produced on or in the lung was not a mortal or a dangerous wound? Am I right in that, too, Doctor? A The wound in the lung?

Q Listen to that question, if you will. (Question read by stenographer, as follows: "So that, if I am right in assuming also it may very well be said, may it not, that the wound, if any, produced on or in the lung was not a mortal or a dangerous wound? Am I right in that, too, Doctor?") inasmuch as it had healed and the scar on the lung had also healed? A Yes, sir.

THE COURT: Because a wound heals, that does not show it was not a dangerous wound.

MR. LeBARBIER: Well, he says, "yes", your Honor. I am only going by the record.

THE COURT: According to that, then, any wound that heals and does not kill a man is not a dangerous wound?

MR. LeBARBIER: No, I wouldn't argue that, your Honor.

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THE COURT: You are right in arguing it is not a mortal wound, but as to its being a dangerous wound is something very different.

MR. LeBARBIER: The doctor just answered.

BY THE COURT:

Q Do you consider that any stab wound through the chest and through the pleural cavity penetrating the lung was not a dangerous wound? A No, sir.

Q Every such wound is dangerous? A It is dangerous.

Q It must be dangerous? A Yes, sir.

BY MR. LeBARBIER:

Q But assume now that that wound had healed, and the apperture, the puncture, had also healed, showing a scar on it, wouldn't that indicate to your mind that the danger had passed? A As far as the lung is concerned.

Q As far as the lung is concerned? A Yes, sir.

Q Now, then, assuming that to be so, can you say that there fore the condition of the lung was no longer dangerous?

A No.

Q Assuming this for a moment more, that under those circumstances the lung had healed and the scar of the puncture, the apperture, had become there and had also healed, do you think you can state that that wound was the cause of death?

A No, sir.

Q So that, if the operation that was made - question withdrawn. Was the operation that was made quite a large

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operation there? A Well, it is considered a major operation.

Q A major operation? A Yes, sir.

Q And it was then - question withdrawn. Was it then after this major operation was performed that the pleural cavity was filled with this pus? A No, sir.

Q Or what was in it? A It was filled with fluid.

Q Fluid? A Fluid. Whether it was pussy, or not, I can't say, because we didn't examine it bacteriologically.

BY THE COURT:

Q What was the fluid? A The fluid was a bloody fluid. whether it contained bacteria or the organisms that cause the pus, that is hard to say.

BY MR. LeBARBIER:

Q Can you state whether there was any pus from the lung?

A No, I can't state that.

Q In the history of this case as presented to you, the family history, speaking of the deceased, it says: "Alcohol, five or six glasses of whiskey a day, and beer in large quantities venereal, gonorrhea, fifteen years ago. Previous medical, measles, six years ago; rheumatism, last year. Previous surgical, fifteen years ago, operation for piles." Might not the condition of the patient as revealed to you by what has been read to you from the record be sufficient to produce a condition of body weakened by disease and drink? A I can't say that. I couldn't state that.

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Q You can't say one way or the other, can you? A No.

Q But would it tend to render the patient liable to weakness?

MR. McDONALD: I object to that, sir. The doctor has already stated he can't say.

BY THE COURT:

Q I suppose a man in bad condition has not the same resisting power as a man in good condition? A Yes, your Honor.

BY MR. LeBARBIER:

Q Then, was any of that fluid, after this major operation was made, that you discovered in the pleural cavity, was any of that fluid at all from the lung? A I can't say that.

Q Did you make that major operation? A In the presence of the visiting surgeon.

Q By the two of you together? A Three of us, in fact, there were three people at the operation.

Q Who was the one who actually did the operation? A I.

Q That is to say, you cut in under the rib, did you not?

A Yes, sir.

Q Describe the operation, will you, please? A It is described right on the chart there.

Q Then after the operation was any other operation made on the patient during his stay there? A He was dressed daily, the dressing was changed every day. That is as far as I know.

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Q Do you know when it was that the wound from the lung had entirely healed? A I never saw it.

Q You never saw it yourself. What is the normal temperature of a person? A 98.6.

Q What? A 98.6 Fahrenheit.

Q Is a temperature of 99.6 a high temperature? A No, you wouldn't call it a high temperature, but it is not normal.

Q What is the normal pulse? A 72.

Q Would you consider a pulse of 80 abnormal? A No, sir.

Q And respiration, what is normal? A 22.

Q Would you consider a respiration of 28 abnormal? A Yes.

Q I refer you to this report and ask you what you find as to the temperature, pulse and respiration, and when it was that you found that, if you did, on the patient? A I don't understand that. Every day?

Q No, when does that report relate to, so far as the time of his admission was concerned, how many days after his admission - the particular page that I have called your attention to? A This page here (indicating)?

Q Yes. A This is on the day of his admission; this is the week of his admission.

Q I see, in lead pencil there, "4 days after"; what does that mean? A That is - he came in four days after the stabbing occurred, according to the history obtained by the doctor.

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Q That four days coming in after the stab wound occurred, what does that record show as to his pulse, respiration and temperature? A It shows that he has a slight elevation of temperature, and an increase in respiration.

Q Did that in any way indicate a dangerous condition of the patient? A It is hard to say.

Q Well, can you tell us? A An old man will come in with pneumonia, and he will have no temperature at all, while a strong, husky man will have a temperature of 105, and they will have the same conditions.

Q From the record, how old was this man? A How old was he?

Q Yes. A He was a young fellow; he was thirty-five.

Q Would you consider now, knowing his age, that that is an abnormal condition of things about the man? A No, I can't say that.

Q You cannot say that, can you? A No.

Q Taking the medical chart of the record from the hospital which is now shown you -

MR. McDONALD: May this be marked for identification?

MR. LeBARBIER: I offer the whole record from the hospital for identification.

MR. McDONALD: Offer it in evidence.

MR. LeBARBIER: Do you offer it in evidence?

MR. McDONALD: I will offer it if you haven't any objection to it.

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MR. LeBARBIER: No objection.

MR. McDONALD: I offer the record, the medical history of this William Clary, in evidence.

(Same received in evidence and marked People's Exhibit No. 2, of this date.)

Q I don't know if I asked you that. Then the fluid that was found in the pleural cavity should have been something altogether different from anything at all connected with the lung; is that right, Doctor? A If it is connected with the lung it is in the lung cavity.

Q Of course, the pleural cavity is the outside covering of the lung?

THE COURT: No, it is not.

MR. LeBARBIER: What is that, your Honor?

THE COURT: The pleural cavity does not mean the covering of the lung.

Q But with the operation in mind and the major operation in mind that you say took place there and the fluid that you found in the pleural cavity and the lung having healed - Doctor, you have answered that question. I will withdraw the question. He has answered it. That is all.

REDIRECT EXAMINATION BY MR. McDONALD:

Q Doctor, it is possible for a lung to have been out or punctured and then healed and then an infection of the pleural sac to take place, causing pus to gather in the pleural sac?

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A Due to that?

Q Even after the puncture in the lung has healed?

A It couldn't very well come from the affection of the lung. It is possible for the suppuration to exist, but it may not have come from the lung.

Q It may not have come from the lung? A Yes.

BY THE COURT:

Q If a stab wound is inflicted which penetrates the chest wall and the pleura and the pleural cavity and the lung, even if the lung heals, the same penetrating stab wound may infect the pleural cavity? A It may, but not from the lung part.

Q From the wound? A Yes, your Honor.

Q Simply because the lung heals up, that wouldn't show that the infection of the pleural cavity didn't come from this wound? A It may have come from the outside wound.

Q That is what I say. Infection may have been carried into the pleural cavity by the wound? A Yes, sir.

Q And suppurate in the pleural cavity, even though the lung healed up? A Yes, sir.

BY MR. LeBARBIER:

Q It meant the condition you found would have generated from something other than the wounded outside covering of the lung? A It may.

Q So that you really -

BY THE COURT:

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Q Did you find anything to account for ~~the~~ it except a stab wound? A No, sir.

BY MR. LeBARBIER:

Q Can you say it was even from a stab wound? A I can't say that.

BY MR. McDONALD:

Q Can you say whether it was from an inside wound, or not? A No, all I can say is that the patient died of suppurative pleurisy. What it is due to I can't say.

Q He must have had this pleurisy at the time you performed the operation, didn't he? A He had pleurisy with an effusion, or we wouldn't have operated on him.

Q That is the reason you operated on him? A Yes, sir.

Q What is pleurisy? A Pleurisy is an inflammation of the pleura.

Q And does it discharge a pus? A It depends on whether it is a dry or wet pleurisy. A dry pleurisy does not discharge any pus. Pleurisy with effusion, or a wet pleurisy, discharges pus.

Q This was an effusive pleurisy, wasn't it? A This was an effusive pleurisy, yes, sir.

BY MR. LeBARBIER:

Q Can it not be that this man suffered from pleurisy before the stab wound? A How can I say?

Q It could be, couldn't it? A Surely.

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Q There is nothing definite here to show one way or the other, is there? A Being that we have not examined the patient before he was stabbed, we can't say whether he was suffering from pleurisy with effusion, or not.

Q But there is that possibility, is there? A Yes, sir.

MR. LeBARBIER: That is all.

BY MR. McDONALD:

Q Who examined him when he came into the hospital?

Dr. Nolan? A Dr. Ponofin. In fact, the ambulance surgeon who brought him in is the first one who saw him.

Q He makes a superficial examination at the place where he is called? A Yes, and applies the first dressing.

Q Then the patient is brought into the ward? A Into the ward, and at night there is only one doctor in charge of three wards, and he is called to see the case, and he examines him.

Q Is there anything in the records to show when you first found out that this deceased, William Clary, had pleurisy?

A When we X-rayed him.

Q When was that? A I think on the second day after he came in.

Q And he had pleurisy at that time? A He had pleurisy with effusion.

Q Where is your X-ray report? A Right here (indicating on People's Exhibit No. 2).

Q This clinical diagnosis, it says here "lung abscess"?

A Well, that is a guess on our part. We couldn't say just

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what it was, and the X-ray people wanted a diagnosis before we sent the patient down, so they have something to go by.

Q Then after the X-ray is taken, then you are able to tell what is the matter with the patient as far as the X-ray shows? A Yes, sir.

Q And you found here that there was a fluid in the right pleural cavity? A Yes, sir.

Q There is nothing here to show anything the matter with the lung? A Fluid is so dense it obstructs the X-ray, I suppose, from penetrating into the lung and giving any X-ray of the lung itself.

Q You say the fluid is so dense? A There is fluid in the chest cavity, and that is all the X-ray shows. Whether the X-ray could show whether there was anything on the lung, or not, I don't know, because I don't know much about X-ray work. There is a specialist in the hospital who does that work.

MR. McDONALD: That is all.

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M I C H A E L M A Y O, the defendant, resumes the stand:

CROSS EXAMINATION (Continued) BY MR. McDONALD:

Q Now, you say that Norman was not there?

A Norman wasn't there, no.

Q Do you remember being asked this question and making this reply: "Q Norman was down in the basement?" and your answer was "Norman was in the hotel"; do you remember saying that? A No, I didn't say that.

Q Did you remember saying that? A Norman was not down yet.

Q Do you remember saying that? A No, I didn't say that.

Q To the stenographer? A I didn't say that.

MR. McDONALD: That is all.

G. E R T R U D E C O L E M A N, being recalled, testified as follows:-

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Do you recall the night of this occurrence, Mrs. Coleman? A I do.

Q Where were you the next morning? A At my home, at work, 152 West 54th Street.

Q Did you see Clary, the deceased, the next morning?

A He came and rang the door bell the next morning about ten or eleven o'clock.

Q When? A Between ten and eleven I think the hour was.

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Q You saw him, did you? A I saw him, yes.

Q When you saw him that next morning, did he say anything to you about being stabbed? A No, he did not.

Q For how long a time did you see him? A Just a few moments.

Q What say? A Just a few moments.

Q That would be January the what -- 29th, wouldn't it?

A It was January 29th, yes.

Q Did you observe his general appearance? A There didn't seem to be anything wrong with him.

Q What? A There didn't seem to be anything wrong with him.

Q Did you see him at any time after that? A Not after that, no.

MR. LeBARBIER: That is all.

CROSS EXAMINATION BY MR. McDONALD:

Q Didn't you see him after that? A Not after that, no.

Q Where was it you say you saw him? A He came to my door and rang the bell, and he asked to see my husband, and I told him he was in bed, and that was all. I didn't see him after that.

Q Did he just ask to see your husband? A Asked to see my husband.

BY THE COURT:

Q How do you know that was on the 29th? A I remember

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it. I asked my husband what the trouble was, and he said there was something about a fight.

Q When was that? A He said it had happened the night before.

Q How did you know then about any trouble to ask your husband about? A I simply went to call my husband to see if he would see the man, and he said no, he wouldn't see him then, that there was some trouble that night, and I told him he was asleep, and I didn't see him after that.

BY MR. McDONALD:

Q You had found out that there was a fight, had you?

A At that time, I did, yes, sir.

Q When you went to wake your husband up? A Yes, sir.

Q Did you say anything to Clary then about the fight?

A No, I simply said my husband was asleep, and he wouldn't see him then; to come around again that evening; and he went away.

Q Didn't say anything about any trouble he was in?

A No, sir. I talked from the window.

Q What? A I just called out from the window.

Q He was on the sidewalk? A On the sidewalk, yes, sir.

Q And what floor do you live on? A One flight up, we live up over the garage.

Q How did he happen to attract your attention?

A He rang the bell, and I always looked out of the window

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before I opened the door.

Q And this was what time? A It was between ten and eleven if I remember rightly.

Q In the morning? A Yes, sir, in the morning.

Q You were not receiving calls, or, at least telephone calls for Mr. Piel that day? A I always answered the 'phone from the house. There was an extension from the office.

Q The office is on the ground floor? A No, sir, it is on the same floor.

Q As yours? A Yes.

THE DEFENDANT RESTS.

REBUTAL TESTIMONY.

JOHN SULLIVAN, being recalled on behalf of the people, in rebuttal, testifies as follows:-

DIRECT EXAMINATION BY MR. McDONALD:

Q The defendant says that Clary knocked him to the ground, and that he -- or, rather, he jumped on top of him and knocked him to the ground, and that then he struck him, or continued to strike him, and that you pulled Clary from on top of the defendant, Mayo. Is that true? A No.

MR. LeBARBIER: Objected to as not in rebuttal.

THE COURT: Objection overruled.

MR. LeBARBIER: I take an exception.

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Q Is that true? A No.

Q Mr. Youngquist testified that nobody ran after Mayo from your crowd, neither you nor White, to be specific. Is that so? A No.

Q Did you and White run after Mayo? A Yes, sir.

MR. McDONALD: That is all.

W I L L I A M W H I T E, being recalled on behalf of the people in rebuttal, testified as follows:-

DIRECT EXAMINATION BY MR. McDONALD:

Q Mrs. Mayo said that you told her that her husband didn't -- that you didn't see anything that took place that night. Did you say that to Mrs. Mayo? A I told Mrs. Mayo--

Q Just answer this "yes" or "no"? A No, sir.

Q Mr. Youngquist says nobody followed Mayo or Clary. Did you follow him? A Yes, sir.

Q Did Sullivan also follow him? A I don't know about Sullivan.

Q Sullivan was behind you? A I don't know whether Sullivan was, or not, but I followed and hollered "Look out, Bill".

MR. McDONALD: That is all.

MR. LeBARBIER: No questions.

N A T H A N B E R C H A L, Jr., called as a witness on behalf of the people, in rebuttal, being first duly sworn testifies as follows:-

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DIRECT EXAMINATION BY MR. McDONALD:

Q What is your business, Mr. Birchall? A Stenographer.

Q And where are you employed? A District Attorney's office, homicide bureau.

Q And how long have you been a stenographer? A Eleven and one half years.

Q And how long have you been in the District Attorney's office? A Nine and one half.

Q Nine and one half years? A Yes, sir.

MR. McDONALD: Defendant's Counsel concedes that Mr. Birchall is an expert stenographer, and also that he transcribed this correctly from his original notes.

Q On the 25th day of February, 1918, did you see this defendant? A I did.

Q And where was he when you saw him? A In the homicide bureau.

Q Of the District Attorney's office? A Yes, sir.

Q And did you there take down in shorthand his statement? A I did.

Q And were questions propounded by Mr. Joyse and others? A Yes, sir.

Q And were they propounded in English? A They were.

Q And did you take down those questions correctly?

A Yes, sir.

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Q And did the defendant answer those questions?

A He did.

Q And did you take down his answers correctly?

A I did.

Q And did you later transcribe the stenographic notes that you then took down? A Yes, sir.

Q And did you do that correctly? A I did.

Q And did you compare the typewritten notes with your originals? A Yes, sir.

Q Taken at that time? A Yes, sir.

Q And did you find that you had transcribed the original notes correctly? A Yes, sir.

Q Is that the original (handing paper to witness)?

A It is.

Q Transcribed copy of your original notes? A Yes, sir.

Q Now, will you please read that?

MR. LeBARBIER: Objected to as incompetent, irrelevant and immaterial, on the further ground that it does not appear that under the statute or any law the defendant was properly advised of his rights.

THE COURT: I will sustain the objection to reading the whole transcript. I will allow him to read those questions and answers which were put to the defendant and which he denied making, but this being rebuttal I will sustain the objection as to reading the whole transcript.

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MR. LeBARBIER: I take an exception.

THE COURT: You can refer to those questions you put to the defendant while on the stand where he denies making certain answers, and ask the stenographer whether he made those answers.

MR. LeBARBIER: As to that, I respectfully make the same objection, to permitting any testimony from this record to be read into the case.

THE COURT: Objection overruled.

MR. LeBARBIER: I take an exception.

Q Please turn to page 3, in the middle of the page, "Norman was down in the basement?" Was that question asked of this defendant? A It was.

Q And did he make any reply? A He did.

Q What reply did he make? A "Norman was in the hotel. So he got to work, he got sore or something like that, and I got my boat and was going to the other truck, and he goes to work and gets right in back of me and punched me in the eyes and nose, and I couldn't see no more, you know, and when I got up off the ground I asked people who was there, you know, my side partner, who hit me, because I didn't know who hit me. I didn't have no argument with him."

Q Now, turn to page 4, please, that question, "Clary?"

A Yes, sir.

Q Was that question put to the defendant?

A It was.

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Q And did he make any reply? A Yes, sir.

Q Read both question and answer, please? A "Bill Clary?"

A Yes. So I run after him. I had that knife, and I run after him. I had that knife and I run after him, and then on the corner of Sixth Avenue and 33rd Street there was a sergeant and officer there, a cop stopped me, see, and when they stopped me he was a block further from me, and I said, 'See that fellow down there? He knocked me down' and I was all full of blood, see, both sides of the nose, so he says, 'Well, there is no use of running after him; let him go, he's gone', because they seen me with the knife, see, and I say, 'if you don't believe me there's the bunch there by the truck, and they'll tell you', because I couldn't talk, I was all blistered up. So this fellow Joe knows all about it, because he was working alongside of me, and I said 'he's the fellow that can tell you all about it', because I was all full of blood, and these fellows wouldn't say boo at all, they were afraid of the colored fellows, so the cop says, 'there's no use making an argument about it; keep your knife. Wash your face and go on working'. That's all there was to it. I didn't see Clary no more. I didn't do nothing more. I worked steady. So I kept on workin and last night I see these two gentlemen come over and look me up that I stab Bill Clary."

Q Turn to page 5, the question in the middle of the

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page beginning, "And as soon"? A "Q And as soon as you got up you took this knife out of your pocket? A Yes, and I couldn't catch him".

BY THE COURT:

Q Was that question put to him, and did he make that answer? A He did, yes, sir.

BY MR. McDONALD:

Q Turn to page 6, that question beginning, "And you"?

A "Q And you opened it and ran after him? A Yes, and when I got on the corner of Broadway and Sixth Avenue, you know, that's near there, there was an officer there stopped me right there, and he was a block away, near Seventh Avenue, kept on running".

Q That question was put to the defendant and he gave that answer? A Yes, sir.

Q Now, the question just before that, "And you took this knife out of your pocket"? A "Q And you took this knife out of your pocket, didn't you? A Yes, and run after him".

Q The second question from that -- was that question put to the defendant and did the defendant make that reply?

A Yes, sir.

Q Now, then, the second following question?

A "Q What did you open that knife for and run after Clary?

A If I catch him I'll cut him, because I was so mad he punched

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me, all my eyes and nose and everything, and I didn't do anything to him."

Q Was that question put to the defendant, and did he make that answer? A Yes, sir.

Q And the following question? A "Q Why did you run after him with the knife? A Well, I can't fight with him".

Q Was that question put to the defendant and did he make that reply? A Yes, sir.

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Q Now, the following question? A "Q. Well, he was running away and you were running after him, weren't you?

A Well, if a man hit you for nothing what will you do?"

Q Was that question put to the defendant, and did he make that reply? A Yes, sir.

MR. McDONALD: That is all.

CROSS-EXAMINATION BY MR. LeBARBIER:

Q You purported to read from a typewritten statement taken from your notes, did you not? A Yes, sir.

Q Of the excerpts that the learned Assistant District Attorney has read to you? A Yes, sir.

Q And that was taken in the District Attorney's office, was it not? A It was.

Q And before it was taken was any admonition given by the District Attorney as to the rights of the defendant in the premises?

MR. McDONALD: I object to the question, sir.

THE COURT: Well, I will allow it.

A No, sir.

MR. McDONALD: No question as to the rights. We are not compelled under any law to advise the defendant.

MR. LeBARBIER: In my opinion, you usurped rights.

THE COURT: Please do not indulge in colloquy. If there is any objection, address it to the Court.

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THE COURT: (To the Jury) Gentlemen, please do not form or express any opinion as to the defendant's guilt or innocence until the case is finally submitted to you. We will take a recess until ten-thirty tomorrow morning.

MR. LeBARBIER: Those motions?

THE COURT: Well, you can make those now. It will save that much time.

MR. LeBARBIER: I make this motion at the close of The People's case, that the indictment be dismissed, on the ground that The People have not made out facts sufficient to constitute the charge as laid in the indictment.

I also move upon the ground that the People - on the variance of proof between the allegations as charged in the indictment and the proof as offered at the trial.

I also move to dismiss, on the ground that there is no proof of the cause of death under the statute, for the reason, as appears from the testimony, that the physician who made the autopsy stated that the stab wound was healed and had a scar showing that it was healed and entirely healed, and that such stab wound had not been a mortal wound, as well as from the testimony from the other physician for the People, that the wound was not a mortal or a dangerous wound; that there was suppuration

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of the right pleural cavity, but that it could not be said that this suppuration was produced by the stab wound, or that it had contributed in any way to the cause of death from any stab wound, or that the stab wound which had entirely healed, or that from the stab wound which had entirely healed that it was any such injury as to produce empyema, causing death, and that it clearly appears that the death was not caused by the stab wound or anything in connection with the stab wound, and, on the contrary, it does appear that the suppuration in the pleural cavity may have been an altogether independent matter from any thing relating to the wound in the lung or any stab wound that had been made in the lung.

THE COURT: Dr. Schultze testified that the cause of death was a penetrating stab wound, producing empyema and suppurative pericarditis.

MR. LeBARBIER: I know, but he ultimately took that back, your Honor, when I asked him, and that is where I was rather surprised myself, that he had only received that by way of information, and finally Dr. Schultze said that he could not say, and then when we did ask him that assuming that this was a wound that had been healed and the scar had been healed, that it was not a dangerous wound.

THE COURT: You always are harping on the wound of the lung, as if that were the only wound.

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MR. LeBARBIER: I am harping a good deal on that, your Honor, because t--

THE COURT: There was a wound of the pleura and of the pleural cavity.

MR. LeBARBIER: Now it appears also that he may have had pleurisy when he went in there. It also appears there was a major operation. Surely, your Honor, from the testimony of this last doctor and Dr. Schultze, it cannot, in my humble opinion, I am only speaking of my opinion, that death was caused from the suppuration of the right pleural cavity as induced in any way from any injury done to the lung, and from what may appear it was altogether a separate, independent and distinct injury in and of itself, as one doctor says, and may have come from the major operation. Now, that is the testimony, your Honor.

THE COURT: The doctor did not say that pleurisy could come from the major operation. He said pus might, but he didn't say that pleurisy might, because he said the pleurisy was there when they operated, and that is what they operated for.

MR. LeBARBIER: I mean this last doctor.

THE COURT: Yes, that is the one I mean.

MR. LeBARBIER: I haven't it word for word, but it is a very grave question.

THE COURT: It is a question, but it is a question

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which must be decided by the jury.

MR. LeBARBIER: Yes, it might come up to them, but I rather think it presents itself as a question of law.

THE COURT: No, I think an issue of fact is raised there on what was the cause of death, whether the cause of death was this wound, or not, which must be settled by the jury. I will deny the motion and give you an exception.

MR. LeBARBIER: An exception, your Honor.

THE COURT: What is the variance you claim in the proof?

MR. LeBARBIER: I ask your Honor to advise the jury to acquit, on the ground there is no evidence in this case to go to the jury upon the question of fact as to the cause of death as charged in the indictment.

THE COURT: Motion denied.

MR. LeBARBIER: Exception. My question of variance of proof is, answering your Honor's suggestion, the question that the indictment charges manslaughter. The crime of manslaughter has not been made out in either of its degrees. The evidence that The People have sought to sustain the charge of manslaughter on has frittered itself away into a question of what was the cause of death, whether it was a stab wound, which seems to be eliminated, or

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whether it was from empyema in the right pleural cavity, both of which doctors say could have been had independent of the injury to the right lung. Now, I think those are grave questions, your Honor.

THE COURT: Motion denied.

MR. LeBARBIER: I take an exception.

THE COURT: (To the jury) Gentlemen, I will repeat the caution that I just gave you a few minutes ago about forming or expressing an opinion as to the guilt or innocence of the defendant, and you are excused until tomorrow at ten o'clock.

(The Court then accordingly took a recess until tomorrow, Wednesday, April 3, 1918, at 10:30 o'clock a. m.).

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