

START

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CASE

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Indicted for Assault in the second degree.

A P P E A R A N C E S:

ASSISTANT DISTRICT ATTORNEY T. CANNON PRESS.

CHARLES SULLIVAN, ESQ.

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Frank S. Beard,
Official Stenographer.

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THE PEOPLE'S TESTIMONY.

FREDERICK MARTIN, of 119t West 66th Street, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Mr. Martin, what is your business? A I used to be in the restaurant business.

Q Used to be? A Yes, sir.; until a year ago.

Q On the 27th day of July, 1913, what was your business?

A Oyster house.

Q And where was your place of business on that date? A 172 West End Avenue.

Q And near what street is that? A Near 68th Street.

Q 68th Street? A Yes, sir.

Q And how long have you been conducting business as a restaurant keeper there, on the 27th day of July, 1913? A About ten months.

Q Before that time where had you been conducting business? A 520 West 47th Street.

Q Well, where is that near? A Right between 10th and 11th Avenues.

Q Now, on the 27th of July, 1913, at about twelve o'clock at night, did any persons enter your place of business? A Yes, sir; fourteen, in a bunch.

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Q What is that? A Fourteen.

Q How did they enter, if you recollect? A Four at a time.

Q Well, who were the first four, if you can recollect? A The first four that I can recollect was Curran, McGlynn, Flood, and the other one I can't remember exactly.

Q Do you know a man by the name of Potter? A Yes, sir.

Q Was he in the first delegation? A I couldn't say exactly if he was in the first or second. They came in all in about one minute, in sections.

Q You say that four entered first? A Yes, sir.

Q Of whom McGlynn, Curran and Flood were three? A Yes.

Q Now, what interval elapsed between the arrival of the other delegations? A Oh, about a second or two.

Q And they came in in fours? A Yes, sir.

Q And how many were there? A Fourteen.

Q Now, I want you to describe your place, if you will. Entering, I presume, from West End Avenue -- is that right? A Yes, sir.

Q About what are the dimensions of your place, the room where your restaurant is? A Well, the restaurant was about twelve foot wide by about twenty foot long.

THE COURT: pardon me.

BY THE COURT:

Q Let me understand it. Do I understand, Mr. Martin,

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that about a minute elapsed between the time when the first four came in and the rest of the party came in? A Yes, sir.

Q And they followed each other in fours? A Yes, sir.

Q And a second or two elapsed between their coming in?
A Yes, sir.

BY MR. PRESS:

Q Now, you say the place is about 12 by 25; is that correct? A Yes, sir; somewhere around there.

Q Now, as you enter the place from West End Avenue, is there a counter? A Yes, sir.

Q On which side is that as you enter? A On the right hand side.

Q And how long about is that counter? A Ten foot.

Q Running from the door? A Yes, sir; towards the end.

Q Running in? A Yes, sir.

Q And then what furniture is there in the balance of the room? A Four tables and a bureau.

Q A bureau? A Yes, sir.

Q Where is the bureau located? A In the back of the four tables.

Q In the very back? A Yes, sir.

Q And these four tables, after you go the length of the counter, these four tables are situated, two on one side and two on the other; is that right? A Yes, sir.

Q Now, how many can you seat at those tables? A Well,

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four at each table, except one table, two people.

Q That would be fourteen all together? A Yes, sir.

Q You had fourteen seats; is that right? A Yes, sir.

Q Now, have you a room in back? A yes, sir.

Q Back of that place? A yes, sir; two rooms.

Q Two rooms? A Yes, sir.

Q And what have you in those rooms? Is that your kitchen? A I was living in the back room, and the second room back was the kitchen.

Q I see. Now when the party entered, the first four, where did they seat themselves, if you can recollect? A Well, a couple sat down on a chair, and one, I remember, sat on a table.

Q And then when the others entered, did they say anything to each other? A Oh, sure, they hollered out, and it seemed like as if they were friends that hadn't met for a long while.

BY THE COURT:

Q They all talked to each other, did they? A Yes; they said, "Hello, hello."

BY MR. PRESS:

Q They all talked to each other? A Yes, sir.

Q Now, when they had all entered, did they separate themselves around the tables? A Yes, sir; sitting on the tables and on the chairs, except Lynch and Curran ^{stood} / at the end of the counter, where I had my door to go inside.

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Q Oh, you have a door at the end of the counter? A Yes.

Q To let you in behind? A Yes, sir.

Q At least to open it to go in behind the counter? A Yes, sir.

Q And you say Lynch and Curran took their place right at that door? A Yes, sir.

Q Where were you when the first four entered? A Behind the counter.

Q And was the door closed? A It was open.

Q Open? A Yes, sir.

Q Now, when these two men stood at the door which is at the end of the counter, tell us, if you will, just in the order of the happenings, what transpired? A Well, when they were all in, the last bunch that came in, they came in dancing and singing. Lynch was amongst them last fellows, the last bunch. He is the one that is called "The Happy Man" around. He is always happy. And I stood behind the counter and I seen I was going to get trouble, and I had a man that just had comething to eat in the place and he was going out; so I sent him out to get the cops. I told him I expected some trouble.

Q You sent him for the police? A Yes, sir; out through the back door.

Q All right. Go on. A During that time I stood behind the counter, and Curran took a chair and put it across the

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counter to the back bar, so that I couldn't get out.

Q Curran took a chair? A Yes, sir.

Q What did he do with it? A And put it across the counter of the back bar, right on top of the door, so that I couldn't get out, (illustrating).

Q And did the door open to the inside or outside? A To the outside.

Q So that the chair there would keep the door from opening; is that correct? A Yes, sir.

Q Now, after Curran had put the chair there, tell these gentlemen, and talk loud enough that they can hear you, just what happened, and in the order of the events. A He put the chair there; I pushed the chair back and asked him what he meant. The answer I got was a punch in the eye from him, and Lynch was standing beside him, and he hit me the second time, and they hit me there for two or three minutes. They were all getting a smash at me, the best they could.

MR. SULLIVAN: I object to that general statement, if your Honor please, as to what they were all doing.

THE COURT: Objection sustained.

BY THE COURT:

Q Well, just tell us who struck you. A Curran and Lynch hit me. It was done so quick.

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BY MR. PRESS:

Q Well, what missile first came your way, if any did come your way?

MR. SULLIVAN: I object to this. I think he should be required to state his own recollection.

THE COURT: Well, you may ask him what they did.

BY MR. PRESS:

Q Well, what did they do? A Curran was the first one, and then Sparrow, and then Sparrow Lynch, and then Flood and then the rest was all together. Some of them were trying to get at me, but they couldn't get at me because there was too many, and I was backed over behind the bar.

Q What did Flood hit you with? A With his fist.

Q Did anybody hit you with a flower pot? A That was after they got through beating me. I was standing against the back bar, and was almost unconscious, and Flood took a big flower pot, weighing about five pounds, with the earth in it, and hit me on the head with it, and I got a big pan of fat on the fire and I scalded three of them. Two of them I never heard who they were.

Q Well, Flood was one of them that got scalded; was he not? A Yes, sir.

Q Now, did any of them strike you with any cups, saucers or anything of the kind? A Yes, they was trying from all ways.

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Q Trying from all ways? A Yes, sir.

Q Well, what part did this defendant play, if he played anything?

MR. SULLIVAN: Now, I object to that style of examination, if the Court please.

THE COURT: Objection sustained.

BY MR. PRESS:

Q Well, what did this defendant do? A The only thing that I seen the defendant do was, after I was beat up, he went on the bureau that was in the back of the store, and took a platter that weighed four pounds and a half and smashed that on the top of my head.

Q On the top of your head? A Yes, sir.

Q Now, was that the end of the visit? A At the end of it. All the rest was gone out then.

Q All the rest had gone out then? A Yes, sir; was running out, he was the last one.

Q Yes. Now, had you known these men before this occasion? A In that location?

Q No, before this occasion, before this time, had you known these men? A For about five or six years.

Q About five or six years? A Yes, sir.

BY THE COURT:

Q Had the other men all gone out before the defendant hit you with this platter? Were they outside of your place?

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A To the best of my recollection they were going out, one behind the other, and this defendant was the last one, and he grabbed that platter, and smashed it on the top of my head.

BY MR. PRESS:

Q Now, I was asking you about your previous knowledge of these defendants. Where had you met them before? A At the time I had the place in 47th Street.

Q I see. And were they in that place at any time? A Yes, sir.

Q So that this meeting on the 27th of July they had paid you, was not the first occasion that you had met them? A No.
BY THE COURT:

Q Does that apply to the defendant? Was he one of the men that you knew down in 47th Street? A Yes, sir.

BY MR. PRESS:

Q And you had seen these men before together, had you not? A Yes, sir.

Q Now, after they had all gone out, and you had been struck on the head by the defendant with this platter, which you have described as being four and a half pounds weight, did the police arrive? A Yes, sir.

Q And what time about elapsed from the time he hit you on the head with this four and a half pound platter to the time the police arrived? A The best of my recollection, about a minute.

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Q About a minute? A Yes, sir.

Q And what was your condition at that time? A I was laying against the counter (illustrating). I could hardly speak. I was half unconscious.

Q Well, were you cut in any place? A I was all full of blood. I was cut over the eye, and on top of the head.

Q And when the police arrived, did they bring any persons with them? A Yes, sir.

Q Whom did they bring? A They brought Reynolds, Potter and Flood.

Q And where was Flood arrested, do you know? A I don't know. I understand that he was found in the --

Q Never mind, if you don't know.

THE COURT: Strike that out.

BY MR. PRESS:

Q Do you know the defendant's condition when he was brought in? A Yes, sir.

Q What was it? A Scalded.

Q Did you see any of the marks of the fat on him? A I did, sir.

Q The fat that you had thrown? A On him, yes.

Q The fat? A If I saw any of the fat?

Q Yes. You saw that he was scalded, did you? A Yes, sir; I saw that he was scalded.

Q Now, when did you see McGlynn after he assaulted you?

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A After he assaulted me?

Q Yes. When, for the first time did you see him after that? A Now is the first time.

Q Now is the first time? A Yes, since that time, since the assault.

Q You didn't see him in the police court, did you? A No, he wasn't there.

Q This is the first time that you have seen him? A Yes.

Q Well now, after the police came in, what was done with you? A They took me over to the station house with the rest, and they sent for the ambulance, and they sewed me up.

Q Who was the doctor, if you can recollect the name? A I don't recollect the name. He is from the Polyclinic Hospital.

Q Was it Dr. Schoenberger? A I don't know.

Q Well, what did the doctor do? A He sewed me.

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

THE COURT: Allowed.

MR. SULLIVAN: Exception.

A (Continued) He sewed my eye first.

BY MR. PRESS:

Q Do you know how many stitches he put there? A Nine.

Q And what other wounds did he then sew up? A On top of the head.

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Q Any other? A There was no more cuts, except swelling, and a tooth broken.

Q And a tooth broken? A Yes, sir (indicating).

Q Are the marks still there, Mr. Martin? A I think so; on the eye especially.

Q Show the jury the marks on the eye.

(Witness shows the jury.)

Q This place of yours was at 172 West End Avenue? A Yes.

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

MR. PRESS: You may examine.

CROSS EXAMINATION BY MR. SULLIVAN:

Q How many rooms are there in this place you had? A Two rooms, besides the store.

Q Two rooms besides the store? A Yes, sir.

Q And you had your oyster counter there? A Yes, sir.

Q Now, how far is the first partition, after you get in from the street, from the door? A About 25 feet.

Q And is your dining room the second room? A No, sir.

Q Did you have a bed there? A Yes, sir; I was living there. The second room was my living room.

Q Now, wasn't the partition about fifteen feet from the entrance? A No, that can't be.

Q You had the door to that back room open or closed? A Open.

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Q Was there anybody in it? A Yes.

Q How many? A There was a couple of friends of mine, five or six friends of mine, in my back room.

Q This was about twelve o'clock at night? A Yes, sir.

Q What day of the week? A Saturday night.

Q What were they doing there? A There was nothing doing. The place was closed, and we were playing a game of cards.

Q A poker game? A No, sir.

Q And, as matter of fact, you used to run a private gambling game there? A No, sir; I never run no game.

Q Well, at this particular time they were in there playing poker, what you call friends of yours, in the back room?
A As far as I can remember I don't believe they were playing poker, that night. We played the night before, but I don't believe we played that night. We might, at that, in the early part of the evening.

Q Were these men in the scrimmage there? A They were friends of mine for a long, long time.

Q Well, you knew Thomas McGlynn, you say? A Yes.

Q Have known him for years? A Yes, sir.

Q How long have you lived in this City? A 24 years; since 1890.

Q Where did you come from? A Quebec, Canada.

Q You live in this place alone? A No, sir.

Q What? A No, sir.

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Q Are you married? A Yes.

Q You have a room outside? A Outside; no.

Q You didn't room out? A My living apartment was behind the store.

Q Well, you had the kitchen and the bedroom, in which you say your friends were playing cards, and you had the front room? A Yes, sir; the front room is the restaurant.

Q The front room is the restaurant? A Yes.

BY THE COURT:

Q Where was the card playing? In the bedroom? A No. I had a table in the kitchen.

Q And that is where they were playing cards, this night? A Yes, sir.

BY MR. SULLIVAN:

Q And the doors were open all the way through? A Yes, sir; always was; always kept them open.

Q Where was your wife? A In the second room.

Q How large a room is that? A Well, that room might be fifteen feet long.

BY THE COURT:

Q That is the bedroom? A Yes, sir.

BY MR. SULLIVAN:

Q You had a bed in there? A Yes, sir.

Q And a bureau? A Yes, sir.

Q And two chairs? A Yes, sir.

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Q And a table? A No.

Q Now, these friends of yours passed through this bedroom? A Yes, sir.

Q Now, how many tables have you got in the kitchen? How many did you have in the kitchen at that time? A Just one.

Q How many tables in the dining room? A Four.

Q You knew McGlynn then, didn't you? You knew Thomas McGlynn? A For about six years.

Q And you knew him by name? A Yes, sir.

Q He had been a customer in your place for years? A He had been some kind of a customer, yes, in 47th Street. I never had any trouble with him before.

Q Now, as a matter of fact, all these men were customers of yours, most of them that came in there, hadn't they; had come in there for oysters, and so on? A Well, you might call them customers. They were the kind of customers that come and eat nothing, and take it on the run.

Q Well, hadn't they been in your place frequently? A They never was in that place.

BY THE COURT:

Q That is, these fourteen men had never been in this place in West End Avenue? A No, sir; they came all the way from 42nd Street to 68th Street, to do me up.

MR. SULLIVAN: Now, I object to that, and I move to strike that out.

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THE COURT: Yes; strike it out.

BY MR. SULLIVAN:

Q Now, there was no occasion for McGlynn to do you, was there? A I don't think there was.

Q Now, you knew where McGlynn lived, where his home was? A No, sir.

Q You knew what he worked at? A I hadn't seen him --

Q Well, you knew what his employment was, didn't you? A Where he worked at?

Q Yes. You knew that he was a driver on an ashcart for the city? A Yes, about three years ago I saw him on an ashcart.

Q Well now, you made an affidavit in this case, didn't you? When you were in the police court and made your statement there to the clerk, you signed it, didn't you? A I don't know; that I don't remember.

Q Did you give anybody -- did you make any statement at the police court that McGlynn had anything to do with this affair? A I wanted to tell the Judge about it.

Q Well did you, as matter of fact? A When I began to tell the Judge --

MR. SULLIVAN: I object to that as irresponsible to my question, and move to strike it out.

THE COURT: Motion granted.

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BY MR. SULLIVAN:

Q When was the first time that you mentioned McGlynn in this case, if you can remember? A In this case here?

Q Yes. A Or since the time of the assault?

BY MR. PRESS:

Q No; when did you first mention him, name him? A Well, I mentioned him to the Judge in 54th Street, and he told me to go downtown and tell the Grand Jury about it.

BY MR. SULLIVAN:

Q Well, when was that? A Well, that was the very next day, on Sunday morning.

Q On Sunday morning? A Yes, sir.

Q You made an affidavit there, didn't you? I ask you to look at that and see if it is your signature.

MR. PRESS: We will consent to its going in evidence.

MR. SULLIVAN: Very well, then.

BY MR. SULLIVAN:

Q Now read that over and see if you signed it. A That's my name (indicating).

Q Now you read that when you signed it; didn't you?

MR. PRESS: Let him read it.

MR. SULLIVAN: Read it.

THE WITNESS: I can't see very good.

THE COURT: Well, is he responsible for anything that

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he signed and swore to? He says that he cannot read it very well, that he cannot see very well. You may inquire about any subject matter that you may desire to inquire about.

MR. SULLIVAN: Very well.

BY MR. SULLIVAN:

Q Can you define in that affidavit any statement that you made to the Court, when you signed it, about anything that McGlynn did to you on that occasion? A Well, I don't believe so, because when I came to the clerk --

MR. SULLIVAN: Now, I move to strike that out.

MR. PRESS: I will ask you about that, later.

(The affidavit is marked Defendant's Exhibit 1.)

BY MR. SULLIVAN:

Q Where are you in business now? A I am not in business. I have not had any business since that happened.

Q Where were these plates that were thrown at you, and the cups and saucers; where were they? A On the tables, except the platter, that was on the back bureau.

Q Well, did these people have anything to eat in there?

A No, sir.

Q Were the tables set?

BY THE COURT:

Q The platter was on the bureau where? A The back of the store.

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BY MR. SULLIVAN:

Q Were there plates and saucers and cups on the tables?

A Yes, sir; people had been eating there before, and had left the table.

Q And you hadn't taken them from the tables? A No, sir.

Q Was your wife in the dining room? A In the back room, in the second room.

Q Did you see her throw anything? A What's that?

Q (Question repeated). A Oh, no, sir.

Q Well, were these men in the dining room at the time you threw this hot, boiling grease on them? A Well, some was in and some was out, because we would have done --

Q Now you have answered my question. Were you behind the counter at the time you threw the grease? A Yes, sir.

Q How wide is that counter? A The counter was about, I suppose, thirty inches wide; somewhere around there.

Q And you had -- what did you have behind there? A I had a gas stove there in front of the window, right at the end.

Q And you had a pan of boiling grease there, did you?
A Yes, sir.

Q And you threw it on these men? A Yes, sir.

Q Now, as matter of fact, didn't you order them out, because you didn't want them -- because you wanted to carry on that private gambling in the back, and didn't want anybody

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in there, and you ordered them out? A No, sir.

M R. SULLIVAN: That is all.

BY THE COURT:

Q Did you order them out? A No, sir; I didn't have the time.

RE-DIRECT EXAMINATION BY MR. PRESS:

Q Now, your restaurant was open for business; was it not? A Yes, sir.

Q And these other people, your wife for instance; is it not a fact that she was in the kitchen? A Yes, sir.

Q She was the cook of the place; is that right? A Yes, sir.

Q And these other people that you had there were in the room beyond the kitchen; is that right? A In the room, in the back kitchen.

Q And that was two rooms from the store? A Yes, there was only two rooms behind the store.

Q Did those men come into the store at all while this melee was going on? A (No answer.)

BY THE COURT:

Q While this trouble was going on, did these men leave the room where they were playing cards? A Yes, they left just at the time the trouble started, by the side door, just at the time, at the same time the trouble started.

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BY MR. PRESS:

Q So, at the time that you were hit on the head by the defendant, those people were not in the store? A No, sir; there was nobody else in the store but them fourteen.

Q Now, you have been asked about this affidavit. At the time that that affidavit was made in the police court, is it not a fact that the only men who were under arrest in the police court, were Potter, Flood and Reynolds? A Yes, sir.

Q And those were the only people there at that time? A Yes, sir.

Q Now, you say that you were telling the names to the Judge? Is that right? A Yes, sir.

Q And the Judge's reply was that you should come down to the Grand Jury; is that correct? A Yes, sir; that is correct.

Q Now did you give the names of these people to the police, including McGlynn's name?

MR. SULLIVAN: I object to that, if your Honor please.

MR. PRESS: Why, counsel has inquired into it, and I can certainly follow it up.

MR. SULLIVAN: The affidavit speaks for itself, your Honor, and it is upon that I interrogated him.

THE COURT: Yes, you may answer it.

MR. SULLIVAN: Exception.

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BY MR. PRESS:

Q Did you give the names of the people who had assaulted you to the police, including McGlynn's name? A Yes, sir.

Q Now, you were asked if you knew where the defendant lived, and I believe you said you did not? A I didn't know.

Q And when you were living or had your place in 47th Street, between 10th and 11th Avenue, he had been a customer of yours, had he? A He was living next door for a while.

Q But at the time the assault was committed, did you know where he lived? A No, sir.

Q Now, you said that he had been an ashcart driver some three years ago? A Somewhere around there.

Q During your last year down at 47th Street, did you know what he was working at? A I do not.

Q Now, you gave the fact -- you mention the fact that these were customers of your place, a kind of customers who did not pay for their victuals; is that right? A Yes, sir.

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

MR. PRESS: That was stated in his cross examination.

MR. SULLIVAN: And I moved to strike it out, as not in response to my question.

THE COURT: Well, I don't think you made the application, but I don't think it has any bearing, and I will

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let it rest where it is. I will sustain the objection to the question. You did not, either, move to strike it out, when the witness went beyond the question.

BY MR. PRESS:

Q And it was while you were at the 47th Street place that you had met these men; is that correct? A Yes, sir.

Q And this night, namely, the 27th of July, 1913, was the first and only time that they had come to visit you? A At 172 West End Avenue?

Q Yes. And you said that they had come up from 47th Street, I believe? A Yes, sir.

Q That was the first place you had known them to be in the vicinity of? A Yes, I had two stores there in 47th Street since 1908. I used to have a small store near the corner.

MR. PRESS: That is all.

RE-CROSS EXAMINATION BY MR. SULLIVAN:

Q Now, I want to ask you, are you married? A Yes, sir.

Q Where were you married? A Well, married, what we call. For the last twelve years I am with the same woman.

Q You are not married to her? You never had any ceremony? A No, sir; not in a church.

MR. SULLIVAN: That is all.

BY THE FOREMAN:

Q You say you gave up the restaurant business? A Yes.

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Q Was there any reason, any inducement, for you to give up the business? A Because the place was all wrecked up. All the windows and door glass was broken, a perfect wreck.

Q And so you couldn't conduct your business any more?

A Yes; and since that time I have been unable to work.

BY MR. PRESS:

Q Have you been working since that time? A I have been unable to work until a month ago, when I worked two or three days a week.

MR. SULLIVAN: I move to strike out the answer. No would have been a sufficient answer.

THE COURT: Motion granted.

BY MR. PRESS:

Q Why were you unable to work?

MR. SULLIVAN: Objected to.

THE COURT: Sustained.

J O H N J. W A L L A C E, of the 43rd Precinct, being duly sworn, and examined on behalf of the People testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

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

Q And have been for how long? A Seven and a half years.

Q You remember the night of the 27th of July 1913? A Yes, sir.

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Q On that night, at about twelve o'clock, were you on duty in the City and County of New York? A Yes, sir.

Q Where? A On West End Avenue, between 66th and 67th Streets, up to 73rd Street.

Q Now, about twelve o'clock that night did you go to the premises 172 West End Avenue? A About ten minutes after twelve, yes.

Q And why did you go there? A I heard a crash of glass.

Q Where was you standing when you heard the crash of glass? A On the northwest corner of 68th Street and West End Avenue.

Q And about how far was that from the restaurant door? A About 125 feet.

Q And was there any other officer with you at the time? A About a block away, yes.

Q About a block away? A Yes, sir.

Q And who was the other officer, a block away? A Officer Levy.

Q Now, when you heard the glass -- the crash of glass, what did you do? A I saw two men run from the restaurant, and I chased them along 68th Street east, towards Amsterdam Avenue.

Q They were the first two that you saw after you heard the crash of glass? A Yes, sir.

Q And you ran after them? A Yes, sir; rapped my stick,

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and officer Levy was right behind me, and the men were turning out from the station house at twelve o'clock, and were about to relieve other men at twelve o'clock, and they must have saw some policemen on Amsterdam Avenue --

MR. SULLIVAN: I object to that.

THE COURT: Sustained. Strike that out.

BY MR. PRESS:

Q Go on. What did you do? A Well, I yelled to them to halt, and they ran in a doorway and stopped.

Q Who stopped? A Reynolds and Potter.

Q About how far had they gone from the store when you got them? A Well, the blocks are about 700 feet long, and they ran about 300 feet, I guess.

Q What did you say to them when you got them? A I asked Potter --

MR. SULLIVAN: I object to this as incompetent as to the defendant, and not binding on him.

MR. PRESS: These men were all engaged in this affair, they were all engaged in this melee,

THE COURT: You object to it?

MR. SULLIVAN: I do.

THE COURT: Sustained.

BY MR. PRESS:

Q Well, you had a talk with these two? A I did.

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CASE 11909

Q What did you do when you had the talk with these men?

A Brought them back to the restaurant.

Q Well, what did Levy do when you had these two, while you were getting these two? A He was with me at the time, getting the two.

Q So that you picked^{up}/these two? A Yes.

Q And went back to the store? A Yes.

Q And when you got back to the store did you see any other persons there? A yes, James Flood.

Q And where was he when you got back to the restaurant?

A Standing in the doorway.

Q Standing or lying? A Standing in the doorway, up against the wall, up against the casing of the doorway.

Q What was his condition? A Well, he had burns about his head and hands.

Q Well, what was the condition of the store? A Well, everything in there was broken up that I could see.

Q About the plate glass windows? A All smashed in.

Q What was the condition of Martin when you entered?

A He had a large cut under the left eye, (indicating), and he was cut on top of the head, and seemed to be kind of doubled up, kind of cramped up, from being hit with sugar bowls and plates, so he said (illustrating).

Q And what was the condition of the inside of the restaurant? A Everything turned over, upside down.

CASE 11191

Q Now, you had a talk with Martin at that time; didn't you? A Yes, sir.

Q And then what did you and officer Levy do? A Placed Potter, Flood and Reynolds under arrest; took them to the station house, where Flood was treated for burns on his neck and hands, and Martin for the cuts under his eye and on his head.

Q By whom were they treated? A Dr. Schoenberg.

Q From what hospital? A Polyclinic.

Q And what did you do with respect to the three defendants after that? A Brought them to court, next morning.

Q Yes. Now at the time that you were talking -- you had a talk with Martin? A Yes, sir.

Q Did he name any other parties? A Yes, sir.

MR. SULLIVAN: I object to that, if your Honor please.

THE COURT: Overruled.

MR. SULLIVAN: Exception.

BY MR. PRESS:

Q Did he name the defendant?

MR. SULLIVAN: I object to that?

A Yes, sir.

MR. SULLIVAN: I object to that.

THE COURT: Overruled.

MR. SULLIVAN: Exception.

CASE #1919

BY MR. PRESS:

Q Now, did you arrest the defendant? A No, sir.

Q But it is a fact that you arraigned these three men the next day in the police court; is it not? A Yes, sir.

Q What police court? A 54th Street, Seventh District Court.

Q And do you know who it was that arrested the defendant, and when he was arrested? A I do not.

Q And as a matter of fact, it was out of your hands? And I right? A Yes, sir.

Q After the remand of the three defendants? A Yes, sir; I was transferred out of that precinct entirely.

Q And in whose hands, if you know, was this matter placed? A The detectives of the 47th Preinct.

MR. PRESS: You may examine.

CROSS EXAMINATION BY MR. SULLIVAN:

Q Now officer --

MR. SULLIVAN: Flood, Potter and Reynolds, step up here.

Q Are these the men that you have reference to (indicating)? A Yes, sir.

MR. SULLIVAN: That is all.

O F F I C E R L E V Y, of the 31st Preinct, a witness called

Q 227

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in behalf of the People, being sworn and examined,
testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Were you on duty with the last witness on the 27th of July 1913? A I was.

Q And at about twelve o'clock, or ten minutes past twelve, how far were you from the restaurant, 172 West End Avenue?

A I was standing about a block and a quarter away. I was on a fixed post, corner 69th Street and West End Avenue.

Q And did you visit that restaurant, or did you see anything happen in its vicinity at about that time? A I seen something happen in the vicinity.

Q What was it that you saw? A Well, I seen a crowd come running out of the door, and I heard the smash of glass and the yell of "Police".

Q Yes. What did you do? A I ran towards 68th Street and I seen two of the defendants running through 68th Street, and I ran after them.

Q And was your brother officer running after them also? A Yes, sir; he was right ahead of me.

Q And did you subsequently get those men? A Yes, sir.

Q And who were they? A Potter and Reynolds.

Q And what you got them, what did you do, officer? A Brought them back to the restaurant, 172 West End Avenue.

CASE #1919

Q And did you see any other person there at the restaurant? A Yes, sir.

Q His name? A Flood.

Q And where was Flood at the time you saw him? A He was leaning in the doorway of the restaurant, in a leaning position.

Q How were the plate glass window of the restaurant? A Well, the front window was smashed, and the side window, and the glass in the doors. All the windows of the store were smashed.

Q Did you enter the store? A Yes, sir.

Q And in what condition did you find the place? A Well, all the tables and chairs were upside down, and the floor was full of broken crockery.

Q Did you see Martin there? A I did.

Q What was his condition? A Well, he had a cut over the left eye (indicating) and the head, the top of his head, was cut open, and he could hardly stand. He was leaning on the counter.

Q When you arrested these other men were there any marks on them, Reynolds, Potter or Flood? A Flood was burned.

Q But the other two? A No marks.

Q And then what did you do with Martin and the three defendants that you had arrested? A Brought them up to the station house, called an ambulance at the station house

Q 229

CASE #19199

to treat Martin and Flood.

Q Now at the time that you were at the station house, did you have a conversation with Martin? A I did.

Q In that conversation did he give the names of the other men who had been in that fight, and among them did he give the name of this defendant? A He named McGlynn and Curran.

MR. SULLIVAN: I object to this, if your Honor please.

THE COURT: Overruled.

MR. SULLIVAN: Exception.

BY MR. PRESS:

Q Now, the next day, did you arraign the prisoners who had been arrested, that night, in the police court? A Well, Wallace arraigned them and I assisted him.

Q Wallace arraigned them and you assisted him? A Yes.

Q That was the last officer who testified here? A Yes, sir.

Q And at that time were the names of the defendants given, including the defendant? A That I don't know.

Q But you arrested the defendant? A I assisted -- this defendant?

Q Yes. A No, I didn't.

Q Who was it that arrested him? A I don't know.

Q Were you taken off the case then? A I was never on

CASE 77-1000

the case; I didn't work on the case, otherwise than to assist in arresting these three defendants.

Q I see. Then after that your interest in the matter ended? A Yes, sir; ended right there.

MR. PRESS: You may examine.

CROSS EXAMINATION BY MR. SULLIVAN:

Q Well now, this was a year ago, or it was last July, wasn't it? A It was.

Q And you have the address of McGlynn; did you get the address of McGlynn from him? A No, sir.

Q Did yhe tell you where McGlynn was living? A Not to my recollection.

MR. SULLIVAN: That is all.

MR. PRESS: If your Honor please, Dr. Schoenberger was notified to be here, and stated he would be here, alsmost half an hour ago. He had to come from the Polyclinic Hospital. And the arresting officer, I understand, is engaged uptown, but outside of that the People will rest.

MR. SULLIVAN: Well, I move the Court to take/ the from Jury the charge of assault in the second degree. It seems to me that there isn't any proof here to sustain that charge against this defendant.

It seems to me that the instrument, if they claimed this defendant used any instrument at all, should be

CASE 10190

produced for inspection.

MR. PRESS: Unless we produced the pieces, we couldn't produce the instrument, because it was a four and a half pound platter that he struck him on the head with, and it was broken to pieces.

MR. SULLIVAN: That is all very well, but we can't permit this complainant to construct an instrument that he can't produce. In view of the fact that he is in possession of these things, he ought to show them; then -- because, as a matter of fact, if he used an ordinary plate, that wouldn't be a deadly instrument or weapon, and there is no serious injury produced here.

THE COURT: Well, the witness Martin has testified that the plate he was hit with was a platter, and has given a description of it, and said it weighed four and a half pounds, and has told us where it was situated, on the bureau at the back of the restaurant, and he has testified that the defendant struck him over the head with that large platter.

Now, I don't know what more can be done. The platter, if it is not in existence, cannot be produced.

These officers have testified that, when they went there, everything was broken and smashed, that there was a state of demolition, crockery broken on the floor, and all the windows of the store broken. Motion denied.

MR. SULLIVAN: Exception.

CASE #19199

THE DEFENSE.

T H O M A S F. M c G L Y N N, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SULLIVAN:

Q Where do you live? A 615 West 45th Street.

Q How long have you been living there? A About two years and a half.

Q Married? A Yes, sir.

Q How many children have you? A I have got three children.

Q And how old are they? A The oldest one is nine, and the other one is six and the other one is four.

Q And you lived there with your family in July last?

A Yes, sir.

Q You knew the complainant in this case, did you? A Yes, sir.

Q How long have you known him? A About eight years.

Q Had you frequently gone to his oyster stand? A Yes, when he was in 47th Street.

Q Now do you know of your own knowledge, during the time you have known him whether he has run a gambling place in the rear --

MR. PRESS: I object to that.

THE COURT: Sustained. What difference would it make?

0233

CASE 441909

MR. SULLIVAN: Well, that might offer an explanation of this crowd being there, your Honor. Exception.

BY MR. SULLIVAN:

Q Now, what did you do? A I am truck driver.

Q Had you ever had any trouble with the defendant? A No, sir; never.

Q You remember the 27th of last July? A Yes, sir.

Q Will you tell the jury just what happened? A Yes, sir

Q In your own way. A Yes, sir. There was eight of us went up to 66th Street, between Amsterdam and West End Avenue, to see a friend of ours, and we seen our friend up there, and we stayed with him maybe an hour and a half in a corner saloon, drinking, and then we said, "We will go up to Fred's oyster house and have something to eat." And we went up there in good faith.

MR. PRESS: I object to that, and move to strike it from the record.

THE COURT: No, I will let it stand.

BY THE COURT:

Q You went up there to get something to eat? A Yes, sir; and when we all got inside we all ordered oyster sandwiches.

BY MR. SULLIVAN:

Q We can't hear what you say. A We went inside, and ordered oyster sandwiches. He went behind the counter, and the oyster sandwiches ain't coming forth, and, every once in

0234

CASE #1000

a while he was running in the back, where there was a poker game going on.

MR. PRESS: I object to that and move to strike that out, unless the defendant saw the game and knew the game.

THE WITNESS: I seen the game.

BY MR. PRESS:

Q Did you go in the back? A Yes, I was in the back.

BY MR. SULLIVAN:

Q How many men were in there? A Ten men, sitting down at two tables.

Q Now go ahead and tell what happened. A And he ordered me out of the back room, and I said, "All right," and went and sat down in the front again.

The room in the front is about twelve foot long. It was partitioned off there.

And we asked for the oyster sandwiches again, and he said he wouldn't serve us.

And he told me that I had no right to go in the back room, and he said he wouldn't serve us, and one word borrowed another, and I was sitting right in the farthest corner of the room when I seen him take the pan of hot fat, and throw it on top of Jimmy Flood, and Jimmy Flood hollered, and we all ran out.

And, in the meantime, his wife, as he calls her, was in the back, and, if any dishes were thrown, they were thrown

CASE #1909

they were thrown by her; and, if he was hit, he was hit by a dish thrown by her.

And we were all running out, because he had the name of a bad man with a gun.

MR. PRESS: I object to that and move to strike it out.

THE COURT: Motion granted. Strike it out. And the jury will disregard it.

A (Continued) Well, then, when everybody was running out, the chairs most likely were thrown over; and I was the last one out, and he was standing outside, and I said, "Fred, this thing should never happen. You know we were all friends of yours," and he said, "You had no business going in that back room."

And that is what caused the whole trouble, on account of me going in the back room, and he refused to serve us with oyster sandwiches, and he did all the damage himself, and, if he was hit, he was hit with plates that come from the other room.

Q Did you take a platter and him over the head with it?

A N Q sir.

Q Did you hit him with anything? A No, sir.

Q Did you talk with him outside? A Yes, I talked with him before I walked away.

Q And was Flood there then, all scalded? A Yes, sir.

CASE 111000

Q Well now, how deep did you say that oyster room is?

A It is about fifteen foot from the door to the partition.

Q And how many tables are there? A One table.

Q In that place? A Yes, sir.

Q And the other is the counter? A Yes, sir.

Q How many chairs did he have there? A Two chairs is all I seen.

Q Do you eat your sandwich standing up at the counter?

A Yes, everybody was standing up with the exception of me.

I was sitting down , and Jimmy Flood was sitting on the other side of me.

Q Now, you started to get out, you say, because you knew his reputation? A Yes, sir.

MR. PRESS: I object to that.

THE COURT: Objection sustained. Strike out the answer.

MR. SULLIVAN: Exception.

BY MR. SULLIVAN:

Q Have you seen him have a gun?

MR. PRESS: I object.

THE COURT: Sustained. He says he did not hit him at all. It is immaterial.

BY THE COURT:

Q You did not hit him with a platter or a dish, or any-

0237

CASE #1999

thing? A No, your Honor, I did not.

BY MR. SULLIVAN:

Q Now, did you see the woman that he calls his wife?

MR. PRESS: I object to the form of the question.

THE COURT: Objection sustained.

BY THE COURT:

Q Did you see the woman who was there? A Yes, sir.

BY MR. SULLIVAN:

Q Did you see her doing anything? A She was throwing the plates. I had a chance to see it all. I was the last one out.

Q She was in what you call the dining room, the front room? A No, she was in the other room, looking out through the door.

Q Is there any mirros there in that place? A Only a small mirror I seen.

Q Where is that? A It is on the side of the wall as you go into the back, just stuck up against the wall, just like as if it was nailed there.

Q And it is not a place that is covered with mirrors, the sides of the room? A No, sir.

Q No glass of that kind? A No, sir.

Q And do you know how thw window was broken in front?

A It was broken by the dishes thrown from the other room.

Q Did you know any of the men that were in the rear

0238

CASE 11191

room there? A I didn't.

Q Did you see them playing cards? A Yes, sir.

Q During the course of your acquaintanceship with the complainant in this case, have you been -- have you seen such things going on in his place?

MR. PRESS: One moment. I object, if your Honor please.

THE COURT: Objection sustained.

MR. SULLIVAN: Exception.

BY MR. SULLIVAN:

Q Now, what have you been doing since? This is a year ago. Have you seen the complainant in the meantime? A Yes, sir; about 25 or 30 times.

Q You worked in the neighborhood? A I worked in 65th Street, last Febuary. I was driving an ashcart for the City, when I seen him on the corner, him and a yellow dog that he has, and he must have seen me because I passed right by him.

MR. PRESS: I object to that, and move to strike that out.

THE COURT: Motion granted. Strike it out.

BY MR. SULLIVAN:

Q Well, how far away was he from you? A I had to turn around him on the corner, and I had to turn around West End Avenue to go down to the dumps.

0239

CASE #1919

Q How far away from you was he? A I should judge about two or three feet.

Q And during this time how frequently had you seen him?
A Well, I seen him once or twice, some weeks, and maybe once every two weeks.

BY THE COURT:

Q Up to the present time? A Yes, sir.

Q Since July of last year? A Yes, sir.

Q Did you ever speak to him? A No, your Honor.

Q You never spoke to him? A No, sir.

BY MR. SULLIVAN:

Q You are living now at the same place you were living at that time? A Yes, sir.

Q And when were you arrested? A I was arrested last Sunday, two weeks; yes, last Sunday two weeks.

Q At your house? A Yes, sir; at my house.

Q With your family? A Yes, sir.

MR. SULLIVAN: That is all.

BY THE COURT:

Q How long have you lived in that house? A About two years and a half.

Q And all this time you have been working in the street cleaning department? A No, sir. Half the time I was working . I was what you call an emergency man in the street cleaning department. I was working three weeks in the street

Q 240

CASE #1919

cleaning department, as an emergency driver, when I met this man, and, outside of that, I met him 25 or 30 times since this thing happened.

CROSS EXAMINATION BY MR. PRESS:

Q After your arrest did you meet him? A No, sir; I didn't.

Q So that when he states he has not seen you, he is telling the truth, is that right? A He isn't telling the truth. If he did see me, how can he be telling the truth?

Q You say that, since this thing happened on the 27th of July last, he has seen you several times? A Yes, sir.

Q About 30 times? A Yes, sir; about 25 or 30 times.

Q And did you ever speak to him? A No, sir; I did not.

Q Why didn't you say something to him about what had happened in the store? A Well, because I didn't feel like talking to him; that's all.

Q Well, did he speak to you? A He didn't speak to me, no, sir.

Q Did he give any sign of recognition? A He looked at me, yes, and I looked at him.

Q Did he say good morning or good evening? A No, sir.

Q And your relationship with him was perfectly friendly?

A Before that, night, yes.

CASE 22190

Q But it wasn't altered by that night, because you had not done anything to him? A No, sir; I hadn't done anything to him.

Q And he hadn't done anything to you? A No, but it wasn't his fault, though.

Q And, as far as you were concerned, you were just as good friends as ever? A No, sir; anyone that done the trick he done, I wouldn't talk to him.

Q I see. Had you heard of the arrest of the other three men? A I certainly did.

Q Yes. And did you say when you met him, "Why did you have those men arrested"? A I knew the court and I knew the court would exonerate those three.

Q Well, why didn't you say, "Why did you have those men arrested, when you know they are innocent?" A Well, I didn't like him enough, after the mean trick he done, to talk to him.

Q Well, but did you approach him and talk with him, and say, "Why did you throw that fat?" A Why, it was up to the police to remonstrate with him.

Q Why didn't you talk to him? A Because I didn't want to.

Q Ah, that is it? And where was it that you saw him on the first occasion, after he had thrown the fat? A 47th

0242

CASE #1009

Street and Ninth Avenue.

Q 47th Street and Ninth Avenue? A Yes, sir.

Q Whereabouts? A Outside of a fish store, fish and oyster store, where he used to frequent.

Q And how near were you to him then? A I passed him, and it was only a block from the station house.

Q He looked you in the eye? A Yes, sir.

Q And you looked him in the eye? A Yes, sir.

Q And it was near a fish store? A Yes, sir.

Q Now when was that? A That was about four weeks after they had the trouble in West End Avenue.

Q Yes? A And three or four cops were on either side of the street.

Q I see. And when was the next time you saw him? A Might have been a week after.

Q A week after? A Yes, sir.

Q Where? A 10th Avenue and 49th Street.

Q Yes. And next. What was he doing there? A He was looking for a friend of his by the name of Paddy Dempsey, that used to be a partner of his in the poker business.

MR. PRESS: I object to that as irresponsible to my question, and move to strike it out.

THE COURT: Motion granted.

MR. SULLIVAN: Exception. He says -- it is, I submit, absolutely responsive to the question.

CASE 11190

BY MR. PRESS:

Q Do you know of your own knowledge what he was doing there? A No, sir; only the man he was talking to told me.

Q Now, you just answer for yourself please. He didn't tell you what he was there for? A No, sir.

Q And so you don't know of your own knowledge what he was doing there? A Only what I have heard.

Q Now, I don't want you to volunteer any more. Now, the next thing.

MR. SULLIVAN: Now, I object to that. I think the witness ought to be allowed to answer as he pleases.

THE COURT: Overruled.

MR. SULLIVAN: Exception.

A Well, it would be pretty hard for me to tell the 25 or 30 places where I met him.

BY MR. PRESS:

Q Now, the next place you saw him? A It might have been on Tenth Avenue.

Q Why, don't you know? Why do you guess? A No, I can't give you the time and date and the street every time I met him.

Q Well, this is important; is it not? A Yes, sir; it is. And I seen him a lot of times in his own block, in 66th Street, where he is living in the basement.

0247

CASE 11-1919

Q But you didn't speak to him on any of the occasions?

A No, sir.

Q But you looked him right square in the eye? A Yes.

Q And so thirty times you walked up and looked him square in the eye, and he looked you square in the eye and you walked away; is that right?

MR. SULLIVAN: Objected to.

THE COURT: Sustained.

BY MR. PRESS:

Q Now, when you met him on each of these thirty times, just describe to his Honor and the jury, if you will, what you did with respect to him, so as to let him know that you were there? A Well, I tell you, gentlemen of the jury. I knew I had done nothing to this man, and --

Q Now, I am not asking you that.

MR. PRESS: And I ask that it be stricken out.

THE COURT: Motion granted.

THE WITNESS: Well, if you will let me explain, I will explain it.

BY THE COURT:

Q Mr. McGlynn, do you understand what the question is?

A No, sir.

(Question is repeated by the stenographer.)

A Well, I made my presence known to him.

CASE #1000

BY MR. PRESS:

Q How? A By passing him on the street, and I was near--

Q Well, how did you make your presence known to him?

Why were you anxious to make your presence known to him, by passing him on the street? A Because he passed the remark to several persons that I may have been one of the people that hit him, that night.

Q Oh, you had heard that he accused you? A No, not accused, but he said that I might have hit him.

Q Well, when did you first hear that you were accused?

A Only three or four weeks after.

Q After the occurrence? A After the occurrence.

Q Yes. And then it was after that that you met him?

A After that, yes.

Q Well, then, why didn't you say to him, "Why do you accuse me of being one of the people who assaulted you?"

A Well, I thought he might have me locked up and I could prove myself innocent.

Q Well, but weren't you anxious to establish your innocence of the charge? A Well, that wouldn't exonerate me.

Q It wouldn't? A No, because he might say, No, and then go to work and have me locked up. I made myself known in his presence, and give him a chance to lock me up.

Q And so, notwithstanding that you knew that you were charged, you would not speak to him for the purpose of

CASE #1000

clearing your good name, but you were anxious to make your presence known to him so that he could have you arrested; is that it? A He acted so ungentlemanly that night, that I didn't think he was fit to speak to.

Q But you were anxious to clear yourself of the charge?

A In Court I was, yes.

Q Well then, why didn't you go to the police? A Well, let him do it. He claimed he was the one assaulted. He was the one to have me locked up, not wait for a year afterwards to do it.

Q So that, six weeks after the assault, you learned that you were charged with having assaulted him, and you spoke to the man, or went to the police, although you met him thirty times. A He didn't say I did hit him but I might probably have hit him.

Q Now where did you learn that? A A friend of his and mine told me.

Q Who is the friend? A Jimmy Fox.

Q Here? A No, sir; he was sent to me with three or four more, by this man Martin.

Q Have you told your lawyer about Jimmy Fox? A No, sir; I did not bring it up.

Q Well, didn't Mr. Sullivan examine you carefully, one of the greatest criminal lawyers in this court? A Yes, he did.

CASE 111000

MR. SULLIVAN: I object to that question, to the form of that question.

THE COURT: Get right down to this case, gentlemen. It is too important to be trifled with.

BY MR. PRESS:

Q Did you mention the name of Jimmy Fox to your lawyer, to Mr. Sullivan? Did you mention the name of Fox to your lawyer? A Yes.

Q Now that is all I asked you. Now then, on the 27th of July, 1913, what were you working at? A I was working along shore.

Q For whom and where? A White Star, Cunard.

Q Under whom? A Under captains of the boats.

Q Well, but the captains of the boats don't engage the longshoremen? A Yes, they do their own unloading. It has nothing to do with the corporation.

Q You mean the captains of the White Star Line? A No, sir; the captains of the lighters that puts off freight.

Q And what captains did you work for? A Maybe with three or four different captains in one day.

Q And how long were you working there? A Well, when I wasn't driving a truck, I might be there for three or four months.

Q I am not asking you that. How long did you remain there after the 27th of July? A Oh, three or four months.

CASE 111909

And then I got a couple of weeks work in the street cleaning department, and then I went back there.

Q You worked three or four months prior to the 27th of July for the White Star People? A On their docks.

Q On their dock? A Yes, sir.

Q Now, give me the name of one of the men that you worked for within a week after the 27th of July, 1913? A Well, I can't give you the names of the captains. I can give you the names of the lighters better than I can of the men, because we never asked the names of the men. We are simply hired to unload the boat, and it might take two or three hours or ten hours.

BY THE COURT:

Q And you are paid so much an hour; are you not? A Yes, sir; as soon as a boat is unloaded, we get paid.

BY MR. PRESS:

Q Now, when was it you went into the street cleaning department? A Last February, as an emergency driver.

Q And where were you engaged to do that? A 65th Street.

Q For whom there? A The foreman's name?

Q Yes. A Nolan.

Q And how long did you work as emergency driver there?

A About sixteen days.

Q Sixteen days? A Yes, sir.

CASE #1919

Q Then you left that? A I didn't leave it. The snow storm was over. The other work was all over, and we were all laid off.

Q And what did you do then? A I turned to the long shore end, then.

Q So that your business is not that of a driver, but a longshoreman, is it not? A Well, between the two.

Q So that, all during this time, with the exception of the sixteen days that you worked in the street cleaning department, in February, as an emergency driver, you worked as a longshoreman, is that right? A Yes, sir.

Q And you had worked for the street cleaning department before that, hadn't you? A Yes, sir.

Q And that was the time that you were friendly with Mr. Martin; wasn't it? A Yes, sir.

Q And you used to visit his place down there? A Yes, every night, pretty near every night.

Q Well, you eat at home with your wife and two children, didn't you? A Yes, but I didn't eat every time I went in there. I went in there to talk to him.

Q Then you were not a customer of his? A No, sir; not regular. I used to eat there, at times, buy sandwiches.

Q Now then, on this night of the 27th of July, who

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were your companions who went up to make this visit at 66th Street? A Well, three of them is in Court now, that is, Flood, Reynolds and Potter.

Q Yes. Who were the others? A Lynch.

Q William Lynch, who is otherwise known as "Sparrow Lynch"? A Yes, sir.

Q Isn't he? A Yes, sir.

Q And was Joe Curran there? A Yes, sir.

Q And he is known as "Red" Curran? A Yes, sir.

Q He was there too? A Yes, sir.

Q And Potter was there? A Yes, sir.

Q That's six we have got. Now who was the other two?

A A fellow by the name of Hemp.

Q What's his first name? A I don't know his first name.

Q Well, you are intimate with him, aren't you? A Well, he don't come from 47th Street. He comes from 66th Street. We got acquainted with him in the saloon where we were drinking.

Q And have you seen him since? A No, sir.

Q You didn't pass him, and look him in the eye? A No, sir.

Q Who was the other man? A The other man, I didn't know at all.

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Q Well, where did you pick him up?

MR. SULLIVAN: Objected to.

THE COURT: Sustained.

BY MR. PRESS:

Q Well, where did you get him, where did you meet him?

A In the saloon.

Q What saloon? A 66th Street and West End Avenue.

Q Now, who was this man that you were visiting that night? A His name is Maher.

Q What is his first name? A Tom.

Q Thomas Maher? A Yes, sir.

Q Where does he live? A He lives in 229, I think it is.

Q What street? A 66th Street.

Q West 66th Street? A Yes, sir.

Q How long have you known Tom? A I knew him for about eight or nine months.

Q And did Curzan know him? A Yes, sir.

Q And did Lynch know him? A I don't know about Lynch knowing him.

Q Well, Potter? A I don't know about Potter.

Q Well, Flood or Reynolds? A Yes, I guess they knew him.

Q Now, where did you all meet, with a view of making this visit?

MR. SULLIVAN: Objected to.

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THE COURT: Allowed.

MR. SULLIVAN: Exception.

BY MR. PRESS:

Q Didn't you, on this evening, namely, the 27th of July, 1913, meet Curran, that night? A Curran lived in 66th Street.

Q 66th Street? A Yes, sir.

Q Near where? A Between First and Amsterdam Avenue. The number I don't know, but we met him in the saloon.

Q Well now, where did -- you say Curran lives at 66th Street? A Yes, sir.

Q Now where did you meet him, that night? A In the corner saloon.

Q What corner saloon? A West End Avenue and 66th Street.

Q And where did you live, that night? A I lived where I am living at now, 615 West 46th Street.

BY THE COURT:

Q And how long have you been living there? Two and a half years? A Yes, sir.

BY MR. PRESS:

Q Well now, which of these men did you meet first, and where did you meet them? A I met Curran.

Q And you went up to 66th Street and met him? A Yes, sir.

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Q Is that right? A Yes, sir.

Q In the saloon? A Yes, sir.

Q What hour did you reach that saloon? A About half past nine.

Q Half past nine? A Yes, sir.

Q Had you been working that day? A Working that day?

Q Yes? A Yes, I worked about five hours, that day.

Q And had you an appointment to meet him there that evening, Murran? A Yes, sir.

Q Eh? A Yes, sir.

Q And you met him at half past nine? A Yes, sir.

Q Well, who was the other person that was there? A Tom Maher. He was up in the house. We went up in the house ofor him.

Q Now when did you meet Lynch? A He come up with us.

Q Was he in the saloon, too? A He come up with us. He was in 47th Street.

Q And he came up with you? A Yes, sir.

Q Where did you meet Potter? A 47th Street.

Q Well, you know that at that time he lived at 466 West 131st Street, didn't you? A I didn't know where he lived.

Q You didn't know where he lived? A No, sir.

Q Well, how did he come to meet you down at 47th Street?

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CASE 111919

A Well, simply because he used to stand on the corner there.

Q At the corner of what street? A At the corner of 47th Street and 10th Avenue.

Q Where did you meet Flood? A 47th Street and 10th Avenue.

Q And you knew at that time that he lived at 447 West 37th Street? A I didn't know where he lived.

Q Weren't these all friends of yours? A Yes, sir.

Q And you didn't know where he lived? A No, sir.

Q He moved so often that you did not know where he lived? A You might know a hundred people, and not know where they live. I never made it my business to ask any man where he lived.

Q You merely met them standing on the corner there? A Yes, sir.

Q And you never had occasion to visit them at their home? A No, sir.

Q Now, where did you meet Reynolds, that night? A 47th Street and 10th Avenue.

Q And you knew at that time that he lived at 789 Ninth Avenue, didn't you? A I didn't know where he lived.

Q You never had occasion to visit him? A Never.

Q Now, when you met with Reynolds, Potter and Flood, at the corner of Tenth Avenue and 47th Street, you had a conversation about going up to visit Maher; is that right?

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CASE #1990

A Yes, sir.

Q And was Maher in the habit of standing on the corner, too? A No, sir; he wasn't.

Q Well, which one of you was it that had the acquaintance ship of Maher? A I did.

Q And you were taking your friends there to visit him?

A Well, there was going to be a little party in the saloon that night, and I sent up to the house for this Maher

Q And so you went up to the 66th Street saloon to meet him there? A Yes.

Q And when did you meet your friends at 47th Street and Tenth Avenue? A I judge it would be half past eight. A

Q And you walked up to 66th Street? A Yes, sir.

Q And did you stop on the way? A Yes, at several places, and had drinks.

Q And how many did you have? A Maybe two or three.

Q And how many did you drink that day and before that? A Maybe half a dozen.

Q What was the drink that you took? A Lager beer.

Q Now, I am asking you about the 27th of July, 1913. How many beers did you have? A All short beers.

Q Well, long beers or short beers? A Four.

Q Before you met your friends at 47th Street and 10th Avenue? A Yes, but I am not sure that they were all long ones. Because there were some small ones in between.

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Q And you are sure of that, are you? A Yes.

Q And then you continued up to 66th Street? A Yes, sir.

Q And how many saloons did you stop at? A Three, I think.

Q And how many drinks did you have in each saloon? A One in each saloon. That would be three.

Q Three? A Yes, sir.

Q And were they long or short? A All short.

Q And when you got to 66th Street, you sent for your friend Maher? A Yes, sir. I sent a boy up for him.

Q By the way, is he here today? A No, sir; he is out of the city.

Q And you told your lawyer about him, did you not? A Yes; about a week ago.

Q And you told your story to your lawyer then, about a week ago? A Yes.

Q Now, how many drinks did you have in the saloon at 66th Street? A Why, we may have had seven or eight.

Q Seven or eight? A Yes, sir.

Q How long did you stay in that saloon? A Maybe an hour and a half or two hours.

Q Well now, you got there at nine-thirty? A Yes, sir.

Q What time did you leave there? A We left there maybe half past ten or a quarter to eleven, or maybe eleven o'clock.

Q Well, do you mean to tell his Honor and the jury that,

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in an hour and a half's time, you consumed only eight beers?

A Yes, and we were talking and singing and playing the harmonica. We had a sociable time, a sociable gathering, of some of Maher's friends, and some of mine.

Q Was the association that met there known as the "Gopher" gang? A No, sir.

Q Well, what is the name of the association that met there, that evening, to celebrate? A The "Yankee Doodle Boys."

Q And your place of meeting was 47th Street and 10th Avenue, wasn't it? A Yes, sir.

Q So that you had fifteen glasses of beer in you, at the time you were leaving that place? A Yes, sir.

Q That is right; is it? A Yes, sir.

Q And some of them, and some were short? A Well, there might have been two long ones in it. The rest of them were short.

Q You are a temperate man? A I am not. I take a glass of beer, but you can't call me a drunk.

Q You never get drunk? A No, sir; I do get drunk sometimes, but this night I wasn't drunk.

Q This night you were not drunk? A No, sir.

Q Now then, at a quarter of eleven, you said to the others, "Well, we will go up and visit Martin"; is that right? A I said -- yes, I said to Jimmy Flood --

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Q That's the man that got the fat? A Yes. And I said, "I'M getting hungry, and Fred Martin has an oyster house up here somewhere, and we will go and see him, and have something to eat." And we went up there in good faith.

MR. PRESS: Now, I object to that, if your Honor please.

THE COURT: Objection sustained.

BY MR. PRESS:

Q Why do you insist upon saying that?

THE COURT: Just answer the questions, and if there is anything necessary to supplement the answer, Mr. Sullivan will question you, later.

THE WITNESS: Thank you, sir.

BY MR. PRESS:

Q Well, why do you insist upon putting that in? A Because I hadn't seen Fred for some time, and we was fairly good friends.

Q Well, you hadn't been in his place from the time he went to West End Avenue? A No, sir.

Q He didn't leave his card with you, did he? A No, sir.

Q So how was it that you learned that he was there?

A "Red" Curran knew where he lived -- where he had his place.

Q You didn't know where he was? A I knew he was on West End Avenue, but where I didn't know.

Q And so you said to "Red" Curran, "Where does our

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friend Martin live?" And Curran said, "Around here somewhere"? A Yes, sir.

Q And then you decided that you would go and visit him, at a quarter to eleven? A Yes, feeling hungry.

Q In this saloon was there not something to eat? A No, sir.

Q Although you were having a good time there? A No, sir; after a certain hour he takes the lunch away.

Q Then you were having this festivity in the back of the saloon? A Yes, sir.

Q And didn't you have any lunch at all? A No, sir.

Q Or music, except the harmonica? A No, sir; and we were singing, too.

Q And you left there at a quarter to eleven? A Yes.

Q And how far is this place from the saloon? A About a block and a half.

Q Well, it didn't take you an hour and a quarter to get there, did it? A No, sir.

Q What time did you get to this restaurant? A At quarter after eleven, I should judge.

Q Are you sure about that? A I ain't positive, but it couldn't be much later.

Q Did you have a watch on you, that night? A No, sir.

Q Did any of the "Yankee Doodle Boys" have a watch on them? A I suppose so; two or three.

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Q Well, did you look at the time at all? A No, sir. Just barely guessed at it.

Q Then it took you a half an hour to walk that block, did it? A No, sir; about a minute and a half.

Q But you say you left the saloon at a quarter after eleven? A Well, it's only a rough guess about the time. I didn't look at a clock and didn't ask anybody.

Q Isn't it a fact that you were drunk, on that occasion, and don't know when you left that saloon? A No, sir; I wasn't drunk.

Q And you were not under the influence? A No, sir.

Q And you were able to make a note of the time? A No, sir; I didn't. The time wasn't bothering me. I wanted to get something to eat.

Q Isn't it a fact that Curran was up at the 66th Street saloon, and telephoned down to you to bring the bunch up? A He didn't telephone to me.

MR. SULLIVAN: I object to that, if your Honor please.

THE COURT: Yes, I ~~am~~ think you can exclude all of that question, Mr. Press. The learned counsel should put that question in a learned way. There is no foundation at present, for such a question.

BY MR. PRESS:

Q Well, wasn't any such telephone received by you or your associates, at 47th Street? A No, sir.

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Q To bring up these other men? A No, sir; not as I know of, because I was standing outside all the time that night, outside of the saloon.

Q What saloon? A Corner of 47th Street and 10th Avenue.

Q Oh, is that a saloon? A Yes, sir.

Q And that is where your crowd -- your people were in the habit of meeting? A Yes, sir; for years and years.

Q In the saloon? A No, outside. Not inside of the saloon. Nobody was allowed to hang out in that saloon.

Q Well, didn't you go in occasionally? A Yes, perhaps for a drink.

Q Or when you went around to this man's place, Martin's place, the restaurant, you said good evening to him as you entered? A Yes, sir; I did.

Q How many were with you at that time? A There were seven, with me.

Q Altogether there were eight people, and only eight?
A Only eight.

Q And when the defendant states that there were fourteen, that is incorrect? A Yes, he overrated it.

Q Now then, when you entered, where was he standing?
A He was in the back.

Q He was not behind the counter? A No, sir.

Q Well, did he come out to meet you? A Yes, he come out, and I said, "Good evening, Fred," and he shook hands with me.

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Q How many tables were in that place? A One table.

Q Just one table? A Yes, sir.

Q Not four? A No, sir.

Q Well, there was a counter there; was there not? A Yes, sir.

Q And about how many chairs were in the restaurant? A Only two chairs.

Q Only two chairs and one table? A Yes, sir.

Q There was crockery around there? A I seen half a dozen plates there. I didn't see no cups.

Q Where were the plates? A On this table.

Q In the center of the restaurant? A No, sir; up against the wall in the corner.

Q At the back? A Yes, sir.

Q Did you see a bureau there? A No, sir.

Q There is no bureau there? A I didn't see no bureau there.

Q Well, then, you all lined up at the counter? A I was sitting down in the corner, and Jimmy Flood was sitting on the other side of the table, and the rest was up against the counter, giving their orders.

Q And you were all quiet and peaceable, I suppose? A Yes, sir.

Q And quite friendly with him? A Yes, sir.

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Q And then you thought you would take a walk through the place? A yes; I heard the talking in the back room, and I thought I might know somebody in there.

Q So you walked into the back room? A Yes, sir.

Q And looked them over? A Yes; I thought I might perhaps know somebody.

Q And then he told you to come out of that room? A Yes, sir.

Q And you immediately obeyed him? A Well, I didn't see nobody in the room there, and I come out again, and he said, "Tom, you have no right to go in there."

Q And you were a good friend of his? A Yes, sir.

Q And that's all he said to you? A Yes.

Q Now, about what time elapsed between the time that you entered with your friends, and the time that he said that to you? A Well, I should judge about ten minutes.

Q Ten minutes? A Yes, sir.

Q Well, what were you doing during those ten minutes? A Well, I was talking to him first off. I was glad to see him. And he was asking me how I made out, and I asked him how he was making out, and he said pretty good, and I went into the back room and looked around.

Q And did you give your order? A Yes, then I gave it. The other fellows gave their orders first. We all

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wanted oyster sandwiches.

Q And behind the counter is a fire? A Yes, sir.

Q And there is a pan on the fire? A Yes, sir.

Q And that pan has grease in it? A Yes, sir.

Q For the purpose of cooking the oysters? A Yes, sir.

Q Didn't he fry any oysters at all? A He put about half a dozen on the pan.

Q And did you -- didn't he supply you with them? A No, sir; he was letting them burn up.

Q And he said, "Tom you shouldn't have done that"? A Yes, sir.

Q And after that, what happened? A He went inside two or three times while he was cooking the oysters, and come out again.

Q Well, he was only cooking six, that he was allowing to burn? A Yes; before he would show them to us.

Q And there was no other person in the restaurant other than yourselves? A Yes, that's all.

Q And then about how long did you stand there before anything happened? A Oh, I should judge we was in there about 25 minutes, or half an hour maybe.

Q And you were sitting all the time? A Yes, sir.

Q And not insisting upon your order? A We did insist upon our order.

Q And at the end of half an hour, what did he say? A

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He said he wouldn't serve us.

Q And then you all got up and walked peacefully out?

A No, sir; some asked him why he didn't serve us, and he said he had reasons of his own. And then he got in some kind of an argument with somebody.

Q With whom? A With two or three up in front, with Jimmy Flood and two or three others, and they said their money was just as good as anybody else's, and they come up there for a bite to eat, and they didn't see why they couldn't be served, and then he threw the pan of grease at them.

Q And nobody struck him? A No, sir; but he was struck by the woman he calls his wife.

Q But nobody in your party struck him? A No, sir. After they seen the hot fat, they were afraid.

Q And Curran and Lynch and Flood were standing at the door talking with him, of the counter? A Yes, sir.

Q And without a word of anger from them, or a blow, he lifted up the pan of fat and threw it at them? A Yes. He was noted for that.

MR. PRESS: I object to that and move that it be stricken out.

THE COURT: Motion granted. Strike it out.

BY MR. PRESS:

Q And threw the fat at them? A Yes, sir.

Q And immediately after that a woman appeared at the

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door of the inner room, and threw plates and cups and saucers and things of that kind? A Yes.

Q And before you got out, were not plates thrown? A Yes, sir.

Q Weren't you the last man to leave that place? A Yes, I was.

Q And so that he is correct when he states that you were the last man to leave the place? A Yes.

Q And these plates were being thrown from the door? A Yes, sir.

Q And each one of them hit him? A Well, not each one of them hit him, but I should judge some of them hit him, and others hit the plate glass windows, and the way they were coming, there was more than one throwing the plates, and --

Q And this woman broke the plate glass window, broke the side window, cut him on the eye and cut him on the head?

A I don't know. I didn't see the cuts.

MR. SULLIVAN: I object to that.

THE COURT: Sustained.

BY MR. PRESS:

Q Well, whatever damage was done, no matter what the damage was, was done by this woman throwing the crockery?

A Yes, sir; and perhaps some of his friends in the back room helping her.

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Q Well, did you see them do it? A I don't know; I didn't see them.

Q And you haven't mentioned that up to date, have you?

A No, sir; but the woman I seen throwing the crockery.

Q And then as you passed out you said -- oh, by the way, at the time you were passing out, you were the last one leaving? A Yes, sir.

Q Did you see his eye cut open? A He was bleeding.

Q From where? A From the eye, I should judge.
do

Q Why/you guess, don't you remember? A Well, yes; he was bleeding from the eye.

Q How about his head? A His head?

Q Yes? A I didn't see no blood coming from his head.

Q You didn't see any coming from his head? A No, sir.

Q But you did see his left eye cut open? A Yes, sir.

Q And did you see one of the plates do that? A I don't know.

Q And then you walked outside? A Yes, and talked to him outside.

Q And when you went outside he was able to talk to you? A Yes, sir.

Q And he wasn't leaning weakly against the counter? A No, sir; he was standing outside.

Q And he did not seem to be on the verge of insensibility? A No, sir; he didn't.

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Q Just as spry as could be? A He was all right, only for the cut on his eye. He was all right outside of that.

Q And you said to him, "Jimmy--" "Freddy" you said, "you shouldn't have done that"? A Yes.

Q Shouldn't have done what? A Throwing the hot fat.

Q But no one hit him from your crowd, as the result of throwing the hot fat? A Well, he started it all by throwing the hot fat.

Q Started what? A All the muss that was there; what his wife finished.

Q What did you begin? A They ran out after he threw the hot fat.

Q Who hit him because he threw the hot fat? A His wife, I guess.

Q What about you and your friends? A We didn't hit him at all.

Q You mean to tell his Honor and this jury that you and these men who were with you didn't resent him throwing the hot fat and go for him? A No, sir; we all ran out. I think you would run, too, if you had hot fat thrown on you.

Q Did you have any thrown on you? A No, sir; I was sitting in the corner.

Q And wasn't all the hot fat thrown -- wasn't there enough to hit Flood? A Yes, but we didn't know what he might

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have underneath the counter.

MR. PRESS: Now come up here, Potter, and Flood
and Reynolds.

BY MR. PRESS:

Q Now, how is Curran, compared with these men (indicat-
ing the three men)? A He is about as big as Potter.

Q Now, the other four men, were they as big as these
men? A Well, just about the same.

Q Just about the same? A Yes, sir.

Q And all of you eight men, although this man threw
fat at you, this lone man, none of you hit him, because he
did it? A No, sir.

Q And you walked out quietly? A Yes, I walked out, and
I seen the other fellows getting locked up.

Q Now one moment. I have done asking you about that
so far. When were you arrested? A I was arrested last
Sunday a week.

Q Where? A In my own home, 615 West 46th Street.

Q Who arrested you? A I don't know the officer's name.
An officer.

Q Wasn't he in uniform? A No, sir.

Q Was it not a detective who arrested you? A Yes, a
detective.

Q Didn't you learn that that detective had been to your

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home, looking for you? A I heard so, that he was looking for me for four or five days, and I said to my wife, "Don't be surprised if I get locked up. I am going to leave the wide open, and, if anybody knocks, and asks for me, tell them I am here."

MR. PRESS: If your Honor please, I move to strike that out.

THE COURT: Yes. Strike it out.

BY MR. PRESS:

Q When was the first time that you learned that the police were looking for you? A The Tuesday before the Sunday I was locked up.

Q Isn't it a fact that you knew, within a week after this occurrence, that charges had been preferred against you?

A No, sir; I didn't.

Q Didn't you state that you heard that the complaining witness was accusing you of being one of those who assaulted you? A Yes, but he never told the police.

Q He never told the police? A No, sir.

Q How do you know that? A Well, if he did, I would be locked up maybe just the same as the others.

Q Well then, that is the reason why you said; is it not? A Yes; and because there was a year between, and I was around my own house all the time.

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Q 27

Q And when did you learn that the police were looking for you? A Four days before I was locked up.

Q Why then d dn't you go to the police station and tell them you were an innocent man? A They knew where I lived, and why shouldn't they come for me? It ain't my place to go to them. It was their place to look for me. I left the door wide open for them, and the officer will tell you my door was wide open and I was laying down on the couch there.

Q And what did the officer say to you when he came in?

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

THE COURT: Allowed.

MR. SULLIVAN: Exception.

A He said, "Are you McGlynn?" And I said "Yes". And he said "You are wanted for the Frenchy case." That's the nickname for this man Martin.

Q What did you say? A I said, "All right."

Q Why didn't you say, "Why, I never did anything"? A Yes, I said that.

Q What did you say? A I said, "I don't see what he wants me for. I never done anything to him. I seen this man 25 or 30 times and he never said anything to me about it."

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal procedure, and took a recess untill two o'clock.)

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AFTER RECESS.

T H O M A S F. M c G L Y N N, the defendant, his cross examination being continued, testified as follows:

CROSS EXAMINATION (Continued) BY MR. PRESS:

Q Now, I want you to tell me, if you will, exactly what you said to the officer who made the arrest in your case?

A When he came into my house he said, "Is your name McGlynn?" And I said, "Yes." And he said, "I want you for the Frenchy case."

Q You are sure about that, that he said he wanted you for the Frenchy case? A Yes: And I said, "That's funny. I done nothing to Frenchy, and I seen him 25 or 30 times during the last year, and, if I done anything he should have had me locked up during that time," and he said, "I don't know about that, but I have a bench warrant for you, and will have to lock you up." And I said, "All right," and that is all that was said.

Q Didn't he ask you what you had been doing with yourself for the week previous? A No, sir; he didn't.

Q Didn't he say that he had been around your house, watching and looking for you? A He said he was around for three or four days, but never come up in my house.

Q Did he say he was in the adjoining house, out of the windows of which he could look into yours? A No, sir; he

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didn't.

Q And that he was there, looking for you? A No, sir.

Q And that for one week you had not been there, to your home? A I was there every night at my home.

Q Didn't you say that you was in the habit of coming in late? A No, sir.

Q Didn't he also say to you -- didn't you say to him, rather, "I knew you were looking for me, and I was keeping out of your way"? A No, sir.

Q Didn't you say in reply that -- or rather, didn't he say to you, "What hour do you come in at night"? A No, sir; he never said such a word.

Q You didn't say that you had a habit of coming in late at night? A No, sir; I didn't.

Q Didn't he say to you, "Why didn't you give yourself up to the police?" A I told him my door was open, and I wasn't hiding, or running away.

MR. SULLIVAN: I object to this, as entirely collateral, and the defendant should not be bound by the answers. This is a matter that I do not think should be permitted to prevail, to create evidence in this way. Now, this is a couple of days before his arrest.

THE COURT: Why, we must take his answers, Mr. Sullivan. That is, it is to show a keeping out of the

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way; is it not, Mr. Press?

MR. PRESS: Yes, it is.

MR. SULLIVAN: But for the term of five days before his arrest.

MR. PRESS: Yes.

THE COURT: It is an inquiry, I take it, upon the study of flight?

MR. PRESS: Precisely.

MR. SULLIVAN: I object to it as too remote. It doesn't relate to the occasion.

THE COURT: But it is the occasion, the time of the arrest, what took place between the officer and the defendant.

MR. SULLIVAN: Nearly ten months after the occurrence.

THE COURT: Yes.

MR. SULLIVAN: I except.

BY MR. PRESS:

Q Is this the officer who arrested you (indicating)?

A Yes, that's the officer.

Q How many times have you been convicted of crime? A In 1910 I got a suspended sentence.

Q For what? A For having a concealed weapon in my pocket. I found it in the street and was locked up.

Q Now wait a moment. Did you plead guilty on that occasion? A Yes, I did.

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Q Yes, and sentence was suspended by Judge O'Sullivan; isn't that true? A I couldn't tell you the Judge.

Q Wasn't it in this Court? A I think so.

Q Now, what next? A That's the only conviction I ever had in my life.

Q What? A That's the only conviction I ever had in my life.

Q Oh, the only conviction? I see. Immediately after this occurrence, were you in Newark, New Jersey? A No, sir.

Q Is it not true that you were in Newark, New Jersey?
A No, sir; it isn't.

Q Was you ever in Newark, Newark?

MR. SULLIVAN: I object to that as immaterial.

THE COURT: Overruled.

MR. SULLIVAN: Exception.

A Yes.

BY MR. PRESS:

Q When was it you were there? A Well, I should judge it would be about two years ago.

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1 Q Was that before this occurrence? A Yes, sir.

Q You are sure about that? A Positively sure, yes.

MR. PRESS: That's all.

RE-DIRECT EXAMINATION BY MR. SULLIVAN:

Q Well, I want to know whether I understand your explanation of this affair. You said to the jury that you were sitting at a table? A Yes, sir.

Q In the corner? A Yes, sir.

Q Was there any bureau in that dining room? A I didn't see no bureau.

Q Was that table in the corner? A In the corner.

Q It was on the opposite side of the room from the bar? A Yes.

Q From the counter? A Yes, on the left hand side of the counter.

Q From the oyster bar? A Yes, sir.

Q Now, when the complaining witness in this case threw the hot grease upon these men, were they standing in front of the counter? A Standing in front of the counter.

Q And you were some distance away from them? A Yes, in the corner.

Q And when that was thrown, they all went out? A Yes, sir.

Q Did the complainant come from behind the counter then?

A Yes.

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Q And follow them out? A Yes, sir.

Q And you followed him? A Yes, sir.

Q And so you went out on the street? A Yes, sir.

Q And it was there that you had the talk? A Yes, sir.

Q Did you hit the complainant while he was in the place?

A No, sir.

Q Or outside the place? A No, sir.

Q And when you left the place where was the complainant? A He was standing outside.

Q With you? A Yes. And a crowd gathered around.

Q And do you know where Flood was? A He was in the next doorway.

Q Was he standing or lying? A He was standing.

Q Was he covered with hot grease? A Yes, sir.

Q Now, when you went out of the place, where was the complainant, with reference to you? A Standing on the outside of the door.

Q Now, when you were going out, where was he with reference to you? A Just outside of the door, and I turned around and faced him. He was outside.

Q Did he go out with you? A No, sir; ahead of me.

Q Ahead of you? A Yes, sir.

Q Now, when these plates were flying from the rear--- were they?

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A Yes, sir.

Q Were you sitting at this table at that time? A Yes, sir.

Q And the other crowd were going out? A Yes.

Q That was after the grease had been thrown? A Yes, sir.

Q And it was after that that you went out? A Yes, sr.

Q Now, you heard him say here that you took a large platter and struck him over the head; is that true? A No, sir; it is absolutely false.

Q How long ago was it that you had this suspended sentence, for a weapon? A Four years ago, in 1910.

Q What was the weapon? A It was a blackjack.

Q Where did you find it? A I found it at Third Avenue. There had been a big fight on the avenue, and I found the blackjack in the street after the fight was over, and I really think I was seen picking it up.

Q And you were arrested? A Yes, sir.

Q And it was on that ground that sentence was suspended? A Yes, sir.

MR. SULLIVA: That's all.

RE-CROSS EXAMINATION BY MR. PRESS:

Q Between the time that the first man left the restaurant and the time that you said good night to the complaining witness, or bid him adieu of any kind---A I didn't

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bid him good night at all.

Q Wait a minute. Between the time that the first man left the restaurant and the time you had your final words with the complaining witness, what time elapsed, about? A Oh, I should judge it to be about six or seven minutes.

Q Six or seven minutes? A Yes, sir.

Q And you were not there when the officers came? A Yes; the three men was under arrest before I left there.

Q And you were there at the time? A Yes, I was in with the crowd, looking on.

Q Oh, in the crowd? A Yes, there was a crowd around there.

Q But you were not in the restaurant at the time? A No, I was outside.

Q And how much of a crowd was there there? A I should judge about three or four hundred. The place was full.

Q And you were on the outskirts of the crowd? A No, I was in as near as I could be. I was trying to push my way in, to see how bad Jimmy Flood was hurt.

Q When the Police Officers were taking their prisoners away, did they walk? A Yes, sir.

Q Did you follow them to the Police Station? A As far as Amsterdam Avenue, and then I took a car.

Q Did you go into the police station? A No, sir; I didn't.

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Q Why, Flood was a friend of yours? A Yes.

Q And you knew he was innocent? A Yes.

Q Well, why didn't you go in, and say something in his behalf? A I didn't think it was necessary. If anybody should have been held, it was Fred.

Q Now, answer my questions. Did you go to the Magistrates' Court, the next day? A No, sir; I didn't.

Q You didn't take any further interest in the case? A No, sir; because I thought there would be nothing to it; that they would be turned out.

BY MR. SULLIVAN:

Q Now, was the complainant there at the time? A Yes, sir.

Q When you left? A Yes, sir.

Q And did you see him and the rest of them go to the station house? A Yes, sir.

MR. SULLIVAN: That's all.

MR. PRESS: At this time, will your Honor permit me to call the doctor. I said I rested, subject to the calling of the doctor and the arresting officer. I only want to know whether your Honor will permit me to do so now.

THE COURT: If it is objected to, I will not allow it to be done. I will not allow anything to be done in the State's case that is not orderly, unless it is consented to.

MR. PRESS: All right, your Honor.

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THE COURT: Witnesses sometimes feel that their convenience is the only thing to be consulted, and if they take such a position as that, and it is permitted, I cannot disarrange or make disorderly the proper legal methods for the trial of causes. They must be here at the proper time, when their evidence can be put in properly, and that refers particularly to physicians and police officers. Go ahead.

MR. SULLIVAN: I offer the original indictment in evidence, in your Honor please, if it is not regarded as a part of the case, the indictment first found.

THE COURT: Is there any objection?

MR. PREDS: No, sir.

THE COURT: Then I will receive it in evidence.

(It is marked Defendant's Exhibit 2)

MR. SULLIVAN: Then that is our case.

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CASE #1000

R E B U T T A L .

HERMAN D. SCHOENBERG , a witness called
on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Dr. Schoenberg, are you a duly licensed medical practitioner under the laws of the State of New York? A Yes, sir.

Q And have been for how long? A Two years.

Q Were you, on the 27th day of July, 1913, connected with any hospital in the City of New York? A Polyclinic Hospital.

Q A little louder, the jurors can't hear you? A Polyclinic Hospital.

Q Did you, on the night of the 27th of July, 1913, see Frederick Martin?

MR. PRESS: Will you stand up, Martin?

BY MR. PRESS:

Q Did you see that man? (Indicating). A I don't remember his face, but my record shows that I saw such a person.

MR. SULLIVAN: Well, I object to it, if your Honor please, and I move that the answer be stricken out. It is no identification of the person.

THE COURT: Motion granted.

MR. PRESS: Will you step up to this table, please,

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Mr. Martin?

MR. SULLIVAN: I object to the man being pointed out.

MR. PRESS: I am not pointing him out. I simply want the doctor to see his face plainly.

THE COURT: Yes.

BY MR. PRESS:

Q I ask you to look at that man again, Doctor, A I can't remember him.

Q You can't remember him? A No, sir.

Q Have you treated many cases in the last two years?

MR. SULLIVAN: I object to this, if your Honor please, as immaterial, irrelevant and incompetent.

THE COURT: Sustained.

BY MR. PRESS:

Q Have you a record of having treated a man by the name of Frederick Martin, at about between twelve and one o'clock in the morning? A I have.

MR. SULLIVAN: I object to this.

THE COURT: Objection sustained. Strike out the answer.

BY MR. PRESS:

Q You can't recollect the man's features at all? A No, sir.

MR. PRESS: That is all, Doctor.

MR. SULLIVAN: That is all.

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MARTIN S. OWENS, of the Detective Bureau, 26th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q You arrested the defendant? A I did.

Q When and where? A On May 31st, at his residence, 615 Wes 46th Street, about 6 P. M.

Q When you entered the premises, what floor did you go to? A On the second floor, in the front part of the house.

Q Was the door open? A Yes, sir.

Q And where did you find the defendant? A The defendant was laying on a sofa in the parlor.

Q Did you have a conversation with him? A I did.

Q State what you said to him and what he said to you.

MR. SULLIVAN: I object to that.

THE COURT: Sustained.

MR. PRESS: May I ask upon what ground?

THE COURT: On the ground that it is disorderly. This witness should not have been produced at this time. He should have been produced on the People's case, and counsel for the defendant now objects, and I must sustain it, unless I overthrow the rules of evidence, and the proper method of trying causes. If witnesses are to be availed of and used, they must be brought here and kept here and put on at the proper time.

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BY MR. PRESS:

Q Had you been looking for him before that time?

MR. SULLIVAN: Objected to.

THE COURT: Objection sustained.

MR. PRESS: You may retire, Officer. I will call Mr. Martin. Your Honor realizes that subpoenas are served by our office, and we do the best we can to get witnesses here.

THE COURT: Yes, but counsel knows he can get an attachment, if witnesses do not appear, and, if they do not appear, I will see that a good lesson is taught to them. And this applies ordinarily to a Police Officer.

MR. PRESS: Well, we don't desire to bring witnesses here by attachment.

FREDERICK MARTIN, the complaining witness, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Mr. Martin, did you go out on the street either before or after noon?

MR. SULLIVAN: I object to that. It is a part of the main case.

THE COURT: Allowed.

MR. SULLIVAN: Exception.

A No, sir; I didn't go out.

BY MR. PRESS:

Q You didn't go out? A No, sir; I couldn't hardly

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stand up.

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MR. SULLIVAN: I move to strike that out.

THE COURT: Strike it out.

BY MR. PRESS:

Q Where were you at the time the Police came in? A
Laying against the counter.

Q The defendant has stated that there was only one
table in that restaurant and that there were only two chairs.
How many tables and chairs were in that restaurant?

MR. SULLIVAN: I object to that. He has been
over there.

THE COURT: Mr. Press, haven't you that already?
I think you have had that from Mr. Martin, just how the
restaurant was furnished.

MR. PRESS: Will your Honor just bear with me for
a moment?

THE COURT: I know that there is a conflict between
the witness Martin and the defendant, but I think you have
the testimony of the complainant upon that subject.

MR. PRESS: Well, this is deemed important. However,
I will not ask him about that, but I will ask the Police Of-
ficer who has been here since the trial began.

BY MR. PRESS

Q Now, did you have any conversation with the defendant
on the street, after this occurrence?

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MR. SULLIVAN: Objected to.

THE COURT: Allowed.

MR. SULLIVAN; Exception.

A No, sir; I never saw him after that.

BY MR. PRESS:

Q The defendant has stated that you saw him, and he saw you, at least twenty-five or thirty times between the 27th day of July, 1913, and the date of his arrest.

MR. SULLIVAN: I object to that.

THE COURT: Allowed.

MR. SULLIVAN: Exception.

A The first time I ever seen him was this morning, and if I had seen him before---

THE COURT: No, that is an answer.

MR. PRESS: That is all I want to know.

BY MR. PRESS:

Q Now, I believe you stated on your direct examination that you informed the police who came into your place of the names of these people, and also in the Magistrates' Court.

MR. SULLIVAN: I object to the question. We have been all over that.

THE COURT: I think so. I will sustain the objection.

BY MR. PRESS:

Q Do you know Mr. DuVivier? Of the District Attorney's Office? A Yes, sir.

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Q When was it that you saw him?

MR. SULLIVAN: I object to that, as immaterial..

THE COURT: Objection sustained.

BY MR. PRESS:

Q Well, did you see Mr. DuVivier.

MR. SULLIVAN: I object.

THE COURT: Objection sustained.

MR. PRESS: Well, your Honor will surely permit me to show the reasons for the delay?

MR. SULLIVAN: I object to this statement, as improper, it seems to me.

THE COURT: Well, I cannot pass upon anything. I have already passed upon your questions, and the objections.

MR. PRESS: Come down.

CROSS EXAMINATION BY MR. SULLIVAN:

Q What is your right name? A Frederick Martin.

Q What? A Frederick Martin.

Q That's an assumed name, is it not? A No, sir; it isn't. It is pronounced Frederick Martin, in French.

MR. PRESS: I object to that question.

THE COURT: Sustained.

G E S L E V Y, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Officer, on the night of the 27th of July, 1913,

When you entered that restaurant, how many tables and chairs were in that restaurant?

MR. SULLIVAN: I object to that.

THE COURT: He may answer it.

MR. SULLIVAN: But this was after the whole thing was over, your Honor.

THE COURT: Objection overruled.

MR. SULLIVAN: Exception.

A Not less than four.

BY MR. PRESS:

Q And about how many chairs? A Not less than fourteen.

Q And did you see a sideboard in that place? A I did.

Q Where was it located? A It was in the rear of the store.

Q Did you see the complainant witness in the crowd there that night? A I did. He was in the store.

Q The defendant, I mean. A No, I didn't. You said the complainant witness.

MR. PRESS: Well, I want the defendant. Pardon me. That's all.

CROSS EXAMINATION BY MR. SULLIVAN:

Q You went through the apartment, did you not? A I did not.

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Q You did not go through the rear rooms? A I did not.

Q When you went in there, didn't you go to the rear rooms? A No, sir.

Q Or the second room? A No, sir.

Q Weren't the doors open? A They were.

Q Could you see through? A Yes, sir.

Q Could you see the chairs in there? A Yes, sir.

MR. SULLIVAN: That is all.

MR. PRESS: The People rest, if your Honor please.

MR. SULLIVAN: The defendant rests.

THE COURT: Go to the jury, gentlemen.

(Mr. Sullivan stood up for the defense).

(Mr. Press closed the case for the People).

THE COURT: Gentlemen, I have concluded not to submit this case to you this afternoon, but will do so tomorrow morning, at half past ten.

(The Court then admonished the jury in accordance with Section 413 of the Code of Criminal Procedure, and adjourned the further trial of the case until Wednesday morning, June 17th, 1914, at 10:30 o'clock.)

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CASE #19199

THE PEOPLE VS. THOMAS MCGLYNN.

TRIAL RESUMED.

New York, June 17th, 1914.

THE COURT'S CHARGE.

MALONE, J.:

Gentlemen of the Jury:

The form of your verdict here will be either guilty of assault in the second degree, or not guilty.

Thomas McGlynn, with Joseph Curran, otherwise called "Red" Curran, William Lynch, otherwise called "Sparrow" Lynch, John Cotter, James Flood and James Reynolds, has been indicted by the Grand Jury, and charged with committing a felonious assault upon Frederick Martin, on the 27th day of July of last year, in this County.

It is alleged in the indictment that they wilfully and wrongfully committed this assault by using a bottle, a certain plate, a certain pot, a certain match box and a certain match holder, upon the head and body of Frederick Martin.

The defendant McGlynn traverses the declaration and puts the matter in issue by his plea of not guilty, and you have been empaneled here, selected by counsel, as a proper body of men to pass upon the merits of this case, and you will pass upon it giving regard to the facts as you find them, and apply the law as the Court advises you.

Your power is supreme upon all the facts of this case.

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By law you are made judges of the facts; the law makes and holds the Court responsible for proper advisement upon all questions of law.

There has been a great deal of earnestness and force and ability shown in the trial of this cause, prosecuted with ability and defended with equal ability.

The functions of counsel are quite different from that of the Court and Jury. Counsel may manifest and should manifest great earnestness in doing the work which is submitted to their keeping. Counsel may be eloquent and ingenious and still perform in the best way imaginable, the responsibility which is created, but with the Court and the jury there is no occasion for that. Calmness and deliberation become the sacredness of our function. No heat, no excitement, no partiality, no leaning on either side, but a faithful, impartial weighing of the proof, and then following that proof where it leads us to.

The law is jealous of the rights of individuals, and puts a full burden upon the prosecution to establish the guilt of the persons charged beyond a reasonable doubt. When that guilt has been established, the State is entitled to a verdict of guilty. It is entitled to a proper and full administration of the law of the land. But, if the Prosecution fails to make out its case up to the requirements fixed by law, it is the duty of the jury, by the law of the land,

to find the person charged not guilty.

That is the rule of the law, and it is founded in wisdom, it is founded in propriety, and it is generally subscribed to by thoughtful and law abiding men.

The defendant, though indicted with the others, whose names I have mentioned, and which are set out in the indictment, is tried alone, and his case is to be determined alone. I mean by that, that you might, in considering the evidence, reach the conclusion that the offense laid in the indictment had been proven, and still conclude that the defendant was not guilty of the offence. The offence itself must be proven by the State, and that offence must be laid at the door and proven against the defendant. These two things must co-exist, must be established in the case, before a verdict of guilty could be returned legally against the defendant. Get that well into your minds.

The offence laid here is defined in this way by the Legislature, and I read the language of the Statute:

"A person who willfully or wrongfully wounds, or inflicts grievous bodily harm upon another, either with or without a weapon, is guilty of assault in the second degree."

The contention of the State here is that this defendant has brought himself within the scope of this indictment by administering upon the head of Frederick Martin a blow, through the use of a large platter, which inflicted upon him

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grievous bodily harm. To that contention the learned counsel for the State has directed his proof, and upon that contention and that theory you are asked to find this defendant guilty. You have the proof that has been submitted to you upon that issue. You will shake it out, and weigh it by the argument that you have listened to that has come from counsel. Use good common sense, and determine the facts.

Frederick Martin has testified for the People of this State, and has told you who he is and what his occupation is and has been.

He says that he maintained an oyster house at 172 West End Avenue and that, on the night of the 27th day of July of last year, some fourteen men entered his place, coming in in sections, but all coming in within a moment of time. They came in fours and in the first division came the defendant, Thomas McGlynn. The prosecuting witness, and the one whom the State alleges was the victim, said that he previously maintained at 520 West 47th Street, in this county, a similar place of business and had known the defendant McGlynn for four years, and that they were neighbors, occupying adjoining places of residence.

The defendant, in his testimony, agrees with Martin upon this subject, but says their acquaintance extended for a longer period of time.

Martin says that, when these men were all in his place,

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some of them sat in chairs, and one of them upon ^a 107 his table, and engaged in conversation with each other; that they were dancing and singing, and causing trouble and noise, and, as a resultant, he tells you that he sent for a policeman.

Martin then says that a chair was put in a position to interfere with his movements, and that Lynch and Curran who, it seems, have not as yet been arrested, both hit him; that Flood followed, striking him with his fist, and that the others followed, striking and beating him. He says that Flood hit him with a flowerpot, and that cups and saucers were flying to him, and that then the defendant, McGlynn, took a platter that weighed four and a half pounds from the bureau in one of the rooms and hit him on the head with it, and that the others had gone out at the time, and that the defendant was the last to leave.

Martin says he threw a pan of boiling fat upon Flood, which scalded him, and it seems from evidence not contradicted here that Flood sustained very serious injuries from that act.

Martin testifies that, after that time, he did not see the defendant, McGlynn, until he saw him here; that he himself, on this night, was taken to the station, and medical assistance given to him, some stitches being put in his head, and he has told you that he suffered other bruises, and lost a tooth.

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On his cross examination, Martin has described to you how his apartment was laid out, how it was appointed, how it was furnished.. He says that there were five or six friends in one of these rooms and in another his wife, and that these five or six friends were playing cards in this room. He says that he mentioned the name of McGlynn to the Judge in the Magistrates' Court, on the following day, and that the Magistrate told him to tell the Grand Jury about it.

On his re-direct examination, Martin told the learned counsel for the State that the men who were playing cards had just left the place, that they were just going out when these men came in, or that they had just gone out. He said, however, that his wife was there during this entire time.

You recall the testimony of Mr. Wallace, the policeman. He said he was attracted to the trouble by hearing the crash of glass, about ten minutes past twelve; and that, with Officer Levy, who entered into the matter, he pursued some men that he saw running away, and that he called out to them and was instrumental by his calling to them in getting them stopped. These men were Cotten and and Reynolds.

He said that he brought these two defendants, indicted with the defendant here, back to the restaurant, and tells how he found blood, and what his condition was; that he was near the doorway, suffering from burns about the neck and hands.

He said that everything was in a State of terrible confusion, as he says, everything seemed to be turned upside down, windows broken, crockery broken and everything in disorder.

Cotter and Flood and Reynolds were taken to the station, as well as Martin, the prosecuting witness.

Mr. Levy's testimony is that, at the station, Martin mentioned the name of the defendant, McGlynn. The testimony of Mr. Levy, the other policeman concerned, substantially corroborates that of Mr. Wallace. Mr. Levy, however, says that Martin, at the Police Station, mentioned the name of Curran, as well as of McGlynn, but that Martin did not give to the Police the address of McGlynn.

So you see, gentlemen, you have on the subject of the assault the testimony of Martin, on the side of the State. The testimony of the Police Officer is on the subject of the condition of the premises and the condition of two men, both of whom seem to have been badly handled and in great pain and distress.

The learned counsel for the defendant has called the defendant to the stand. In reply to the testimony of Martin Mr. McGlynn has told you his own life's history, what he has been doing for a considerable period of time, saying that he has been driving a truck, working as a longshoreman, and working in the Street Cleaning Department of the City.

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The defendant says that he, with some others, seven others, were out this night, and called upon a friend at 66th Street and Amsterdam Avenue; that they had been drinking together and, late in the night, and, although drinking, McGlynn said that he was not drunk, they went up to Martin's place to get something to eat.

He said that he had been accustomed to see Martin frequently, and had traded with him when at 47th Street, and went there with the best of intentions, and, while somewhat under the influence of liquor, without any evil design or intent to do Martin or any one else any harm.

McGlynn said that there were a number of men in the back room of the Martin place, and that he went in, or made some effort to go into one of the rooms where men were playing cards, and that, as a resultant of such action or effort, he had some words with Martin, who reproved his conduct, and told him that he would not serve him or his party.

McGlynn says that one word borrowed another, that a general state of confusion arose, that dishes and other missiles were thrown about; that Flood was scalded; and that he took the prosecuting witness to task for his act.

He denies that he struck Martin, or did any of the things which it is charged were done at this time in Martin's place.

He is not responsible for any acts, except those that he did himself, or that he aided and assisted in doing.

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The defendant says that he saw the woman, from the rear room, throwing plates and dishes.

The defendant coincides with the other testimony that the windows were broken and that there were dishes broken, but he says that he did not break them, nor did he encourage others to do so.

The defendant, also, says that from that time he had seen the complainant frequently, twenty or thirty times; that he never left the City or his accustomed places, but continued in his employment, and did not know that he was sought after until the Tuesday preceding the Sunday upon which he was arrested, and that he heard then, for the first time, that he was accused of participating in this affair; and that he made no effort to run away, but that he gave directions to notify any one to come to him, and the evidence of the State upon that subject seems to correspond with what McGlynn has said.

The defendant has said, upon his examination, that, in 1910, he was convicted of having on his person a concealed weapon, and that on that conviction, by his plea, sentence was suspended. The defendant must be tried upon the facts of this case. His credibility is a matter always for the jury, as it is of every witness who is called, and a person who is convicted of crime goes in the witness chair with that fact affecting his credibility. It is to be used for no other

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purpose, only as affecting his credibility.

The learned counsel for the People of the State argues that it is of weight and consequence here when his testimony is examined and considered with reference to the testimony of a person who has not been convicted of any offense. The learned counsel for the defendant urges that that fact does not even press against his credibility, because the defendant admitted his guilt, and did not deny it, and the facts were such that the Court was impressed that it was a proper case to suspend sentence upon him.

Well, you will take both these arguments, and apply them to the testimony, bearing in mind that the fact itself only has a bearing upon the subject, generally, of his credibility, and nothing else. Get that well into your minds.

The people argue that they have made out a clear and convincing case against the defendant, and one which warrants them in asking for a verdict of guilty. The learned counsel for the defendant argues, and it is for you to say, with what force the argument comes, that the indictment of the defendant is an afterthought; that a previous indictment was made, but not against the defendant, only involving Cotter, Flood and Reynolds, and not including McGlynn, Curran and Lynch, who, the prosecuting witness says, were persons who struck and committed an assault upon him.

I say to you, gentlemen, you should consider each one

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of these persons separately, in considering this evidence. Your duty is limited to passing upon the merits of the case urged against the defendant by the People of the State here, and not against the others.

This action is not an action brought on the part of the State for injury to property, which is a matter which is the subject of prosecution and indictment, but in this case that is not the offense that is laid, or to be considered by you. But the action is for a felonious assault upon the person of Frederick Martin, not upon the property or effects of Frederick Martin.

You must not confound this matter. Keep your minds focussed on the one question, to wit, whether Thomas McGlynn, from the evidence which you have listened to, lifted from the bureau this large platter, and struck the prosecuting witness on the head with it.

The learned counsel for the defense argued, as part of his defense, that there are circumstances here which clearly establish that the defendant did not commit this offense.

Did the witness Martin, on the occasion of the trouble, tell the same story that he has told here, or was it confined to the fact that the defendant McGlynn was present on that occasion, but not participating?

If he told the same story that he has told here, has the fact that McGlynn was not indicted on that occasion with

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Potter, Flood and Reynolds, any bearing upon the question whether the story that he has told here was the same story that he told to the Grand Jury then, having been advised by the Magistrate to do so?

You will ask yourselves this question: "Could he have overlooked McGlynn in the account he then gave; When you consider from the testimony that McGlynn was the only person he knew well, from 47th Street, and that the others, who were indicted at that time, were unknown to him?"

Is there any evidence to the effect that there had been unfriendly relations between the complaining witness and Martin?

They had been neighbors for some years. Is there any evidence to support the view that there was a motive for the defendant bringing people to his restaurant for the purpose of abusing him personally and injuring his property?

You may ask yourselves the question whether this trouble and confusion and destruction came from a development of acts that sprang up in that oyster place, without any previous arrangement or design to bring them about.

You may ask yourselves the question whether there is force in the argument of counsel for the defendant that McGlynn was indicted very largely because it afterwards developed that he had been previously convicted of a crime, and that his prosecution might help in the prosecution and conviction of

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others.

If there is in this evidence here, gentlemen, something mysterious, something that indicates to you a departure from the facts, something of truth, and something of lying, it is for you to decide where the truth lies.

Do you, in viewing all the things, all the evidence, feel that there is a moral assurance of the defendant's guilt of this offense; that the acts done by him, and his conduct both at the time and subsequently, convince you that he committed the assault as laid in the indictment? If you conclude that he did, you will find him guilty and turn him over to the law for the consequences of his act. A serious crime is laid here and the circumstances are such that call for your careful, impartial and faithful consideration of all the evidence in the case.

You will see to it that both parties are treated the same way by you. You will make it your business to find the defendant guilty, if the evidence satisfies you that he committed this offense. If he did commit it, he should be convicted and punished for a serious, grave crime. But, if he did not commit the offense, he is entitled to a favorable verdict from you, to a verdict of acquittal.

Take the case into your deliberating room, and canvas the situation carefully, thoroughly and impartially.

Use the arguments that both of these learned gentlemen

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have urged upon you and, with your own good sense, find what the facts are and determine the merits of the case.

I am sure, gentlemen, that you will reach a conclusion that will be one that will be satisfactory to you, later, and which will do impartial justice between the great body of the People and the defendant at the bar, for each one has reason to expect that from you, and I have an abiding confidence that the return that you make here will be expressive of the best judgment that can be rendered in view of all of the circumstances as they have been detailed to you.

Your verdict will be either guilty of assault in the second degree or not guilty.

Is there something that you would like to have me charge the jury, counselor?

MR. SULLIVAN: No, sir.

THE COURT: Mr. Press?

MR. PRESS: Yes, sir. I ask your Honor to charge the jury that, regardless of the fact as to whether this defendant struck the complaining witness with the platter or not, if the jury should find that he aided or abetted in the commission of the assault upon him, and whether present or absent, or directly or indirectly, he counseled, commanded, induced or procured others to commit the crime, that he is guilty.

THE COURT: That is a correct statement of the law, and it is, I think, in the language of the statute it-

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self.

MR. PRESS: Yes, your Honor.

THE COURT: It means, gentlemen, that several men may embark in the commission of a crime, and, if they come within the fair scope of that definition, they are all made principals and susceptible of indictment and conviction, if the facts be established that warrant the conclusion. Does that cover it, Mr. Press?

MR. PRESS: Yes, your Honor.

THE COURT: Take the case, gentlemen.

(The jury retired at 11:45 o'clock A.M.)

(The jury returned to the Court Room at 12:30 P.M.)

(The jury found the defendant guilty of assault in the second degree).

THE COURT: When shall I dispose of this matter?

MR. SULLIVAN: Monday?

THE COURT: Yes, Monday, the defendant is remanded until next Monday.

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