

START
1088
CASE

New York January 18, 1910

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COURT OF GENERAL SESSIONS OF THE PEACE CITY AND COUNTY OF NEW YORK. PART II.
THE PEOPLE OF THE STATE OF NEW YORK

-against-

ISTVONI RONAY

BEFORE:

HON. WARREN W. FOSTER, Judge and a Jury.

New York January 18, 1910.

Indicted for assault in the first and second degrees Indictment filed December 21, 1909.

Appearances:

For People; ISIDOR WASSERVOGEL, ESQ., Assistant District Attorney.

For Defendant: (?)

A Jury is duly empanelled and sworn.

Mr. Wasservogel opens to the Jury on behalf of the People.

JOHN KAFKA, called as a witness on behalf of the

People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live?

A 435 East 76th Street.

Q What is your business?

A Baker?

Q On the night of November 21st, 1909 were you in the premises 420 East 70th Street?

A Yes.

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Q In the County of New York?

A Yes, right here in New York.

Q Did you see the defendant Ronay there at that time?

A Yes, I seen him there.

Q Did you have any conversation there with him of any kind?

A No sir.

Q Tell the Court and Jury what happened, if you please?

A I was coming up there in the same saloon and restaurant, what is it, and some men was in there and that man he make trouble by three or four men in there.

DEFENDANT'S COUNSEL: I think the District Attorney had better ask the questions. He is bring out trouble with three or four other men. I move to strike that out.

THE COURT: Be careful to confine yourself to this transaction.

Q Did you see this defendant do anything there after he came in?

A I didn't see him do anything. He was sitting drinking and then he made trouble with another man.

DEFENDANT'S COUNSEL: I move to strike that out.

Q Was this a saloon?

A Saloon and restaurant.

Q This man (Indicating defendant) was sitting there and drinking?

A Yes sir.

Q Did he say anything to you?

A No, he didn't say anything to me. He talks the Hungarian language and I cannot talk the Hungarian language.

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Q You do not understand Hungarian?

A No sir.

Q He addressed you in the Hungarian language did he?

A Yes.

Q And you did not understand him?

A No. He can talk some words in German too.

DEFENDANT'S COUNSEL: I object and I move to strike that out on the ground it is leading.

THE COURT: Strike it out.

Q Did he say anything to you in the German language?

A No sir.

Q Did he do anything to you? If he did please tell us?

A Yes.

Q What did he do?

A He called me swindler and gave me had words and then he make trouble with another man and the saloon keeper man he like to send him home.

Q The saloon keeper wanted to send him home?

A Yes, and he wouldn't go, and he pushed him out.

Q Who pushed him out?

A The saloon keeper sent him home, and he was waiting about half an hour, a good half an hour or three quarters of an hour outside on the street.

Q Then you went home and saw him outside when you went out of the saloon?

A Then, I was in the saloon there and he was the first man going out.

Q Then you left the saloon?

A Yes.

DEFENDANT'S COUNSEL: I object to his leading the

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witness.

THE COURT: Go on. There is nothing pending to which an objection can apply.

Q You left the saloon?

A Yes.

Q Did you see the defendant outside?

Was this man (Indicating defendant) standing outside after you left the saloon?

A I left the saloon, he was in there, and I was going out there the front door was closed and so I have to walk out in the hallway, and he was standing out on the street and was waiting, and another man was going, the first man was going out and I was going the second man and he was calling "Son of a bitch" and take a knife and stick me right behind the ear, and another one here and here on the top (Indicating top of head) and the hand here (Indicating hand).

BY THE COURT:

Q How many times did he cut you?

A He cut me on the top, is once; and two here (indicating head) and on here (Indicating hand) and here and then on the back.

Q How many times?

A Four times. Here is one cut (Indicating on top of head and stepping down for jurors to examine head); thirteen stitches in here (Pointing to head); here behind the ear. I have got one on top of the head and I have got here on the hand, there was cut the skin down here, and I have stick me with a knife (Indicating in back), and goes through. It had to be sewed (Indicating on back

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of coat.

Q Did that cut on the back penetrate to your body?

A No. Then he struck me on the left arm too.

Q Did it leave any scars on the arm?

A Yes.

Q Did he cut the flesh?

A Yes.

Q Well, show the Jury where he cut you?

A (Witness indicates to Jury).

BY MR. WASSERVOGEL:

Q After he had cut you as you have testified here did you go to the Hospital, or was a doctor sent for?

A No, the ambulance took me in the hospital.

Q And did you stay in the hospital any length of time?

A Yes. He sent me in the Presbyterian Hospital and I was there the whole night over there, and he say I have to go to Bellevue Hospital, or bring some money with me for the Doctor, or some medicine, and I say "Well, I lose the job now, and I aint got no much ready money and I can't go over there; I like to go home." Then I was going home and go to visit a doctor.

Q You went to your own doctor?

A Yes, I was going to the German Hospital in 70th Street, and the Presbyterian Hospital.

Q Now before he struck you with this knife did you strike him?

A No sir.

Q Did you hit him at all?

A No sir.

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Q Did you call him any vile names of any kind?

A No sir.

CROSS EXAMINATION BY DEFENDANT'S COUNSEL:

Q What language did you speak to the defendant in? German?

A German or English---we aint speak much.

Q You do not understand Hungarian?

A No sir.

Q And he spoke in the Hungarian language did he?

A Yes sir.

Q And you didn't understand what he was talking about, did you?

A No sir.

Q What business are you in?

A Baker.

Q Did you ever have any transaction with any one in that saloon, sending them a postal card?

A No sir.

Q Did you ever give this defendant thirty postal cards?

A I got postal cards.

Q Where did you get it from?

A The man gave it to me because---

Q How many of there were you in that saloon when this trouble happened?

A That was not the same time of the postal card, the first time I seen him. That was the second time. The first time I seen him I gave him a few postal cards---not thirty, ---about three or four, and another man three or four.

Q Where did you get those postal cards from?

A The

man gave it to me for nothing.

Q For nothing?

A Yes sir. I don't know for sure. He gave me \$1.25 or \$1.30.

Q You say you went into the saloon what is the name of the saloon keeper?

A Leshner.

Q Is he here in Court?

A No, I didn't see him.

Q Are those people who were sitting in the back of the room with you that day in the saloon?

A Yes sir, they were in there.

DEFENDANT'S COUNSEL: I ask to exclude the witnesses? while the examination is going on.

THE COURT: Yes.

(Witnesses excluded)

Q Now all those three men (Indicating men who have just left the Court room) are friends of yours, aren't they?

A No sir.

Q You knew them, did you?

A I see the one man John Trum the same time, the first time, and another friend I see him the second time, just the same as that man over there (Indicating defendant).

Q Was this the first time you went in this saloon?

A That was the second time. Once when he was first, and that was the second time.

Q What is the name of this man that just walked out of this court room?

A Lackey and Trum.

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Q And you say you only saw those people twice in all your life?

A Twice, yes. I seen one the first time and another one twice.

Q When did you come to the saloon, what time in the evening?

A That must be after six o'clock when I came over there.

Q And you stayed there until about four o'clock, in the morning?

A What?

Q How long did you stay in the saloon?

A About half past one or two o'clock; in the night, two o'clock.

Q Are you sure it was not three o'clock?

A I am not sure. That happened to me about 2 o'clock.

Q Are you sure it was not three o'clock or four o'clock?

A No. Four o'clock? I am sure it was not four o'clock.

Q Well you say you walked out of the saloon and who was walking with you?

A John Trum, he was outside.

Q That is the man that walked out?

A Yes.

Q And who else walked out with you?

A I am the second and another one he got fish tools underneath the arm and he was the last one.

Q The three of you walked out of the saloon?

A Two of us. He was out first.

Q When you got to the hallway who was with you? Were there with you at that time Lackey and you too?

A No sir.

Q Were you all alone?

A No sir. I was the first man and he was after me.

Q Who is that "he"?

A Franz Lackey was after me and Trim was outside.

Q Did you have any light in that hall room?

A Not much; a little light was in there.

Q What time of the morning was this?

A It must be after 2 o'clock, because I was 3 o'clock in the hospital.

Q And you say there was a light there?

A Yes sir.

Q What kind of a light?

A A gas light.

Q And you could see everybody very plainly, could you?

A Not very plainly. There is light enough to see.

Q Well you could see? If you saw somebody you could tell who he was, couldn't you?

A Sure, certainly.

Q Now what had you been doing from 6 o'clock in the night until 2 in the morning in that saloon? Were you drinking?

A No sir. I was drinking and have a few glasses of beer, two or three.

Q From six in the evening until 2 in the morning you drank two glasses of beer.

A Yes, two or three. I drink a glass of wine and I drink no more. I drink a glass of wine with him when he sat down to the table. He came to the same table where we was.

Q You are sure that is all you drank---two or three glasses of beer?

A Two or three glasses of beer.

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Q What did you drink?

A I drink two or three glasses of beer and drink a glass of wine with soda water, or two.

Q From six in the evening until 2 in the morning?

A Yes sir.

Q Did you see the others drink?

A Sure I saw drinking people. Another one was playing billiards.

Q You say when you got into the hallway there was Lackey with you?

A He was behind me.

Q You could not see what he was doing behind you, could you?

A Who?

Q Well, he was in the back of you, I mean?

A Yes, he was in the back of me.

Q Who else was in the back of you besides Lackey?

A Nobody else.

Q If there was somebody else you would not know it now, would you?

A Well, there was nobody in there. He was the last man.

Q You couldn't see through from your back, could you?

A Well, I can see when I look around.

Q Did you look around?

A Well, when I walked out I looked around behind me.

Q Did you look around?

A I have to look around behind me when I go out.

Q And if there was any one else behind you you would not know it even to-day, would you?

A Well, I have to seen him

when there will be somebody in there, because it is long to run, to go out the hallway on the street, and the same place goes steps upstairs.

Q So you say that this defendant did not have any talk with you at all then, he didn't talk to you?

A He talked some good words with me the first time, before he started to make trouble in there.

Q Didn't you just testify before that you didn't understand Hungarian?

A No, he can talk German too.

Q Didn't you just say a minute ago that he was talking Hungarian?

A Yes.

Q Was he talking Hungarian or German?

A He was talking Hungarian and some few words German, too.

Q Why didn't you say that before that he was talking German? A

MR. WASSERVOGEL: He did say so.

A If I can't talk in English I would like to get a man to speak German.

Q And you say you had no trouble with this defendant that day before you came there?

A No sir.

Q And you were friendly with him and he was friendly with you?

A Friend? I see him the second time and the other I see the first time, the same day. What is it for Friend? I didn't know that man at all.

Q Did you see the knife in the hands of the defendant

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with which he struck you? Did you see it?

A Yes, I seen it.

Q Now will you describe it as nearly as you can, what kind of a looking knife it was? Now be careful. You understand you have got to tell the truth?

A Yes, I tell the truth. The knife was about so long (Indicating about 8 inches). I don't know in very much measure--- and he struck me on the head.

Q Now I asked you to describe that knife?

A Well, I don't have so much time to look.

Q It was eight inches wide?

A I didn't say 8 inches, about so long (Indicating with hands a space about six or seven inches long). I didn't have time to stay and look back to the knife when he struck me.

Q How big was the knife how wide was it?

A It must be about this size because on my head it showed it (indicating about one and half inches wide). There are two or three stitches in here.

Q You saw the knife before he cut you with it?

A Yes.

Q What pocket did he take it from?

A Well, I didn't see that. And I know people that he told he sharpened two knives the same afternoon and say in 70th Street "there have to run blood." That man over there (Indicating defendant)

Q To whom did he say that?

A People in 70th Street. DEFENDANT'S COUNSEL: I move to strike that out. Will your Honor instruct this witness to just answer

my questions. He is telling me what people said when I ask him a question.

THE COURT: What do you want.

DEFENDANT'S COUNSEL: I ask your Honor to instruct the witness to answer my questions.

THE COURT: Why, certainly. Answer the questions responsively.

DEFENDANT'S COUNSEL: I move to strike that out.

THE COURT: Motion granted.

Q Did you see this defendant take that knife with which he took you from his pocket? Did you see that?

A I didn't see him take the knife.

Q Did you see that or not?

A No sir.

Q And how long before he cut you did you see that knife in his hand?

A No sir, he cut me and I seen it then. It was quick---it was in about six minutes all over.

Q Do you know what happened with that knife?

A I don't know. He run away.

Q Who run away?

A That man (indicating defendant.

Q (am asking you, do you know what happened to the knife?

A No sir.

Q Did you ever see the Knife after that time?

A No sir.

Q Was it shown to you at any time after you were cut? Was the knife shown to you at any time afterwards?

A No sir.

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Q You have never seen it since that time?

A No sir.

Q If you would see it to day would you recognize it?

A No sir.

Q You would not?

A No sir. Because I am not sure is it that knife or not.

Q Just a minute ago you gave me a description of the knife and you say you know how the knife looks?

A Well, lots of knives are long like that. If you show me a knife and show me another one they are the same.

Q Was it a razor or a knife?

A A knife.

Q Do you know the difference?

A Yes.

Q What was it, was it a knife or a razor?

A It was a knife.

Q Was it one of the pocket Knives? Was it a knife that a man wears in his pocket?

A It must be a pretty heavy one.

Q Where were you when this defendant was cut and stabbed?

A He was not cut?

Q Oh, he was not stabbed?

A No sir.

Q You didn't see him being stabbed?

A I didn't see him.

Q You didn't see him?

A I didn't see he cut. I didn't see him stuck,

Q You didn't see him all in blood?

A Yes. That was afterwards when I was laying on the floor, he liked to run

away.

Q Did you see this defendant all in blood at the time you were cut.

A When I was all finished?

Q Yes?

A Yes, I seen him.

Q Who cut him, do you know?

A Nobody cut him.

Q He cut himself, did he?

A That was not a cut.

Q You don't know whether that was a cut?

A That was not a cut.

Q What was it?

A It must be when he ran away, then I was all full of bleeding and I hollered out he cut my ear off, and people was behind him and Lackey was after him and he was running up the stoops, and he caught him by the coat and he fell down and must have fell down and hurt his head, and then he said "Three fellers stick me. Three fellers stick me."

DEFENDANT'S COUNSEL: Mr. District Attorney be fair and instruct your own witness that he should be fair and answer the questions.

THE COURT: Answer the questions briefly and responsively. If you do not understand a question do not answer it; appeal to me and I will cause it to be made plain to you.

Q Did you see on that morning that you testified, when you were cut, this defendant bleeding from his forehead on both sides? Did you or did you not see that?

A I see him bleeding but I didn't know from what.

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Q How soon after did you see that after you were cut, how many minutes?

A Well, I can't tell, because I had enough with that (Indicating head).

Q Was it as much as an hour after you were cut?

A No sir. After when he stabbed me he run away and then he was bleeding.

Q Did your friends have a knife with them?

A No sir.

Q They did not?

A No.

Q How do you know? Did you search their pockets?

A What?

Q Did you go through their pockets to see whether they had any knives?

A No.

Q But you know they did not have any knives, do you?

A Well, he told me he aint got any knife.

Q And you knew this man did have a knife?

A Sure, he got a knife.

Q You say that you went to the Presbyterian Hospital did you?

A The ambulance took me over there.

Q How long did you stay there?

A I stayed over there the next night.

Q And you knew that this man was laid up in the hospital for seven weeks, did you not?

A Well, when I want to lay down I can lay down for three weeks and three months, and I lose so much blood I couldn't work.

Q Do you know who if anybody among you struck this man (Indicating defendant) in the eye so that he pretty nearly got blind?

A I didn't see that.

MR. WASSERVOGEL: That is objected to as improper.

THE COURT: You are assuming a fact. You may ask whether the man was struck, what the effect of the striking was and so on. The vice of your question is that you are yourself characterizing a blow.

Q Did you see the defendant at that time being stabbed in the eye?

A No sir. I seen him in the hospital.

Q Did you on that night when you were stabbed see that he was bleeding from his eye?

A No sir.

Q You are a friend of that saloon keeper where this trouble happened?

A I was the second time in there.

Q Did you set this saloonkeeper after this fight, after this trouble happened to you?

A No sir.

Q You did not?

A No sir.

Q Did you ever talk to him about this trouble which happened to you that night?

A No sir. After that time?

Q Yes?

A Yes, now in the court, when he was down here, he was talking to me "How is it?" But not the same night.

Q Did you talk to your friends of that night, about what happened on that night when Lackey and the other feller?

A He was over there happened.

Q Did you or did you not?

A No sir.

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Q You didn't talk to Lackey about this fight and you didn't talk to the other fellow about this fight, is that true, after this happened?

A After this happened?

Q Yes?

A Oh, now? On the same day it happened---a few days when I was in the court he asked me how it was and I told him.

Q Who asked you how it was?

A Them witnesses.

Q And you had a talk with your two friends about this case several times, did you not?

A They aint my two friends.

Q How many times did you talk this matter over with your friends?

A So Lackey asked me and I answered him.

Q Well tell me. Now, you understand my question?

A Yes.

Q I ask you again how many times, if you remember, did you talk with your friends about this fight with Ronay?

A I don't know. About---some time and sometime not, a few words, that's all. We don't talk much.

Q You told them what you were going to testify here now?

A No. I didn't tell him that. He didn't know himself what he had to say.

Q Did he tell you what you have to say?

A No sir. I know myself what I have got to say. What is right I can tell.

Q But you say he tells you what he has got to say?

A Every witness knows what he has to say. I don't need to tell him what he has to say, because he was there, and he was running out and hollered "Policeman". Trum and another one was behind me.

Q Did this defendant tell you anything about your stealing some postal cards from him?

A No sir.

Q He didn't talk to you about your postal cards at all, did he?

A No.

Q This is the first time that you hear that anybody mentioned those postal cards, is that true?

A He aint saying at the time nothing about postal cards.

Q What did he say to you when you got out in the hall?

A "You some of a bitch," and stick me in here (Indicating head).

Q And without saying anything he simply said "son of a bitch" and struck your car?

A Yes.

Q Was that the same time he said, at the same time he struck you, and that is true, isn't it?

A Yes sir.

Q That is as true as anything else you have just said?

A That is as true.

Q Did you do anything? Did you hold up your hands?

A Yes, I hold up my hands and then he cut me.

Q And you didn't cut him at all?

A Yes, I have. I got my hands and when he like to stick me again I put up

my hands and he struck me on the head and then it was blue and black before the eyes.

Q You didn't see what Lackey was doing behind your back

A He was about so far from me (Indicating).

Q Did you see what he was doing?

A Yes.

Q What was he doing?

A With his fish tools in an oil cloth.

Q You saw that he was doing that?

A Yes.

Q Did you just testify that he was standing behind you? How could you see that?

A Who was behind me?

Q You know that I am talking about Lackey and you were just talking about Lackey?

A Yes, Lackey was behind me.

Q And you saw what he was doing?

A Well, I see when he dropped the fish tools down on the floor and when I hollered he cut my ear off, and I looked around and seen him drop the fish tools down on the floor.

Q But you don't know what he was doing before you looked around, do you?

A Before he came I didn't look around what he was doing. That was going quick.

Q Was Trum behind your back too, the other feller?

A No, he was out on the street.

Q You said on your examination here to the District Attorney that the saloon keep Leshner told this Ronay to go home?

A Yes sir.

Q Did this saloon keeper tell him to go home because

he is going to get licked; is that right?

A Because he made every one trouble he sent him home.

Q What were the words of the saloon keeper---

DEFENDANT'S COUNSEL: I move to strike that out.

He talked Hungarian.

Q Who talked Hungarian?

A The saloon keep with him.

Q You do not understand Hungarian do you?

A No sir. I know so much he was talking Hungarian.

Q But you are volteering information to us that the saloon keeper told him to go home because he is making trouble with every body?

A Sure, because he pushed him out. That is enough.

Q You didn't hear what the saloon keeper told him?

A He sent him home.

Q How do you know he said "You go home because you are making everybody trouble here"?

A When he pushed him out of the saloon and the door, that is as much as he sends him home.

Q Didn't you a minute ago testify that you heard the saloon keep say to him he should go home because he is making trouble with everybody here?

A The saloon keeper told him.

Q And the saloon keeper and he were talking Hungarian?

A Yes. He talks German too.

Q Were they talking German or Hungarian?

A Well,

what he talk in Hungarian I don't know.

Q Was the saloon keeper talking to him in Hungarian?

A I don't know what he talk in Hungarian. When he talks in German I understand every word.

Q Did the saloon keeper at that time talk to this defendant in Hungarian?

A When he sent him home, yes.

Q He didn't use any German words, did he? A Yes. He says "You don't know about that man, because he was by himself". In Hungarian. He say "I fix him," and "Son of a bitch", and the saloon keeper told him in German "you don't know this man. What you doing; with that man?"

Q And when you testified before that he was talking in Hungarian you lied?

A How is that?

Q Because you say just now the saloon keeper was talking German?

A He talks German and Hungarian.

THE COURT: Now, you must not do that. You tell this witness here that he lied. I can't permit that. I cannot permit you to tell this witness that he lies, I say. It is entirely improper.

DEFENDANT'S COUNSEL: Well, I apologize.

Q Now you went out at two in the morning with your friends after this defendant was told by the saloon keeper to go home, is that true?

A He went out an hour or three quarters of an hour before.

Q And you went out with your friends?

A I went out.

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Q Did you or did you not go out with your friends?

A I aint got any friends. I live there with Franz Lackey. That wasn't my friend.

Q Did you go out with those two men, Lackey and Trum, together?

A I was going out with Franz Lackey.

Q With the two men?

A No sir.

Q Just with Lackey?

A With one man, yes.

Q And the defendant was going out himself?

A He was a longer time out; about half an hour three quarters.

Q He went out himself did he?

A He pushed him out.

Q Was the defendant drunk?

A No sir.

MR. WASSERVOGEL: We are going over the same ground for the third time, your Honor.

THE COURT: Yes. I will sustain the objection.

Q Was the defendant drunk?

A No sir.

Q He was sober, was he?

A How many drinks did he have that night?

A I didn't count. I don't know how much he drank. I see him have a few, that's all. I don't know how much he get.

Q Well you then heard this feller having trouble there that night with Lackey too---he had trouble with lackey?

A I don't know.

Q You don't know?

A No sir, because he talked Hungarian and I can't understand what he has got.

Q Hoe is you only want to know things that you think

are going to help your friends?

A What? I can't understand it.

Q Did you hear this man (The defendant) talking with Lackey at all?

A Yes, I hear him talking.

Q Did Lackey say anything to him?

A He was talking with him.

Q Did you see as though they appeared to be in trouble?

A No sir I didn't see that. I see them talking.

Q You didn't hear that Lackey and this man was quarreling having words with each other, did you?

A Well when he talked he was talking with him, what he was talking I don't know, I didn't understand that.

Q You said the saloon keep said he had to go home because he is having trouble with him.

A Sure.

Q You heard that, did you?

A Yes.

Q Did Lackey have trouble with him?

A That was nothing. He had it with three or four other men, a big trouble.

MR. WASSERVOGEL: I object to this as already gone over, three times.

Q Did Lackey talk at any time in German to him?

A No sir, not that time.

Q You say Lackey can talk German, does he not?

A Sure, he talks German.

Q And all the time while you you heard they were

talking you say you could not understand them?

A Because that is a Hungarian and the other one is a Hungarian and I have been with the German.

Q Didn't you testify just before that he could not speak German?

THE COURT: You heard him say it. It is not necessary to ask him so many times.

Q Were you taken to the Hospital together with the defendant?

A No sir.

Q Did you see him in the hospital?

A Yes sir.

Q Was his head all bandaged up?

A I didn't see that.

Q How many days after the fight did you see him in the hospital?

A How many days after the fight?

Q Yes?

A I didn't see him no more. I seen, the time he sewed me up, that was the cut here, and two cuts here. I don't know how the doctor fixed it.

Q Now you understand my question? If you don't say so. You saw this man (indicating the defendant) in the hospital?

A Yes sir, the first night.

Q How many days after the trouble did you see him in the hospital? Was it the same night?

A The sane night.

Q Now what condition was he in at that time when you saw him that night in the hospital?

MR. WASSERVOGEL: Objected to as already gone over.

Objection sustained. Exception.

Q You say that the first night after the trouble that you saw this defendant and that you did not see that he was bleeding from his eye?

A No, I didn't see that.

Q And that he was not bleeding from his forehead, both sides, you didn't see that?

Objected to. Objection sustained.

THE COURT: It seems to me that you have exhausted this witness. Don't you think so? Do you think there is anything more you want to hear. This was a simply happening.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q You say that after you were struck by this man he ran away?

A Yes.

Q How soon after he ran away did you see him again?

A Then when the policeman was coming.

Q The policeman brought him back to you?

A Another policeman was stopped there.

DEFENDANT'S COUNSEL: I object to this as unfair.

This witness is clever and shrewd enough without the District Attorney helping him to testify.

THE COURT:

Q Don't you think you had better reserve that for your summing up.

Q How soon after you were struck by this man did you see him again?

A About fifteen or twenty minutes.

Q Was the policeman there at that time?

A Yes sir. then the policeman brought him down.

JOHN DURKIN called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live?

A 429 East 69th Street.

Q You are a police officer of the City of New York attached to what precinct?

A 31st.

Q Did you ever see the defendant at the bar?

A Yes sir.

Q When and where?

A On the night of November 21st, about the hour of 3 A. M. in the morning.

Q Where did you see him?

A I seen him on the stoop of 420 East 70th Street.

Q Was the complainant there?

A The complainant was the yes sir.

Q Will you tell the court and Jury in what condition you found the complainant?

A Well I found the complainant at that time sitting on the stoop and he was bleeding from this wound in the head which he received on the head from this defendant, and I asked him---

DEFENDANT'S COUNSEL: I move to strike that out.

THE COURT: Yes. Strike out "Which received on the head from this defendant".

A (Witness continuing) And I asked him who stabbed him or

cut him and he told me that this man here (Indicating Defendant) So I placed him under arrest and telephone for an ambulance and sent the complainant to the hospital. So that is all that I know about the case. I didn't witness the affair at all.

CROSS EXAMINATION BY DEFENDANT'S COUNSEL:

Q Did you see this man (Indicating defendant) at the same time?

A I did, sir.

Q Did you see him bleeding from anywheres?

A Well, he was bleeding from the nose and and there was a cut on the top of his head, but I didn't witness it at that time.

Q Did you see him bleeding from his eye here?

A No sir, I did not.

Q From his left eye?

A Yes, from the left side of the nose.

Q What else did you see?

A After I took him to the station house?

Q What else did you see when you saw him there sitting on the stoop? You just testified you only saw him bleeding from the top of his head. What else did you see?

A I saw him bleeding from the nose, that's all I seen.

Q Did you or did you not see him bleed from his left eye?

A No sir, I did not.

Q Did you or did you not see him bleed from his forehead?

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A No sir.

Q Did you or did you not see him bleed from this side of the head (Indicating left side)?

A No sir, I did not.

Q Did you call the ambulance?

A No, I did not. I had another officer to call the ambulance. I couldn't go away.

Q You held this man (Indicating defendant)?

A Yes sir.

Q Where did you take this man?

A I took him to the station house.

Q And after you had taken him to the station house what did you do with him?

A Well, he was searched there, and afterwards I took him over to the Presbyterian Hospital to have the complainant identify him thoroughly as the man who assaulted him.

Q Did you walk to the Presbyterian Hospital with him?

A Walked with him, yes sir.

Q Did you leave him there in the Presbyterian Hospital?

A Yes. He was kept there. The doctor examined his nose and asked him what happened him and he told him that it was this complainant assaulted him. And he said "Officer, I had better keep this man here also over night."

Q The complainant?

A The defendant. The defendant and complainant were both kept in the hospital.

Q Did this man say any thin to you about being struck by anybody?

A Yes. I asked him what was the cause of the

trouble.

Q Who did he say had struck him?

A Well he didn't say exactly who struck him. He said three men followed him out in the hallway of number 417, which is opposite or across from where I found him on the stoop of 420.

Q You saw those three men afterwards?

A I saw them over there at the time I got there, after the fight was over.

Q And he pointed them out to you as the ones who struck him?

A He pointed out the complainant and those two witnesses over here.

Q No complaint was ever made by you as peace officer that this man charged them, that they struck him?

A No sir.

Q You are acquainted with the saloon keeper in 70th Street, aren't you?

A Well, no, not very well. I know him.

Q Now you positively swear that when you walked that man over to the Presbyterian Hospital that you saw no other injuries, you couldn't see any other injuries except that he was bleeding from his nose?

A Bleeding from the nose and the top of his head, that's all the injuries that I noticed at that time.

Q And his injuries to his left eye you did not see at all?

A No sir, I did not.

Q Did you look at him?

A Well, not thoroughly, I didn't.

Q Oh, you didn't look at him?

A No sir.

Q You didn't have a chance to see him at all, did you? At any time?

A I did, yes,---a chance to see him on the way to the station house and in the hospital and also inside in the station house.

Q And you could not see the injuries to his left eye, could you at that time?

A No sir.

Q This was about three months ago, wasn't it, in November?

A Well, the blood was coming from the top of his head and I couldn't very well tell whether there was anything the matter with his eye. I couldn't tell whether his eye was injured or not, with the blood that was coming from the wound on the top of his head.

Q And you say that the complainant told you that this man struck him?

A The complainant told me that this is the man that assaulted him.

Q And that is all you know about this whole thing?

A That is all I know about the case.

Q Did you find a knife with which---

A No sir, I did not.

Q This man (The defendant) told you that he did not injure himself, that he was struck by these people, and why didn't you make a charge against them in the police court for assault, a counter charge?

A Well, the complainant was sent to the hospital. He didn't say the other man assaulted him. I took those other two men as witnesses to that affair between him and the defendant.

Q You were in the police court when this man was arraigned?

A Yes sir, I arraigned him there.

Q And the complainant was there in the police court?

A Yes sir.

Q And his witnesses?

A No, the witnesses were not there in the police court.

Q Well this man Lackey, he was in the police court, was he not?

A No sir. He didn't testify in the police court.

Q Didn't you see him in the police court?

A No sir I did not.

Q You say this man did not say anything as to which man struck him?

A The complainant told me---

Q I am talking about the defendant? Did he say to you which of the men struck him?

A Yes. this man (Indicating the complainant) here, he said.

Q Still notwithstanding that you did not make any complaint?

A Well, he was asked in the police court---

Q Well, did you or did you not?

A No, I did not.

Q But you did make a complaint against the defendant, stating that the complainant said that this man struck him?

A Yes sir.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q You say he was asked in the police court what?

A If

he wanted to make a countercharge against this man.

Q What did he say?

A He said no.

RE-CROSS EXAMINATION BY DEFENDANT'S COUNSEL:

Q What was that?

A He was asked by the police clerk in the police court and by me whether he wanted to make a countercharge against the complainant and he said no sir.

Q Were you present when the clerk asked him that question?

A I was, sir.

Q And you say that he said what?

THE COURT: Do not repeat and repeat. If you have anything knew question the witness concerning it.

Q What language were they talking in?

A English language.

Q And the clerk of the court talked to this man in English and he in English answered---if you please repeat that?

THE COURT: No no. He said it once. We do not want to repeat it. The Jury heard it. Have you anything knew.

Q Did you talk to this defendant?

A Where.

Q At the time you made the arrest?

MR. WASSERVOGEL: That is objected to.

THE COURT: Objection sustained. It has already been answered.

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DEFENDANT'S COUNSEL: Exception. I want to test this officer's veracity.

THE COURT: I have sustained the objection.

(The Court now declares a recess to Wednesday, January 19, 1910 at 11 A. M. first duly admonishing the Jury as usual)

New York January 19, 1910.

TRIAL RESUMED.

LOUIS STEPHEN LESSO, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live?

A 418 East 70th Street.

Q Your business is what?

A Saloon keeper.

Q Where is your saloon?

A Same place.

Q What have you got there, a saloon and what else?

A Saloon and restaurant.

Q Billiard Parlor too?

A Well, I have got a pool table, yes sir.

Q On the 21st day of November 1909 did you see this defendant at your place of business?

A Yes sir. He was since evening until 12 o'clock.

Q Did you have any talk with him at all?

A Well, I didn't have much talk with him and I had the business to attend to until 12 o'clock.

Q At 12 o'clock did you have a talk with him?

A Yes, about 12 o'clock I closed up and locked the doors, and I was to go to a fishing party, three fellers of mine, we were to go fishing, and he remind the same, and then he begins

to get unruly, and I order him out and also put him out.

Q You put him out?

A Yes sir.

Q You didn't strike him, did you?

A No, no. I just told him to go home it would be all right.

CROSS EXAMINATION BY DEFENDANT'S COUNSEL:

Q What time of the night did you put him out?

A It must have been twenty minutes or do after closing time.

Q When did you close?

A I closed at 12 o'clock.

Q And then this man walked out at 12 o'clock out of your place?

A He didn't walk out at 12 o'clock. After I put him out, twenty minutes after.

Q At twenty minutes after 12 he walked out of your place?

A Yes sir. I told him to go home.

Q Are you sure the time was 20 minutes after 12?

A I aint sure exactly, because I have to take up my business and have everything in shape, lock the doors and take the register ---it might have been twenty minutes, it might have been thirty minutes. I aint particular as to the time.

Q Was it more than thirty minutes after 12?

A I couldnt say exactly.

Q Will you say it was before one o'clock in the morning

A Yes sir.

Q Now besides this man in your place at that time

there was a party by the name of Lackey?

A Yes.

Q And a fellow named Trum?

A Yes sir.

Q They were all there?

A Yes sir.

Q And besides those three people was there anybody else in your place when you closed up.?

A No sir.

Q And you say Lackey and this other man walked out of your place at the time when you closed up, which was positively before one o'clock---that is true?

A No. These people remained longer.

Q Did Lackey and the other man walk out of your place at the time you closed up your store which was before one o'clock

A No sir.

Q What did they do?

A I was talking to them. We were to go fishing between four and five o'clock.

Q So that they stayed with you after you closed up your place?

A Sure they did.

Q And about what time did they walk out of our place?

A I don't know exactly the time, but I know it was at least three quarters of an hour after the defendant went out.

Q This was on November 21st?

A Yes.

Q And where were you to go to fish?

A To Canarsie. I was only once fishing in my life, at City Island.

Q And this was the first time in your life you were to go fishing?

A No. This was the second time I was to go out.

Q When were you to come back from your fishing?

A Oh, I couldn't answer that. I might drown over there.

Q You were in that place of business all day, weren't you? You keep your place open all day, don't you?

A Sure; twenty hours, every day.

Q And it was about three o'clock in the morning that you were to go fishing with your friends Lackey, and Trum?

A Yes.

Q You are supposed to close up your place before three o'clock aren't you?

A I did close up at 12 o'clock.

Q You say you told this man about one o'clock he should go home?

A I told him far before that to go home, right when I told him to go home.

Q Did you tell him why he should go home?

A No. I found him unruly.

Q What did you mean by that?

A Well, he was talking. It didn't apply to the company We were talking about fishing and he interrupted us all the time.

Q In what respect interrupting you?

A Well, he had some grudge against that young fellow.

Q Oh, now you are talking?

A Yes.

Q What did he say to this young fellow?

A Well, he didn't say nothing directly to the young fellow. He was talking to Mr. Lackey. He says "You shouldn't associate with a fellow that him" and I walked up to him and I say "Now, Mr. Ronay, am I only seen the young fellow the second

time in my place. And you only seen him the second time I don't see where you come in to say anything like that about him." At the moment I thought the young feller understands Hungarian and I says "If he understands what you say there might be trouble, so you had better go home".

Q Did you hear this young feller when he got out in the hall? You saw him when he walked out in the hall with Lackey and Trum?

A I closed the door behind them, yes. I didn't see them. They went out.

Q Did you hear any noise?

A No, not until the police rapped on the door.

Q You didn't hear a thing when you closed up your store?

A No sir. I was sleeping already then.

Q Didn't you a moment ago say you were going fishing that morning.

A I couldn't arrange it for the next day for myself; I couldn't go. That was the second Sunday I was to go out.

Q So you had these people there and you were to go fishing with them and instead of going fishing you went to sleep?

A Yes, I went to sleep, yes, which I have an explanation as to that.

Q Well, give us your explanation?

A We were to go fishing and I asked them what time I could get back, as I was to attend a certain meeting in a society in the afternoon---I was on a committee---and they told me I can't

get back until about four or five o'clock. So I thought they had to pick up a different place when I can get back a little earlier here, so I can go, and they went by themselves and I went and laid down and went to sleep.

Q That is your explanation?

A Yes.

Q And all at once you went to sleep?

A Yes.

Q Didn't you ask them when you would return if you should go fishing?

A No.

Q Only that night---it was the first night you talked with them about going fishing, is that true?

A Yes sir, that is true.

Q These people were your customers before, Lackey and Trum?

A Yes sir.

Q They hang out in your place?

A No, they don't.

Q They were last night in that place?

A That is nothing. They just come in. They aint hanging out. They come once a week.

Q Were they in your place last night?

A Yes, they were.

Q And this fellow here, this defendant, how long do you know him?

A Oh, I know him pretty nearly three years---the third year anyhow, since I am in the business there.

Q You say when the police woke you up you walked out in the street, did you?

A No, I didn't walk out in the

street, because I hardly had anything but my pants on and undershirt.

Q Where did you come down from?

A When they were rapping hard on the door I didn't know what it was. I opened the door and come out and seen what was the trouble, and then they wanted to know whether that fight started in the house and I said "No," and opened the door.

Q Did you see this man, the defendant?

A Not afterwards no. They were all gone by the time---

Q Whom did you see when you came down?

A I seen the three plain clothes men and the three policement, I think.

Q And did you see any of these fellows?

A No, I didn't see none of them.

Q You didn't see Lackey?

A No, I didn't see nobody. They were all in the hospital by the time I got out, or in the police station, I don't know which.

Q Did you say to this man that he should go home because those people are going to do him up that night?

A I didn't say one word. I told him he was talking about the feller, he didn't know him.

Q Did you or did you not say that?

A No, I didn't say that.

Q You didn't say to him "If you don't go home tonight you will be a dead man", did you?

A I don't know where I could get that.

BY THE COURT:

Q You either did or you did not?

A No sir.

BY DEFENDANT'S COUNSEL:

Q Did you kick this fellow out (Indicating defendant)

A No, I did not. I never kicked anybody out.

Q You didn't take hold of him and shove him out?

A I told him to go home, if he don't go home I will throw him out.

Q But you didn't throw him out?

A Just told him to go home, and he seen I meant business and he went out.

Q You know this German fellow Kafka who testified here yesterday, who said he was stabbed? Do you know the complainant?

A I seen him the second time

Q You know what he testified here yesterday, don't you?

A No, I don't.

Q He was in your place last night, was he not?

A He come over for Mr. Lackey, yes.

Q Did he tell you what he has testified?

A No, and I didn't want to know nothing about the case and I didn't expect to be a witness for the case either.

Q Now you say that you closed up at 12 o'clock?

A Yes sir I did.

Q And these people, Lackey, Trum---

A They were sitting there until I can make arrangements to go out

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with them.

Q They were in the saloon?

A Yes.

Q They were in the saloon waiting until 3 o'clock until you could get finished?

A No, it was not three.

THE COURT: You are getting this time and time after time. Now, the res gestae of course is always competent, relevant and material to the issue, but you can spin it out with a minutiae of detail which has no purpose other than to consume time. Now I think you have got all the story of this witness, haven't you? If you have don't ask questions merely for the sake of getting some little fact which hasn't any bearing. You know there are certain facts which constitute crime, and there are certain facts which constitute a defense to crime. Now it is the object of a shrewd lawyer to get the facts which constitute such crime, or the defense thereto, before the Jury and disregard all that hasn't any possible bearing.

DEFENDANT'S COUNSEL: I take your Honor's suggestion, but your Honor appreciates I want to show the credibility of all these witnesses.

THE COURT: Well, I suppose that is so, and we have to get in a great many outside facts, but we don't have to repeat these things.

Q You say there is a hallway next to your saloon, is

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there?

Q After twelve o'clock is turned off there, is it not?

A No sir.

Q When do you turn off the gas in the railway?

A Never turned out. There is one light burning there.

Q Where is that light, how far from the street?

A From the street it is about fifteen or eighteen feet.

Q What kind of a light is it?

A A usual gas---an ordinary gas jet.

Q And you can see there everything?

A Oh you can see plain, yes.

Q You say you didn't hear any scream or anything?

A No, I didn't hear nothing.

FRANZ LACKEY, called as a witness on behalf of the people, being first duly sworn, testifies as follows:

(Through official Interpreter Rosenthal)

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live?

A 435 East 76th Street.

Q What is your business?

A Painter.

Q Do you know this defendant? Did you ever see him before?

A I have seen him before.

Q On the night of November 21, 1909 were you in the saloon of one Lesso in 70th Street?

A Yes.

Q 420 East 70th Street is that the address?

A It

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is 70th Street. I don't know the number.

Q Did you see this defendant there?

A Yes.

Q Did you have any conversation with him there?

A A few words, yes.

Q What was said?

A This man (Indicating defendant) said some bad words about Kafka.

Q What did he say?

A He called him a swindler and different other words.

Q Then what was said.

A He remained sitting in the saloon and then he had some trouble with some other people.

DEFENDANT'S COUNSEL: I move to strike that out.

THE COURT: Strike it out.

Q Did you hear him have any conversation with Mr. Lesso, the proprietor of that saloon?

A Yes. He said that he would throw him out and he did not go.

Q And then?

A He told him twice he should go out and he didn't go out and then he threw him out.

Q How long after that did you see this defendant if at all?

A About three quarters of an hour.

Q With whom were you at that time?

A I, Trum and Kafka.

Q Kafka is the complainant here is he?

A Yes. He was a stabbed.

Q Where were you three when you saw this defendant?

A We were in the saloon.

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Q No, when you came out of the saloon?

A In the hall. How he was stabbed him.

Q Who was stabbing him?

A Ronay stabbed Lafka.

Q Did you see with what he stabbed him?

A Yes.

Q With what?

A A knife.

Q What kind of a knife was it do you remember?

A It was a knife as long as that (Witness indicating about six or seven inches).

Q Was there any conversation between Ronay and Kafka before this striking, as you say?

A This I didn't see.

Q Well, did you hear any conversation?

A No.

Q Then you say as they came out you saw this defendant strike Kafka with this knife. Did you see where he struck him, what part of his body?

A Yes.

Q Just describe to the jury just where he struck him?

A Once he stabbed him (Indicating right side of the head, near the temple) up to the ear, and then he stab him through the ear and then behind the ear and once right on the top of the head and once the right hand near the wrist. Then he stabbed him in the back but it didn't go through only the coat, and then he coat his coat the right arm from the elbow to the wrist.

Q What did you do?

A Didn't do anything.

Q Did this man run away?

A After he stabbed him I held Kafka, because Kafka was about falling down.

Q What did the defendant do?

A Then he ran away.

Q How long after he ran away did you see him again?

A I ran after him and I caught hold of his coat. He didn't want to let himself be held. And I asked him "Did they get your address where you lived?" And he said "It is none of your business". Then he tore himself away and he fell into the railing.

Q Where was this railing?

A At his house.

Q And then what happened if anything?

A Then he went in and in the meantime the police arrived.

Q Went in where?

A In his home, in his house.

Q Where was his home?

A On the ground floor, on the right side where one goes in.

Q And then you say the police came and took him in?

A The police asked me where I lived and I indicated where he lived. Then together with the police I went in and they asked me whether this was man, pointing to the defendant, and I said yes. The police took him and led him away.

Q Did Kafka strike this man before he stabbed him?

A No.

Q Did you strike him?

A No.

Q Did your other companion Trum strike him?

A No. nobody beat him. We were playing pool and he was making trouble.

Q Who was?

A The defendant.

DEFENDANT'S COUNSEL: I move to strike that out as not responsive.

THE COURT: Strike it out.

CROSS EXAMINATION BY DEFENDANT'S COUNSEL:

Q Did you see Kafka last night?

A Yes, he boards with me.

Q Did you see him in the saloon last night?

A Yes. I was there in the saloon first and he went to his office and afterwards he came for me.

Q Do you know what he testified here yesterday?

A No we went out.

Q You talked to Kafka last night in the saloon, did you not, about this case?

A No.

Q Not a word was said by you to Kafka of what he said here yesterday?

A I wouldn't talk about court. We talked about other things.

Q Now is Kafka your brother-in-law?

A No.

Q Did you ever say so, that he is your brother-in-law?

A No.

Q How long do you know this man Ronay?

A Perhaps about six months.

(The Court now declares a recess until 2 P.M. first duly admonishing the Jury as usual)

After Recess.

TRIAL RESUMED.

FRANZ LACKEY resumes the stand and further testifies.

CROSS EXAMINATION BY DEFENDANT'S COUNSEL: (Continued)

Q Now on the 21st day of November were you working?

A Yes sir.

Q Where were you working?

A For Messenger.

Q What were your hours of work there?

A The whole day I worked.

Q Were you employed there by the week?

A Yes.

Q You say that on that night, on the 21st day of November you were going out fishing with Lasso, is that true?

A Yes.

Q Well when did you talk to him about going fishing?

A We spoke it night that we were going fishing Sunday.

Q Then you were there to go fishing on that night when the trouble happened, when your friend was cut.

A We could not go because the trouble took place.

Q So after the trouble happened then you first made up your kinds you will not go fishing, is that true?

A We couldn't go fishing because we were in the court and hospital; it was too late.

Q Well up to the time when the trouble happened you had all of your fishing things, all of your books

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and every thing ready to go fishing, is that true?

A Yes.

Q And was the saloon keeper also to go fishing with you too?

A Yes.

Q Well, did the saloon keeper Lesso go out with you when he closed up as though he would go fishing with you?

A No.

Q Well why didn't he go out with you when you had arrangements with him to go out fishing? Why did he go upstairs and sleep?

A When the trouble took place at half past two then he locked the place and he went up-stairs to sleep.

Q But will you answer my question, why didn't Lesso go with you fishing when you had arrangements with him to go fishing that night, before the trouble happened?

MR. WASSERVOGEL: Objected to, if the Court pleases, because he assumes a state of facts not in evidence. There is no evidence here that they were to go fishing that night.

THE COURT: There is not much importance to the question whether they were going fishing that night? It is only an incidental matter. I will sustain the objection.

DEFENDANT'S COUNSEL: Exception.

Q Now since when is this Kafka boarding with you?

A Saturday night this thing happened and Sunday when he came

from the hospital he had no money and then he came to me.

Q Now just describe to the Jury again how this prisoner was cutting Kafka?

A I and Trum were playing pool in a saloon---

DEFENDANT'S COUNSEL: I move to strike that out as not responsive. I asked the witness to describe how this prisoner was cutting Kafka, the complaining witness, in that hallway---where, in what part of his body.

A I was as asked that before. I needn't tell that ten times. I said that once.

DEFENDANT'S COUNSEL: Will your Honor direct the witness to answer.

THE COURT: If he said it once it is sufficient.

DEFENDANT'S COUNSEL: Exception. I want him to describe again how this cutting occurred. Exception.

Q Now you say that you and Trum were present in the hallway when this prisoner was cutting and stabbing this Kafka, is that right?

A I was present.

Q Was Trum present?

A Trum saw how he was stabbing and he run for the police.

Q Now you didn't touch this defendant at the time, neither did Trum, is that true?

A No.

Q You simply stood by and saw how Kafka was being stabbed and so did Trum, is that true?

A Trum was not

standing there. He ran and telephoned for the police.

Q Well, what did Trum telephone for the police for if this cutting did not take place yet?

A He saw that there was some trouble.

Q Well, what did Trum see? What kind of trouble did he see.

MR. WASSERVOGEL: Objected to---what trouble did another man see.

Objection sustained Exception.

Q How many minutes did this take while this prisoner was stabbing this Kafka?

A It may have lasted about three or four minutes.

Q And you were standing in the back of Kafka? You were standing behind Kafka, is that true?

A Just about seven yards away.

Q And where was Trum standing?

A He was standing outside.

Q Then Trum did not see while this man was cutting your friend, did he?

A This I don't know, whether he saw it. You must ask him.

Q But you are sure that Trum was standing outside while this cutting was being done, are you?

A Yes, he was standing next to the vestibule.

Q Outside of the hallway?

A Yes.

Q Was it very light in that hallway or how was it?

Describe it as to the light? Was it dark or light?

A It was pretty light so that one could see the other.

Q Could you read a newspaper? Could you read anything in the hall?

A When one is a good reader he could read.

Q Now after this cutting you say that this prisoner here ran out of the hallway?

A Yes.

Q And that you went over to him and asked him where his residence was?

A Yes.

Q Well, he lives right across the street from the saloon, did he not?

A Yes.

Q And you knew him for six months previous to that time did you not?

A Yes.

Q You say in that transaction that the saloon keeper took hold of him and threw him out of the saloon, is that true.

A He didn't throw him out but he pushed him out.

Q Did he take hold? Just describe on what of his body did the saloon keeper take hold of him?

A When he pushed him out he touched his back and pushed him out and said "Go out, get out."

Q What time of the morning was this when he pushed him out like this?

A This was after 12.

Q And after 12 o'clock till 2 o'clock in the morning you were all alone in the saloon with your friends?

A Yes, we were talking about fishing, where we should go fishing.

Q You are a Hungarian, aren't you?

A I was born in

Hungary.

Q You are not a Hungarian?

A No.

Q Now you say that this man the defendant here, said something to Kafka. Now what were the words? Did you hear the whole conversation between this defendant and Kafka?

A This I don't know.

Q Didn't you on direct examination say that this man said some bad words to Kafka?

A Then he spoke to me. He told me that "I have to fix somebody tonight and blood will have to run in 70th Street".

Q But then he did not talk to Kafka at all? The Defendant?

A No. Went there and sat down.

Q You told Kafka what the defendant told you, is that true?

A No.

Q Then Kafka didn't know at all that the defendant was speaking about him that night, did he?

A He didn't know.

Q And Kafka didn't say anything about it to the defendant, did he?

A No.

Q And Kafka didn't have any trouble with him at all, that night, did he?

A No, I didn't see.

Q And you say when you came out in the hallway you were accompanied by Kafka and this other man Trum?

MR. WASSERVOGEL: I object to that as going over it time and time again.

THE COURT: Objection sustained. Do not repeat.

I am leaving you to conduct your own examination, trying not to interfere, but we are taking time unnecessarily by these repetitions.

Q At the time that this defendant stabbed Kafka you didn't hear anything said between these two men, did you?

A I only heard Ronay saying "Son of a bitch."

Q Why did you testify here on your direct examination that you did not hear one word passed between this defendant and Kafka.

MR. WASSERVOGEL: He didn't say that at all.

THE COURT: Let the witness testify for himself.

I cannot suggest anything to him.

A When we went out of the saloon after Ronay jumps up to him and says "Son of a bitch", and stabbed him. I had my fishing appliances with me and I was standing behind Kafka about seven feet away and I dropped it to the floor.

DEFENDANT'S COUNSEL: Now I move to strike that all out on the ground it is not responsive.

THE COURT: I will let it stand for what it is worth.

Q You say that after that you saw this defendant in front of his stoop where he lived, across the street?

A This I did not say. I caught him by the coat and asked him where he lived and he said "Don't ask me where I live or else you will get something too".

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Q And did you see when the policeman came and arrested him?

A There were two policemen. I don't know which one it was

Q Did you see the defendant at the time he was arrested?

A Yes.

Q Was he at that time bleeding from his nose?

A No.

Q Was he bleeding from his left eye?

A He didn't bleed at all.

Q Did you observe whether he was bleeding from his forehead or from his head?

A Nothing was to be seen.

Q Nothing at all was the matter with him? You didn't see any blood on his face?

A No.

Q And you are sure that besides you and Trum and this complaining witness there was nobody in that place?

A Only Ronay, we four and the saloon keeper.

Q And you didn't see anybody touch or hit or stab this defendant, is that right?

A No.

Q Didn't you stab this defendant?

A No.

Q And you did not stab this Kafka either, did you?

A No.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q How far was Trum from you at the time of the stabbing/

DEFENDANT'S COUNSEL: Objected to on the ground that it is not re-direct examination, and has already

been testified to.

THE COURT: He may answer.

DEFENDANT'S COUNSEL: Exception.

A I can't tell it exactly. Trum was standing outside.

Q Was the door open so that he could see if he wanted to?

A The door was not open but he could look through the window.

RE-CROSS EXAMINATION BY DEFENDANT'S COUNSEL:

Q Did you get some postal cards from Kafka, some picture postal cards that night?

A Yes, four.

Q Did you pay him anything for it?

A No. He gave me them as a present.

JOHN TRUM called as a witness on behalf of the people being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live?

A 511 East 78th Street.

Q What is your business?

A Painter.

Q Where are you employed?

A Stromeyer, #49th Street. Through this affair I lost my job.

Q Do you know Kafka the complaining witness?

A Yes.

Q Do you also know this defendant Ronay?

A Yes.

Q Were you in the saloon of Lesso is 420 East 70th Street on the 21st of November 1909?

A Yes.

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Q Did you see this defendant there?

A Yes.

Q Did you have any talk with him?

A Nothing.

Q What time was this when you first saw him?

A Nine o'clock when I came to that place.

Q How long did you remain there?

A Until 12 o'clock, until the saloon keeper put him out.

Q Was there any conversation between the saloon keeper and this man at the time he put him out, you say?

A The defendant had an argument there.

Q What was it?

A First he had some argument with a young man there and he called him names and it was about money.

Q And then what happened?

A And the defendant said that if he should happen to meet him alone he will give him something for that.

Q Then you say this man left the place?

A When the saloon keeper put him out then he was standing outside in the street.

Q Did you see this man after that the same night?

A When I came out I saw him, he was standing outside at the door.

Q Who was with you at that time?

A I went out first and after me came the man who was injured and then the other man came.

Q And was Ronay there at that time?

A He was standing outside.

Q What did you see him do if anything?

A When he saw me come out he jumped towards the door, and when he saw that I was not the man whom he was waiting for and the other man was behind me about five or six paces, then he jumped in the hall and I saw that he took out a knife from the pocket and that he stabbed the complainant.

Q Where did he stab him?

A In the head.

Q Did he stab him any other place on the body?

A I did not see that. I only saw that one stab and then I was hollering for the police and run out in the street.

Q Did you get any police officer?

A Yes. When I was yelling for the police no one came right away. Then I ran to First Avenue and I call for the police there.

Q Well, you got a policeman and you brought him back.

A I didn't get any one at first Avenue. I then went into a place and I asked a man to telephone over there for the police and for an ambulance.

Q Did you finally get a police officer when I came back then a policeman who is here was there already.

Q Did you see the complaining witness at that time?

A Yes, he was lying on the stoop.

Q What was his condition, describe it?

Objected to.

A He was full of blood.

Q And did you go to the hospital with him?

A The

policeman asked me and I told him and he told me I should come along as a witness.

Q Did you strike this man, the defendant.

A No I didn't even touch him with the finger.

Q Did Kafka strike him?

A As far as I have seen, no.

Q Did you see anybody strike him?

A No.

CROSS EXAMINATION BY DEFENDANT'S COUNSEL:

Q Did you see blood running on his face?

A No.

Q There was no blood at all on his body?

A No, I didn't see.

Q You didn't see blood running out from his eye or from his forehead?

A I didn't see a drop.

Q Or from his nose?

A No, not a drop.

Q You say that this defendant told Kafka in the saloon that he would fix him for that?

A Yes, he said it.

Q In what language did he say that, German, English or Hungarian.

A In Hungarian.

Q Said it to Kafka in Hungarian?

A Yes.

Q You say that you were working on that 21st of November as a painter?

A Yes.

Q And were you to work on the next day, on the 22nd day of November too?

A That was Sunday

Q Were you to go out fishing also on that night with Lasso?

A Yes.

Q When did you make up your mind that you would not go fishing?

A Before this happened.

Q You decided that you would not go fishing?

A Before this trouble happened, because Lasso says he wants to be back by noon.

Q So it was not on account of this trouble that you did not go fishing, is that right?

A No no.

Q So did you see the defendant run after the stabbing?

A No.

Q What did the defendant do?

A I saw how he was stabbing.

Q Did you go towards the help of your friend at the time that you saw that he was being stabbed?

A No, I was only yelling for the police.

Q You didn't go near him trying to help him, did you?

A No.

Q Did you show a dollar bill to this prisoner in the saloon and ask him whether he had money? Did you take out a dollar from your pocket and show it to him?

A No.

Q You are sure that you did not ask him whether he had any money that night are you?

A Why should I ask him? I don't know him.

Q Was that the first night you saw him?

A Yes.

Q How long have you known Kafka before that night?

A The same night as I saw this defendant for the first time.

Q Did you ever work together with this man (Indicating defendant) by Dill; did you work together with him for a man named Dill?

A I was working, for Dill but I don't know this man.

Q You never worked together with him for two days on the same place, did you?

A I don't know about it. I was working together with several people; sometimes ten or twelve people together, but I don't know this man.

Q Did you after that trouble go to this man's house where he lives across the street together with Lackey?

A No, I wasn't. I don't know where he is living.

Q Did you see how Lesso took hold of him and pushed him out of the saloon?

A This I didn't see. He didn't push him out at all. He only told him twice that if he should not behave as a gentleman then he would be pushed out.

Q He didn't put his hands on him did he?

A Not that I have seen it, because I was playing pool at that time.

Q This man was talking in Hungarian all the time?

A Yes.

MR. WASSERVOGEL: People rest.

DEFENDANT'S COUNSEL: I ask your Honor to take away from the consideration of the Jury the indictment in first degree, because there is not the slightest evidence to show any intent on the part of the defendant to make out the crime in the first degree, of assault.

THE COURT: I will deny your motion at this time.

DEFENDANT'S COUNSEL: Exception.

Defendant's counsel now opens to the Jury on behalf of the defendant.

ROBERT S. PRESTON M. D. called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY DEFENDANT'S COUNSEL:

Q Where do you live?

A Bellevue Hospital.

Q Are you a duly licensed physician and surgeon?

A Not in this State. I am a Bellevue Hospital interne.

Q What are your duties?

THE COURT: It means simply that he is a student there, does it not, Doctor.

THE WITNESS: Yes sir---physician in charge.

THE COURT: But that you are a student studying the practice of your profession in the Hospital.

THE WITNESS: Yes sir.

BY DEFENDANT'S COUNSEL:

Q Well, did you look up the records of your hospital appertaining to the case of Itsvone Ronay?

A Yes sir.

BY THE COURT:

Q Do you remember the man?

A I remember him, yes

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sir.

Q Was your memory refreshed by the records?

A Yes sir.

BY THE DEFENDANT'S COUNSEL:

Q You were not the surgeon who had charge of this man?

A No sir. I was not.

DEFENDANT'S COUNSEL: I want to show why we could not subpoena him. He is in Jersey.

BY THE COURT:

Q Do you know what Doctor attended this man?

A Yes sir, Dr. Ford.

Q Where is he?

A His service was up the first of January.

Q And he left?

A Yes sir.

Q And is not within the State?

A Yes sir.

Q You saw this defendant when he was brought there, did you?

A Yes, sir, shortly afterwards.

Q What did you observe as to his condition?

A Well I observed he had contusions and abrasion on his face.

Q Tell us in common parlance what that meant.

A He had bruises and abrasions on his face, and the diagnosis according to the record---"A suspected fracture of the skull".

BY DEFENDANT'S COUNSEL:

Q Did the diagnosis also show injuries to his eye?

A Bruises of the eye, yes sir.

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

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A From November 21st. to December 11th.

Q And does the diagnosis from the books show what kind of operation, if any, there was performed on him?

MR. WASSERVOGEL: Objected to.

BY THE COURT:

Q Do you know what operation was performed on him?

A No sir, I do not.

THE COURT: He cannot testify, because he does not know.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You are not a practicing physician in this State, are you?

THE COURT: He is an interne in the hospital, Mr. District Attorney. We know just what that means.

JACOB SCHOEM, is now duly sworn to act as Interpreter.

ISTVONI RONAY, the defendant herein, called in his own behalf, being first duly, sworn, testifies as follows:

(Through Interpreter Schoem)

DIRECT EXAMINATION BY DEFENDANT'S COUNSEL:

What is our business?

A Painter.

Q When did you come to this country?

A 12th of October was a year when we got here---two years.

Q For whom did you work since you are in this country, what firm?

A I worked for a gentleman by the name of Mr. Brenner on Second Avenue, in the paint business.

Q How long?

A One year.

Q And then whom did you work for?

THE COURT: Well now that is not proper.

A Well I worked in several other places after I lost my job and times were pretty dull.

THE COURT: You can show good character by good character witnesses, if you wish, but not by this man in this way.

Q On the 21st day of November last were you in a saloon of this man by the name of Lesso?

A I was there.

Q When did you go there, what time of the night?

A In the evening, at 8 o'clock.

Q Who else was there?

A In the evening when I went there there was a lot of people there. The saloon was full.

Q How long did you stay in the saloon?

A Till 3 o'clock in the morning.

Q Did you have a talk with Lesso the saloon keeper, on that night, and if so what did he say to you and what did you say to him?

A In the whole evening I had no conversation with Lesso only towards morning I have warned him not

to associate with that German fellow that he stole some kind of a picture.

Q I am speaking about the saloon keeper, not Lesso?

A I had no conversation with him till towards morning.

Q Did the saloon keeper say anything to you before you went home?

A He told me I should go home as quick as I came.

Q And who was there at that time around three o'clock in the morning besides you and the saloon keeper?

A Franz Lackey, Trum and some Austrian feller whom I don't know his name.

Q The complaining witness in this case?

A Yes sir. Can you talk any other language besides Hungarian?

A I speak a little German but not clear enough to make myself understood.

Q What transaction if any did you have with Kafka the complaining witness, on that night?

A I had absolutely nothing to do with him that evening.

Q Now just tell us in your own words after you went out what happened to you---what happened?

A THE INTERPRETER) When he went out he spoke to Trum and he told Trum he should have no dealings or no associations with that other feller, and he took out a dollar from his pocket and asked him whether he had money and offered him money.

Q Who showed him the collar bill?

A Trum. He pulled

out the dollar and showed him the dollar and asked him whether he had money.

Q Well go ahead, proceed?

A He asked him that he had money but he don't show his money in a saloon.

Q And what happened then?

A Then Lesso the saloon keeper, as I explained, came to him and told him he should go home as quick as he came, he should not wait not time but he should go home.

Q Then did you go outside?

A Trum left the saloon with him together, the both went out together?

Q Where did you go from the saloon?

A I only went to the door, to the street door, because Trum kept me back with some conversation.

Q After you had this conversation with Trum what happened

A Lackey and that Austrian fellow followed me and he called me right back, he made an intent to go away and he called me right back.

Q Who is "He"?

A Lackey called the defendant back.

Q You say then that Lackey called you back into the hallway? What did he say to you when he called you back into the hallway?

A He said to me I should not say to anybody that Austrian fellow stole the picture because it is his brother-in-law.

Q And now just tell us what happened when you got into that hallway, in as few words as you can?

A When he called me back to the hall this Lackey spoke something, said

something in German to this Austrian and this Austrian went for me and hit me one in the eye.

Q Where did he hit you---in the left eye there?

A Yes sir, in the left eye.

Q After he hit you in the left eye what next happened?

A Lackey stabbed me in the same minute on this side (Indicating right side of the head)

Q Will you show the Jury that part on your head?

(Witness exhibits head to Jury)

Q Now just proceed. After Lackey stabbed you on that side what did next happen?

A They have turned out the light in the hall and I fell on my knees. I crawled on my feet and on my legs. As I crawled in the hall that way and when I neared the door one said "You Frank," you Franz" "You stabbed me?"

Q Who said that?

A That Austrian feller said that to Lackey.

Q When you say Austrian feller, do you mean Kafka, the complaining witness?

A The complaining witness is the Austrian.

Q Who did he say that to? Kafka?

A He said to Lackey.

Q After you were crawling as you state on that hallway what next.

A Lackey said I made a mistake. I didn't mean to stab you.

Q Well what happened to you then?

A I opened the door and I made an attempt to get out and they ran after me and they beat me down and stabbed me on the other side.

Q And where was that? Was that on the sidewalk?

A On the sidewalk.

Q In the street?

A In the street. On there side of the saloon.

Q And is that near to your residence?

A In the front of the house where I live, on the sidewalk.

Q Just go ahead and say what happened after that next?

A I collapsed and they kicked me out until I fell in a faint.

Q Did you manage to crawl into your rooms where you live?

A I tried. Some woman assisted me and wiped the blood off my face.

MR. WASSERVOGEL: I ask to strike that out.

THE COURT: Motion granted.

Q Did Lackey and the other feller Trum come after you into the room?

A He followed me and he wanted to knife me there yet, after he followed me into the room.

Q Who was in the room at that time when they wanted to knife you in the room too?

A The landlady or the lady of the house.

Q Now do you know whether or not anybody else saw while these two men were kicking you on the street?

A They told me after.

MR. WASSERVOGEL: Objected to as to what some one else told him.

THE COURT: Objection sustained.

Q Well now what happened then when these two men got into your room?

A As soon as they come in the police came in and they took me away from there.

Q Where did they take you?

A To the police station.

Q After you got to the police station what happened to you then?

A I was entirely unconscious and don't know what happened after.

Q In what condition was your face?

A I couldn't speak a word because my mouth was swollen entirely.

Q How about your eye? Could you see?

A I couldn't see a bit on my eye.

Q Was your eye swollen?

A Five days steady I have been putting ice on my eyes.

Q How did you go to the hospital from the police station?

A On a carriage.

Q You mean the ambulance?

A Ambulance.

Q What hospital did they take you to, do you know?

A First they took me to the Presbyterian Hospital.

Q After that?

A The next day to Bellevue?

Q And how many days did you stay in Bellevue?

A 20 days I stayed at Bellevue.

Q Were you laid up in bed?

A Stayed laying in bed. My left side hurt very much where he kicked me and my head, I couldn't get up from bed.

Q What surgical treatment did you receive there while you were in the hospital?

Objected to.

THE COURT: He may answer that.

A When the Professor came down and he examined me he winked his eye and said "It was a pretty tough job".

Q What if anything did he say about your eye?

Objected to. Objection sustained.

Exception.

Q What was the matter with your eye?

THE COURT: Well, haven't you got all you need of his injuries? We are not trying the defendant injuries, are we, here. His defense, I take it, is self-defense and you have shown that he had some injuries.

Q Now show that these people beset him. The extent of injuries suffered by a complaining witness is important because sometimes it affects the degree of the assault.

DEFENDANT'S COUNSEL: I take it, if your Honor pleases, that I am allowed to show the credibility of those witnesses. They said he had no injuries.

THE COURT: Oh, it is part of the res gestae and within reason I will admit, but it seems to be I have admitted quite as much as you need to establish your defense.

Q Now, did you have a knife in your possession on the 21st day of November when this thing happened?

A I am not in the habit of carry a knife with him.

Q Did you stab or touch or assault this Kafka, the complaining witness?

A I didn't touch him, I didn't put a finger on him no time.

Q Now will you explain---the Jury seemed to be amused---will you explain how you believe he came to his injuries---that Kafka.

Objected to. Objection sustained.

Q Now on that night when you got into that hallway, was it light there or dark?

A When they called in the hall it was light yet but when they hit me the blow in my eye they turned the gas down and it was entirely dark?

Q The complaining witness charges you that you took out a knife about eight inches long with which you stabbed him? Did you ever possess such a knife or any knife that night.

A I had no kind of knife at all with me at that night. The policeman searched me and found no knife on me, as I had no knife.

Q Now when you were taken to court did you say to the

clerk of the court that you wished to make no charge against the man who stabbed you?

A I didn't say anything of the kind.

Q How did they talk in that court? Did they use an Interpreter while they talked to you in the court?

A No, they used no interpreter.

Q And when the policeman took you from your house, the policeman who testified here, did you tell him that this man Lackey and the other man stabbed you?

A I told him that I was stabbed by those people and I showed him the blood on the sidewalk even where the blood was where I laid.

Q Why did you say about this complaining witness that he was a swindler?

MR. WASSERVOGEL: Objected to.

DEFENDANT'S COUNSEL: Question withdrawn.

Q What did the complaining witness tell you about the postal cards which he came you?

MR. WASSERVOGEL: There is no question here about any postal cards.

DEFENDANT'S COUNSEL: Question withdrawn.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You say you are a painter?

A Yes sir.

Q Were you employed at that time November 21st

A Three days before that I have left my position.

Q Well at that time you were not in any employment?

A No sir. I have not been employed at that time.

Q And you were spending your time in this saloon?

A No sir, I just came there about 8 o'clock in the evening.

Q And you stayed there until what time?

A 3 o'clock in the morning. It was after three o'clock when he sent me out of the saloon.

Q Why did he send you out of the saloon?

A I have no idea why he sent me out of the saloon.

Q And you want to tell the jury that for no reason at all this man told you to get out?

A My idea is---my idea is that he told me to go out only on that account that I had told him not to associate with the complainant here, with that Austrian, on account of that dishonest act that I told him about a picture.

Q When he told you to get out, did you refuse to get out and he had to push you out, isn't that correct?

A I immediately left, I immediately went out.

Q You went out all alone, didn't you?

A I left myself but Trum followed me about one step behind.

Q Kafka remained in the saloon, did he not?

A Kafka remained in the saloon, also Lackey.

Q And how long after you went out did you see Kafka?

A About two minutes after I left I have seen Kafka with Lackey

Q Where did you see him---out in the street?

A I spoke on the sidewalk to Trum, and when they came out they called me right into the hall, Lackey called me in the hall.

Q Well, you saw that this man Kafka was bleeding, didn't you?

A He wasn't bleeding at that time.

Q Now Kafka you saw on the stand here to-day?

A I have.

Q And you saw him describe to the Jury the injuries which he received on that occasion, did you not?

A I have.

Q And you mean to say you did not see him bleeding then?

A Not at that time, no sir.

Q Did you see him bleeding at all that night?

A In the hospital when he sewed up his wounds, that is the only time I have seen him with blood.

Q So when this man and these other witness and the police man say that you cut him why they are not telling the truth, is that right?

A Positively so, they are not telling the truth.

Q And when these men all say that they saw the knife in your hands they are not telling the truth, is that what you mean, to tell the Jury?

A I swear by my five children that they are lying.

Q Oh, you are a married man then, are you?

A Yes

I am married.

Q But you are not living with your wife now, are you?

A My wife is in the old country.

Q And how long are you here?

A It was two years the last 12th of October.

Q After you left the saloon you ran away for a space, did you not?

A I didn't run away. I remained right in the front, on the sidewalk, and spoke to Trum.

Q Well your home is across the street, is it not?

A Yes, right across the street.

Q So you did run across the street, at any rate?

A No sir.

Q How did you get across the street?

A They had been beating me right along and I have been crawling across the street from the saloon to where I lived.

Q You were crawling across the street from the saloon to your home? How large a distance is your home from the saloon?

A Only the width of the street.

Q What do you mean by saying you were crawling?

A They have been beating me while I was crawling across and then I fell down and the woman helped me up.

Q You say you were crawling all the way across the street, do you not?

A No, I was not crawling across the street. I mean crawling in the hallway, but I was walking the best as I could across the street. I was crawling on my

feet and hands in the hallway there, but I walked on the street across.

Q And you went right into your rooms?

A I couldn't go in because I was beaten so bad that I remained laying on the sidewalk in the front of the house.

Q In front of your own house?

A In front of my house.

Q Is there a railing around that house?

A Yes sir. There is a railing.

Q Isn't it a fact that you fell against that railing striking your head?

A Positively not.

Q And you want to tell this Jury then that you had no quarrel with any one in that saloon at all that nigh?

A I had no fight nor no quarrel with no one.

Q And without any reason at all these men attacked you?

A The only reason why they had, that they have beaten me that right, because I have spoke about that? I didn't know that the complainant was a brother-in-law of this Lackey about whom I spoke of being dishonest.

Q Well, which one of these men did you see strike you, which one was it?

A The complainant, that Austrian hit me first in the left eye.

Q Well, Trum did not strike you, did he?

A I didn't see whether Trum hit me or not, I don't know. I couldn't see because I couldn't see out of my eyes and I couldn't

see who hit me then.

Q Well, the policeman took you to the station house, did he not?

A Yes sir.

Q And you walked with him to the station house?

A He supported me by holding my arm. That is the way he led me to the station house.

Q And how far is the station house from number 420 East 70th Street?

A I can't tell you, I can't judge the distance.

Q Where is the station house?

A 57th Street. I am not positive whether 57th or 58th Street or what street.

Q How long did it take you to walk down there?

A I don't know.

Q Well it was 67th Street, wasn't it, not 57th Street?

A I don't know I couldn't see what street I was in.

Q Have you served in the Army in Hungary?

A Yes, I served.

Q Isn't it a fact that the scar that you have on the side of your head was received there?

A No, There was no war during the time I served and I received no injuries at the army.

Q Have you ever been convicted of a crime anywhere?

A Never in my life.

RE-DIRECT EXAMINATION BY DEFENDANT'S COUNSEL:

Q Are you sending money regularly to your wife since you are in this country?

Objected to. Objection sustained. Exception.

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ANNIE BOUBERLY called as a witness on behalf of defendant being first duly sworn, testifies as follows:
(Through Interpreter)

Q Do you know this defendant? He is boarding with you? He used fro board with you? This defendant?

A He is boarding with me two years.

Q And do you remember on the 21st day of November last about three or four o'clock in the morning, what happened to this defendant? Did you see him on that morning?

A I had seen him that morning in my rooms, brought up by a man.

Q Now did you observe his condition that morning?

A He looked terribly beaten up, full of blood, his eyes were black and stabbed on the left side.

Q Did you see Lackey that morning?

A He followed me right in the morning when he was brought up, lackey followed me at once.

Q Did anybody else?

A Some one else remained in the hallway.

Q Did you see anything that Lackey was doing?

A He was threatening me in the room yet.

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

Question withdrawn.

MR. WASSERVOGEL: No cross examination.

RE-DIRECT EXAMINATION BY DEFENDANT'S COUNSEL:

Q Do you know a man by the name of Ladani?

A I do know him.

Q Did you have a talk with him about this case?

MR. WASSERVOGEL: Objected to. Going into something which has nothing to do with this issue.

Objection sustained.

Q Did you serve a subpoena for me on a man by the name of Ladani?

Objected to. Objection sustained.

DEFENDANT'S COUNSEL: I want to show a conversation had between this witness and another witness whom I have subpoenaed.

THE COURT: For which you have laid no foundation. I do not see the relevancy or the importance of it. If you will tell me what you are driving at I will see if I can help you.

DEFENDANT'S COUNSEL: I have an eye witness whom I have subpoenaed through this woman.

THE COURT: You cannot produce any hearsay evidence from this witness.

DEFENDANT'S COUNSEL She has personally left the

subpoena with him.

THE COURT: Well, suppose she did, your proper relief is to submit to me a copy of the subpoena with proof of service in writing and thereupon ask for an attachment, which I would have granted at once on your application.

Q Did you hear this man Ladani tell you anything about this---

THE COURT: I said you could not do that and you are going right ahead despite my warning. You mean no contempt but that is contempt.

DEFENDANT'S COUNSEL: Exception. That's all.

BY THE FOREMAN OF THE JURY:

Q What time did you see the feller in the room?

A After three o'clock?

BY THE THIRD JUROR:

Q Were you out of bed or were you in bed?

A I was in my bed.

Q What brought you out of bed?

A The defendant hollared "Mrs. Mrs., they killed me, they stabbed me, come and help me".

CARL BERON, called as a witness on behalf of defendant, being first duly sworn, testifies as follows:

(Through official interpreter Rosenthal)

DIRECT EXAMINATION BY DEFENDANT'S COUNSEL:

Q On the 21st day of November you remember about being waked up from your sleep about three or four o'clock in the morning on that day?

A Yes, it was about three o'clock.

Q Now what if anything did you hear or what did you see when you went down. Did you go down after you were waked up from your sleep?

A Yes sir, my dogs were not quiet and I knew that something was wrong.

Q You are in the saloon business, are you not, on 70th Street?

A Yes sir.

Q And your place of business is right opposite 417 where Lessons place of business is?

A Yes sir.

Q And you came down to the street, and what did you see

A When I came down I saw three people together and they were fighting and hollering.

Q Were you near enough to them to see as to who was doing the fighting?

A No. Only the three together, all three.

Q Now is that all you saw?

A Yes sir.

Q You didn't see the defendant on that morning did you? after that?

A Yes, I know him for several months. I---saw him.

Q Did you see him right on that morning?

A No. That Sunday I didn't see him.

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Q You weren't there when he was arrested?

MR. WASSERVOGEL: Objected to. He has already said he didn't see him. That is enough.

Question withdrawn.

Q How long have you known this defendant---

DEFENDANT'S COUNSEL: I will make him a character witness.

A About six or seven months.

Q And do you know people who know him in the neighborhood

A Sure.

Q Well now what reputation has he for peace and honesty among those people who know him, good or bad?

A As far as I know he is an honest, decent man, and has a good reputation.

CROSS EXAMINATION BY MR. WASSERVOGEL:.

Q You have an opposition saloon across the street, have you not?

A Yes sir.

BY THE FOREMAN OF THE JURY:

Q When you went down and saw three men did you see the defendant with them?

A I can't tell. I was about twenty two feet away. Maybe he was there but I didn't see him.

DEFENDANT'S COUNSEL: Now, if your Honor pleases unless I can obtain an adjournment and have an eye witness here as to this fight I must close.

THE COURT: What do you want to do.

DEFENDANT'S COUNSEL: I would like to have an attachment issue for that eye witness.

THE COURT: Well submit proof. I cannot issue an attachment without formal proof.

DEFENDANT'S COUNSEL: Well, I guess I will close.

THE COURT: Very well. Now I will deny your motion. You may go to the Jury. Do you want to sum up this case or will you submit?

DEFENDANT'S COUNSEL: Do you deny my motion to take away from the consideration of the Jury the first part of the indictment charging him with assault in the first degree?

THE COURT: Yes, I am going to submit the case to the Jury. How long do you want to take to sum up this case?

DEFENDANT'S COUNSEL: I would like to have three quarters of an hour.

THE COURT: Oh no, you don't want that. You know the poet says "There is weakness in much talking".

DEFENDANT'S COUNSEL: Well I will try to be as short as I can.

THE COURT: You have got the evidence not once but twice and three times before this Jury. Now I think by four o'clock you can finish summing up.

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DEFENDANT'S COUNSEL: I will do the best I can.

Both sides now close to the Jury.

(The Court now directs an adjournment to Thursday January 20, 1910 at 10:30 A. M. first duly admonishing the Jury as usual)