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CASE

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COURT OF GENERAL SESSIONS OF THE PEACE,  
CITY & COUNTY OF NEW YORK---PART 2.

THE PEOPLE,  
VS.

EDWARD HURLEY.

Before

HON. RUFUS B. COWING

and a Jury.

THIRD, NEW YORK, JANUARY 15, etc. 94.

INDICAED FOR MURDER IN THE FIRST DEGREE.

INDICTMENT FILED SEPTEMBER 26TH, 1893.

APPEARANCES:

ASSISTANT DISTRICT ATTORNEY JAMES W. OSBORNE,

FOR THE PEOPLE.

LEWIS S. CHANLER, ESQ.,

FOR THE DEFENSE.

THE EXAMINATION OF THE JURY

BY MR. OSBORNE:

Gentlemen of the Jury; Is there any one of you acquainted with Edward Hurley, who lives in the Northern part of this City?

A. (No answer.)

Q. Is any one of you acquainted with any member of the Hurley family?

A. (No answer.)

Q. Have any of you ever read or heard of the homicide committed on Willis Avenue, as charged in this indictment, by one Edward Hurley, upon Jeremiah Hurley?

A. (No. answer.)

Q. And the homicide is alleged to have taken place on the 7th of August, 1892?

A. (No answer.)

MR. OSBORNE: I hear no responses from any of you, and I, therefore, conclude that none of you gentlemen have over heard of that case, or formed or expressed any

opinion about it; and the jury is satisfactory to me.

BY MR. CHANLER:

Q. Gentlemen, you are quite sure that you have not formed or expressed any opinion about the case? This defendant is charged with killing his brother with a rollingpin; that is the charge against him.

A. (no answer.).

Q. Do any of you gentlemen know Mr. Osborne, except in his official capacity, as District Attorney?

A. (no answer.).

Q. Do any of you know Mrs. Addeberth? I do not know her address, but she lived on Willis Avenue at this time?

A. (No answer.)

Q. MR. CHANLER: I will excuse the 7th Juror.

Q. (To the new 7th Juror): You have heard the questions that I put and that Mr. Osborne has put?

A. (No, sir; I have not).

Q. Well, do you know of any reason why you should not render a fair and impartial verdict?

A. None whatever.

Q. Do any of you gentlemen know of any reason that has not been suggested by either of us that would prevent you from

rendering a fair and impartial verdict in this case?

A. (no answer.).

MR. CHANLER: The jury is satisfactory.

MR. OSBORNE: I will now call the physician in this case a little out of order, because he has important professional engagements.

MR. CHANLER: Very well.

LEWIS C. POTTER, called by THE PEOPLE, being duly sworn, testified as follows:

Direct-Examination.

BY OSBORNE:

Q. You are a practicing physician in the City; are you, doctor?

A. Yes.

Q. How many years have you been engaged in practice?

A. Since 1877.

Q. At the request of the Coroner, did you make an examination upon the body of Jeremiah Hurley, the deceased?

A. I did.

Q. At 443 Willie Avenue, in this City?

A. Yes, sir.

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Q. And you made that examination on Monday, the 9th of August, 1892?

A. Yes, sir.

THE COURT: What day?

MR. OSBORNE: What day? The 9th of August, 1892?

BY MR. OSBORNE:

Q. Now, tell the jury what you discovered?

A. On going there and inquiring---

Q. Now, just tell us what you discovered at the examination of the body?

A. About the body?

Q. Yes.

A. I found, as near as I recollect, on the vertex of the skull a depression into which I could put my finger, and therefore, I found that it was a fracture of the skull.

Q. Yes. When you say, "as near as you can recollect," you mean about the place?

A. Yes, sir.

Q. But, there is no doubt about its having fractured the skull?

A. No, sir; there is no doubt about that.

Q. No. And what was the cause of death, in your opinion?

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A. The cause of death was a blow upon the head.

Q. Well, I know.

A. Causing the fracture.

Q. I beg your pardon. That was the remote cause.

MR. CHANLER: Pardon me, one moment. I will object to that answer.

MR. CHANLER: And I will consent to strike it out.

THE WITNESS:

The cause of death?

BY MR. OSBORNE:

Q. Yes.

A. The cause of death was the fracture of the skull.

Q. Yes. Now, from your examination did you form any opinion as to what produced---don't you answer the question until the counsel makes an objection. I will renew my question. From your examination or the fracture, could you form any opinion as to what produced it?

A. Well---

THE COURT: So many causes could have produced it.

MR. OSBORNE: Yes, sir. I have no desire to press the question.

THE COURT: He says that he examined the body on the day in question, and found the skull was fractured, and that that was the cause of the death of the person.

MR. OSBORNE: Yes, sir; that is all there is about it.

BY THE COURT:

Q. This was the body of Jeremiah Hurley, the deceased?

A. Yes, sir.

Q. And you saw the body on August 9th, 1892?

A. Yes, sir.

Cross-Examination.

BY MR. CHANLER:

Q. Doctor, the report that you made at the time was that the cause of death was fracture of the skull, from falling on the stoop, while intoxicated; was it not?

A. That was the testimony given to me.

Q. No; that the report you made?

A. Yes, sir; that is the report I made.

Q. That is all I have to ask you. That is all.

Re-Direct Examination

BY MR. OSBORNE:

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Q. You were not there yourself and had no idea whether the man fell or not?

A. No, sir.

BY THE COURT:

Q. Did you have any personal knowledge as to how he got the fracture; had you?

A. No, sir; no personal knowledge whatever.

Re-Cross-Examination.

BY MR. CHANLER:

Q. That was the certificate that you gave, however?

A. Yes, sir.

MR. OSBORNE: Well, I will admit that. Here it is right before you. Here is the certificate right before you.

THOMAS J. RODDY, called by the People, being duly sworn testified as follows:

Direct-Examination.

BY MR. OSBORNE:

Q. Mr. Roddy, where do you live?

A. 717 East 146th Street.

Q. Do you remember the evening of the---the night of August

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7th or morning of August 8th, 1892?

A. Well, I remember about---I can't say about the date, but I remember the night that I was standing on the corner.

Q. Where were you standing?

A. On the corner of 145th Street; me and another young friend.

Q. What was his name?

A. James Brennan.

Q. Corner of 145th Street and Willie Avenue?

A. Well, right near Willis Avenue; Yes, sir.

Q. What did you hear first?

A. Well, we were just standing there, after having a game of pool, and a couple of glasses of beer, and we came and stood by the hydrant for a while; and we heard a little loud talking up the street. We were looking in the meanwhile South of 145th Street.

Q. Yes.

A. And see nothing at all whatsoever on the other side.

Q. Yes.

A. And we turned around and we seen this young man laying on the sidewalk.

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BY THE COURT:

Q. Which young man?

BY MR. OSBORNE:

Q. Jeremiah Hurley?

A. Yes, sir.

Q. You saw him lying on the sidewalk?

A. Yes, sir; with his head towards one of these corner posts like on to the stoop, a kind of double stoop; with his head laying towards that.

Q. Well?

A. But, I didn't see him hit him or anything like that.

Q. Did you walk up towards the man?

MR. CHANLER: I move to strike out the previous answer, as irresponsible. He did not say that anything was done at all.

THE COURT: Well, he says he did not see anything done to him. It does not hurt your client.

BY MR. OSBORNE:

Q. Did you walk up that way?

A. Yes, sir; me and this other friend. And, in the meantime, three other young fellows come across the street.

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Q. Do, you know their names or any one of them?

A. As I believe, I gave the name before, Farrier, I think the name is.

Q. James Farrier?

A. Yes, sir. It is a long time and I \*\*\* kind of disremember now.

Q. Well, do not let us argue. We will take all that you remember now.

A. And so I---

Q. Did any one of them say anything on the defendant?

A. I believe one of them said something to him.

Q. Well, what did he say?

A. He said---I couldn't say, exactly, what it was, but I think he said, "You ought to get a punch in the puss."

Q. Did he say you ought to get a punch in the---

(Objected to, as leading.)

Q. Now, have you stated all that you remember about that was said?

A. Well, I am telling right straight up and down what I remember about it now.

Q. Well, go on and tell it. Tell all you know or remember.

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A. Well, one of them remarked that he ought to get a punch in the puss.

Q. For what? For what did he say he ought to get a punch in the puss?

A. And this young man, Hurley---

BY THE COURT:

Q. And the defendant?

A. Yes, sir; was standing on the stoop. At the same time he had a rollingpin in his hand.

BY MR. OSBORNE:

Q. Did you see it in his hand; the rollingpin?

A. Yes, sir; I seen it.

Q. Go on, now.

A. And at the time this fellow said, "You ought to get a punch in the puss," he said, "I will hit any one of you sons-of-bitches that comes up near me," and I said---

Q. Yes. Well, didn't the defendant say anything else?

A. Who?

Q. The defendant?

A. Well, not that I can remember now.

Q. Now, have you told all that you recollect about that conversation?

A. Well, that is all I take not of now.

Q. Well, did he say this: "You fellows would do the very same thing, if you were in my place"?

A. Yes, sir.

Q. Eh?

A. Yes, sir. I disremembered that. It was quite a long time ago.

Q. Well, did he say that? Please answer that question?

A. Yes, sir.

q. Just answer the questions, and don't talk so much. Now, you said, just now---now, have you stated all that you recollect about his saying, "You ought to have a punch in the face or puss"?

A. Yes, sir.

Q. Now, did he say this, "You ought to have a punch in the face for doing that"?

A. Yes, sir.

Q. Now, were those his words?

A. That was his words. (Objected to, as leading.)

THE COURT: Now, let me see. The District Attorney claims the right, which is allowable, after the witness has stated that he has given all his recollection, than he has the right to refresh his recollection, by asking him if he did not say so and so. It would be leading, unless he first asked him to \*\*\* everything that was said that he re-

members. Then comes in the rule of evidence that he may draw his attention to specific things, and ask if these were said.

MR. OSBORNE: Yes, sir; I am clearly within the rule, and you know that, Mr. Chanler.

MR. CHANLER: Yes; but I would suggest that a little time be given to the witness to think. But he puts the questions very rapidly.

THE COURT: Of course, the rule requires that there should not be any leading, and that, first, everything that he remembers must be got from him, and then the District Attorney may refresh his recollection by asking specific questions. That I believe, done as to names and quantities, and other things.

MR. CHANLER: But, as to vital points, it seems to me that the rule can't be stretched.

MR. OSBORNE: Well, why do you argue about it. I am through with the witness, and there is no question before The Court.

THE COURT: Well, now, Mr. Chandler, you take him; and

all that you object to is the last answer.

MR. CHANLER: Yes, sir; that is all.

MR. OSBORNE: But, I am not through with the witness you, our Honor.

BY MR. OSBORNE:

Q. Now, after that did you see anybody else there?

A. Well, I couldn't---I did see some one else, what I supposed to be---

(Objected to.)

THE COURT: Never mind, if you do not know.

BY MR. OSBORNE:

Q. Did you see a man or woman or child there?

A. Yes, sir. I seen his own sister come downstairs and take Jeremiah's head right on her knee, just like that (illustrating).

Q. Yes.

A. And these three fellows, I don't know which one it was, made the proposition to take him upstairs, and so they took him upstairs, and me and this other young fellow went away.

Q. Yes. Now, did you hear anything that the lady said, his

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sister---

MR. CHANLER: Objected to. I will ask, now that the witnesses be excluded, as to the act itself.

A. No, sir.

BY MR. OSBORNE:

Q. In the presence of the defendant.

BY MR. CHANLER:

Q. I ask only that all witnesses to the set itself be overloaded, from the court-room on both sides, except witnesses for character.

MR. OSBORNE: No; neither the doctors nor the witnesses for character. They need not go out. All others must go.

BY THE COURT:

Q. Yes; this all took place on August 7th, 1892, or thereabouts.

A. Yes, sir.

BY MR. OSBORNE:

Q. Now, I understood you to say that two or three man helped

to carry the wounded man upstairs?

A. Yes, sir.

Q. Now, will you state whether or not the sister said anything in the presence of the defendant, while she was holding the head of her brother in her lap?

BY THE COURT:

Q. In the presence of the defendant?

A. Not that I remember of.

BY MR. OSBORNE:

Q. Nothing that you recollect?

A. No, sir.

Q. Where do you work?

A. I have been formerly driving a street cleaning machine for the Street Cleaning Department.

Q. For how long?

A. Oh, I was driving for three years, until every winter we not knocked out; and this fall I had a cart in the street Cleaning Department, but I got hut twice in succession, and so that knocked me out for nearly five weeks, now.

Q. So you have been laid up for five weeks?

A. Yes, sir.

Cross-Examination

BY MR. OSBORNE:

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Q. Where were you working on the 7th of August 1892, did you say?

A. I was driving for a man named Ling, who had a hired tea the other side of the bridge, driving a sweeping machine for the Street Cleaning Department.

Q. Where had you been spending the evening in question?

A. Oh. In different places. The last place we were wound up was in the place corner of 45th street, and we \*\*\*hain game of pool and several beers and came out again.

Q. Who was with you?

A. James Brennan.

Q. Does he live in the City?

A. No, sir; in the City of Brooklyn.

Q. What time did you meet Brennan that evening?

A. Well, that is more than I can say now. It was somewhere early in the evening; and we had been together nearly all the evening.

Q. Well, about 6 or 7 o'clock?

A. Somewhere in that neighborhood.

Q. And have you any recollection---do you remember what you did that evening; how you spent the evening?

A. No, sir; I don't; I have no recollection at all.

Q. Well, do you know where you went to before you went to the saloon where you had the game of pool and a couple of beers?

A. Well, I couldn't say. At the time that we struck that saloon I was feeling what you call pretty good.

Q. You were pretty full?

A. Yes, sir.

Q. And your friend, I suppose, was---

A. Well, I guess he was.

Q. Pretty full, too?

A. Yes, sir; his sails was all full set, I guess.

Q. And, in fact, neither of you were particularly sober, to come down to the real fact; were you?

A. Well---

Q. Were you pretty well set?

A. Yes, sir; we was feeling happy, as the person says.

Q. Well, now, when did you first have any conversation with an boy about this---about seeing this man lying on the street? How long after that night did you have any conversation with anybody?

A. Well, it was the following afternoon, that any one had any conversation with me about it.

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Q. Well, who did you have the conversation with?

A. Detective Gilmartin.

Q. did you have any conversation with Mrs. Addeberth?

A. Not that I know of.

Q. Have you ever had any conversation with her on the subject or this case?

A. Well, just only while being subpoenaed down at the Coroner's jury, and at the Grand Jury.

Q. Well, you saw her at both places, at the Coroner's Jury and the Grand Jury?

A. Yes, sir.

Q. And had a talk with her?

A. Well, just speaking neighborly; that is all about it.

Q. Do you remember how far off you were from the stoop where you saw the man lying?

A. \*\*\*How far I was from the stoop?

Q. Yes. You and your friend, when you first noticed or heard anything there?

A. Well, the house is supposed to be about 25 feet and the curbstone about 15.

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Q. Then, you were about 35 feet away, then?

A. Yes, sir; about that; about 35 or 40 feet away.

BY THE COURT:

Q. I understood you to say that you did not see how the deceased came on the sidewalk?

A. No, sir; no, sir.

Q. You did not see because of his being there?

A. No, sir.

BY MR. CHANLER:

Q. Could you see distinctly? Was there a moon that night?

A. I couldn't say positively.

Q. You couldn't say?

A. No, sir.

Q. What is your best recollection of it?

A. Well, I couldn't say positively whether the moon was out that night, or not.

Q. Well, can you tell us whether or not it was light in the street that night, by the stoop?

A. Well, there may have been electric light around somewhere on the corner, but I couldn't say positively.

Q. Now, how far was the house from the corner? Do you remember about how far, about the location of it?

A. The

location of---

Q. Of the house, from the electric light on the corner?

A. Well, the electric light was on the opposite corner.

Q. And how far is the house from the electric light?

A. Well, I should judge about 100 feet.

Q. Yes. It was pretty dark on that stoop, was it not?

A. Yes, sir.

Q. And you could not distinguish the features of the man that was standing there very clearly; could you?

A. Well, not exactly; no.

Q. No. And, as I understand you, you do not recollect absolutely, exactly, everything that you did that night; do you?

A. I don't; I couldn't say---

Q. No. Now, you have told us that you saw the defendant?

A. Yes, sir.

Q. Standing there, with a rollingpin in his hand?

A. Yes, sir.

Q. Now, you would not swear, would you, that that was not the end of a broomstick that you saw, fastened to a bunch of keys?

A. Well, to the best of my opinion, I will swear that it was a rollingpin that he had in his hand.

BY THE COURT:

Q. That is your best judgment about it?

A. Yes, sir.

Q. And that is the best of your recollection about it?

A. Yes, sir.

BY MR. CHANLER:

Q. What had you been drinking in the saloon where you had been playing pool?

A. Well, we played several games there.

Q. Yes.

A. And the first game we had whiskey.

Q. You were playing for drinks; weren't you?

A. Oh, sure. And the next I had a mixed ale, I believe.

Q. Yes.

A. And then, so we made a final game, and so we had a cigar apiece, so that we would have a smoke going home.

Q. Now, what did you take to drink in the saloon that you were in before that?

A. Well, it was different stuffs; I couldn't tell you.

Q. Well, give me an idea.

A. Well, there was a little beer and a little whiskey

sometimes and sometimes it would be soda and whiskey.

Q. And in the saloon that you had been in before that; do you remember about how many you had had in there?

A. Well, I couldn't tell you what saloons I had been in before that.

Q. You don't remember that?

A. No, sir; I could not.

Q. Can't you tell us one of them?

A. Well, I couldn't. I couldn't tell you one of them; I don't remember them now. It is quite a long time ago, nearly three years ago now, and I couldn't tell you exactly what saloons they were, or who owned them.

Q. Now, I understood you to say that when you waked up you saw a man standing on the stoop; did you?

A. Yes, sir.

Q. And what did you notice first; the man standing on the stoop, or the man lying on the sidewalk?

A. Well, when we turned around, me and this young fellow, we walked towards the fellow---towards the man laying on the sidewalk.

MR. OSBORNE: Counsel asked you a question. Why don't you answer it?

Q. (Question repeated.)?

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A. The man laying down.

BY MR. CHANLER:

Q. Well, go on and tell us what you were going to say, when Mr. Osborne interrupted you.

MR. OSBORNE: Go on, and tell it. I was trying to help you out there, but I see you do not want to be helped out. Go on and tell everything that you started to tell when I interrupted you.

THE WITNESS: Well, we were just standing by the hydrant there, and we turned around and heard some little noise on the stoop, and we walked up, and there was a man laying on the sidewalk, and these three other young men came across the street.

BY MR. CHANLER:

Q. Yes.

A. And this young fellow was standing on the stoop.

BY MR. OSBORNE:

Q. This defendant? You mean Edward Hurley?

A. Yes, sir. And he was standing on the stoop. And, in the meantime, his sister came down, and these three young fellows came across the street, and she took the deceased, the head,

and raised it upon her knee.

BY MR. CHANLER:

Q. And where did the three men come from?

A. I couldn't say; from across the street.

Q. Do you know a gentleman named Durr?

A. No, sir; I don't know him.

Q. Have you seen him down in court to-day?

A. No, sir; I have seen him before, and I don't know him by name either.

Q. Now, Mr. Roddy, as matter of fact, you weren't able to see who it was that was standing on the stoop that night, were you? You weren't able to see who it was that was standing on that stoop that night; were you?

A. Oh, I could see plain enough.

Q. Could you recognize him plainly?

A. Yes, sir.

Q. You could?

A. Yes, sir.

Q. You swear to that?

MR. OSBORNE: He is under oath all the time, and swearing to everything that he testifies.

MR. CHANLER: I am cross-examining him, Mr. Osborne.

MR. OSBORNE: Then, I will submit it to The Court.

THE COURT: The criticism is on the form of the question. Of course, the witness is under oath.

MR. CHANLER: The witness seems to be a rather ignorant man, and I think I ought to remind him.

THE COURT: I suppose it is often done, on cross-examination, to make the question more emphatic.

BY MR. CHANLER:

Q. Yes, sir. Mr. Roddy?

A. Eh?

Q. Mr. Roddy?

A. Sir?

Q. Did you ever go to the Tombs and see this defendant in the Tombs?

A. Did I?

Q. Yes?

A. Did I ever what?

Q. Go to the Tombs and see the defendant there?

A. Yes, sir; I went once to see him.

Q. Now, when you saw him there, did you have any difficulty in finding out who was Mr. Hurley? Did you recognize him when you first saw him?

A. No; just only asked for Hurley; and then, when I went to the door he was there. I never knew him before that

and never spoke to him.

Q. No, of course not. And, if you had met him in the street, you would not have recognized him?

A. No, I wouldn't have knowed him.

Q. Yes; exactly. That is what I want to get at.

BY MR. OSBORNE:

Q. You went where?

A. To the Tombs. I went there once.

BY MR. CHANLER:

Q. Now, what did you hear the deceased, Jeremiah Hurley, say, when he was lying on the sidewalk there?

A. Well, I couldn't exactly say what---he said what I supposed to be, "I'm all right," or something like that.

Q. "I'm all right"?

A. Yes, sir.

BY THE COURT:

Q. You heard the deceased say, while he was on the sidewalk, "I'm all right"?

A. Yes, sir; when his sister picked up his head, and held it on her lap. I think that is what he said; I ain't positive.

BY MR. CHANLER:

Q. And how many people was standing around there at the time?

A. Well, I couldn't say, There was one---two---three---four. I guess that is about all there was. His sister, and there was three other fellows and me and Brennan. There was six of us, I believe.

Q. Mr. Roddy, do you remember having any conversation with Mr. King, in the last two or three weeks, at Mr. King's house, in regard to this case?

A. Yes, sir.

Q. Do you remember what that conversation was?

A. Well, partly; yes.

Q. Do you remember partly?

A. Yes, sir; part of it.

Q. Do you remember, on that occasion, telling Mr. King that you didn't remember anything about the rollingpin, but that Mrs. Addeberth had told you that there was a rolling pin there, and you guessed you remembered it?

A. I said so?

Q. Yes?

A. Well, that is more than I know about it.

Q. I asked you if you remembered anything of that kind

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to Mr. King?

A. No, sir; I don't.

Q. Who was present when you were at Mr. King's house that night?

A. There was a young friend of his and his daughter, I believe.

Q. A young friend of his and his daughter, you believe?

A. Yes, sir.

Q. And what was the name of the friend?

A. I couldn't say.

Q. Was Mrs. King present?

A. No, sir.

Q. When you went down to see the defendant at the Tombs, did you tell him that you didn't know anything about this case, but that all you were saying was what the detective told you to say?

A. What the detective told me to say?

Q. Yes. What Mr. Gilmartin, the detective, told you to say?

A. No, sir. I said, right straight up, and down, "My evidence is right there before the Coroner's jury and the Grand Jury, and I can't say anything more, and I will have to give my own evidence, and I ain't going to perjure myself for anybody."

Q. Well, didn't you say---

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A. I said---

Q. Well, give me a chance, Mr. Roddy. Didn't you then say to the defendant that you were pretty drunk that night? Now, listen to what I have to say?

A. Yes.

Q. That you were pretty drunk that night, and that you didn't remember what happened, but you were asked if these things didn't happen, and you had confused what had happened with what you were told had happened, and, having sworn to it, you were afraid to go back on it? Didn't you tell the defendant that?

A. No, sir.

Q. Didn't you tell Mr. King something like that, in his house?

A. No, sir.

Q. Didn't you tell Mr. King in his house that Mrs. Addeberth had asked you about the rollingpin, and had suggested the rollingpin, and you couldn't tell but what it was a piece of broomstick that he had in his hand?

A. No, sir.

Q. What else did you hear said there that night by the defendant and the other man?

A. Nothing more than me and this other young man walked away, that I can remember, that is all I remember of; we

walked away, and went up to the corner of 46th Street, and went in, and had another glass of whiskey and went home, and went to bed.

Q. Who was it that carried the defendant upstairs?

A. Well, as far as I could judge, I think--- as I told you before, that James Farrier was one of them that helped to carry him upstairs, but I couldn't say positively now whether it was or not; but he is here, for to answer for himself. I couldn't say who it was, or anything, but at least I thought at the time---

Q. When did you have your second conversation with Mr. Gilmartin; the detective in this case, Mr. Roddy?

A. When did I have what?

Q. (Question repeated.)?

A. Oh, we met several times after that.

Q. Well, about how often did you meet after that?

A. Well, I met him once after that, when he came to serve a subpoena on me to come down to the Grand Jury.

Q. To the Grand Jury?

A. Yes, sir.

Q. And was that just after the 7th of August?

A. Yes, sir; and he gave me another one to see Mr. Osborne.

Q. Yes. Didn't you see him before the Coroner's jury?

A. Yes, sir; I seen him here.

Q. And that was about November; was it not?

A. It was somewhere in the neighborhood of that, I believe.

Q. And you had a conversation with him then?

A. But not of any account, not relating to the subject at all.

Q. Well, when did you have a conversation with him relating to the subject?

A. That is more than I can say.

Q. Did you ever have any conversation with him relating to the subject?

A. That is more than I can remember; I may have, but can't remember now.

Q. The day after the homicide, as it is claimed in the case, when you saw Mr. Gilmartin, no reference was made to what you saw, was there, when you saw Mr. Gilmartin, on the 8th or 9th of August?

A. Yes, sir; he came down in the yard to see me.

Q. No. Did he talk to you about what you saw, about this case; didn't he?

A. He came down in the yard and asked me what I know

about the---

Q. Yes, but I don't want to know what was said. But was not the conversation about this case?

A. Yes, sir. Mr. Gilmartin came right down in the yard where I was stabling.

Q. No; that will do. Well, when was your next conversation with Mr. Gilmartin about this case?

A. Well, quite a long time after.

Q. Well, about how long?

A. Well. I guess five or six months after.

Q. And this was the day after---you are sure?

A. Well, I ain't going to be positive about it.

Q. Well, it was within a day or two?

A. Yes; it was a day or two after the accident happened.

Q. Yes; and it was before the funeral?

A. Before the funeral?

Q. Yes?

A. Well. I can't say; that is more than I can say; I wouldn't be positive about that.

Q. Now, you told me it was the next evening. Now, was it with-

in three or four evenings? I don't want the exact time. I want something about it, something to go on?

A. Well, it may be---let me see---I think it was a Monday, I guess it was. It was the day after the young fellow was dead or Tuesday. I believe the young fellow died of a Sunday night or Sunday afternoon.

Q. Now, when did you first see Mrs. Addeberth?

A. When did I first see her?

Q. Yes?

A. When I was called down to the Coroner's jury.

Q. Yes. When was that?

A. Well, you have got the best of me there; I can't tell you.

Q. Well, within a year?

A. Well, it was quite a long time after. I can't say exactly; I don't remember.

Q. Well, you made a statement before the Coroner; didn't you?

A. Yes, sir.

Q. Were you around the neighborhood of Hurley's house after that night, within a day or two after that night?

A. No, sir; not that I know of.

Q. Sure of that?

A. Well, I am quite positive, but I would not swear to it, though, because I passed there every night.

Q. Well, when did you hear of the man dying?

A. Well, Sunday night---

Q. I asked you when.

A. Well, of a Sunday night, when I had to go out with the machine, and had to pass that door, and I seen the undertaker's wagon standing in front of the door and I asked a party who was dead, and they told me, and I didn't know who the party was, and they didn't know me.

Q. Well, then you knew that it was the man that you had seen lying on the sidewalk?

A. Well, when they told me, I did. Now, how long was it after that that you had any conversation with anybody in regard to this case, with regard to what you saw that night, with anybody.

A. Well, it was---the first one that I had any talk with I believe was---well, with a fellow that was driving a sprinkling cart in front of me. We had just a few words about it, and that is all; and the next that had conversation with me at all about it was Detective Gilmartin; and

he came down to the yard where I was stabling.

Q. Now, had you ever been in the house where Hurley lived?

A. Not in where he lived, but I lived in the house 445 just right next to it.

Q. And when did you leave there, Mr. Roddy?

A. Well, I lived there with a woman named Mrs. Moran, but I don't know exactly when. I lived on the top floor.

Q. Now, when was it, in about what year was it that you lived in 445 with Mrs. Moran?

A. Well, about----

Q. What?

A. About two years ago, I guess, now.

Q. About two years ago?

A. No. It is over a year ago.

Q. How long was it after this year that you were living there?

A. Oh, I didn't live there for a long time before this thing happened at all.

Q. You didn't live there before that?

A. Yes, sir; I did live there before that, but quite a long time before that.

Q. You know when this thing happened. It happened nearly two years ago---about 18 months ago.

A. Well, I lived there before the thing happened.

Q. Well, was Mrs. Addeberth living there then?

A. Well, I didn't know--- a part in the house; only the party I boarded with. I used to come in late at night and go out early in the morning.

Q. At the Coroner's inquest you were sitting, were you now, between Mr. Gilmartin and Mrs. Addeberth on the same bench with them; between them, weren't you?

A. I may have been; I couldn't say exactly.

Q. Well, didn't you tell the defendant, when you went to see him at the Tombs that you were sitting between them at the inquest, and that you really did not remember what happened, but that they were nudging you, and telling you what to testify to?

A. No, sir.

Q. And that you were "in a hole," and didn't know how to get out of it?

A. No, sir.

Q. And nothing to that effect?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Now, how long were you in Mr. King's house that evening?

A. Oh, I was over to see Mr. King one Sunday night, and the day I went down to see the defendant, that evening I went over to see Mr. King.

Q. That same evening?

A. Afterwards, on a Sunday night. He was laid up, sick, with a kind of paralytic stroke.

Q. Did you go to see the defendant in the Tombs on Sunday?

A. No, sir; I think it was Saturday afternoon.

Q. And the next Sunday night you went around and saw Mr. King?

A. You, sir; I saw him that Saturday afternoon, and I went to see him again on Sunday evening.

Q. Now, when you were seeing Mr. King there; that Saturday afternoon on Sunday evening, did you say anything to Mr. King or to Mrs. King or to Miss King---by the way is that Miss King in court? You must go out, Mrs. King. Did you say anything to Miss or Mrs. King, or this young man that you speak of, about Mrs. Addeberth having told you what to testify to, and the detective having told you what to testify to; and that you really did not remember anything that happened that night, excepting the

fact that you were there, and that the man was lying on the ground?

MR. OSBORNE: I submit that he has asked the question several times.

MR. CHANLER: Yes, sir; but I want to lay the foundation broadly for contradiction by these persons.

THE COURT: Very well; I will allow it.

BY MR. CHANLER:

Q. Any such conversation whatever with them?

A. No, sir.

Q. Or did you say that you were willing and anxious, when you broke your leg, which you did a short time ago--- didn't you? You sprained your ankle, didn't you?

A. Yes, sir.

Q. Did you tell Mr. King that you were willing and anxious that the defendant's counsel should sent up to where you were lying in bed and get your statement out, did you?

A. I said--I told them that I would be glad to get the change withdrew if I could; if it was possible for me to withdraw iy in any way at all, to help the fellow out; that I didn't want to see him staying in there.

Q. Yes. And did you say that you would like to see the

defendant's counsel, or have the defendant's counsel see you?

A. Well, I told the defendant in the Tombs that I would go see Mr. King, and Mr. King would come down with me and see if he could do anything with him.

Q. Yes.

A. And Mr. King was sick, at the same time, and when Mr. King was well I was laid up, and that is the way the thing ran, and I wanted to ease up on the fellow, but I couldn't possibly have done it.

Q. And only for that, you would have come down and seen the defendant's counsel? That is all, sir.

Re-Direct-Examination.

BY MR. OSBORNE:

Q. Now, will you tell me who Mr. King is, please?

A. There is the gentleman, sitting right there, sir.

Q. Mr. King?

A. Yes, sir.

Q. Which is Mr. King?

A. There he is (indicating).

MR. CHANLER: And you have to go out, Mr. King. All the witnesses, except as to character, must go out.

MR. OSBORNE: Yes; any witness to this alleged conversation. Now, I want to state, now, in the presence of this jury and the court, that I directed the witnesses, on both sides, to leave the court room, and they have stayed in home, nevertheless, and heard this testimony.

MR. CHANLER: And it is my fault, Your Honor.

MR. OSBORNE: And it is not your fault. I made it as absolutely clear as possible.

MR. CHANLER: No, sir; I told them that they would have to testify only as to character, and they had no idea that they would be called for anything else, nor had I, until these questions were put by me.

BY MR. OSBORNE:

Q. Now, who is Mr. King? What has he got to do with this case? Do you know?

A. Nothing that I know of, whatsoever.

Q. Well, how did you happen to come down and see Mr. Hurley in the Tombs, the defendant?

A. Well, Mr. Hurley---

Q. Did you see King before you went down there?

A. King came to see me.

Q. Before you ever went to the Tombs?

A. Yes, sir.

Q. And, on consequence of a conversation with King, did you go down to the Tombs to see Mr. Hurley?

A. Yes, sir.

Q. Now, the counsel for the defendant has asked you for particulars of the conversation with King. Now, will you state to the jury, in your own language, the whole of your conversation with King, when he came to see you, in reference to this case? State everything that was said on your side, and all that was said on his. Go on, now.

A. Well, Mr. King come over to see me----

MR. CHANLER: Objected to, because I brought out no conversation that was had when King came to see him. I brought out the conversation when the witness went to see King.

THE COURT: I thought you asked the witness if he did not say so and so to Mr. King.

MR. CHANLER: Yes, sir; but in Mr. King's house

THE COURT: Then, confine the questions to that conversation.

BY MR. OSBORNE:

Q. Did you testify to any conversation that you had with Mr. King when he came to you, about going down to the Tombs? Has not the counsel been asking you what you said to him?

A. Yes, sir; he asked me. Well, if you will permit me to tell it right out, I will tell you the conversation that was between me and him.

Q. Between you and Mr. King?

A. Yes, sir.

Q. Go right on.

A. Well, he came there several nights, to my house, before I was in, and had said he came ---

Q. Now, down to the conversation and tell what took place between you.

A. Well, he came to my house, and he says, "Are you going to---" He says, "You will have to go down in front of Hurley," and I said, "Yes," and he said, "I hope to God---".

Q. He said, "You will have to go down and testify against

Hurley"?

A. Yes, sir; and he said, "I hope to God you will do something for the poor fellow, and not let the poor fellow go up the river," and I said, "If I can do something for the poor fellow, I will do it, but I aint going to put myself in a "hole." I am sworn there, and I will have to go by what I am sworn to," and he said, "All right; you can't do more than that," and he said, "Well Hurley would like to see you, anyhow; but, if you can spare the time, go down and see him," and I said, "Well, all right, I will go down and see him," and the first chance I got I went down; and it was Friday, and I couldn't get in.

Q. Well, you went down to the Tombs and saw him, at last?

A. Yes, sir; I went down on Saturday and saw him.

Q. Now, tell all the conversation that occurred between you and the defendant, every bit of it.

A. And Hurley said---I went and asked the keeper at the gate first---

Q. No; don't tell that. Tell what you said to the defendant, and he to you.

A. And I said, "Hurley," and he said, "Yes," and he put out his hand and we shook hands, and I said, "Are you all right?" and he said, "yes," and I said, "I have come down to see you, to see if I couldn't ease up your mind a little bit. If I can do anything to help you, I will do it. You know how the statement is put in, and I can't go back on that," and I said, "If there is anything that I can do for you, by Jesus, I will do it for you, but that is the statement made before the Coroner's jury, and the Grand Jury, and I can't do nothing," and he said, "Well, if there is any possible way of doing it, by going and seeing my lawyers, or something, you may be able to do something," and I said, "All right". If I can see Mr. King, he may come down with me and see the lawyer," and I went up that afternoon to see Mr. King, and he was sick in bed, and so I----

Q. Now, one moment.

A. And so I couldn't get down to see them, or in fact---

Q. Now, was the statement that you made before the Coroner---that was true, what you swore to before the Coroner's

court, was it not?

A. Yes, sir; it was the truth, the whole truth and nothing but the truth.

Q. And it is the same statement that you made here to-day?

A. Yes, sir.

Q. And Hurley, when did you---what did you say he asked you to do, to see if you couldn't change that statement?  
(Objected to.)

A. No. He asked me if I couldn't see his lawyer and kind of withdraw the charge like.

Q. Withdraw your statement?

A. Yes, sir.

Q. That you had made?

A. Yes, sir.

Q. Well, then you went back and saw Mr. King?

A. Yes, sir.

Q. And you had some talk with him? Now, state the whole conversation.

A. Well, I didn't have much talk with him. I told him just exactly, straight up and down, "My charge is there, and I can't do anything more. If there is any possible way of helping him out, I will do it, and I can't go back on my own statement."

Q. Did you tell Mr. King that you told the truth in that

statement?

A. Yes, sir.

Q. And what did he say to that?

A. Well he said, "It may go hard, and it may not, but I hope the fellow will get out."

Q. And your feeling towards Hurley was to help him. If you could?

A. Yes, sir.

Q. And that is your feeling now?

A. Yes, sir.

Q. But you felt that you are obliged to tell the truth?

A. Yes, sir.

Q. Now, Mr. Roddy, you were not too drunk that night to recollect everything that occurred?

MR. CHANLER: Objected to. My learned friend forgets that he is his own witness.

MR. OSBORNE: No; I do not; and I remember that you went into that whole question, and opened the door wide.

THE COURT: Yes; you went into that question and asked him if he was drunk, and the District Attorney wants to know if he was so drunk that he cannot remember everything or not.

BY MR. OSBORNE:

Q. Well, is what you swear, to to-day correct?

A. Correct.

Q. And you remember that it took place?

A. Yes, sir.

Q. And it did take place?

A. Yes, sir.

Q. Had you ever seen the defendant Edward Hurley before that night?

A. No, sir; not to know him, and not to speak to him.

Q. Well, had you ever seen him?

A. I may have, but not to speak to him.

Q. Well, had you ever seen Jeremiah Hurley before that night?

A. Well, I don't remember of ever seeing him.

Q. Well, do you remember ever seeing Edward Hurley before that night?

A. No, sir.

MR. CHANLER: He has answered that question once before.

MR. OSBORNE: I know he was.

BY MR. OSBORNE:

Q. Now, the counsel asked you whether, when you were giving your testimony in the Coroner's court, Mrs. Addeberth was sitting on one side of you and Detective Gilmartin on

the other, nudging you in the side. Were they?

A. No, sir; unless they were joking, something like that; but as far as pertaining to the case, there was no words uttered about it at all.

Q. And you never told anybody so?

A. No, sir.

Q. How long have you know this man, King?

A. Well, only couple of weeks, now, I guess.

Q. Only a couple of weeks?

A. Yes, sir.

Q. Did he offer you any money?

A. Offer me any money?

Q. Now, tell the truth, Roddy. You are sworn here. You are under oath.

A. I understand all about that.

MR. CHANLER: Objected to, because I am astonished at the question, really. But, at any rate, unless my learned friend can show that Mr. King had any authority, from the defendant, it seems hard upon the defendant to bring in a transaction of the kind between the witness and Mr. King. Lf course, it was very improper, if it was done; but, unless they can show that the defendant know something about it, it does seem to me improper, appearing on the part of this defendant.

MR. OSBORNE: Your Honor, this is one---I was going to characterize it---this is one of the most improper things that I have ever known to be done in a homicide case. Here is one of the witnesses for people approached by the \*\*\*sary of the defendant, with the purpose of suborning him to commit per jury, and foreswear a statement made in the Coroner's court, and it was brought out by counsel for the defendant.

MR. CHANLER: Yes; on purpose.

MR. OSBORNE: Yes; on purpose, but apparently without seeing the effect of it. Now, here is a man who goes to a witness for The People and asks him to let up on the defendant, and be as light as he could, and go down and see the defendant. In consequence of that, he does go down and saw the defendant, and the defendant ratifies that act of his agent, King. He then sees this defendant, and tells him that he is going to see King, and goes immediately from the Tombs and sees King; and now the counsel for the defendant has the

assurance to claim that I cannot prove that fact, because we can't show that Hurley was present, when the money was offered, if any, or the proposition was made.

THE COURT: Well, the question is, is the defendant bound? Supposing this man King had offered some money, supposing, for the sake of the argument, that he had offered money to this man to withdraw his charge. Is the defendant bound by that?

MR. OSBORNE: It goes to affect the status of this \*\*\*itness. It goes to affect the entire good faith of this defense, it goes to the root and substance of the whole matter, as much as anything can possibly go. Here is a man, on the outside of the Tombs, going to the State's witnesses and trying to suborn them to commit perjury.

MR. CHANLER: One moment, if Your Honor please----

THE COURT: If Hurley knew it was going on, and had sent him to pay money, you could undoubtedly prove it.

MR. OSBORNE: But, he knew that King was acting as his

agent, because Roddy went right from King down to the Tombs, and saw Hurley, and then went right back from Hurley to King.

THE COURT: And that may have all happened, and King, at the same time, may have done all that of his own volition, without any direction from Hurley.

MR. OSBORNE: Yes, sir; but when he went down and told Hurley that he had seen King and was going back to see King again.

MR. CHANLER: There is no evidence of that at all, Your Honor, I think.

THE COURT: Well, I guess I wouldn't ask that question.

BY MR. OSBORNE:

Q. I think, Your Honor, that that touches the root of this whole case, and this whole matter. I was inclined, at the outset, to press as lightly on this defendant as a man could possibly do, but my whole attitude in this case has been changed by the attitude of this defendant and his agents towards the witnesses.

THE COURT: Well, if you can show that the defendant, Hurley, sent King to this witness, with instructions to get him to change his testimony, or offer him any money or anything of the kind, I will allow it.

MR. OSBORNE: I will try to do that.

MR. CHANLER: Well, one moment. I don't think that I can allow one or two of the remarks of Mr. Osborne to go without question, even at this stage of the proceedings. Mr. Carbone has taken for granted that there was an attempt to suborn the witness. If you will remember, Your Honor, this witness himself says that, when Mr. King came to him, this witness said to Mr. King, "that is my statement," and Mr. King then said, "Well, that is all right. I am sorry." From the evidence of this witness it appears that when Mr. King discovered that he had made a statement which was apparently unknown to Mr. King at the time, and when this man told Mr. King that he could not go back on his statement according to his statement,

Mr. King said, "Well, that is all right, but go as light as you can," and that was not suborning perjury by any means. I don't want to discuss the matter further now. In justice to me, a remark like that should be made upon a state of facts entirely different from this. There is no evidence heretofore of any subornation of perjury.

MR. ORBORNE: I did not refer to you at all, Mr. Chanler, of course. You forget that the defendant asked him to withdraw that statement, in an interview in the Tombs.

BY MR. OSBORNE:

Q. Now, coming back, Mr. Roddy, will you tell the defendant in the Tombs what Mr. King had said to you?

A. No; I didn't tell him, only just that he was asking for him.

Q. That Mr. King was what?

A. That he was just asking for him, that he was asking me to tell him that King was all right.

Q. And when you went in the Tombs, the defendant told you that King was all right?

A. The defendant?

Q. Yes. Now, when you went down to the Tombs to see the defendant in the Tombs---

MR. CHANLER: Objected to. Ask him what was said there.

BY MR. OSBORNE:

Q. Wait until I finish the question.

MR. CHANLER: No. I object to the form of the question, even now.

THE COURT: And I will hear the question first. Let him finish his question.

BY MR. OSBORNE:

Q. When you went to the Tombs to see mr. Hurley, did you tell Mr. Hurley what King had told you?

A. I told Mr. Hurley---

BY THE COURT:

Q. Did you or not?

A. Yes, sir.

BY MR. OSBORNE:

Q. Now, then if you told Hurley what King told you, tell the jury what King told you, all of it.

BY THE COURT:

Q. And what you told Hurley.

BY MR. OSBORNE:

Q. Tell it now.

A. Well, King came to me, and told me to go down and see him, and so I went down---

BY MR. CHANLER:

Q. One moment, Mr. Roddy. As I understand his Honor's ruling, you tell just what you told Hurley as to what king told you.

A. Well, King told me---

BY THE COURT:

Q. And you told this to Hurley, did you?

A. Yes, sir; and I told Hurley that king asked me for to come down and see him.

BY MR. OSBORNE:

Q. Yes.

A. And it would ease his mind up a good deal, in the predicament that he was in, and I said, "All right. If it will do him any good, I will go down and see him," and me and Bill Clark went down to see him.

THE COURT: He has been all over this; hasn't he?

MR. OSBORNE: But he is telling another thing.

BY MR. OSBORNE:

Q. Billy Clark was with you; was he?

A. Yes, sir.

Q. Was he a friend of yours?

A. Yes, sir; and we went in and seen Mr. Hurley.

Q. Now, one moment. While you were in the Tombs, was any promise made to you by Hurley?

A. No, sir.

Q. Did he offer you anything? Did he say anything about what he would do for you in case you let up on him.

A. Oh, only he said if he could get out of it we would have a good time together. That is all the promise he ever made.

Q. He only said if he could get out of it, you would have a good time together, and that is all the promise \*\*\*hd over made?

A. Yes, sir; me and his friends would have a good time together.

Cross-Examination.

BY MR. CHANLER:

Q. You told us---at least I understood you to say that you had a clear recollection of everything that happened that night. Did you tell us that in answer to a question

put by Mr. Osborne?

A. A perfectly clear recollection?

Q. Yes; of the night when you saw the deceased lying on the ground?

A. A clear recollection?

Q. Yes. Did you tell that to Mr. Osborne?

A. Not that I know of; a clear recollection.

Q. As I understood you to any, you cant recollect very clearly what you did that night, Mr. Roddy?

Q. Well, I recollect enough I seen the man laying on the sidewalk, and I seen the man standing on the stoop.

Q. Yes.

A. And after that I don't know what happened, when they took the young man into the house.

Q. But the other events of that evening are a comparative blank in your mind. I will put it briefly to you.

THE COURT: Is this the principal witness in the case?

MR. OSBORNE: Oh, no sir.

THE COURT: Well, it will take six weeks if he is, at this rate.

MR. CHANLER: I thought he was the principal witness.

MR. OSBORNE: Well, that is the mistake King made.

MR. CHANLER: Those remarks are very improper.

THE COURT: Well, this witness has sworn freely to seeing the deceased on the sidewalk, and to seeing his sister come down and pick up his head, and to seeing the defendant standing on the stoop, with a rollingpin in his hand.

MR. OSBORNE: And to his words, besides.

THE COURT: But is there to be a conflict as to whether he was the man on the sidewalk at the time?

MR. CHANLER: Oh, yes.

THE COURT: Is there going to be any conflict as to whether the deceased was on the sidewalk at the time?

MR. CHANLER: Oh, no, sir; but as to the defendant being there with the rollingpin. Your Honor will pardon me, but this new line of testimony has necessitated a long cross-examination of the witness.

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

## AFTERNOON SESSION.

JAMES E. BRENNAN, a witness called on the part of the People, being duly sworn, testified as follows:

By Mr. Osborne:

Q. Where do you live?

A. 122 Walworth Street, Brooklyn.

Q. What is your business?

A. Cooper.

Q. Where do you work?

A. I have got a small shop of my own.

Q. Whereabouts?

A. 81 Canton Street, Brooklyn.

Q. You remember the evening of the 7th of August, 1892, being near Willis Avenue - Saturday night?

A. Yes.

Q. Was you there with Thomas J. Ruddy?

A. Yes.

Q. Where were you standing with Ruddy?

A. Right on the corner of Willie Avenue and 145th Street.

Q. Was your attention attracted by any noise in that neighborhood?

A. No sir - there was not much noise - it was attracted there when I turned around and went towards the stoop.

Q. What did you hear?

A. I heard a conversation going on, but did not turn around to look.

Q. You heard some loud talking?

A. Yes.

Mr. Chanler: That is leading, but I do not object.

Q. How far was the 441 I think it is Willis Avenue from this corner?

A. If that was the number of the house where that occurred, it was about 35 feet I think.

Q. You turned and looked?

A. Yes sir.

Q. What did you see?

A. I saw a man lying on the sidewalk.

Q. Who was that, Jeremiah Hurley?

A. I don't know the man, I don't know the defendant either; don't know any of them; I was a stranger.

Q. Did you see Edward Hurley there?

A. Yes, sir, standing on the stoop.

Q. Did he have anything in his hand?

A. I believe he did, could not tell you whether it was a stick or rolling-pin; they say it was a rolling-pin, but could not tell whether a rolling-pin or stick.

Q. You could not tell?

A. No sir.

Q. But it was a stick of some sort?

A. Yes sir.

Q. State to the jury what you first heard?

A. When I came out of the store it was just closing up and I did not feel like going home.

Q. Tell us the first thing you heard?

A. My standing on the corner I heard something like a fall - couldn't say whether a fall or blow - heard some noise which attracted

my attention. I turned around and walked up and saw the man lying on the sidewalk.

Q. Did you hear a man hallo?

A. No, sir; when I got up along side of him, he gave a kind of moan, and a lady there -

Q. Did you see the man before he fell, or while he was in the act of falling - which?

A. I think I saw him after he fell; I saw him when he was on the sidewalk; I did not see him in the act of falling.

Q. Did you see him before or after he fell?

A. When he was on the sidewalk.

Q. After he fell?

A. Yes sir.

Q. What did you see him do?

A. He was lying on the sidewalk with one hand under his forehead and the other hand stretched out like that (indicating). He was in that position when I got alongside of him.

Q. But when you first looked he had already fallen?

A. Yes sir.

Q. Have you had a talk with Mr. King?

A. I don't know who he is - no sir, I have not.

Q. Go on and state what you heard said and done there?

A. When we got there there were three young men came across the street. Ruddy and I got there; by the time we arrived

There, these three men were on the sidewalk at the same time; and one fellow said. "Whoever done that ought to get a punch in the face."

Q. Did he say "whoever" or "You ought to get a punch"?

A. He said "Whoever done that ought to get a punch in the face." He said "Don't none of you's interfere."

Q. Who said that?

A. The defendant said "Don't none of you's interfere, or you will get the same." He said he deserved that "He is my brother."

Q. Have you got any objection to using the language that the defendant did exactly on that occasion? What did he call those men?

A. I could not swear that he called them any name at all; he said "Don't you's interfere." Then the woman came out.

Q. Have you stated all the conversation that you recollect up to the time the sister arrived?

A. As near as I can recollect; it is so long ago and I attend to my business -

Q. Don't argue. Have you stated all the conversation that you can now recollect?

A. Yes sir.

Q. I ask you if the defendant said this, according to the statement you made to me - "Defendant said 'he is my brother and if any of you sons of bitches interfere I will give you

the same dose." Did he say that?

A. I don't know; don't recollect whether he did or not; he said "If any of you's fellows interfere, you will get the same." I don't know whether he said "You sons of bitches" or not.

Q. Did he say "If any of you's interfere, I will give you the same dose"?

A. He said "You will get the same." He didn't say "I will give you the same."

Q. You saw his sister come?

A. I don't know whether it was his sister; a woman came out.

Q. What did she say?

A. She got her arm under his head and lifted it up on her lap and tried to get him to speak and he just gave a little moan, that is all.

Q. After the sister came you remember any other remarks that the defendant made?

A. No sir.

Q. I will refresh your memory from the statement - "Did the defendant say" He was all the time drunk and never worked; he struck his mother and wanted money off of her"?

A. Yes, I believe he did say that.

Q. Is that your recollection?

A. Yes.

Q. You told the truth when you made that statement?

A. Yes sir.

Objected to.

By the Court:

Q. The defendant said he was always drunk?

A. Yes, and beat his mother when he could not get it.

By Mr. Osborne:

Q. You are sure you have not seen anybody?

A. Yes; I have only seen Thomas J. Ruddy; that is the only man I have seen connected with it at all.

Q. What did the sister do?

A. Took him in the house, I believe.

Q. Is that all you recollect on the subject?

A. Yes, I think that is all.

Q. Let me see if I cannot refresh your memory. "Did the sister say to the defendant, what have you done? And did the defendant say in reply, he deserved it"?

A. No sir, I don't think I made that statement.

Q. I didn't ask you whether you made that?

A. Well, I didn't hear that said.

Q. Did you hear the sister say anything to the brother at all?

A. No, sir, I heard some woman hallo off the fire-escape.

Q. What did she hallo?

A. Couldn't tell.

Q. Did you hear the woman that came out and put the man's head in her lap say anything?

A. She tried to get him to

Speak.

Q. Did she say anything to the defendant?

A. No sir, not to my recollection; don't remember.

Q. You say the sister said she wanted him brought in there; is that right?

A. Yes sir.

Q. What did the defendant say to that, if anything?

A. I think he made the remark "If he goes in then I go out."

Q. Is that all you recollect his saying?

A. He said something - he was no use there and he was supporting the house and everything, and if he was taken in there, he would go out.

Q. You mean the defendant would go out?

A. Yes sir.

Q. That is all you recollect of the case?

A. Yes.

Q. I want to refresh your recollection again - I ask you again whether when you first saw this dead man, I mean the deceased Jeremiah Hurley, he was standing or he was falling?

A. He was lying down when I saw him.

CROSS EXAMINED BY MR. CHANLER:

Q. You were with Ruddy?

A. Yes.

Q. And you and Ruddy went away together?

A. Yes sir.---

By Mr. Osborne:

Q. Have you had any conversation since recess with anybody

about this case?

A. No sir.

Q. Had any conversation with anybody about this case for the defendant?

A. No sir.

MRS. ELIZABETH ADELBERTH, called on the part of the People, being duly sworn, testified as follows:

By Mr. Osborne:

Q. Where do you live?

A. 8113 Park Avenue.

Q. Live there now?

A. Yes.

Q. How long have you lived there?

A. I will be a year there in February, next month.

Q. Where were you living on the 7th and 8th of August, 1892?

A. 443 Willis Avenue.

Q. Where was Mrs. Hurley with her two sons Jeremiah and Edward living at that time?

A. 443 Willis Avenue, first floor - beneath me.

Q. Where was the sister Mrs. West living?

A. 445 Willis Avenue, the next house.

Q. On the night of the 7th of August about 12 o'clock - mid-night of that date, or one o'clock on the 8th of August -

The Court: It took place on the night of the 7th or morning of the 8th of August.

Mr. Osborne: Yes sir; he died on the morning of the 8th.

Q. Did you hear any noise that night?

A. Yes, I was waked up with the noise.

Q. Describe to the jury what that noise was, the nature of it and what you heard?

A. I was waked up by hearing Jeremiah Hurley calling for \$2.50 from his mother.

Q. Tell what he said?

A. He said "I want \$2.50"; the mother said she didn't have it. He said "You have got it, I am after getting \$10, and I want the \$2.50".

Q. Did you hear any further conversation?

A. Then I heard Eddie say something about his board.

Q. Do you remember what he said?

Mr. Chanler: I object. Was she present?

Mr. Osborne: She was.

Mr. Chanler: Then I object.

By the Court:

Q. Do you know Edward the defendant?

A. Yes.

By Mr. Osborne:

Q. How long?

A. Two years I lived in the house.

Q. How long did you know Jeremiah?

A. The same length of time.

Q. Did you know the family well?

A. Yes, I was pretty well acquainted with the family.

Q. Did you know Edward's voice?

A. Yes.

Q. Did you know Jeremiah's voice?

A. Yes.

Q. You heard Edward say something about his board?

A. He said something about his board---

Objected to.

By the Court:

Q. You say it was his voice you heard?

A. It was his vice.

The Court: She heard the defendant's voice and heard him say something. I think it is admissible.

By Mr. Osborne:

Q. Did you hear any other noise?

A. Well, I heard a door open, and heard Jeremiah running out.

Q. If you don't know that was Jeremiah, all you can say is you heard somebody run?

A. I heard somebody run.

Q. What else did you hear besides that?

A. I heard the slamming of doors.

Q. What did you do?

A. I went to the window and looked out.

Q. The front window of 443?

A. Yes sir.

Q. Where did you look?

A. Out on the street - right down

on the stoop.

Q. What did you see then?

A. I saw Edward Hurley go from one house into the other.

Q. You saw Edward Hurley run out from 443 into what?

A. 445.

Q. Then what did you do?

A. I started to go back to bed again and I heard loud talking and I heard Edward Hurley say he was a son of a bitch and he would hang for him.

Q. Did you look out of the window then?

A. Yes.

Q. Whom did you see?

A. I saw Mrs. West and I saw Jeremiah lying on the sidewalk; and I saw Mrs. West stoop down and pick Jeremiah up into her lap.

Q. Did you see Edward?

A. I heard him hallo, saying "You son of a bitch he would hang for him.

Q. Use his words, you can leave out about the name?

The Court: She said "I heard the defendant say he was a son of a bitch' and I will hang for him'."

Q. Did you see Edward?

A. No sir, I only heard him; he was standing on the stoop.

By Mr. Chanler:

Q. Did you see him standing on the stoop?

A. No sir - I

heard him.

Mr. Chanler: Then I object.

By Mr. Osborne:

Q. After you saw Jere stretched out on the sidewalk, did you see Eddie then?

A. No sir, not until after he was carried upstairs.

Q. I mean the defendant?

A. Yes, I saw him afterwards.

Q. Did you see him before he went upstairs?

Objected to as leading.

The Court: This particular question is not.

Q. Did you see Edward after you heard him say "I will hang for him" - did you see Edward after that on the stoop and before he went upstairs?

A. Yes, I saw him.

Q. Where?

A. I saw him standing talking to Mr. Dew after Jere was carried up. He was standing and talking with Dew and with another men who was with Dew.

Q. You looked out of the window and saw him - did you hear what he said?

A. He was excusing himself to the gentlemen.

Q. What did he say?

A. He said that his mother was an old woman and he did not know where she was how; he said "I don't know where my mother is now", to this young man.

Q. What else?

A. That is all I heard, I came away from the window.

Q. Did you hear him repeat the phrase "I will hang for him" more than once?

A. Yes, I heard it three times.

Q. You saw the defendant after he was carried up stairs - I mean the dead man?

A. Yes sir.

Q. Where was he carried?

A. Into the kitchen and laid on the floor.

Q. Were you present?

A. No sir, I came down to the foot of the stairs.

Q. Did you see him carried up?

A. I saw him carried up; he went inside the door; I went upstairs; I didn't go into the room; I held the light. Afterwards I saw him when his mother asked me to come down.

Q. What next happened?

A. Eddie came up after his mother.

Q. You have not said anything about the mother?

A. The mother came up to my door after Jere was carried upstairs; she rang the private hall bell and I opened the door; I asked---

Objected to.

Q. When the mother came up there, you cannot state what was said between her and yourself unless the defendant Edward was there and heard it?

A. No, he was not there.

Q. He did not hear it?

A. No sir.

Q. Where did the mother go?

A. She came in my house.

Q. She went into your room?

A. Yes.

Q. After the mother came into your room, did you see Edward the defendant?

A. Yes.

Q. After the mother came up there did he come up?

A. Yes.

Q. How long had she been there before he came?

A. She was up there about fifteen minutes.

Q. Then who came?

A. Edward.

Q. What did he do when he came?

A. He rang the bell.

Q. And you went to the door?

A. Yes.

Q. What did he say?

A. He asked me if his mother was there, and I said she was.

Q. What did he do?

A. He came in. I went in the front room to look for his mother. His mother had got into the clothes-press. I asked why she done it -

Objected to.

Q. Not unless Edward could hear?

A. He was in the dining room; there was only a room between. I asked the mother why she went up there; I told her Eddie

was waiting in the dining room. Eddie asked her why she did not stay in her own room; she said she was afraid.

Q. What did he say?

A. He said no, "You need not be afraid; if I have not killed him I will kill him before morning."

Q. What did you say?

A. I said "Don't say that, Eddie"; the mother said "No, don't Eddie dear, don't."

Q. Then what happened?

A. Then he told her to come down stairs; she turned to me and asked me to come with her and take the lamp. I did so and I went down and Jere was lying in the kitchen on a pillow, and his coat on one side. His mother stooped down and put her hand on his face, and she said "Oh, he is not out"; she turned his head over, and she said "Hold the lamp down"; and over the left ear there was a mark about an inch long and a lump.

Q. Did Edward say anything to you about his mother stopping with you that night?

A. Yes, he asked if she could stop with me; I said yes. She went into the clothes-press and got the clothes out.

Q. You said she could?

A. Yes.

Q. Did you and she go upstairs together?

A. Yes, after she got her clothes; we went into my room.

Q. After that how long did she stay before she saw the defendant?

A. The rest of the night until four o'clock in the morning. He came up after us, after we got in the room; he merely asked for the keys of the room downstairs. I asked him if he wanted a light; he said no, there was enough light downstairs for him. I got the keys from his mother and gave them to him.

Q. Did you have any talk with Edward at all, or with anybody, in Edward's presence, after that?

A. No sir, I did not.

Q. Not with the mother or with Mrs. West or any other person about this thing at all?

A. Only about the rolling-pin; she showed it to me in the morning.

Q. Who did?

A. Mrs. West.

Q. Was Edward there?

A. No sir.

Mr. Osborne: Then strike it out.

Q. Have you seen Edward Hurley since four o'clock on that Sunday morning?

A. No sir.

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Q. How long did you live in that house after that?

A. From August till February.

Q. And he was not seen there after that night?

A. No sir.

CROSS EXAMINED by Mr. Chanler:

Q. Which of your windows did you look out of?

A. My front window - the right hand window.

Q. When you first saw the dead body of the deceased being carried up?

A. I could look out of the front window to see him in the street.

Q. Did you have more than one window?

A. Two.

Q. Were you always at the same window?

A. Yes.

Q. Your house adjoins 445?

A. Yes, my window did not adjoin there.

Q. Question repeated?

A. Yes.

Q. And you are on the second floor?

A. Yes.

Q. You are on the third floor?

A. I was two flights up in front.

Q. You tell us you looked out of your front window and you saw the defendant going out of your house towards the next stoop?

A. Yes sir.

Q. You looking out from your window?

A. Yes.

Q. Did you see him go out of the door?

A. No, could not see him very well go out; could see him going down the stoop and crossing right over; saw him going down the steps and go into the next house.

Q. Is there not a tin roof in front of your window?

A. Yes, a small one.

Q. Will you tell the jury you were able to look over the tin roof, standing at your window, and see the defendant go into next door - from one door, to the other?

A. Yes sir.

Q. Could you see his features clearly?

A. Yes.

Q. Sure it was him?

A. Yes.

Q. No question in your mind as to who it was?

A. No sir, it was him.

Q. Pretty light in the street?

A. The electric light.

Q. How far is that house from the electric light?

A. Not far; it shines right over into our window.

Q. How far was it?

A. Don't know; couldn't tell that.

Q. Is this house in the middle of the block?

A. No sir, near the corner.

Q. How far from the corner (Pause.)

Q. Some distance from the corner?

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A. Well, some distance.

Q. You saw the defendant come up to your room a short time after the deceased had been carried upstairs?

A. Yes sir.

Q. Did you swear to that at the Coroner's office?

A. I did.

Q. You went to the Coroner's office a comparatively short time after this occurrence - about two months afterwards?

A. Yes sir.

Q. And you were sworn there and examined by a lawyer - the District Attorney?

A. Yes, I made a statement to the Coroner, certainly.

Q. And everything was fresh in your mind what occurred?

A. Yes.

Q. And you were sworn then?

A. Yes.

Q. Sworn to tell the truth and the whole truth?

A. Yes.

Q. And you did tell it?

A. Yes.

Q. That is about a year and a half ago that you were at the Coroner's office?

A. I think so; yes, it is a year ago this last Thanksgiving, the day before Thanksgiving.

Q. Did you see Mr. Ruddy as you looked out of the window?

A. I saw a young man around---

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Q. Did you see him?

A. No sir.

Q. Did you hear him say anything?

A. I did not.

Q. Do you remember saying at the Coroner's inquest "I heard Mr. Ruddy say 'Where is the policeman'"?

A. I didn't hear Ruddy say that; I heard somebody say it.

Q. Did you say at the Coroner's inquest that Ruddy said "Where is the policeman"?

A. No sir.

Q. You were with Ruddy at the Coroner's inquest, were you?

A. Yes.

Q. Do you remember seeing Mrs. West the next morning?

A. Yes.

Q. Do you remember saying anything to Mrs. West the next morning in regard to being surprised to hear that her brother Jerry was hurt last night?

A. No sir.

Q. You don't remember anything of that kind?

A. No sir.

Q. You and the Hurley family were on good terms - excellent terms of friendship?

A. Yes sir.

Q. You have no grudge against Mrs. West?

A. No sir.

Q. Have never threatened Mrs. West?

A. No sir.

Q. Never threatened to tear Mrs. West's insides out?

A. No, -- she done it to me, though.

Q. You remember going to the police court and making a complaint against Mrs. West?

A. Yes sir.

Q. And the judge dismissed the complaint and discharged her?

A. Yes sir.

Q. Do you remember saying in the presence of Mr. Jones on the way back from the courtroom that you would get even with Mrs. West - if you could not get even with Mrs. West you would get even with her brother Eddie?

A. No sir, I never used the expression.

Q. How long after the death of Jerry Hurley did you make the complaint in the police court?

A. I had cause to make it - about a week or so after.

Q. You made a complaint and the complaint was dismissed?

A. Yes sir.

Q. That was a week after the death of Jerry?

A. A week or two.

Q. On the way back did you say in the presence of Mr. Jones or somebody with you, "I will make that Hurley family shed tears before I have done with them"?

A. No sir.

Q. Or words to that affect?

A. No sir.

Q. The testimony you have given in this court is not in the least affected by your quarrel with Mrs. West?

A. No sir - she quarreled with me; I had nothing to say to her; she made an attack on me.

Q. You tell us that the defendant came to your room twice?

A. Yes sir.

Q. And the second time he got the keys?

A. Couldn't tell you, don't know. I took the keys out of the mother's hand and handed them to him; I did not stand to count them, I saw them.

Q. I ask you how many keys there were?

A. I said I didn't remember how many keys there was.

RE DIRECT EXAMINATION by Mr. Osborne:

Q. This complaint you made against Mrs. West was made after or before you testified in the Coroner's office in this case?

A. Before.

The Court: What has Mrs. West to do with this case?

Mr. Osborne: He proposes to show that witness is biased against the Hurley family, and I propose to investigate it.

The Court: I will rule it out of the case.

Mr. Osborne: I assure Your Honor it is

material. I propose to show that the quarrels grew out of the fact that Mrs. West tried to induce the witness to tell things different from what they were, and she insisted on telling the truth; and further that the witness has been approached by the defendant.

The Court: If it had not materiality, why did you ask it?

Mr. Chanler: I wanted to show that she came from the police court and said to a certain party "I will get even with Mrs. West or her brother Edward." This occurrence \*\*\* before the Coroner's inquest, and I do not object to it.

The Court: He waives objection.

Q. What was the cause of your making this complain against Mrs. West?

A. I came in from the avenue one day and was sitting on the stoop talking to Mrs. Boyd and her daughter.

Q. Tell what the quarrel was about?

A. I got up to go upstairs and she came and shook her fist in my face.

Q. Who did that?

A. Mrs. West.

The Court: I will rule it out.

Mr. Osborne: I propose to show that she threatened the witness.

The Court: I will take the responsibility to rule that out, and I think you might leave the West transaction out. Try not to draw in conversations and interviews unless you take the whole thing.

Q. Will you kindly tell what was the complaint that you made in the police court?

A. Because she pulled my hair and slapped my face.

By the Court:

Q. Mrs. West did?

A. Yes sir.

The Court: I rule that out.

Mr. Osborne: Then I cant show that part of my \*\*\*wase.

By Mr. Osborne:

Q. Has anybody endeavored to intimidate you as a witness?

A. No sir.

Q. Did Mrs. West?

A. Yes, Mrs. West did.

Q. What did she say to you about this case?

Objected to.

Sustained. Exception.

The Court: Defendant is not bound by what Mrs. West said about this case.

Q. Whatever quarrel you had with Mrs. West was in reference to her attempt to intimidate you?

Objected to as leading, asking for a conclusion and improper. Sustained. Exception.

Q. The Counsel asked you another question. He asked you while His Honor was talking to Mr. Wellman about a conversation you had with Mrs. West the next morning after the homicide. You remember that - will you state the whole of that conversation the next morning after the homicide?

A. When I came downstairs, she asked me if I know what Jerry was hit with; I said no; she said "come with me."

Q. Is this Mrs. West or Mrs. Hurley?

A. Mrs. West. I followed her into the back room and she looked behind the range. She said "mama must have done something with it." I said "What is it?" She said "Wait and see." Then she looked again and brought out the rolling-pin, and said "There is what he hit him with." I said

"I don't wonder it killed him."

OFFICER FRANK A. KUHTMANN, called for the People, being duly sworn and examined, testified as follows:

By Mr. Osborne:

Q. You are a police officer connected with the police courts of this district?

A. Yes.

Q. Did you arrest Edward Hurley?

A. Yes.

Q. On what date?

A. 10th of September, 1893.

Q. That was about a year after the homicide?

A. Yes.

Q. State about what time it was that you arrested him?

A. It was about midnight of the 9th.

Q. Did you have any talk with him?

A. Yes.

Q. What did you say?

A. I went over to him, and I told him I wanted him - they wanted him at the station house, there was a warrant out for him. I did not tell him what for.

Q. Did you ever tell him what for?

A. I did when I got up further; I told him he was wanted for being implicated in the case of his brother being killed.

Q. Did you tell him you wanted him for killing his brother?

A. Yes sir.

Q. What did he say?

A. "Oh, my God, you don't want me for that?" I said "I do." We got up further, and I asked him where he had been; so he told me he had been out in foreign States of the West; he had been out West; he told me that he did not know anything about his brother being killed; that he had left previous before his brother was dead, and three weeks afterwards his lady friend had notified him and told him about it - told him in a letter that he had fallen down stairs.

Q. He did not know anything about his brother's death at the time it occurred?

A. No; he left previously. Three weeks after his death his lady friend wrote him the letter.

Q. He did not hear of it until after his brother had been dead three weeks?

A. Yes sir.

CROSS EXAMINED by Mr. Chanler:

Q. In other words, he said he did not hear of his brother's death until three weeks after the funeral?

A. After his brother's death.

By a Juryman:

Q. Three weeks before he had fallen down stairs?

A. No sir, he did not tell how long previous to that; but he told me he left before his brother was dead, and three weeks after his death his lady friend wrote the letter and told him he was dead.

By Mr. Osborne:

Q. That was the first time he heard of his death?

A. Yes sir.

THOMAS GILMARTIN, called for the People, being duly sworn, testified as follows:

By Mr. Osborne:

Q. You are connected with the 33rd Precinct?

A. I was then.

Q. In the early part of August, 1892, did you get out a warrant for the arrest of this defendant?

A. Yes.

Q. Where did you get it?

A. At the Coroner's office.

Q. Did you endeavor to find the defendant?

A. I did.

Q. Were you able to find him?

A. Not at the time.

Q. You did not find him for a year afterwards?

A. Not until September, 1893.

Q. After he was arrested did you have some talk with him?

A. On the way down here?

Q. Yes - state what that was?

A. Defendant asked me what they wanted to arrest him for; I said "You know all about it." He said "I don't know only what I am told; you want me for killing my brother; I did not do that." He said "I was out West at the time that was done" - out in Ohio, I believe he said. After that some more questions I asked him in reference to it.

CROSS EXAMINED by Mr. Chanler:

Q. You don't remember the exact words used in that conversation?

A. That was about what it was.

Q. Repeated?

A. Those were just about the exact words that were used.

Q. That was the idea you got from what he said; you understood him to say he was out west at the time?

A. Certainly I understood it.

Q. At the time his brother died?

A. Yes sir; he said "I was out West, I was out in Ohio."

Q. You had some conversation - the words did not flow out exactly as you have given them?

A. Just about.

Q. See if you can tell the exact words?

A. That is as near as I can tell, as near as I can recollect.

Q. You did not write those words down?

A. That was in September; that was on the day I was over to the Coroner's office; I did not write the words down.

It is conceded that Jeremiah Hurley died Sunday evening August 8th, 1892, at about 8 P.M.

Mr. Osborne: That is the case for the People.

Mr. Chanler: Is there enough evidence to go to the Jury, Your Honor?

The Court: There is enough evidence to go to the jury, that he died from a fracture of the skull. There is evidence that defendant made some threat to kill him - "If I have not killed him, I will kill him before morning"; that is an admission.

Mr. Osborne: That is an admission he made to Mrs. Adelberth. He also stood over him with a rolling-pin in his hand, and said "If you sons of b -

interfere you will get the same dose." Another thing; that the deceased was lying on the ground prone and that defendant was standing near him and said "I will hang for him" - all admissions that he struck the blow.

Mr. Chanler: The testimony in regard to the hanging part, she says she was up in her window and she recognized his voice; but if Your Honor will pardon me, I will suggest something that will explain the whole case.

The Court: There is no evidence here from any eye-witness that he struck any blow. The only question is whether or not his statements were such that a juryman has a right to infer that he struck him. I have this down here - someone said to the defendant "You ought to get a punch in the face" and the defendant was standing in the street at the time with a rolling-pin in his hand. He said "I will hit any one of you sons of b --- that come near me." He said "You would do the same thing if you were in my place."

Mr. Chanler: That referred to the boys who

were going to hit him.

The Court: Brennan says "I saw a man lying on the sidewalk and he stood with a stick in his hand. Someone said 'Whoever done that he should get a punch in the face.' Defendant said 'don't any of you interfere or you will get the same; he deserved that, he was my brother.' Defendant said 'He is all the time drunk and beats his mother when drunk.' I heard defendant say 'I will hang for him.' Defendant asked his mother why she did not stay in her own room; she said she was afraid. He said "You need not be, if I have not already killed him, I will kill him before morning." I think I will let it go to the jury.

Mr. Chanler: Is it man slaughter in the second degree?

Mr. Osborne: Man slaughter in the first degree. A rolling-pin is a dangerous weapon used on a head by one man to another.

The Court: I won't pass on what goes to the jury. I suppose from what the District Attorney said in opening that he would not ask for a higher

verdict than manslaughter in the first degree.

Mr. Chanler: Your Honor will not take away from the jury manslaughter in the first degree?

The Court: No. I will give you an exception.

Mr. Chanler: Or manslaughter in the second degree?

The Court: No, nor in any degree.

Exception.

Mr. Chanler closed his summing up as follows:

There was no desire to kill the man by defendant, who was of spotless character, always worked hard and supported the family. So far from wantonly killing his brother with a rolling-pin for no reason at all, it is simply impossible, and is uniform with the evidence. We will show you that defendant had an excellent reputation; that he did not run away. If in the face of the evidence he had run away and did not come back, it is natural to think he was in the wrong. If Mr. Osborne had put Dr. Bougel on the stand you would have heard this - that the next morning about seven or eight o'clock this defendant went to see Dr. Bougel.

They did not know what was the matter with deceased; that he had fallen on his head. The doctor came to see him and told Edward Hurley it was all right, that it was simply a blow he had got on his head while drunk. Edward Hurley was working as a plumber and work was slack and he was going on his vacation in the western part of the State, in the hop-growing country. He went there that Sunday morning. He declined to be elected president of the baseball club, because he was going away on his vacation; he was going to work to pick hops in the northwestern part of the State; he could not say where because it is a migratory business, to go from farm to farm. After saying good by to the girl he was engaged to, he went to see Mr. King and Miss King, who has been engaged to this defendant and is engaged now to him and wanted to get at the truth. He went to see Miss King and said good-by as he promised the night before or a day or two before. His valise had been packed several days before by his sister; and the doctor having told him that there was nothing the matter with deceased but drunkenness, he does not

see why that should interfere with his short vacation, and off he goes. He does not hear from his brother for several weeks - three weeks. When he had been there three weeks he gets a letter from Miss King or his sister telling him that his brother was about to be buried. The letter had been delayed. Then he comes back. So far from hiding we will show that he came back at once on receipt of the communication from his sister or fiances, and from the 22nd of August until the 27th of September he was trying to get work in this city. I hope to be able to produce the plumber to whom he applied for work. He had no idea there was anything against him - spent two or three weeks trying to get work and couldn't get it. He had knowledge of a bridge that was to be built in Columbus, Ohio. He goes out there and stays there longer than he intended, because he had his rib broken there. While there he corresponded with his family and his lady friend. He comes back some time in July, 1893. Last July he goes to work for a man named Lindsay a plumber, and worked a number of months

Before he was arrested. We shall show by the evidence of his friends that they were together one summer evening in July or August - this defendant and this girl he was engaged to and one or two others - and were singing. Officer Gilmartin was listening to them; there was no attempt at running away. It is all the result of the unpleasant feeling between Mrs. Adelberth and Mrs. West. I do not care who is right, whether Mrs. West or Mrs. Adelberth. I do care that there was a quarrel, that Mrs. Adelberth did have a quarrel. We will show by Mr. Jones' evidence that he heard Mrs. Adelberth say after she failed to get Mrs. West arrested or punished, "I will make her and her brother Eddie shed bitter tears." That was a week after the funeral and about three months before the Coroner's inquest. You can easily imagine the effect of idle rumors - "I guess Jerry Hurley was killed by a rolling-pin in the hands of his brother, and he has run away." All these things not coming out until five or six weeks after the death. Any slight circumstance is enough to cause a police

officer to start up an investigation. There was no crime committed; there was no reason why he should strike his brother, and he did not strike him. I do not want to take up your time about what Mr. Osborne calls subornation of perjury, but so far as any money is concerned there has none been offered to any witness. I can show that they have not had a dollar for several months, and have been living since the defendant was arrested upon charity. There is no money to purchase testimony. This Mr. Ruddy who testified we claim that he was drunk that night; that he would testify if he said truly "I cannot tell whether it was a rolling-pin or was not? That is what he said in Miss King's house. We do not say that anything he testifies to hurts Edward Hurley; and having said on one occasion he saw the rolling-pin he thinks he ought to stick to that statement. The rolling-pin is simply the talking of people about the evidence among themselves. I do not think that Mr. Osborne implied that Mrs. Adelberth had been threatened not to give her testimony in this case. It is simply an error on the

part of Mr. Osborne, who in his zeal to see justice done has been led away by statements made by Mrs. Adelberth. It is really a women's fight.

STEPHEN J. EGAN, called on the part of the defense, being duly sworn, testified as follows:

By Mr. Chanler:

Q. You know the defendant Edward Hurley?

A. Yes.

Q. What is your business?

A. Plumber.

Q. In that business some years?

A. Yes, about six.

Q. You employ other men?

A. Yes.

Q. Head of a plumbing establishment?

A. Yes.

Q. How long have you known defendant?

A. I guess since 1889.

Q. You know people who know him?

A. Yes.

Q. What is his character - reputation?

A. Very good.

Q. When was he working for you?

A. He started in the summer of 1889.

Q. What is the last time that you recollect?

A. I guess about 1891.

CROSS EXAMINED by Mr. Osborne:

Q. You are a plumber?

A. Yes.

Q. Where?

A. 635 East 136th Street.

Q. How far is that from Willis Avenue?

A. Right close to Willis Avenue.

Q. Near to where the people live?

A. No sir, about ten blocks away.

Q. You saw Edward Hurley pretty often?

A. He served his time with me; I did not see him much after he left me.

Q. He left you in 1891?

A. Yes.

Q. But you used to see him from time to time?

A. No sir.

Q. Never saw him?

A. I might see him occasionally - passing living in the neighborhood.

Q. As he passed by your shop you would see him?

A. No, he generally came up Willis Avenue, and I would be on the avenue.

Q. Do you remember the time Jeremiah died?

A. I heard a little report of it.

Q. Did you see Edward from that time until 1893?

A. No sir, never until to-day.

RE-DIRECT EXAMINATION

By Mr. Chanler:

Q. Do you recollect his calling at your shop or getting a mess-

age from you?

Objected to.

Q. Did you receive any message purporting to come from defendant, applying for work, some time between august, 22 and Sept. 27?

A. Excuse me - you are mistaking me for another man. You mistake me for McMahan.

Q. Are you not in partnership with McMahan?

A. No sir.

JAMES REYNOLDS, called for the defense, being duly sworn, testified as follows:

By Mr. Chanler:

Q. Do you know the defendant?

A. Yes.

Q. You are in partnership with Mr. McMahan, plumber?

A. Yes sir.

Q. Did the defendant work for you?

A. Yes.

Q. When?

A. Some time last summer,-- in the summer months - I think about July or August.

Q. He was not working for you when he was arrested?

A. No, he was laid off for a few days before that.

Q. Did you see defendant at all before last summer?

A. I have heard of him; I never saw him before last summer.

Q. You know people who know him?

A. Yes, my partner knew him before that.

Q. Question repeated.

A. Yes.

Q. You know his general reputation for peace and quiet?

A. I know him to be peaceable and quiet.

Q. You know as far as his general reputation is concerned it is good?

A. Yes, as far as I know.

Q. Your partner has charge of the shop or you have?

A. My partner has charge of the outside work.

Q. Did you receive any application for work from this defendant in August or September, 1892, personally?

By Mr. Osborne:

Q. Did you see him?

A. No sir.

By Mr. Chanler:

Q. Did you receive an application?

Objected to. Sustained. Exception.

The Court: If he will swear to the fact that he made an application by letter or personally, I will let you prove it.

Q. Your partner is in town?

A. Yes sir.

CROSS EXAMINED by Mr. Osborne:

Q. Do you know how long defendant has been working for you prior to his arrest?

A. Five or six weeks, I think.

Q. Prior to his arrest in September, 1893?

A. Yes sir.

By Mr. Chanler:

Q. He worked from July to September - somewhere between July and September?

A. Yes, in the summer months.

Q. You don't know exactly when?

A. No sir.

FRANK HARBECK, called for the defense, being duly sworn, testified as follows:

By Mr. Chanler:

Q. Did you have a conversation with Mr. Ruddy in the presence of Mr. or Miss King on any occasion a short time ago?

A. Yes.

Q. Did Mr. Ruddy in the course of the conversation you had with him in King's house say that he could not remember whether there was a rolling-pin there or not, but they told him to say it was a rolling-pin?

A. He said he saw something in his hand up to his shoulder, but didn't know what it was; but did not say they told him

to say so. He did say he had something in this way (indicating) but did not know what it was until the next day they told him it was a rolling-pin, and he believed it was that.

Q. How long have you known defendant?

A. I guess about four years.

Q. Were you with him any time previous to his brother's death?

A. Yes; I was with him that night; I was with him all that evenings.

Q. Had the defendant at any time expressed to you during that evening his intention of leaving town?

A. Yes; it was not that night exactly but a few days before; he did not know exactly when to go, but he expected a letter. That night there was a meeting of the ball club; I was joining the club at that time; I left it at about half past ten; where he went I don't know. but two or three days before he expected to go away to his cousin in Cohoes, the hop country.

CROSS EXAMINED by Mr. Osborne:

Q. Tell all he said about leaving town - it was two or three days prior to Jeremiah's death, was it?

A. Previous to that accident that night, yes.

Q. Did he tell you that night he was going to leave?

A. No sir, two three days prior to that.

Q. As I understood he said he didn't know exactly when he was going to leave town?

A. He said he expected a letter.

Q. When he got that letter he was going to leave?

A. Something to that effect - could not exactly say the words - he was expecting a letter or two get word in some way.

Q. Did Ruddy say the statement he made before the Coroner was true?

A. He said he had to stick to the statement he made.

Q. Did he say it was true?

A. No, he didn't say it was true; he said he saw something but didn't know what it was.

Q. A kind of stick?

A. He didn't say any stick, no sir.

Q. But saw something in his hand?

A. Yes.

Q. Short like?

A. No sir.

Q. Didn't you just now say to the jury it was short like?

A. I said he had his hand up to his shoulder; he thought he had something in his hand but didn't know what, until

the next afternoon he was told it was a rolling-pin, and he believed it was a rolling-pin.

Q. Did he say who told him it was a rolling-pin?

A. No sir.

By Mr. Chanler:

Q. No one urged him to change his statement about the rolling-pin at the Coroner's office?

A. No sir.

Q. Oro to say anything but the truth in his statement?

A. Only to speak the truth. He said he was going to stick to his statement. He said "That is right." He said he would no  
\*\*\*perjure himself. We said "One man's life is as good as another."

By Mr. Osborne:

Q. He said he would not perjure himself and would not change his term rolling-pin?

A. Yes.

Q. Did you go to see Ruddy?

A. I did.

Q. You knew about the statement he made before the Coroner?

A. I never asked him anything, no sir.

Q. What made you go to him?

A. In the first place it was on account of Mr. King; he was laid up at the time sick. He had made an engagement with Clark as a friend of Ruddy's.

Q. You and King both knew that Ruddy was a witness for the prosecution?

A. We did, we heard about it.

Q. \*\*\*Your object in seeing Ruddy was to get him to lighten up about the testimony?

A. No sir.

Q. What for?

A. Because he was a friend of his and wanted to see him.

Q. Did not you want to get him to change the statement he had made at the Coroner's office?

A. No sir.

Q. What did you go for?

A. To pay a friendly visit; he said "Come over and see me". I went over to pay him a visit.

Q. Had you seen him before that?

A. No sir - just that night at King's house.

Q. In that the place where the conversation took place about what defendant had in his hand?

A. Yes.

Q. That was at King's house?

A. Yes.

Q. After that you paid a friendly visit to Ruddy?

A. Yes.

Q. A visit of condolence while he was sick?

A. He made an engagement with Clark; I called there to tell him that King could not come over.

Q. You told the jury that you went to see Ruddy because he was sick?

A. That is the reason.

Q. Because you felt friendly towards him?

A. Yes.

Q. By the Court:

Q. You sand he told you that he saw something in defendant's hand at the time the deceased was lying on the sidewalk but didn't know what it was?

A. That is the idea; didn't know what it was.

Q. But someone told him the next day it was a rolling-pin, and he thought so?

A. That is it.

By Mr. Chanler:

Q. Mr. King was sick?

A. Yes; and because King was sick I went to see him.

Q. What did you see him for?

A. To tell him that King was sick and couldn't come, and to pay him a visit at the same time.

Q. Because King was sick and couldn't come over to see him?

A. Yes.

The Court adjourned with the usual admonition until eleven o'clock to-morrow morning.

TRIAL RESUMED.

JANUARY 16TH, 1894.

DELIA WEST called by THE DEFENSE, being duly sworn, testified as follows:

Direct-Examination.

By MR. CHANLER:-

Q. Mrs. West, you are a sister of this defendant?

A. Yes, sir.

Q. Edward Hurley?

A. Yes, sir.

Q. Do you remember the---

THE COURT: Is she the sister of the deceased?

MR. CHANLER: Yes, sir; and of the defendant.

BY MR. CHANLER:

Q. Do you remember the night before our brother died?

A. Yes, sir.

Q. Do you remember when it was?

A. The 7th of August.

BY THE COURT:

Q. That is the person referred to in the indictment, the deceased?

A. Yes, sir.

Q. He died on the night of August 7th, 1892?

A. No, sir; he

died on the night of August 8th, 1892, at a quarter of 8, 1892.

Q. When did you see your brother that night for the first time?

A. I saw him at 5 minutes of 1 o'clock, at about 5 minutes of 1, on the night of the 7th of August, 1892; and I looked out of the window. I had seen him many times before, that way, and the reason that I was up was that I had a sick baby, and, at 5 minutes to \*\*\*1 I had given my baby medicine.

BY THE COURT:

Q. Five minutes of 1, at night?

A. Yes, sir; and I looked out, and I saw three men standing on the corner, and I recognized my brother as one of them; and he came up the step, and he said he would get what he had come for, and be down in a few minutes.

BY MR. CHANLER:

Q. He said this to his companions?

A. Yes, sir; and being highly intoxicated, I looked for troubles. I went out through the hall and stood at the airshaft window and I heard him stumbling upstairs and

go inside and shut the private door.

Q. Did you hear him slam the door?

A. Yes, sir. He did not earn any money, and he was drunk all the time. Several minutes after, I saw a white figure go down the stairs, and I knew it was, and he came directly behind her. Well, he had not got down only two steps, that faced towards the window when he fell down the other flight.

Q. Do you mean the window of the airshaft?

A. Yes, sir; and I could only see opposite, though.

Q. You lived on the adjoining house, to where your mother and the deceased lived?

A. Yes, sir.

Q. And this airshaft communicated between the two house?

A. Yes, sir; and I could see the stairs and part of the hall. He fell down that flight of stairs. I didn't hear any movement, and I thought he was hurt, and I ran through into my parlor window, and I looked out, and in a few minutes he came out, and he stood on the stoop, and he stood on the stoop as if he would change his mind and go back into the house again, and he staggered and fell over the railing and grabbed at the lion's head, and he fell down and fell over into \*\*\* stoop. He missed

the railing, and fell over; and I ran downstairs and I picked up his head and laid it in my lap; and I said, "Jerry, are you hurt?" and he said, "Oh, I have done it this time," and I said, "Oh, no. You are all right. Keep quiet."

BY MR. OSBORNE

Q. Was the defendant there then?

A. No sir; there was not a soul in the neighborhood then.

BY MR. OSBORNE:

Q. Then, you can't testify to what the deceased said. You can't testify to anything like this.

MR. CHANLER: Yes, she can testify, if I don't object to it.

THE WITNESS: And when he fell, the two companions that was waiting for him ran down Willis Avenue, and I was alone; and I went into the hallway, and rang the bell of my mother's house several times, to wake them, as I knew Eddy was in bed, and I came out again, and I then rushed up into my house and came back, and seeing Mr. Durr, I called on him to help me, and Roddy and this other man came

out of the corner liquor store. I didn't know who he was, the other man.

BY THE COURT:

Q. Roddy and his companion came out of the liquor store?

A. Yes, sir; and I holloaed, and I ran upstairs and grabbed my wrapper and came down, and, when I came down, those four man were standing there, and they asked me what was the matter.

BY MR. CHANLER:

Q. How were you dressed the first time you went down?

A. In my night dress; and I went upstairs and put my wrapper on; and they asked me what the trouble was, and I said, "My brother was fallen on the stoop," and I asked Mr. Durr to light the gas---no, then I asked the other man---

Q. Which other man?

A. Farrier, I think his name is, I don't know his name; and he took a match out of his pocket and struck a light and lit the gas, and they helped me up with my brother, and they laid him on the kitchen floor, and I \*\*\* stayed there a few minutes, and then went home, and the defendant

came in and laid on my sofa until daylight. When I rang the bell and came downstairs with my with my wrapper on, Eddy had come down to the front door.

BY THE COURT:

Q. And he stood on the steps?

A. No, sir; on the mat, in the doorway, and asked what was the matter, and I said, "Jerry has fell. Help me to take him upstairs," and he said, "No; I went. You go upstairs and min\*\*\* your sick young one. You are always dragging around with him," and he went upstairs to my room, and there he stayed until the next morning.

BY MR. CHANLER:

Q. Now, the next morning did you see your brother, Eddy?

A. Yes, sir; I was talking with him next morning.

Q. Now, did Eddy go away the next morning?

A. He had rude, previously, an engagement to go away because we packed his valise on the Saturday, and got his clothing ready.

Q. Who did?

A. Mamma and I, both; and he came into my room, on Saturday afternoon, about 5 o'clock, and he said, "I

wish you could go away with me."

(Objected to.)

THE COURT: Now, one of your points is flight, and he has a right to explain. If he had made his arrangements public, it would not show flight.

THE WITNESS: No, sir; because he had made his arrangements two weeks before that; and he said, "I am going to have a good time, this time."

BY THE COURT:

Q. He had made all his arrangements to go away two weeks before that?

A. Yes, sir.

Q. And you had packed his goods?

A. Yes, sir.

BY MR CHANLER:

Q. On the next morning, do you remember, Mrs. West, the doctor being called in?

A. Yes, sir.

Q. What doctor?

A. Dr. Br\*\*\*equest.

MR. OSBORNE: Now, the doctor is requested to go out of court while this witness testifies.

MR. CHANLER: Yes, doctor; Mr. Osborne requests that you

go out of the court while this witness is testifying.

BY MR. CHANLER:

Q. Well, the next morning, you called the doctor in?

A. Well, my brother Eddy seen him laying on the floor, and he tried to awake him, and he could not, and he went up to mamma, and he said "I think there is something wrong with Jerry," and they picked up Jerry and put him on the bed.

MR. OSBORNE: I object to any conversation that took place between the defendant and any one else during that time.

THE COURT: Well, strictly speaking, it would not be proper.

MR. OSBORNE: Well, I want to try the case strictly if I can.

THE COURT: Well, we want to get at the facts. I want to get at them.

MR. OSBORNE: And do so I, sir.

THE COURT: And I am going to get at the bottom of this case. If this woman tells the truth, then the people have no case.

THE WITNESS: I am telling the positive truth, Your Honor, and no living person knows more than I do.

THE COURT: Let us get at this case. Let us not shut out anything. I am going to get at the bottom of it, if I can, and see if anybody is to blame. That is the way I try cases always.

MR. OSBORNE: I know that, but I am not responsible for the rules of evidence.

THE COURT: Well, I am responsible for the case, and the rules of evidence, too.

MR. OSBORNE: But you have no object to my making the objection.

THE COURT: Well, what good will it do you? I will overrule your objection.

MR . OSBORNE: Well, then I will be straight on the record.

BY MR. CHANLER:

Q. You say that your two brothers and your mother and you were in the room at the time, next morning?

A. Yes, sir.

Q. And Eddy said something about Jerry being sick?

A. Yes, sir; he said, "Mamma, I think he is hurt," and he turned to me and he said, "How did he fall? Did he

hurt his head on the stoop?" And I said, "Yes; he fell on the stoop," and they brought in Dr. Broquet, and he said it was a case of intoxication, and gave him some powders, and he said that he would be all right at 9 o'clock.

(Mr. Osborne moves to strike out the conversation.)

THE COURT: I will allow it, and I will give you an exception.

MR. OSBORNE: And your Honor knows that the exception will do no good to the People.

BY THE 7TH JUROR:

Q. Did you say your brother, Eddy, was asleep, the first time that Jerry fell down?

A. Eddy was in his bed at 11 o'clock. When the boy fell down, he did not see him. This happened on the front stoop, and I saw Eddy in bad a few minutes before this happened. I had been up for three months with sick baby at this time.

Mr. CHANLER: He will show this by the month. You need not tell that, Mrs. West.

THE COURT: Is the mother here?

MR. CHANLER: Yes, sir; she is out in the hall.

BY MR CHANLER:

Q. I mean, at the time your deceased brother went in to see your mother you were not in the room?

A. No, sir; I was in the hallway.

Q. And you can't say positively of your own knowledge---

A. No, sir.

Q. What went on in that room?

A. No, sir.

Q. Well, then, don't give us your ideas, because Mrs. Hurley will tell us what happened. Now, you say that Dr. Broquet came in and had a conversation about the deceased?

A. Yes, sir; and he said my brother would be all right at 9 o'clock, and it was a case of intoxication, and Eddy says, "Well, I don't care to go away while he is sick," and I said, "Well, don't put yourself out. You go. You know this thing has happened so many times. You may as well enjoy your vacation as not."

BY THE COURT:

Q. Was your brother dead then?

A. No, sir; he die at a

quarter of 8 o'clock that night.

BY MR. CHANLER:

Q. Now, was any other doctor called in, Mrs. West?

A. Yes, sir. I went into my own house and came back and saw my brother was breathing heavily, and was vomiting, and I said, "Mamma, we had better call in another doctor."

Q. Who did you call in?

A. Dr. Lucius.

THE COURT: Is that doctor here?

MR. CHANLER: I didn't subpoena him. I saw he was subpoenaed by the people, and he was sent away by Mr. Osborne, yesterday.

BY THE COURT

Q. Well, you called in another doctor?

A. Yes, sir; and I was not allowed in the room at the time. They performed an operation.

Q. And your brother died the next night?

A. Yes sir; at a quarter of 8.

BY MR. CHANLER:

Q. When did you next see your brother, Eddy?

A. Around about the 1st of September. I moved on the 30th of August, and he came to my flat on the 1st of September.

BY THE COURT:

Q. Of the same year?

A. Yes, sir.

BY MR. CHANLER:

Q. You moved away from there where you had lived?

A. Yes, sir; on account of my brother falling on the stoop, which worried me.

Q. And you afterwards, about the 1st of September, saw your brother?

A. He was in my house, he \*\*\*aiinner in my house, and also put up a pulley line for me, which the janiter objected to, and he asked, "Who are you putting that up for?" and he said, "My sister."

BY THE COURT:

Q. Well, that is enough about that. You saw him?

A. Yes, sir.

BY MR CHANLER:

Q. And when he was away did you send any word for him to

come back to his brother's funeral?

(Objected to.)

A. Yes, sir; we did.

THE COURT: It is all material on the question of flight. It is an inculpatory circumstance, but always explainable.

BY MR. CHANLER:

Q. And when he went away did he tell you exactly where he was going?

A. He was going to Auntie's.

BY THE COURT:

Q. Did he tell you where he was going?

A. Yes, sir; why certainly.

Q. You knew where he was going?

A. Yes, sir.

BY MR. CHANLER:

Q. Did you know what he was going to do?

A. Yes, sir.

Q. And he came back, and how long did he stay back in September, of this year?

A. I could not say, exactly.

Q. Well, about?

A. I couldn't say; about a couple of weeks, I think.

Q. And you were not staying in the same house with him?

A. No, sir.

Q. And do you know where he went to the second time?

A. Yes, sir; I have letters. We wrote back and forth.

Q. Did he tell you why he was going away the second time?

A. Yes, sir.

Q. And you say, while he was away, he was gone about how long, the second time?

A. The second time he went away---well, I couldn't exactly say. I have letters in the house. I guess you have got some, Mr. Chanler.

Q. Well, just give us some idea of how long he was away. I don't want you to be too particular.

A. He was home, I know, about---say, two months before he was arrested.

Q. Then he came back some time in June or July; April, May or June or July, of the next year?

A. Yes, sir.

Q. He was gone several months?

A. Yes, sir.

Q. And, in the course of the correspondence, did he explain his absence?

A. Yes, sir.

Q. And, from time to time, he explained his absence?

A. Yes, sir.

Q. When he came back, you saw him several times?

A. Yes, sir.

Q. Before he was arrested?

A. Yes, sir.

Q. And he was not in hiding; was he?

A. No, sir; he went to places of amusement and balls and dances

Q. Was he hiding the first time?

A. No, Sir; not at any time did he hide.

Q. Now, there was some evidence as to conversations that took place between the defendant and some men standing by the stoop, in front of your house, after your brother was picked up. Did you hear any such conversations?

A. No, sir.

Q. But you were away part of the time, up stairs, getting your wrapper?

A. Yes, sir.

Q. And, when you got back, your brother, Eddy, was standing on the stoop?

A. Yes, sir.

Q. And, if these conversations took place, they took place

while you were upstairs?

A. Yes, sir.

BY THE COURT:

Q. Can you tell what your brother had in his hand?

A. Yes, sir. I had two pieces of broomstick, and, as my children were always grabbing the keys off of the tubes, where I kept them, I put \*\*\*screweyes in the wood, and tied on the number of each room, and the keys on the screweyes, and, when anybody came, knowing that Jerry was out late, we threw out the keys, on the piece of wood.

BY MR. CHANLER:

Q. You are the janitor of the house?

A. Yes, sir; and that is what I found on my clothes back, when I went up in my house.

BY THE COURT:

Q. Did you see it in his hand?

A. Yes, sir; he had it in his hand on the door step, which has the stick of keys, and a piece of broom-stick.

Q. And it was attached to keys that belonged to the house?

A. Yes, sir.

BY MR. CHANLER?

Q. Now, Mrs. West,

Now, Mrs. West, I don't want to go into any of your discussions with Mrs. Addeberth. I hope you will keep out of it entirely. But, I want to ask you whether, the next day, Mrs. Addeberth had any conversation with you about the injury which your brother had received; yes or no?

A. Yes, sir.

Q. And that was about what time the next morning?

A. It was just after the doctor had gone away.

Q. It was just after the doctor had gone away?

A. Yes, sir.

Q. And did she then say that she was surprised, or words to that effect?

A. Yes, sir; very much surprised when she seen Jerry was so sick. She knew nothing of it until Eddy came after mamma, in the morning. She was not in eight, at the time the boy was hurt.

BY THE COURT:

Q. That is, you did not see her?

A. No, sir; she was not there.

BY MR. CHANLER:

Q. And the next morning she said that she was very much sur-

prised?

A. Yes, sir.

Q. Oh, I will ask you one more question. No; I will not.

Cross-Examination.

BY MR. OSBORNE:

Q. Mrs. West, I understand you to say that you lived at 445 Willis Avenue?

A. Yes, sir.

Q. And your mother and your brother lived at 443?

A. Yes, sir.

Q. And there was an opening between the two houses?

A. Yes, sir.

Q. That, so you could go from one house to the other?

A. Well, not exactly.

Q. Well, then, you could not go from one house to the other?

A. Not when the flat next to mine was occupied. Otherwise, we did.

Q. But, on that night you did not go from one house to the other?

A. Well. I stood in the hallway, and one window was

opposite the other.

Q. Now, I don't want to get into any wrangle with you. Just answer my questions.

A. Of course, not.

Q. On that night you did not go from one house to the other?

A. I didn't go into the house?

Q. I say, you did not go from one house to the other, without going into the street, that night?

A. No, sir.

Q. Well, that is what I want to know. And, if you want to go from one house to the other, you go out into the street and across the stoops?

A. Yes, sir.

Q. Well, now, these stoops were about how many steps high?

A. Just four steps.

Q. Just four steps?

A. Yes, sir.

Q. Four ordinary steps to the house?

A. Yes, sir.

Q. And you say that you heard your brother, Jerry, and two

other friends coming up singing?

A. Yes, sir; that is right.

Q. And it was the singing which attracted your attention?

A. Yes, sir.

Q. And you were up nursing a sick child, and you looked out of the window?

A. Yes, sir.

Q. Did you raise the window?

A. The window was opened.

Q. And you say that your brother was in an intoxicated state?

A. Very much so.

Q. And he came up the stoop of 443?

A. Yes, sir.

Q. And he told his friends that he was going to remain there for a short time?

A. He said that he would get it and be down in a few minutes.

Q. And he went on upstairs, and you, expecting trouble, you came to the skylight, did you say?

A. To the airshaft window.

Q. To the airshaft window?

A. Yes, sir.

Q. What do you mean by the "airshaft window"?

A. Because, there was an airshaft that ran between the two houses. There was a window on this side of my house (indicating) and on this side of mamma's house. You could look half way into the hallway through both windows.

Q. So that you looked through the two windows of the airshaft?

A. Yes, sir.

Q. That is, through the airshaft window on your side through the window on the other side?

A. Yes, sir.

Q. And how wide is the airshaft?

A. About four feet.

Q. And into the hallway?

A. Yes, sir.

Q. Of 443?

A. Yes, sir.

Q. And you there heard your brother say something to your mother?

A. He did not speak, no, sir; there was no words.

Q. You heard him go upstairs?

A. Yes, sir.

Q. And slam the door?

A. Yes, sir.

Q. And you did not hear the conversation between your mother and him?

A. No, sir.

Q. And then he came down again?

A. Yes, sir.

Q. And then you looked out of the window and onto the stoop?

A. Yes, sir.

Q. Did you?

A. Yes, sir.

Q. And, when you looked out on the stoop, you say you saw him reel and fall?

A. Yes, sir.

Q. And he fell off the stoop?

A. No; he fell over the lion's head, into my stoop.

Q. He fell over the railing?

A. It was not a railing. It was a lion's head. The railing was high, and the head came below. He went to grab the railing, and missed his hold, and fell over on my stoop.

Q. And he lay on the stoop, between the two houses?

A. No, sir; on the farthest end of my stoop.

Q. And were his head and feet---did they make a line parallel with the steps?

A. His head was on the steps and his feet on the sidewalk.

Q. His head was on the steps and his feet on the sidewalk?

A. Yes, sir.

Q. And then it was that his friends ran away?

A. Yes, sir; when they saw him fall.

Q. Yes, when they saw him fall?

A. Yes, sir.

Q. And while he was lying there, and while you were standing there in your night dress, did these four men come up?

A. I was not standing. I sat down and took his head in my lap.

Q. Well, while you were sitting there, with his head in your lap, did these four men come up?

A. No, sir; there wasn't anybody there; not a soul but myself.

Q. Now, have you finished?

A. Yes, sir.

Q. Now, during the time that you were there, with your brother's head in your lap, did anybody come up at all, while you were doing that?

A. Not while I was in my nightdress; no, sir.

Q. Then, after you had held his head in your lap for a few minutes, you went upstairs?

A. I went into my mother's hallway and rang her bell several times, to attract my brother's attention, and then I went upstairs.

Q. Into your mother's rooms?

A. No, sir; into my room.

Q. You came back from your mother's house, after ringing the bell, and went upstairs to your own room?

A. Yes, sir.

Q. And there did you put on the wrapper?

A. Yes, sir.

Q. And, when you came back---

A. These four men were around the stoop.

Q. And your brother, Edward Hurley, was there?

A. He had come down, in the meantime.

Q. Yes. he had come down in the meantime?

A. Yes, sir.

Q. And was standing on the stoop of 443?

A. Yes, sir; not on the stoop. He stood on the mat, because he was in his bare feet, and he stood on the mat, because he was afraid of catching cold.

Q. And, in his hand he held the stick to which the keys were attached?

A. Yes, sir.

Q. And then it was that you requested the four men to help carry the body of your brother upstairs?

A. Not until after Eddy refused to do it. He said that he was tired of it.

Q. Well, you requested him to do it?

A. Yes, sir.

Q. And he declined?

A. Yes, sir.

Q. Did you tell your brother, Eddy, that Jerry had fallen off the stoop?

A. Yes, sir; and he said, "His bed is upstairs, and, when he knows enough to be \*\*\*cober , and to go up there, he can go up; and you go to your bed, and take care of your sick baby."

Q. And did he say, "If he goes up, I will not go up"?

A. No, sir; he passed no more remarks. He went upstairs and put on his coat and hat and laid on the sofa in the parlor.

Q. Did he put on his shoes, also?

A. I didn't notice that; I can't tell you that.

Q. You can't tell that?

A. No, sir.

Q. And then the four men carried your wounded brother upstairs?

A. Three of them.

Q. Now, what are the names of these men, as far as you know?

A. One was this Roddy, that I called over from the corner and the other was Mr. Durr and I don't know the other gentleman's name. And, in carrying him upstairs, they dropped him on the stairs. His arms came out of his sleeves, and he dropped on the floor, and he called for his friend, "Ba\*\*\*ney. Oh, my finger."

Q. And was Barney there that night?

A. No, sir.

Q. Who was he?

A. The gentleman that he worked with.

Q. And you don't know who the two men were, that came up with Jerry; do you?

A. No, sir.

Q. And you have no idea who they were?

A. No, sir.

Q. And then he was carried upstairs and laid on the floor?

A. Yes, sir.

Q. And did you spend the night with your mother?

A. I spent the night back and forth.

Q. Back and forth?

A. Yes, sir. My mother was not in the place at all. She ran away. She went up to Mrs. Addeberth's house, and stayed there until daybreak.

Q. She was afraid of Jerry and spent the night with Mrs. Addeberth?

A. Yes, sir.

Q. And do you know whether or not your mother ran down into the cellar that night?

A. Yes, sir. I saw her coming by in her night dress. I looked for her to go into my house, but she went into the cellar. She would always come to me before

that.

Q. And Edward spent the night in your house?

A. Yes, sir.

Q. And it was about what time in the morning that Dr. Broquet first got there?

A. I couldn't tell you; I didn't notice the time; it was daybreak; four or five or six o'clock.

Q. Well, he got there some time in the morning?

A. Yes, sir.

Q. And he diagnosed the case as one of drunkenness?

A. Yes, sir.

Q. Produced by drunkenness?

A. Yes, sir.

Q. And as one not likely to do any injury to your brother, Jerry?

A. Yes, sir.

Q. And did he call again?

A. Well, my husband spoke about the boy, and Eddy said, "Well, we had better have another doctor."

Q. And did you have another doctor?

A. Yes, sir; Dr. Lucius.

Q. And did he diagnose the case?

A. I couldn't tell you that. They performed an operation

and I was not allowed in the room.

Q. Now, you are going ahead of my story? What time did Dr. Lucius get there?

A. Well, I couldn't tell you the time.

Q. Well, you say that you know more than anybody else about the case. Tell the jury the time.

A. Well, there is no one who knows more about it than I do.

Q. I suppose you do, madam. At least, you say you do.

A. I do. I am telling the whole truth.

Q. Then, when did Dr. Lucius come?

A. It was somewhere about 1 o'clock in the afternoon.

Q. And that was his first call?

A. Yes, sir.

Q. And Dr. Broquet called only once in the morning, and then called again with Dr. Lucius?

A. Yes, sir.

Q. In the afternoon?

A. Yes, sir.

Q. And what time of day was it that Jerry left?

A. Left where?

Q. Left your house?

A. Jerry?

Q. Edward, I mean.

A. Well, he had made an engagement to catch the 10 or 11, something, train, I couldn't tell you which of the two. We were speaking of it in our house, that night. I asked him when he expected to go, and he said on the 10:10 or 11:10 train.

Q. Well, he left some time in the morning, between 10 in the morning and noon?

A. Yes, sir.

Q. Now, would you be surprised to hear that Dr. Lucius had diagnosed the case as one of cerebral hemorrhage?

A. I don't know about that.

Q. I mean, that Dr. Broquet arrived there in the morning, between 6 and 7, and found the man unconscious and breathing stertorously, and the pupils of the eyes dilated and that he diagnosed the case as one of cerebral hemorrhage?

MR. CHANLER: Objected to. I do not care to take up time, but Dr. Broquet is to be called, and, if his testimony differs from hers, it can be shown by him.

THE COURT: I don't think that she is called as an expert. It is conceded, substantially, that he died of fracture of the skull. You are not going to contradict that?

MR. CHANLER: Ch, no, sir.

THE COURT: Then, there is no use in wasting any time in that matter. I will charge the jury that he died of fracture of the skull.

MR. \*\*\*OSBGRNE: The witness has informed the jury that Dr Broquet diagnosed the case as one of plain drunkenness, in order to contradict the idea of flight.

BY MR \*\*\*OSBORNE:

Q. Now, didn't he inform the family that it was a case of cerebral homorrhare?

A. No, sir.

Q. Didn't he inform your brother, Edward, to that effect?

A. No, sir. When Dr. Lucius was there, my brother was not there.

Q. Did he not---you saw Dr Broquet examine your brother; did you not?

A. Yes, sir.

Q. And didn't the tell you brother, Edward, that he was in a

very dangerous condition, suffering from cerebral hemorrhage, at that time in the morning?

A. No, sir; he did not.

Q. Now, madam, you were sworn before the Coroner, were you not?

A. No, sir.

Q. Will you kindly look at that paper and tell me whether that is your signature or not.

A. Oh Dr. Potter. I talked with Dr. Potter, but was not before any coroner.

Q. Do you see there the signature of Ferdinand Levy, the Coroner, there?

A. I was before no Coroner. There was no coroner's inquest held.

Q. Were you at the Coroner's office?

A. No, sir.

Q. Did you sign that paper?

A. Yes, sir; before Dr. Potter.

Q. You say you signed that paper?

A. Yes, sir; that is my signature.

Q. And when you signed your name to that paper, you intended to speak the truth; didn't you?

A. Yes, sir.

Q. And you signed that paper, in response to the request of the gentleman who asked you to tell what you know about the case, didn't you?

A. Yes, sir.

(The paper is offered in evidence, by Mr. Osborne.)

MR. OSBORNE: I will now read it to the jury.

MR. CHANLER: One moment. I object.

THE WITNESS: I didn't read the paper, and I couldn't tell that was on the paper. I know what I told Dr. Potter, and Dr. Potter didn't know whether it was a white or a black man, because he did not look into the icebox at all.

Q. How, you are creating an impression that I don't think you want to create. Answer my questions, please. You signed that paper?

A. Yes, sir.

Q. And you meant to indicate that it was true---that was said in the paper?

A. Yes, sir.

(The paper is admitted, without objection, and marked People's Exhibit A.)

MR. OSBORNE: I will now read it to the jury.

(Mr. Osborne reads it.)

THE COURT: Do you claim that that differs from her testimony?

MR. OSBORNE: I do; most materially.

THE COURT: In what respect?

MR. OSBORNE: That she states there that her brother died when he came up to the stoop; that she saw him come up, and, when he returned he came up on the stoop, and reeled, and fell.

THE COURT: She swears to that now.

MR. OSBORNE: I beg Your Honor's pardon. She now swears that he returned and walked upstairs and had some trouble with his mother, and then came back and reeled and fell; and she made no statement of this fact whatever.

THE COURT: And then it is claimed that it varies in its omissions?

MR. OSBORNE: Yes, sir; of the most important kind.

THE COURT: But, so far as she states it, it is exactly as she state it to-day?

MR. OSBORNE: Your Honor has the point exactly; in its

omissions.

BY MR. OSBORNE:

Q. Now, Mrs. West, do you know the late Mrs. Elvira Boyd?

A. Yes, sir.

Q. Did you know her for some time?

A. Yes, sir; for about two months.

Q. How long?

A. For about the months.

Q. Do you know her daughter, Mrs. Dean?

A. Yes, sir; I know of her>

Q. Do you know her, I ask you?

A. Yes, sir.

Q. Do you mean to tell the jury that you know of her or know her?

A. Yes, sir; I know her for about four weeks; and they lived on the top floor of 443.

Q. On the same floor that you lived on?

A. No, sir; on the top floor, back.

Q. But in the same house?

A. Yes, sir.

Q. Now, a few days after this unfortunate occurrence, did you have a conversation with Mrs. Elvira Boyd, in the presence of her daughter?

A. No, sir.

Q. None whatever?

A. No, sir.

Q. I ask you, didn't you tell Mrs. Boyd that your mother gave him---the defendant---all the money she had and a suit of clothes, to run away with?

A. No, sir.

Q. You deny it?

A. I deny it positively.

Q. Did you not show Mrs. Elvira Boyd the rollingpin?

A. No, sir.

Q. One minute. And didn't you say, "That is what Eddy hit Jerry with"?

A. No, sir.

Q. Mrs. Boyd was at your mother's house when Jerry died, wasn't she?

A. No; she was not in the house when he died.

Q. I ask you if she was not there from 9 o'clock in the morning until 8 P.M. when he died?

A. No, sir; she was there in the morning, but she had gone out.

Q. She was not there in the afternoon?

A. No, sir.

Q. Didn't you tell Mrs. Elvira Boyd that Eddy hit Jerry with a rollingpin, and he was going to hit him again, when

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you stopped him?

A. No, sir.

Q. Do you know Mrs. Elvira Boyd's signature; don't you?

A. No, sir.

Q. Did you ever see it?

A. No, sir.

Q. "Sworn to before me this 26th of October---"

A. She swears a lie. That is all there is about it.

(Objected to.)

THE COURT: It would not be evidence; counsel, has a right to cross-examine Mrs. Boyd.

MR. OSBORNE: I have all the right in the world to---

MR. CHANLER: But this woman is dead.

THE WITNESS: She committed suicide, a week ago.

BY MR. OSBORNE:

Q. Well, her daughter, Mrs. Dean, has not committed suicide?

A. Well, she does not know any more than she did.

THE COURT: I do not think it is material.

MR. CHANLER: That is the reason I objected do it. Your Honor.

BY MR. OSBORNE:

Q. I ask you if, a few days after this unfortunate affair, you did not have a conversation with Mrs. Boyd, in the

presence of Mrs. Dean, her daughter?

A. No, sir; because I had discharged her.

Q. Now, don't argue with me, madam. I am trying my best to treat you courteously.

THE COURT: Just say you did not; that is sufficient.

A. I did not.

BY MR. OSBORNE:

Q. Now, I ask you if, in your presence, Mrs. Boyd did not say, "Mrs. Hurley, where is Edward?"?

MR. CHANLER: Objected to. What possible application has it here?

THE COURT: That would not be admissible. All that you can prove by the witness is ground to contradict her.

MR. OSBORNE: Well, I will leave that out. Your Honor's ruling is entirely satisfactory.

THE COURT: You can ask any questions to contradict her.

MR. OSBORNE: I say, the ruling is entirely satisfactory, Your Honor.

BY MR. OSBORNE:

Q. Now, I ask you if, in the presence of Mrs. Dean, as I said before, and I want to call your attention to this because I want to let you know that Mrs. Dean is alive---didn't you tell Mrs. Boyd, in the presence of Mrs. Dean, that Eddy hit Jerry with a rollingpin?

A. No, sir.

Q. One minute. And didn't Mrs. Boyd say "a rollingpin"? and didn't you say, "Yes, Haven't you seen it?" and didn't Mrs. Boyd---

(Objected to.)

Q. Didn't Mrs. Boyd say to you, didn't she say, "No," and didn't you then request Mrs. Dean to go and get it, saying, "Lizzie, go in and get it. It is under the tubs, in my kitchen;" didn't you say that or do that?

(Objected to.)

A. No, sir.

MR. CHANLER: Well, madam, don't answer until I object.

THE COURT: Why is that paper not admissible?

MR. CHANLER: Simply because it brings in statements made by Mrs. Boyd in the absence of the defendant.

THE COURT: He asks, didn't she state that Eddy struck Jeremiah with a rollingpin, and tell another

woman to go and get the rollingpin.

MR. CHANLER: I don't care about that, but I don't want what Mrs. Boyd said because it is not admissible in the absence of the defendant.

THE COURT: But what he is trying to do is to lay the foundation to contradict the witness.

MR. CHANLER: Yes, sir; and he can do that by showing what the other woman, Mrs. West, said.

BY MR. OSBORNE:

Q. And didn't Mrs. Dean go in and return with the rolling pin?

A. No, sir.

Q. And didn't Mrs. West, didn't you say, "That is what he did it with. It must have been a pretty hard blow to break off the handle"?

A. No, sir.

Q. And didn't you show Mrs. Dean how Eddy held it, when he hit your brother?

A. No, sir.

Q. And didn't you also say that Eddy had come into your house and took the rollingpin from under the sink?

A. No, sir; I didn't have one.

BY THE COURT:

Q. You didn't say so?

A. No, sir.

BY MR. OSBORNE:

Q. You didn't have a rollingpin?

A. No, sir; I didn't.

Q. And didn't you also tell Mrs. Boyd that Edward was going to hit Jerry again, when you stopped him?

A. No sir.

Q. You didn't?

A. No, sir.

Q. And didn't you say to your brother---to Mrs. Boyd---that you said to Edward, "Hit me---"  
(Objected to.)

THE COURT: That is proper. Didn't she say so to Mrs. Boyd.

BY MR. OSBORNE:

Q. Yes, sir; that the witness said to Edward, "If you are going to hit him, hit me"?

A. No, sir.

Q. Now, wasn't Mrs. Dean there from 10 o'clock all day, until your brother died?

A. No sir; she was in and out, now and then.

Q. She was there then?

A. She was there say about three hours, altogether, in the day, all told.

Q. Now, Mrs. West, you didn't hear Mrs. Brennan testify, did you?

MR. CHANLER: Now, if you want to talk of Brennan's testimony, take it from the Stenographer's Minutes, and not from any affidavit that you have got.

BY MR. OSBORNE:

Q. I ask you if you did not hear your brother say at the time he was standing on the stoop, "He is my brother; and, if any of you interfere, I will give you the same dose"?

A. No, sir; he never passed that remark.

Q. He never passed any such remark?

A. No, sir.

BY THE COURT:

Q. None that you heard?

A. No, sir; not while I was there.

Q. And I ask you if you heard a fellow, a short fellow, who came across the street, any, 'You ought to get a punch in the jaw for doing anything like that"?

A. No, sir.

Q. You never heard anything like that?

A. No, sir.

MR. CHANLER: Your Honor, I don't want to take up time unnecessarily, but she has already sworn that she heard no conversation of that kind at all.

THE COURT: I will allow it.

BY MR. OSBORNE:

Q. Did you hear your brother say, "He is all the time drunk, and never worked. He threatened his mother, and wanted money off her"?

A. No, sir; he didn't pass that remark.

BY MR. CHANLER:

Q. Not that you heard?

A. No, sir.

BY MR. OSBORNE:

Q. Did you say to Edward, "What have you done?"

A. No, sir.

Q. And did he say, "Jerry deserved it"?

A. No, sir; I didn't.

Q. Did you hear Edward say, "I don't want him in here. He is of no use; and if he comes in, then I stay out"?

A. No, sir.

Q. You didn't say that?

A. No, sir.

Q. But he did stay out?

A. He always did, when he came home like that.

Q. Did Edward always stay out? I ask you simply that.

A. Yes, sir.

Re-Direct-Examination.

BY MR. CHANLER:

Q. Now, you said you had no rolling pin in your house, I believe?

A. No, sir; I didn't.

Q. THE COURT: I did not hear the question.

(The question is repeated by the Stenographer.)

BY MR. CHANLER:

Q. I Don't think I asked you on the direct-examination Did you ever show Mrs. Addeberth any rollingpin and say, "That is the weapon with which my brother killed Jerry"?

A. No, sir.

Q. And did you ever say anything of the kind to Mrs. Addeberth?

A. No, sir.

Q. Nothing of that kind whatever?

A. No, sir.

BY THE 7TH JUROR:

Q. You haven't got that stick with the keys to it, in court?

A. No, sir; because when I left the flat I left the keys. I didn't disturb them.

BY THE COURT:

Q. You have moved away from this flat?

A. Yes, sir.

BY MR. CHANLER:

Q. When did you move?

A. August 30th, 1892; directly after burying the boy. I felt very nervous, and left there.

Q. These keys were not your keys, but belonged to the flat?

A. No, sir; they belonged to the house that I took care of.

BY THE COURT:

Q. You were the janitress of the building?

A. Yes, sir.

BY THE 11TH JUROR:

Q. Did your brother, Jerry have steady employment?

A. No, sir. He hardly ever worked. When he did, what he made he always drank.

Cross-Examination.

BY MR OSBORNE:

Q. That is, he did not contribute to the support of the family?

A. No, sir. This boy here did.

Q. This is the boy that has supported the family?

A. Yes, sir; FOR THE LAST SIX YEARS.

Q. And the deceased drank the money that he got?

A. Yes, sir.

Q. And do you know whether he was working the week previous to his death?

A. He had; and he didn't come that evening.

Q. He had been working that week?

A. Yes, sir; and he didn't come home that evening to no dinner. He came home at 5 minutes to one.

Q. And he didn't come home before that?

A. No, sir.

Q. Now then, you see there is a flat contradiction?

A. I didn't say that he never came home. He left the house in the morning. He always stayed out and spent his money.

BY MR. CHANLER:

Q. Mrs. West, you were going to say something---Mr. Osborne asked you about a statement that you signed your name to, and that was made after conversation with Dr. Potter, in your house?

A. Yes, sir.

Q. He just came in and had an ordinary conversation with you, about how your brother died?

A. Yes, sir.

Q. And you told him what you knew at the time?

A. I told him that I saw him go to work at 7 o'clock, in the morning, all right, in the morning, and I didn't see him again until 5 minutes to 1, on Sunday morning.

Q. You had no intention of telling Dr. Potter---as I understand Mr. Osborne's point, it is that, when your brother came home he fell right on the stoop before he came into the house?

A. No, sir.

THE COURT: She swears that he came into the house and went upstairs, and went into the room where her mother was, and pretty soon she saw her mother coming out in her nightdress, and she saw the defendant following her, and he went

downstairs and out on the stoop and fell down on the stoop. That is her testimony.

ELLEN HURLEY, called by the defense, being duly sworn, testified as follows:

Direct Examination.

BY MR. CHANLER:

Q. Mrs. Hurley, you are the mother of the deceased?

A. Yes, sir.

Q. And of this defendant?

A. Yes, sir.

Q. And you live at 145th ---

A. 443 Willis Avenue.

Q. Now, Mrs. Hurley, I want you to keep your voice up, so that the furthest juror can hear you, and do not get excited.

A. Oh, no, sir; all right.

Q. Well, tell us what happened and try to answer my questions as briefly as possible. Now, do you remember the night of your son coming home, on the 7th of August; do you?

A. Yes, sir.

BY THE COURT:

Q. 1892?

A. Yes, sir.

BY MR. CHANLER:

Q. The night before he died?

A. Yes, sir; he come home the very same night; on Saturday night.

THE COURT: My good woman, just answer his questions and give a responsive answer to each question.

A. Yes, sir.

MR. CHANLER: Well, I think I will save time by leading the witness.

THE COURT: Yes; but do not make it too flagrant. Do you want her to tell what took place that night? Tell everything that took place that night that you saw or heard, not what was told you, but what you saw or heard. Just tell these twelve gentlemen what you saw and heard that night.

A. Well, my son came in about 5 minutes to 1 o'clock.

Q. Your deceased son?

A. Yes, my deceased son; and he was pretty drunk, and I was in my bed, and my son Eddy

was in his bed. He came in about half-past 10 o'clock.

Q. Who?

A. That boy there, Eddy.

Q. The defendant?

A. Yes, sir. And he put out the gas for me, and the other boy didn't come home at all all day and didn't come home until something around 1 o'clock; and, when he came in at that time he was pretty drunk, and I was asleep, and I didn't feel very good that day, because I worked very hard, and I was very tired and I went to sleep; and he come over to me, and I was in bed and he put his hand to me and he said, "Old woman---" that is the very word he said---

Q. Your deceased son?

A. Yes, sir.

Q. Your son Jeremiah?

A. Yes, sir. He came over and shook me in the bed, and asked me was I asleep, and I answered him, and I said, no. Says I, and "jerry what do you want?" and says no, "I want some money, mamma," and I said, "you know I haven't got it," and he said, "Well, I've got to get it." "I haven't got it at all. I haven't

Got it at all," I said, "and the best thing you can do is to go to sleep." Well, I wont express the language that he expressed, but he swore quite a big word, and it isn't polite for me to say, and he said that he should get it, and he said he would pull the clothes off me in the bed if I don't give me him the money, and I said no more then; and when he made an attempt to drag the clothes off me, he staggered over against the wardrobe and I ran out to the front door in my night dress and in my bare feet, and he followed me, hot feet, and he grabbed my night dress, and torn the shoulder out of it, and I got away from him, and when I got downstairs, here was the cellar(illustrating), and I deliberately stepped into the cellar and stood on the cellar platform and I stopped there until I heard him fall down the stairs.

Q. You heard him fall down the stairs?

A. Yes, sir; when he made a grab at me, I get away, and he fell down the stairs; and I opened the cellar door and peeped out, and I seen he picked himself up, and he was pretty well full, and he was swearing.

Q. Swearing?

A. Yes, sir. And the moment he turned the arch, this way (illustrating---here was the stairs and the arch. He got out that way through the main hall, and as he did. I got upstairs into Mrs. Addeberth's room, and I was afraid of him, because always, when he was drunk, he would beat me.

BY MR. CHANLER:

Q. Now, when you went upstairs to Mrs. Addeberth's room, what happened?

A. Well, I rang her private hall door bell three or four times before she answered me, and she come to the door the private hall door, and she says, "Who is there?" And says I, "Oh, Mrs. Addeberth, open the door. Jerry is drunk, and he is at me, and I am awfully afraid of him," and she opened the door, and I went in, and she locked the door after me, and locked her kitchen door, also and the lamp was lighted on the table, and I said, "Mrs. Addeberth, if anybody comes to the door, don't let them in," and she said, "No;" and with that she went right in. She had a little girl about 3 or 4

years old, and she commenced to cry in the bed for the mother, and then the mother goes to bed with her.

BY MR. CHANLER:

Q. With the little girl?

A. Yes, sir; back again to the child; and then she says to me, "Now, Mrs. Hurley, make your mind easy, and go inside on that lounge, and lay down, and I will give you something to lay over you," and I said, "I can't sleep. Don't bother," and with that she threw me a comforter from the bed, on to the lounge. But I could not rest. I remained there until daylight, until morning; and neither her nor me never left the house that night, to go out in the hall, nor no place else, because there was too much fear that Jerry would come after me.

Q. And Eddy came up---

A. And Eddy came up in the morning to me, and he said, "Mamma, come downstairs," and I went downstairs with Eddy, and Mrs. Addeberth came down at the same time, and my deceased son was lying on the floor drunk, and didn't know there was anything at all the matter with him. I shook him up, and I went to the fire to get a hot cup

of coffee for him, as I often did, and I couldn't get any move out of him, and I said, "Eddy, come here and help me put Jerry in the bed. He will be better there."

BY THE COURT:

Q. And you supposed, at that time, that he was just drunk?

A. Yes, sir; and I was well used to that lying on the kitchen floor. That was his bed; and Eddy and Mrs. Addeberth helped me to put him on the bed; and, in the lifting of him I said, "Eddy, there is something the matter with jerry. I guess you had better go for the doctor," and so poor Eddy ran out.

Q. When was this?

A. Sunday morning, after the fall; and Eddy went out about half-past 4 or 5 o'clock. You know the summer mornings is very bright, and he brought in Dr. Broquet I was standing at the bedside, rubbing his face that way (illustrating).

Q. Jeremiah's face?

A. Yes, sir; trying to bring him to, and make him speak to me. He was only drunk. He smelled of whiskey very much. And Dr. Broquet come in, and I said, "Doctor,

There is something the matter with Jerry. I guess he is drunk in the bed," and he looked at him and examines him, and he said, "Oh, he is only intoxicated, and when he has a couple of hours' sleep, he will come out all right," and that was all.

BY MR. CHANLER:

Q. Now, did you call in Dr. Broquet again?

A. Well, he came of his own accord the second time, with another doctor.

BY THE COURT:

Q. At what time?

A. Something around 10 or 11 o'clock. Now, I wont tell you a lie.

BY MR CHANLER:

Q. Dr. Lucius and Dr. Broquet?

A. Yes, sir.

Q. Now, did Mrs. Addeberth say anything to you when you went into her room about having seen Jerry and Eddy down in the yard together?

A. No, sir.

Q. Did she say anything, the next morning, when you were

with her, in your deceased son's room, about having heard Jerry say---about having heard Eddy talking down in the yard or being down in the street below with Jerry?

A. No, sir.

Q. Did any such conversation take place? A. No, sir.

Q. No. Now wait until I tell you what the conversation is. Did any conversation like this take place between you and Eddy? Did he come into your room, and in the presence of Mrs. Addeberth say, "I have killed my brother, Jerry, and, if I haven't, I will kill him before morning"?

A. No, sir; nothing of the kind.

Q. Your son, you told us before, came home drunk?

A. Yes, sir.

Q. Now, in all those times did Eddy ever get into a fight with him or quarrel or struggle with him?

A. No, sir; only once, when he collared Eddy for money, and Eddy merely picked up his hat and coat and got away from him; and he was very drunk and he laid down on a trunk and went to sleep.

Q. And Eddy always got out of his way?

A. Yes, sir.

Q. And you always got out of his way, too?

A. Yes, sir. I

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often took the spread off the bed and wrapped it around me and sat on the stop of the stops until he would go to sleep.

Q. And you did that whenever he came home drunk?

A. Yes, sir; I did.

Q. Now, when did you next see your son Eddy again - but, before I ask you that, when did your son, Eddy, say good-bye to you and go away?

A. He went away that morning.

By The Court:

Q. Sunday morning?

A. Yes, sir; because he was laid out to go. He told me, Saturday morning, "Be sure, mamma, and have my clothes ready for me, because you know I am going tomorrow," and he was intending to go a week before that, and he didn't go until this Sunday morning; and, when he heard what Doctor Broquet said, that everything was all right, he had nothing to do with him; it was none of his business.

By Mr. Chanler:

Q. Now, when did you see your son, Eddy, next after that morning?

A. I moved on the 30th of August from that place, from Willis avenue to Second avenue, and my son come home on the 1st day of September then, the day after I moved. He come home the 1st of September, from his aunt's. It was on a---I really couldn't tell you what day of the week it was on, but it was on the first of the month that he come home, because

I remember I was paying my rent, and I am very glad - he knocked on the door, and it was early in the morning; he knocked on the door very politely, as I was getting the rent ready to go down to the house-keeper with it.

Q. And how long did he stay there then?

A. Two weeks; and he looked for work, and didn't get no work; and then he went to Mr. McMahan, that he was working for when he was arrested, and his building wasn't finished; and, when he was going out in the morning, he said, "Now, look here, mamma. The very first chance I get, I will take it."

Q. And he went away and went West?

A. Yes, sir.

Q. And he stayed away several months?

A. Yes, sir; until the 27th of July.

Q. That was July, '93?

A. Yes, sir.

Q. In other words, he was gone nine or ten months before he came back?

A. Yes, sir.

Q. Now, before that, when he was living with you for the two weeks, in September---

A. Yes, sir.

Q. After Jerry died, he was not hiding; was he?

A. No, no; he went every place.

Q. And the next time when he came back, in July, '93, was he hiding then?

A. No, sir; he went to work the following Monday, and stayed to work six weeks, steady, with this Mr. McMahan, steady. He was working up to the very night he got arrested, Saturday night before, that he finished the six weeks.

Cross Examination.

By Mr. Osborne:

Q. Mrs. Hurley, do you know Mrs. Elizabeth Boyd - no, Mrs. Elvira Boyd?

A. Who, sir?

Q. Do you know Mrs. Boyd?

A. I did. She was a perfect stranger to me. I knew her well.

Q. You didn't know her at all?

A. I know her personally. The first time I seen her, she lived in the same house with my daughter.

Q. Then you did know her?

A. Just a few weeks. I never know her personally until

the time of my son's death, the deceased's death.

Q. And she came down to your house on the day of the death?

A. Yes, sir. She come in to help me, as she said.

Q. Well, she was in there?

A. She was; with the doctor.

Q. Do you know her daughter, too?

A. I don't know much about her daughter.

Q. Did you ever see her?

A. Yes, sir; but had no conversation with them.

Q. Do you remember being in Mrs. Boyd's room and having some talk with her about where Edward was?

A. No, sir.

Q. I ask you if you didn't say to Mrs. Boyd - didn't Mrs. Boyd - I withdraw that question. Did Mrs. Boyd say to you, "Where is Edward?"

Mr. Chanler: I will not object.

(Allowed)

By Mr. Osborne:

Q. And didn't you say, "I gave him \$5. And a suit of clothes and sent him away"?

A. No, sir, I didn't; and I didn't have a dollar that morning in my pocket.

Q. And you never said it?

A. No, sir; I never said any such thing.

Q. Now, didn't you then tear down Edward Hurley's pictures from the wall, and say, "They will never find him from his pictures. I have sent him up to his cousin's"?

A. No, sir; I never had his pictures on the wall; I never said such a thing.

Q. That night when your son was hurt, in this affair, I ask you if you didn't pile up your clothes in the middle of the room and say that you were going up stairs, because you were afraid of your son?

A. No; I didn't pile up no clothes, nor nothing else.

Q. On the floor?

A. No sir.

Q. Did you get into the press of Mrs. Addeberth and hide?

A. I did, when the knock came to the door, and when the foot came to the door, and I didn't see anybody.

Q. Well, didn't you get into the clothes press?

A. Yes, sir.

Q. Now, wasn't that step that came to that room your son Edward Hurley?

A. No, sir; he didn't come there until the next morning.

Q. I ask you, suppose Mrs. Addeberth says that then she opened

the door, and your son Edward came in; I ask you if that is true?

A. No, sir.

Q. You say you heard a step?

A. Well, I don't know. I might hear it over my head.

Q. Well, you say that yourself, that you heard a step?

A. I might hear plenty over my head. I couldn't hear it from the private hall door.

By the Court:

Q. Well, you did hear something that made you go into the closet?

A. Well, I did; when I heard people walking over my head. I thought it was Jerry coming. The terror of Jerry was in my heart, I tell you.

By Mr. Osborne:

Q. Well, I believe you.

A. And you may believe me. The terror of him was in my heart, because I ought to get terror out of him.

Q. Now, Mrs. Hurley, will you do me a favor, and I know that the Court will request you to do it. Just answer my questions, and don't get excited.

The Court: Don't get excited. Answer the

questions quietly and properly.

By Mrs. Osborne:

Q. You have naturally a great deal of emotion on this occasion, which I greatly respect. Now, you said that you heard a step, and that you went into Mrs. Addeberth's press. Is that true? Yes, or no?

A. Well, I might hear a step, but I couldn't tell who it was.

Q. Well, did you say that just now?

A. I did say that.

Q. Well, that is all I want. Now, you remember the row that Mrs. West had with Mrs. Addeberth?

A. Yes, sir.

Q. And it was because Mrs. Addeberth talked about your son, Edward; was it not?

A. I don't know, sir; I didn't hear that.

Q. And didn't you take a hand in that row yourself?

A. No, sir. I beg your pardon.

Q. Do you remember the fight that Mrs. West had with Mrs. Dean?

A. Who?

Q. Mrs. Dean?

A. No, sir. I don't know any lady by that name.

Q. I asked you just now if you didn't know Mrs. Dean, Mrs. Boyd's daughter?

A. I didn't know that name; I never heard it before.

Q. Well, she is Mrs. Boyd's daughter, Elizabeth Dean is her name. Do you know her?

A. Yes, sir, I do.

Q. Now, do you remember that Mrs. West, on account of what Elizabeth Dean said she knew about this case - do you remember Mrs. West making an attack upon her and having a fight with her?

A. No, sir, I don't. I didn't hear Lizzie Dean and my daughter having a word.

Q. And didn't you take a hand in that affair?

A. No, sir; not until Mrs. Addeberth came down and stuck her hands in my daughter's hair.

Mr. Chanler: Is that proper, your Honor? It will take a whole week to try this case, at this rate.

Mr. Osborne: Oh, not at all. It has a considerable bearing.

Mr. Chanler: Well, I don't want to get into too long a discussion.

The Court: Well, when I think it is getting tedious, I will shut it off.

By Mr. Osborne:

Q. Yes, your Honor. Mrs. Hurley, you do remember, however, that Mrs. West had a quarrel with this Elizabeth Dean; don't you?

A. No, sir; I was not there at all.

The Court: Supposing Mr. Osborne - I want to draw your attention to this - supposing that was so, that Mrs. West and Mrs. Dean had a quarrel. How would that affect Mrs. Dean's testimony?

Mr. OSBORNE: Mrs. Dean has not testified yet.

The Court: I thought you were laying the foundation.

Mr. Osborne: Yes, sir, to show that the same process of intimidation that was that was brought to bear on Mrs. Addeberth.

The Court; I don't not think there has been any intimidation shown here.

Mr. Osborne: But your Honor would not let

me show it.

The Court: Well, I haven't seen any. All that I have seen here---

Mr. Osborne: Your Honor declined to let me show it. I proposed to show it, and your Honor ruled it out.

The Court: If you could show that Mrs. Dean had had a quarrel with these people, how would it affect her testimony, when she came to answer against them?

Mrs. Osborne: Well, I know the inside of the case, and I don't think your Honor does.

The Court: No. But I come to conclusions pretty quick, and sometimes I am wrong.

Mr. Osborne: I know your Honor does, and I see your Honor has.

The Court: Well, go ahead. I will let you go ahead and ask her if Mrs. West and Mrs. Dean did not have a quarrel.

Mr. Osborne: Well, if your Honor wants, on the ground of mercy---

Mr. Chanler: Oh, no; we don't want any

talk like that.

The Court: No, not a particle of mercy; justice.

Mr. Osborne: That is all I want.

The Court: Justice; that is all.

Mr. Chanler: Now, will your Honor pardon me a second. I don't want to take up your time. The Reason I objected to the quarrel being gone into is this: If Mr. Osborne gets in his side of it, I will have to get mine out, too.

The Court: Well, go ahead. Let us see what light it will throw on the case.

Mr. Osborne: Yes. There is no question before the Court now.

By Mr. Osborne:

Q. Now, you remember when your son, Edward, came up to Mrs. Addeberth's room, that night?

A. No, sir.

Q. You don't remember his calling for you up there?

A. No, sir.

The Court: In the morning, she says.

THE WITNESS: He called me in the morning;

no other time.

By Mr. Osborne:

Q. About 4 o'clock?

A. I couldn't really tell you the time; I don't want to tell only what I know.

Q. And do you remember that he said, in your presence - did you say that you were afraid that Jerry would kill you?

A. I did.

Q. You did say that?

A. I said I was afraid that Jerry would follow me up to Mrs. Addeberth's, and kill me.

Q. And did you say that in the presence of your son, the defendant, and Mrs. Addeberth?

A. No, sir; I told Mrs. Addeberth that.

Q. And didn't Edward say, in reply to that, didn't he say, "If I haven't killed him, I will kill him before morning?"

A. No, I beg your pardon I never heard in my living life; never, sir.

Q. You admit, though---

A. I never heard my son, Eddy, say any such word.

The Court: Now, my good woman, just answer the questions.

By the Court:

Q. You never heard any such words?

A. No, sir.

Q. Or anything like that?

A. No, sir.

By Mr. Osborne:

Q. But you did say to Mrs. Addeberth, "I was afraid Jerry would kill me"?

A. Well, I said that Jerry was drunk, and I got afraid of Jerry.

Q. Well, did you say what I have said?

A. No, sir, I didn't say altogether that he would kill me.

Q. Well, you changed that.

A. Well, I said that he beat me so bad that I got a terror in me of Jerry.

Q. Now, you said just now to the jury---

A. Well, I don't say that Jerry was going to kill me.

Mr. Osborne: Well, will your Honor kindly instruct the witness to answer the questions?

The Court: Yes. We will never get through this trial. Hear the question and give a responsive answer, without any speech or explanation. Say yes or no.

By Mr. Osborne:

Q. And didn't you say then, "Eddy, don't say that"?

A. No, sir.

Q. And didn't Mrs. Addeberth say, "No, Eddy, don't say that"?

A. No, sir; I never heard her.

Q. Didn't the defendant say to you - didn't you go down stairs with your son, Edward, when he came up for you in the morning; you went down with Edward when he came up for you?

A. Of course, I went down in the morning.

Q. I ask you if you did?

A. I don't hear what you say.

Q. Did you go down with Edward Hurley in the morning when he came up to Mrs. Addeberth's rooms for you?

A. Of course, I went down. Eddy went down ahead of me, and I went down the stairs after him, and---

Q. Now, please, madam, do not give us an inundation of words. Just say yes or no, and I will be very much obliged. And when you got down there with Eddy, you found Jerry still lying on the floor; didn't you?

A. Yes, sir.

Q. And did you put your hand over his face and say, "Oh, he isn't hurt." Did you say that?

A. Yes, sir, I did.

Q. Did you say, "There is no blood on his face"?

A. No, sir; not a drop.

Q. I say, you said that; "There is no blood on his face?"

A. Yes, sir, I did; that he had no hurt on him.

Q. And that there was no blood on his face?

A. And that I didn't know but that he was drunk.

Mr. Chanler: She says that she didn't speak of blood at all. Why ask her again?

By Mr. Osborne:

Q. Now, one moment. You said that he was not hurt. You just now told the jury that you said that he was not hurt?

A. I said that there was no blood. You must excuse me.

Q. But you say at that time that he was not hurt?

A. I said that he was not hurt; there was no blood on him.

Q. I say, you said that?

A. I didn't speak of blood at all that morning.

Mr. Chanler: You have asked that question three times.

Mr. Osborne: Well, make your objection to the Court.

The Court: Well, give the District Attor-

ney a chance. I have been on your side long enough. Give him a chance.

Mr. Osborne: Yes, there is no question before the Court.

By Mr. Osborne:

Q. Now, will you please answer this question again? You said that, "There is no blood on him. He is not hurt;" did you?

By the Court:

Q. Did you say he was not hurt?

A. I did; I said that he was not hurt.

Q. Well, that answers that question.

Mr. Osborne: Yes, sir, that answers that question.

By the Court:

Q. And you didn't know that he was hurt; did you?

A. No, no; my goodness, no.

By Mr. Osborne:

Q. And, not knowing that he was hurt, and not having heard that he was hurt---

A. No, sir.

Q. You never heard it?

A. No, sir.

Q. You therefore made the remark, "He isn't hurt"?

A. No, sir, I never knew the boy was hurt. I merely thought the boy was intoxicated.

Q. Now, that will do.

Mr. Chanler: Well, she may tell what she thought, under the circumstances.

The Court: Well, she said it.

By Mr. Osborne:

Q. Now, did you hold down the light, or did Mrs. Addeberth have a light, when you came down stairs with her?

A. No; I didn't see no light in her hand.

Q. Well, you had a light in your room?

A. No, sir, I didn't.

Q. Well, there was a light in your room when you went down; was there not?

A. A light in the room, in the morning?

Q. Yes?

A. There was a light that the Lord sent.

Q. And yet it was 5 o'clock in the morning?

A. I don't know what time it was.

Q. And then you didn't have a light there?

A. No, sir.

Q. At any rate, you looked over your son's head, examined it?

A. I looked at him, of course, the same as any mother would look at her child, but I didn't know that he was hurt or anything the matter with him, except that he was drunk.

Q. Will you please just answer the questions? Did you see a lump over the left ear, or a cut over the left eye?

A. No, sir.

By the Court:

Q. When you first saw your son?

A. No, sir; he had no cut at all then.

By Mr. Osborne:

Q. And did you see a ridge at the back of his hand, and a dent?

A. No, sir; indeed I didn't, sir; no such thing.

PHOEBE KING, called by the Defence, being duly sworn, testified as follows:

Direct Examination.

By Mr. Chanler:

Q. Now, Miss King, you have known the defendant how long?

A. About four years.

Q. You knew him very well in August, 1892; did you not?

A. Yes, sir.

Q. You were, in fact, keeping company with him at the time?

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A. Yes, sir.

Q. And he was in the habit of frequently going on your house and talking to you about his plans?

A. Yes, sir.

Q. And did you see him about the 7th of August, shortly before his brother Jeremiah's death?

A. Yes, sir.

Q. Did he have any conversation with you then about going away, before you heard of the brother's death?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. When did he talk to you about it?

A. Well, that whole week before he went away.

By the Court:

Q. That is, he talked to you about going away, the week before his brother died?

A. Yes, sir.

By Mr. Chanler:

Q. And did he tell you where he expected to go - don't say where it was.

Mr. Osborne: That is all right.

By Mr. Chanler:

Q. Did he tell you where he expected to go?

A. No, sir.

Q. Well, did he tell you where he was going - that he expected to go to his cousin's?

(Objected to)

Q. (Question repeated)

A. Yes, sir.

Q. Well, when was the last time you saw him before he went away?

A. Saturday evening, early.

Q. And did he say good-bye to you then?

A. Yes, sir.

By the Court:

Q. What time was that?

A. Well, it was early in the evening, around 5 o'clock.

Q. On Saturday evening he bid you good-bye?

A. Yes, sir.

Q. Early in the evening?

A. Yes, sir.

By Mr. Chanler:

Q. You didn't see him on Sunday morning?

A. No, sir.

Q. And when did you next see him again?

A. The next time was around the 1st of September.

Q. And did he tell you then where he had been?

A. Yes, sir.

Q. And did he see you frequently during September?

A. Yes, sir.

Q. Was he going about as usual?

A. Yes, sir; just as usual.

Q. Was he hiding, or going under an assumed name, or anything of the kind?

A. No, sir.

Q. Did you and he walk out in the day and evening together?

A. Yes, sir.

Q. And then when did you say good-bye to him again? When did he leave you again?

A. On the evening of the 26th of September.

Q. And did he tell you on that occasion where he was going?

A. He didn't say just where he was going.

Q. Did he say what he was going for?

A. He said that he was going to look for work. He didn't say exactly the place.

Q. When did you next see him after that?

A. In July.

Q. Of the following year?

A. Yes, sir.

Q. And he was arrested in---

A. In September.

Q. Between July and September, did you see him often?

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A. Yes, sir.

Q. Was he making any attempts then at hiding?

A. No, sir.

By the Court:

Q. Was he in the city all the time between July and September?

A. Yes, sir, all the time.

By Mr. Chanler:

Q. How far was your house from where the defendant lived; about?

A. From where he lived when he came home?

Q. Well, at first. At the time of Jerry Hurley's death, did you live far from where he lived?

A. I would judge about five blocks.

Q. And then, when they subsequently moved, did you live further or nearer?

A. Further.

Q. And you used to go down to his house, to see his sister?

A. Yes, sir.

Q. And you used to see him there?

A. Yes, sir.

Q. And he used to visit your house?

A. Yes, sir.

Q. You were living with your father and mother?

A. Yes, sir.

Q. Did you on any occasion while you were with Eddy pass police

officers?

A. Yes, sir.

Mr. Osborne: When?

By Mr. Chanler:

Q. About when was that?

A. Well, I couldn't say just the date, but I passed Mr. Gilmartin and Mr. Woods, also.

Q. With Eddy?

A. Yes, sir.

Q. And they didn't seem to notice Eddy?

A. No, sir.

Q. And they didn't speak to Eddy?

A. No, sir.

Q. Did you see Mrs. Addeberth after the death of ----

A. I saw her on the Monday; yes.

Q. After the death of Jerry?

A. Yes, sir.

Q. On a Monday?

A. Yes, sir.

Q. And did she say anything about being surprised?

A. Yes, sir. When she saw me, in the morning, she was standing with her back to the table in the kitchen, and I was standing over against the tube, and she asked me if I wasn't surprised when I came over, and I said I was, and she said I couldn't be one bit more surprised than she was, when she came down in the morning.

Cross Examination.

By Mr. Osborne:

Q. Now, you say that the defendant told you that, about a week before, he told you he was going out of town?

A. Yes, sir.

Q. For work; did he say?

A. Not the first time he went away; for pleasure.

Q. Well, he didn't tell you where he was going or anything about it, except that he expected to go away?

A. Yes, sir, on a pleasure trip.

Q. On a pleasure trip?

A. Yes, sir.

Q. And he was going to his cousin's?

A. Yes, sir.

Q. And did he - he hadn't fixed the time when he was going, when you saw him; had he?

A. Well, he expected to go away of a Sunday.

Q. Of same Sunday?

A. Yes, sir, of that Sunday.

Q. Did he fix the day?

A. Yes, sir.

Q. when was that?

A. Sunday, August 7th.

Q. Did he tell you where he was going?

A. No, sir; he said he was going off on a pleasure trip.

Q. Well, didn't he tell you where he was going?

A. No, sir.

Q. He just left it entirely indefinite?

A. Yes, sir.

Q. And I understood you to say that you were engaged to be married to this young gentleman at that time?

A. No, sir.

Q. You were just keeping company with him?

A. Yes, sir.

Re Direct Examination.

By Mr. Chanler:

Q. One moment. While he was away, did you correspond with him?

A. Yes, sir.

Q. And did he correspond with you?

A. Yes, sir.

Q. And that correspondence kept up all the time he was away; did it not?

A. Yes, sir.

Q. And you wrote to him under his proper name?

A. Yes, sir.

Q. And posted the letters in the General Post-office?

A. Yes, sir.

Q. And you made no attempt at hiding?

A. No, sir.

Q. Or at deceiving anybody when you wrote to him?

A. No, sir.

Q. And he wrote to you openly?

A. Yes, sir.

Q. So that anybody could see whom you wrote to, when you wrote to him?

A. Yes, sir.

Q. And you had been keeping company with him for some time before he went away?

A. Yes, sir.

Q. And it was generally known in the neighborhood that you were keeping company together?

A. Yes, sir.

EDWARD HURLEY, THE DEFENDANT, being duly sworn, in his own behalf, testified as follows:

Direct Examination.

By Mr. Chanler:

Q. Edward, you are the brother of the deceased?

A. Yes, sir.

Q. The one who died on the 7th of August or the 8th of August, 1892?

A. Yes, sir.

Q. You were born in this country?

A. Yes, sir.

Q. And you have lived here all your life?

A. Yes, sir; all but a few years, I was here off and on.

Q. And you have always worked for a living?

A. Yes, sir.

Q. Have you ever been arrested before this, for any charge whatever?

A. No, sir, for nothing what ever; never an officer's hand on me.

Q. Do you remember the night that your brother came home?

A. Yes, sir.

Q. Now, just tell us what occurred?

A. Do you want the whole of the facts?

Q. Yes. From the very evening until the next morning?

A. Well, on the Saturday evening, of August 7th, 1892, I came home from work. The job was finished. There is a young man in the audience that was working with me, and I left my tools in his charge; in case that I didn't go to work on Monday morning, they would be in safe keeping; and I came home that evening and changed by clothes and went out, and met a young man by the name of Frank Harbeck, and we walked around, and I played in the ball team, and the team busted up through a quarrel with the captain; and were organizing that team over, that Saturday evening,

And we met, and, about half-past 10, I got tired and sleepy; and I had done a hard day's work, and it was hot weather, and I was not feeling well; and I made a motion to go away, and Mr. Harbeck and Mr. Bloom went with me about a block and a half. We were not in a room, but sitting on the stoop, and we went into the corner saloon, and Harbeck and I had soda and lemon, and Bloom, beer, and we had a talk and went out, and Mr. Bloom wanted me to go to Harlem.

Q. No. Don't tell that. Just tell us what happened when you got to the house. You walked home to the house?

A. I want to get in every fact. I shook hands with Mr. Harbeck, and I said, "Frank, if you don't see me to-morrow, it will be all right with the team. I will be with you as soon as I am home. It will be over two weeks or over two weeks and a half," and I left the gentlemen and went home; and I got home just in time, and took off my shoes and put on my slippers.

By the Court:

Q. About what time was it?

A. Between 10 and 11 o'clock I got home.

Q. On August 7th?

A. Yes, sir. I made a practice of going in and putting the gas out for my mother, and I get home in time to put out the gas and shut the front doors and leave everything in good order, and I went home and my mother went to bed, and I sat reading awhile and went to bed, and I dozed right off to sleep. I was kind of stirred with something at the foot of my bed. I just kind of opened my eyes up. I didn't come naturally to my sense, and identified my brother.

Q. Jeremiah?

A. Yes, sir; passing my bed. I seen him drunk. It was the custom. I didn't mind that. And I must have dozed back to sleep again, and I didn't know any more until I was waked by the noise of the bell. I didn't know whether it was a dead bell in my ear or the natural sound of the bell, and I lay there and I heard the door---bell ring, and I was often locked out at night, and I know what a great thing it was to throw out the keys after me. And so I jumped up and put on my pants, and my mother usually kept the keys on a small piece of broom-handle, and the front door key was on that, and I went in to take that, and it was in the closet right by her bed, and I missed her out of the bed, and I grabbed the bunch of keys and I went into the front door

with the intentions of throwing that front door key out of the window, to let this gentleman or lady, or whoever I thought it was, ringing the bell, to let them in, and next day mother used to get the key. And, when I missed mother out of bed, and I saw the front door open, it stirred me up a little bit, knowing that her and I was alone in the house, and her bed-room door was open, opening on the private hall; and I walked right out into the hall, and the bell kept ringing and it stopped and I went down stairs and I went down the stairs, and you couldn't see out to the street. You had to walk through a twenty-five foot hall to the stoop, and I identified four man on the side-walk. Two cam south and two crossed the street. At any rate, it looked to me that we met at once. If I had kept on walking out on the stoop, we would have met like that (illustrating). We all seemed to meet together. When I got there I asked what the trouble was. Somebody said, "Who is this fellow?" I looked off the stoop. I was in my bare feet and I didn't want to go out on the stones, and there was a mat in the hall, and I gave a little kick to the mat and stopped on it and held on hand on the jamb of the door and the other hand held the keys, and my shoulders and head were outside

of the door, the way I could identify the side-walk and see what was going on; and I seen what it was, and I said, "To hell with him," and I was on my actions to turn and go up stairs again, and someone said, "Why don't you carry him up stairs?" And I said, "I have carried him up stairs once too often," and he said, "You ought to get a punch in the snout," and I said, "Well, if you're inclined to make trouble, you come up here and I will give you some. We will exchange that punch in the snout," and I said, "Why don't you go on about your business? This thing, it isn't any affair with you. This is my brother; and, if you were in my place, you would do the same thing that I am doing. I don't want him up stairs. I keep this house. I support my father and mother and pay the rent, and I am sick and tired of this man, and I don't want him in there. Go about your business, and let this question drop," and, with that, I stopped and identified my sister coming out of the next hallway, and she stooped down and she picked him up, and she said, "Oh, Eddy, carry him up," and I said, "No," and she requested some men to help carry him up stairs; and I went up stairs and put on my coat and hat and slippers, with the intentions of going out and getting an officer to carry

that man out. My poor mother was heart-broken with him. I went out with the intentions of getting an officer, and I had hardly reached the corner when I heard my name called, "Eddy," and some gentleman came up and I heard afterwards it was Mr. Durr, and he said, "Well, there is no use of going out, Eddy. Let it drop. There is no use of getting an officer," and I said, "No, I will have that man arrested to-night, or I will not put a foot in the house," and he said, "No. Come up in my house and stay all night," and I said, "No, I can't have nothing, like any other fellow. I can't have a home or anything. I try hard enough, God knows. I am troubled enough. I can't have any enjoyment with the drunken loafer coming in and disgracing us every place we go," and he said, "There is no use of getting excited;" and I said, "No, Mr. Durr, I hope you will excuse me. I don't want to vent my angry temper on you. I hope you will excuse me if I have said anything wrong to you," and I doubled back and went up to my sister's, and she had a sick young one and I said to her, "You ought to know better than to bother with that man. You ought to be ashamed of yourself to be in front of those men down stairs in the condition that you are in. Where is your husband, to let you go down

stairs at this time of night?" And she said, "Oh, he is our brother," and I said, "Brother? I wouldn't acknowledge him as a brother. He is no good to us, and I will have him arrested before the night is over," and I sat down on the sofa and I got drowsy and sleepy, and I pulled off my hat and coat and laid on the sofa. And my mother said on the stand here that I laid there and she couldn't name the hour, but I can name the hour. It was between 5 and 6 o'clock that I got up and put on my hat and coat and I walked out; and the front door was still open and the kitchen door, in the very same way that it was when I left it. And I walked in, all through the house, and when I got to the kitchen, from my bedroom, I looked in and I seen my brother laying on the floor, and I kind of tapped him on the feet, with my feet, like that (illustrating), and, if it was a dog, I would pity him. If a man stuck a knife in my heart, I would pity him, and I walked up and I said, "Jerry, Jerry," and he didn't speak; and I said, "Where the devil must mother be?" And I went out in the hall, and I thought of Mrs. Addeberth. She was quite a good friend of my mother's, and I knew she would go up there when he came in drunk; and I went up and rung Mrs. Addeberth's bell, and the outside pri-

vate door was locked, and I rang that bell twice or three times before I got an answer. And I heard the inside door open, and I said, when she came out, "Is mother here, Mrs. Addeberth?" And she said, "Yes." And, when she came out, I said, "You had better come down stairs with me. This is no place for you up here," and she came down after me.

By Mr. Osborne:

Q. That was your mother?

A. Yes, sir, my mother. And Mrs. Addeberth, if I ain't quite mistaken, and I won't swear to it, but somebody came down after us, and came into the room. There was my mother and somebody else there, and my mother says, "That poor fellow, anyway," or something else, when she looked at him. She kind of looked at his face or something, and she said something about, "Oh, if the Lord would only take him, or turn his mind," and she lifted her hand from his face, and she said, "You poor fellow," and she turned to me and threw her arms around my neck, and she said, "Oh, if he was only like you;" and I said, "Well, let us put him on the bed," and his body kind of hung in a dead way, no life in his arms or anything; and we laid him on the bed, and I looked at him and said, "You poor, good-for-nothing fellow," and I didn't like

The looks of the man, somehow or another, I didn't like his actions. He wouldn't speak; and, if he was ever drunk, he would give me some motions, and I would be the first one that he would come to, and I was the only one that could get along with him; and I said, "Mother, there is something wrong with Jerry," or she said it to me. Anyway, it was passed between us, and I said, "I'm damned if I will go away without seeing that things is in no danger. I can't go no please with a comfortable mind," and I went around the corner and rung Dr. Broquet's bell.

By the Court:

Q. You went for the doctor?

A. Yes, sir, and he came to the door. He had just got out of bed. And I said, "Doctor, would you please come down to see my brother. He hurt himself last night. I think he fell, and I would like you to look at him and make sure," and he said, "Who is going to be responsible for it, who is going to pay me?" and I said, "I will pay you before you leave the premises," and he said, "Will you be responsible?" And I said, "Yes; whatever the bill is," and I walked around with the doctor, and at the bed-side I said, "Now, doctor, I want you to tell me what is the matter with that man," and

He turned his head and looked at his eye-balls and he said, "There is nothing the matter with that man. He is in a drunken condition. In an hour or two he will be all right," and I was satisfied then. I didn't want no more, and I turned around and my mother and sister were in the room. I didn't see anybody else, I didn't identify anybody else; but I am pretty sure they were in the room, and I said, "Well, I am going ever. I promised Mr. King to meet him." I had the habit of going down every Sunday morning and buying him a SUN and a WORLD.

By the Seventh Juror:

Q. Your brother?

A. Yes, sir; every Sunday morning I used to go out and buy those papers; and I never missed that, and may be I wouldn't look at them. I bought the papers, and, instead of turning back home, I stuck them in my pocket and walked over to where Mr. King lived, and I seen something in the paper and stopped to look at it, and I got a tap in the back of the neck, and it was Mr. King, and he said, "Helloa, you night-hawk. Yu are out early," and so it was. It was a nice Sunday morning. And he said, "If you don't come over to see my wife, she would be after you with an axe," and I

said, "I was handing over that way now." And then there was a Mr. Martin there, and we got into conversation, and I said, "Well, I will treat you," and Mr. King don't drink anything, and I don't know what the taste of it is. We had a drink in the saloon on the corner and a cigar and left the place, and Mr. King and I went over to the house.

By the Court:

Q. Over to your house?

A. No, sir; Mr. King's house. Miss King was in bed, and her sister, her younger sister, and her brother, Johnny. There was nobody up but Mr. and Mrs. King, and I had a cup of coffee in over there, and started back to the house. And I met a young lady on the way, and she said, "The next time you meet me you must treat," and I said, "Well, Jane, it will be two weeks before you can get that treat," and I walked over to the house. And my sister had my valise packed to go to the hop country, and it was going on to 8 or 9 o'clock, and I said around the house until a quarter after 9, and then I took my little satchel in my hand and bid they all good-bye; and my mother went with me to the head of the stairs, and she shook hands with me over the banister and kissed me good-bye. And I went to the Mott Haven Depot and took the

10:10 train for Albany, and I got to Albany at 1:10 that same afternoon, and I arrived in Troy at a quarter after 2, and I took a car from Troy right away and arrived in Cohoes about 4 o'clock, just in time for my two cousins having their valises packed, to go down to my house.

The Court: Now, I think you can go on and ask questions.

By Mr. Chanler:

Q. Yes, sir. Now, you went up into the hop country?

A. Yes, sir.

Q. And work in the hop country is a wandering life?

A. We didn't know what farm we were going on. We went for enjoyment; not money. People don't go to pick hops for money.

Q. You got paid, though?

A. Yes, sir; forty cents a box and your board, and you get your meals, and there is hop dances in the barn every night.

Q. Well, when you left your home, you didn't know what part of the hop country you were going to?

A. No, sir; but I knew what part of the country I was going to, but I didn't know what farm would go to.

Q. You didn't know your address then?

A. No, sir.

Q. Now, when did you come back from the hop country?

A. I think it was the first day of September, if I ain't mistaken. Now, I might be mistaken in a day.

Q. Well, about the first of September?

A. Yes, sir.

Q. And how long did you stay then?

A. Until the 26th day of September.

Q. Yes. And during that time what were you doing?

A. What was I doing?

Q. Yes?

A. Well, a gentleman by the name of McMahan---I went to see him every morning.

Q. Looking for work?

A. Yes, sir; and he kept putting me off.

By the Court:

Q. Well, you were looking for work?

A. Yes, sir.

Q. And you couldn't get work?

A. No, sir.

By Mr. Chanler:

Q. And then where did you go?

A. I seen an advertisement in the papers for plumbers out through the State of Ohio, for four and a half a day. I

went down to the PLUMBERS' JOURNAL, and went to Columbus, Ohio, and stayed there until some time in July.

By the Court:

Q. July, '98?

A. Yes, sir. I would have been home long ago, but I was laid up, which letters I can prove.

By Mr. Chanler:

Q. Never mind about that. You wrote letters home?

A. Yes, sir, every week.

Q. And you did break your rib there?

A. Yes, sir, my hip. I didn't break it, but I got a bad bruise; and I had the pleurisy from a cold, and I intended to stay for the winter, and come home about May.

Q. I understood that you came back about July?

A. Yes, sir, I came back about July.

Q. Now, did you hit your brother with a rolling pin?

A. Well, my hands never handled one, let alone hitting him.

Q. Did you have anything to do with killing him?

A. No, sir.

By the Court:

Q. Did you even touch him?

A. No, sir.

AFTERNOON SESSION.

Mr. Chanler: I would like Your Honor to permit another witness to go on the stand now. He is a plumber and a very busy man.

Mr. Osborne: Certainly; I would be willing to accommodate you in any way I possibly could.

JOHN T. MCMAHON, Called for the defense, being duly sworn, testified as follows:

By Mr. Chanler:

Q. Are you a plumber?

A. Yes.

Q. Your partner is Mr. Reynolds?

A. Yes, sir.

Q. Do you remember seeing defendant at all in 1892?

A. Yes.

Q. Remember when it was?

A. September; it was the first week in September he applied to me on a job I had on the East side one morning. He asked me for a job, if I am not mistaken.

By the Court:

Q. You can leave the conversation out. You saw him in September, 1892?

A. Yes, sir.

By Mr. Chanler:

Q. He applied to you for work?

A. Yes.

Q. Did you see him more than once?

A. Yes, sir.

CROSS EXAMINED BY Mr. Osborne:

Q. Now I will let you say what he said when he applied to you?

A. He said "I arrived in the city this morning". If I am not mistaken he said I think this morning or yesterday morning. He said "I would like to get a job." I asked him what he wanted a day---

Q. That is only about the price. Is that the whole of the conversation?

A. Yes, sir, that is the first part of it.

Q. You are sure it was the defendant Edward Hurley?

A. Yes sir; he was worked for me since.

By Mr. Chanler:

Q. He worked for you again last summer.

A. Yes, sir.

EDWARD HURLEY, the defendant, recalled for cross-examination:

By Mr. Osborne:

Q. You were present when Dr. Broquett came to see your brother?

A. Yes.

Q. And you were present when the doctor diagnosed his case, -- when he examined your brother?

A. Yes.

Q. You were in the room with him?

A. Yes, sir, right by his side.

Q. You heard all he said, did you?

A. Yes, sir.

Q. When you went to see Dr. Broquett you told the doctor that your brother was unconscious?

A. No sir, I did not; I told him -

Q. You did not tell him he was unconscious - you say no to that?

A. That is over fourteen months ago; I told him my brother was hurt.

Q. You are getting riled - just answer my questions?

A. I told him my brother was hurt, and to come around and look at him,--he was in a bad condition, -- I might have said it and might not.

Q. Then you might not have said he was unconscious?

A. Yes.

Q. You know at that time your brother was hurt, didn't you?

A. At the time I went to the doctor I didn't know what

was the matter with him.

Q. You just said that he was hurted, didn't you?

A. I said the man looked bad; he was in a helpless condition and I thought he needed a doctor and I went for him. That is what I said.

Q. Do you remember when Dr. Broquett examined your brother he told you at that time that he was in a very dangerous condition?

A. Not to my memory.

Q. Don't you remember that the doctor told you at that time that he had cerebral hemorrhage?

A. Not to my memory.

Q. And you tell the jury that the doctor told you at that time that it was a case of simple intoxication, and that he would be well in a few hours?

A. Yes sir, and that is true.

Q. That is true, is it?

A. Yes, what I understood the gentleman to say.

Q. You were arrested by officer Thomas Gilmartin, were you not?

A. No sir.

Q. At no time?

A. No sir, I was never arrested by Officer Gilmartin.

Q. You walked from the station house to the Tombs, didn't you, with him?

A. Yes sir.

Q. On the way to the Tombs you told Officer Gilmartin that you were not present when this thing happened, didn't you?

A. I told him I wasn't present when the man died.

Q. Question repeated - and that you were up in the State?

A. When the man died I was not at home.

Q. Then you deny that you told the officer that you were not present when this thing happened, and you were up in the State?

A. I cannot recollect it that way what I did say. I said "I was not home when the man died" - and neither was I. I was at home when he fell from the blow; how he fell I don't know that. I was not at home when the man died; I was in Cohoes.

Q. You remember you were arrested by Officer \*\*\*?

A. Yes, if that is the gentleman's name.

Q. Did you tell him that you were away two or three weeks in the western part of the State, and that you know nothing or it until your girl wrote to you?

A. About the death? When the man died, I knew nothing about it that he was dead; it was three weeks after - a day looking or more of the three weeks.

Q. You never heard of his death until three weeks afterwards?

A. It might not be exactly three weeks but close to it. I know nothing about the man's death, I said to the officer.

Q. What time in the morning did you leave there to go away?

A. Between nine and half-past nine, that is as near as I can come to it.

Q. Though you don't remember now that the doctor told you that he had cerebral hemorrhage - do you know whether that made any impression on your mind at the time?

A. Not to my memory, I don't recollect that.

Q. But you know that he told you it was a case of simple intoxication.

A. I am sure of that.

Q. And that he would be well in a few hours?

A. That is what I am pretty sure of.

Q. And resting on that statement you went away?

A. Yes, seeing the man was all right.

Q. How many steps was there to the stoop - I don't recollect what your sister says me to the stoop?

A. It makes four. There is two stone stops and two other stops, and that makes four stops to go on the top of the stoop.

Q. When your brother was lying on the ground, was there two or four steps between you?

A. There was five. I was inside the house altogether; inside the roof of the house; the mat was inside between the vestibule door and the front door.

Q. Will you state to the jury who were present at that time?

A. I don't know none of the gentleman by name.

Q. Don't you know Mr. Dew/

A. Don't know the man and wouldn't know him if he stood before me. I knew only one parson in the house I lived in and that is Mrs. Adelberth and her husband.

Q. You 414 not see Mr. Dew there?

A. I wont swear he was there, but heard afterwards that he was there.

Q. You don't know the name of any of the four witnesses that were there?

A. No, sir, I don't know them.

Q. After you stood there a while you went upstairs?

A. After I came down I went up again.

Q. Then your brother was carried up?

A. I want up before he was carried up.

Q. Then you came down again?

A. Yes.

Q. Then where did you go?

A. I started to walk to the corner, but did not reach it before I heard some one say Eddie.

Q. Then it was as you told the jury you said to Mr. Dew you were looking for a policeman?

A. I said I was not sure - I wouldn't swear to it. If I am not badly mistaken I did not.

Q. You told the jury that it was to Mr. Dew that you said you were going after a policeman?

A. I said I was told afterwards it was Mr. Dew; I didn't know the gentlemen.

Q. Is he here?

A. I don't know if he is in the house or not.

Q. When you changed your mind and did not get the policeman, you went back to the house upstairs?

A. Went up to my sister's.

Q. You spent the rest of the night at your sister's?

A. Yes sir.

Q. What time did you go and wake up your mother?

A. Close to five o'clock, between five and six.

Q. When was it you discovered your mother was not in her own room?

A. At that time.

Q. But from the time you went into your sister's rooms until five o'clock you did not know your mother was not in her room?

A. I didn't know where she was. My sister said "You lay down and go to sleep."

Q. You say you did not miss your mother until five o'clock in the morning?

A. When I woke up and got out of bed I missed her; but both doors were open. I went down not to look for her, but went down to answer the door bell when it was rung.

Q. So then you missed your mother when you went down stairs?

A. I missed her when I came to put on my slippers and hat and coat. Then I went to get an officer.

Q. When you went to Mrs. West you did not know where your mother was?

A. No sir.

Q. And you were very angry with your mother in the morning and thought she had run away on account of your brother,

is that it?

A. I don't know.

Q. Is not that the reason you told the jury that you went for a policeman, that you were angry and did not want her to go away?

A. I will not answer you - speak a little slower and one question at a time - not two.

Q. Didn't you tell the jury that when you woke up and got out of bed you found your mother was not there - or when you found she was not there you knew that Jeremiah had come home drunk and that you didn't want your home broken up and you went and got a policeman?

A. Did I say I went home, or did I not? No, I didn't say that part of it.

Q. Say no, then, you did not tell the jury that?

A. Not exactly that way.

Q. You did go for a policeman because you were angry with your brother?

A. I was not angry with him - had no words with him - did not speak to the man.

Q. You went for a policeman because you were in a good humor with your brother?

A. Because he was drunk.

Q. And because he had driven your mother out of the room?

A. Well, yes.

Q. Why didn't you answer that?

A. Well, I wanted to know what you were talking about.

Q. And though you knew your mother had been driven out of her room you nevertheless went over and spent the night with your sister, Mrs. West, is that right?

A. Yes sir. I spent the night there.

Q. At that time you knew your mother was not in her room?

A. When I went to Mrs. West's house she was not there; I didn't know where she was.

Q. You never found out until five or six o'clock in the morning where she was?

A. Yes.

Q. Then you went up and knocked at Mrs. Adelberth's door?

A. No, I rang the bell there.

Q. Then Mrs. Adelberth came out?

A. Yes, sir.

Q. And you and your mother and Mrs. Adelberth went downstairs together?

A. I won't exactly swear that Mrs. Adelberth came down.

Q. You won't say she was there?

A. She came to the door; I won't say she came downstairs. I was looking at the man.

Q. You won't swear that Mrs. Adelberth was not there?

A. I won't swear either way, but I swear my mother came downstairs.

Q. When your mother came downstairs your brother was laying on the floor?

A. Yes sir.

Q. And you made an examination of your brother?

A. Well, yes, I looked at him - not at that time I examined but before I had looked at my brother.

Q. You made an examination before that of your brother?

A. Yes sir.

Q. Did you make an examination of him when your mother came down?

A. Not an examination, no.

Q. Did your mother examine him?

A. She looked at the man - she rubbed his face over - she looked at him.

Q. Did she turn his head over?

A. I don't know; I walked out in the front room.

Q. Did you see the knot on his head?

A. Yes - and there (indicating) is the man that did it - the officer sitting next to Gilmartin.

Q. You saw the knot on your brother's head when first?

A. Yes, three weeks before that, right back of the ear.

Q. Did you see the dent in his head too?

A. No sir, not that morning, but saw it before that; I saw it in that week that had passed by,-- that is the knot.

Q. Did you see the dent in his head too?

A. No sir.

Q. At any rate on account of the examination you made you went to see the doctor?

A. Well, no.

Q. You just went to see the doctor anyhow?

A. When I picked the man up his body fell lifeless - his arms and legs dropped without any life in them.

Q. You went then for the doctor?

A. Yes.

Q. And when you went for him did you tell him that your brother was unconscious?

A. I don't remember; I told him to come around anyway, and I would pay him.

Q. In consequence of that did the doctor come around?

A. Yes.

Q. At the time that these four men were standing out there your brother was lying at the bottom of the steps, wasn't he?

A. Yes.

Q. And you were standing above him?

A. Yes sir.

Q. And you had a stick on your hand?

A. A piece of broom handle.

Q. How long?

A. Six inches long - a regular broom handle.

Q. Do you remember saying this: "I will give it to any of you sons of bitches that come near me."

A. Not exactly that way.

Q. "You fellows would do the very same thing if you were in my place" did you say that?

A. Yes.

Q. At that time did your sister come out and raise up your brother's head?

A. Yes, right after that.

Q. Did you hear anybody hallo that night?

A. No sir.

Q. Did you call these two men from the corner?

A. No sir.

Q. Did you hear your sister call the two men from the corner?

A. Not to my memory. When I went downstairs the men were there when I got there.

Q. Do you remember seeing a little short fellow there?

A. Yes.

A. And is he the one that went across the street and said "You ought to get a punch in the jaw" or anything like that?

A. I don't know which of the people said it, but it was said between the four of them.

Q. He said "You ought to get a punch in the jaw for doing anything like that"?

A. Yes, it was said.

Q. And you hadn't done anything?

A. Not that I know of, only I came downstairs. I talked a little angry to my sister when I said I wouldn't take the man upstairs. That made the four men mad.

Q. You are arguing. I will give you an opportunity to explain. Did your sister or not come until after the conversation with the men?

A. I said just as this man spoke to me - "If you were in my place you would do the same thing". After that my sister walked out of the doorway and picked up the man's head and put in

in her lap.

Q. You just now told the jury that it was in consequence of your talk to your sister that the four men got mad and you now say the conversation took place before you spoke to your sister?

A. My sister wasn't there when the men and I had the conversation.

Q. Then the conversation between you and the four men did not take place in consequence of any talk with your sister?

A. Part of it did and part of it didn't.

Q. And yet you say your sister did not come until after you had had a quarrel with the four men?

A. I said "If you were in my place, you would do the same thing." She came out after that; then I told her to go upstairs and mind her business and take care of the sick young one. Then the four men got mad at me. They thought I was a brute for not taking him upstairs.

Q. You had not refused to take him upstairs, had you?

A. No sir; they said to take him upstairs, and I said "No, not if he is dead before morning."

Q. These four utter strangers asked you to take your brother upstairs, and you became angry at that and they became

angry with you for not taking care of your brother - that is the reason of the quarrel taking place?

A. Yes sir.

Q. You never saw the four men before?

A. I may have passed them on the street, but don't know them and could not identify them.

Q. You now tell the jury that you refused to take your brother upstairs before your sister got there?

Q. So you mean to say the man got angry after your sister came there - only partially so?

A. They were angry before my sister got there.

Q. You said before your sister got there "He is my brother; if any of you sons of bitches interfere, I will give you the same dose"?

A. Not quite that way; there is two sides to the story.

Q. Tell us your side?

A. These gentlemen were standing around the door. I said "You go about your business; don't interfere with this thing--it don't concern you; this man is my brother, and if you were in my place you would do as I am doing.; -- that is not to take him upstairs - disown him.

Q. Did your sister go up after that?

A. Yes sir.

Q. Did you say to the crowd "He is all the time drunk, he never works, he struck his mother and wanted money off of her"?

A. I don't know,--not in front of my sister - not as I know of.

Q. So if any one of the witness in the case has said that you said it - you deny it?

A. I deny it.

Q. It is a fact that he was drunk?

A. Yes sir.

Q. And it was a fact he did try to get money off of his mother?

A. I don't know anything about that; I was asleep.

Q. You heard your mother say he tried to get money off of her, didn't you?

A. I didn't know that until I went away; after I came back I knew it.

Q. Did your sister say to you at that time "What have you done"?

A. No sir.

Q. Did you say that he deserved it?

A. No sir.

Q. Didn't you tell the jury that just now?

A. I don't know what he deserved - explain yourself.

Q. Didn't you say your brother deserved it?

A. Deserved what?

Q. Anything?

A. What? There is no answer to that question.

Mr. Chanler: Your Honor, he asks the witness didn't he say so as if in reply to a remark of his sister, and then the witness denies it and it goes down upon the record. Then at another time he asks him if he did use those words, to different people. It is confusing - that is all I can call Mr. Osborne's cross examination.

The Court: The witness must pay attention to the question and take time to answer it.

Q. I ask you if you did not say to the crowd some time during the night "He deserved it"?

A. Not that I know of in that way.

Q. You deny saying that?

A. I deny saying that part.

Q. What did you say about his deserving it?

A. I don't remember saying it any way at all.

Q. Did your sister say to you "Take him upstairs"?

A. She said "Help me upstairs."

Q. Did you say "I don't want him in there, he is of no use

and if he comes in there I will stay out"?

A. No sir.

Q. You did stay out?

A. Yes sir - I didn't say I did.

Q. But you did stay out?

A. I didn't intend to - I didn't have it in my mind to stay out - I was just as like to go up in my house as in my sister's; but I thought my mother was up in my sister's, and that is what drove me up there.

Q. Do you know what your brother was working at?

A. He was so seldom working I don't know.

Q. Did he work that week?

A. I don't know as he did; I think he did part of the week; he was no mechanic or tradesman or anything of the kind.

Q. Do you know whether he gave his mother any money that night?

A. Couldn't tell you; I don't know.

Q. Did you hear him talking to your mother about money?

A. No sir, I did not.

Q. How many rooms are there in that house?

A. Four rooms.

Q. How many rooms away from yours was your mother's?

A. Just a partition - just one partition between the two rooms.

Q. You say you did not hear any conversation between him and

his mother that night?

A. No sir.

Q. Didn't you say that night he was a son of a bitch and "I will hang for him"?

A. No sir, never said anything like that.

Q. Did you go into your sister's Mrs. West's house that night after you came downstairs?

A. After I came downstairs?

Q. I mean immediately after you came down?

A. The first time?

Q. Yes? when you heard the bell ring?

A. No sir - the furthest I went was to the mat - never went farther than the mat the first time.

Q. You came upstairs to see your mother and went into Mrs. Adelberth's room?

A. Yes, in the morning.

Q. Did you know your mother had been in the clothes-press?

A. In the clothes-press?

Q. She testified to it?

A. I don't know - was I in the room to see if she was in the clothes-press?

Q. Don't argue it, but answer the question?

A. I say no.

Q. Did she say to you that she was afraid of Jerry in Mrs. Adelberth's room?

A. Not that I know of.

By the Court:

Q. Not to your memory?

A. Not that I remember.

By Mr. Osborne:

Q. And did you say: "If I have not killed him, I will kill him before morning", or any similar expression?

A. No sir.

By the Court:

Q. Did you ever threaten to kill him?

A. No sir, never had a word between us. When he was drunk I would always leave the house.

By Mr. Osborne:

Q. When he came in the house drunk, did you go for a policeman?

A. I had him arrested once or twice.

Q. Did you see your mother get all her clothes and all his clothes?

A. No sir, I did not see her do it.

Q. And did you ask her what she was doing?

A. No sir.

Q. Do you remember when the doctor came there that morning he had cracked ice put to your brother's head?

A. No sir.

Q. Don't recollect it?

A. Don't remember it.

Q. How long did you stay up there in the hop country?

A. I went away on the 8th; I came home around the 1st of September.

Q. Around the what?

A. 1st of September.

Q. I ask you if you did not go into your sister's house and get that rolling-pin?

A. No sir, I have not handled such an article in my life.

Q. You say you did not?

A. No sir, I swear I did not.

Q. I ask you after you got the rolling-pin if you did not take it up into your mother's house?

A. I did not.

WILLIAM JONES, called on the part of the defense, being duly sworn, testified as follows:

By Mr. Chanler:

Q. You used to live at 443 Willis Avenue?

A. Yes.

Q. Do you know Mrs. Adelberth?

A. Yes.

Q. Did you ever have a conversation with Mrs. Adelberth shortly after the death of Jerry Hurley?

A. No sir, had no conversation.

Q. Did you hear her talk?

A. Yes, I heard her say on Saturday night - I was on the sidewalk and Mrs. West was passing -

Q. After the quarrel was over and after they went to the police court, and after the charge was dismissed, did you hear

Mrs. Adelberth use these words, or words like them, "Very well,---

Mr. Osborne: You need not use the exact words.

Q. Tell us what you heard her say coming back from the police station?

The Court: If you want a particular conversation, locate it; if you leave it open, you throw open the door and rove all around. Make it specific, so that I can rule upon it.

Q. I want to give the words that Mrs. Adelberth used coming back from the police station?

A. I came out with her, and she bid the two detective at the top of the stairs good-by.

Q. Did you make these words out?

A. This is in the Third Avenue Court; she said when she could not take satisfaction out of Mrs. West she would take it out of her brother.

By the Court:

Q. You heard her say that?

A. Yes sir, I was with her.

Q. She told you that if she could not get satisfaction out of Mrs. West, she would get it out of her brother?

A. Yes.

By Mr. Chanler:

Q. The police court charge was dismissed?

A. Yes sir.

CROSS EXAMINATION by Mr. Osborne:

Q. How did you happen to go to the court?

A. I was on the sidewalk.

Q. I withdraw that question - did you go there as a witness?

A. No sir.

Q. You were not subpoenaed to court?

A. No sir.

Q. Did you go with Mrs. Adelberth?

A. No sir.

Q. Did you go with Mrs. West?

A. No sir.

Q. Did you go out of curiosity?

A. No sir, I overheard her saying a few words.

Q. Did you see a part of the row between Mrs. Adelberth and Mrs. West?

A. I heard a couple of words of Mrs. West's, and I went to court. I live in the house they did, and knew the whole business.

Q. You never quarreled with Mrs. Adelberth?

A. No sir, never in my life; I happened to stand on the sidewalk, and when Mrs. West passed I heard -

Q. You heard the conversation in court?

A. No sir - coming from the court she bade the two detectives on the top of the landing good-by - Mr. Gilmartin was there.

Q. And the other one was there (indicating)?

A. No sir, the other one is not here.

Q. She said it to Gilmartin?

A. No sir, to me.

Q. You by yourself?

A. No sir, she had two ladies more with her, Mrs. Boyd and

Miss Boyd.

Q. Elisabeth Boyd and you?

A. Yes sir.

Q. And you state she said in your presence, "If I cannot get even with Mrs. West for this assault, I will take it out of her brother"?

A. That is not the way. I asked her how the case got on; she said "It is discharged, but if I do not get satisfaction out of her, I will get it out of her brother." I bade them good-day corner of 3rd Avenue and 125th Street.

RE-DIRECT EXAMINATION by Mr. Chanler:

Q. Tell how it happened you went to court - you say you went there because you heard Mrs. Adelberth say something on the steps?

A. That is what I wanted to tell first.

Objected to.

Q. Did you see Mrs. Adelberth the day after Jerry Hurley's death?

A. Yes.

Q. Did you hear her talk about it?

A. Yes.

Q. Did she say anything about the rolling-pin?

A. No sir, she knocked at my door on the other side of the hall, and I said "Come in." My wife was getting

dinner ready. She asked for the loan of a bowl for the doctors to wash their hands in. I handed her a big bowl. She said "Jerry Hurley fell down and he hurt himself, and the doctors are in there." I went in looking while the doctors were tapping him. He told me he fell down while he was drunk.

Q. The doctors were performing the operation while you were there?

A. Yes, I stood looking at him.

By Mr. Osborne:

Q. How long have you known Hurley?

A. While I was living in the house; I lived there between three or four months.

MRS. ANNIE KING, called on the part of the defense, being duly sworn, testified as follows:

By Mr. Chanler:

Q. Did you know this boy Hurley, the defendant?

A. Yes sir.

Q. You remember seeing him a short time before his brother's death?

A. Yes.

Q. You are the mother of Miss King?

A. Yes.

Q. Did he tell you before he went away that he was going away any time?

A. Yes.

Q. When was the last time you saw him?

A. The last time he was at my house Sunday morning.

Q. Before your daughter was up?

A. Yes; he had a cup of coffee in my house and went away.

Q. Did he say he was going away?

A. Yes sir.

Q. Did you see him when he came back?

A. Yes, and I set table for him and he ate in my house.

Q. Your daughter used to correspond with him?

A. Yes, she has kept company with him now three years.

CROSS EXAMINATION by Mr. Osborne:

Q. That is the first time you knew he was going away, when he came there that morning?

A. No sir.

Q. He told you before that?

A. Yes.

Q. How long before?

A. He was a good while expecting to go away to his cousin.

Q. How long before that had he told you he was going away?

A. They had been talking about it I guess two weeks.

Mr. Chanler: I think I will rest.

DR. BROQUETT was called by the People in rebuttal:

Mr. Chanler: I did not know you intended to subpoena him. I supposed he was my witness, and I have a note from him (showing paper to Mr. Osborne.)

Mr. Osborne: I had a conversation with this witness at recess. I do not want to delay the case, and if Your Honor does not think it of enough importance, I will let him go.

MRS. ELIZABETH DEAN, called in rebuttal by the People, being duly sworn, testified as follows:

By Mr. Osborne:

Q. Where do you live?

A. 107 87th Street.

Q. You remember the night after Jeremiah Hurley met with the accident?

A. Yes sir.

Q. Were you in Mrs. Hurley's room with your mother?

A. Yes sir.

Q. Did you hear some talk there by Mrs. Hurley?

A. No, I heard some by Mrs. West.

Q. Did you hear Mrs. Hurley say anything about \$5?

A. Yes, I heard Mrs. Hurley say that she gave Eddie -

Mr. Chanler: What is the object of this?

The Court: To contradict Mrs. Hurley.

Mr. Chanler: I have no objection.

Q. Go on?

A. Mrs. Hurley told mama at least to me that she gave Eddie a suit of clothes and all the money she had to go away to his cousin's people; she said they would never find him by the pictures, and took the pictures off the wall and tore them off the wall and burned them.

Q. At four o'clock that evening did you hear any conversation on the part of Mrs. West?

A. Yes, Mrs. West asked mama if she knew what Jeremiah got hit with, and mama said no. She said "With a rolling-pin"; mama said yes. Then Mrs. West asked me to go into her kitchen and get the rolling-pin under her tubs. I went in for it and brought it to her, and the handle was broken off, and he said "It must have been a pretty hand blow when the handle was broken off" and she lifted her hand to show how it was done.

Q. Did she show you how Eddie held it?

A. Yes, like this way (indicating).

Q. That way (indicating)?

A. Yes, sir; and she told me if Eddie was going to hit him he should hit her instead - and of course he would not hit his sister, she said.

Q. Did she tell you where Eddie got the rolling-pin?

A. She did not tell me, but mama, that she got it in her house.

By Mr. Chanler:

Q. You were there at the time?

A. Yes, I was there all the time with mama.

By Mr. Osborne:

Q. What did she say?

A. She said that Eddie came into her house for the rolling-pin.

Q. Did she tell you whose it was?

A. She did not, but it was in her house.

Q. Did she tell your mother where he got it in her house?

A. Yes, she told her that he came in and got it off the tubs in her house.

Q. How long were you in Mrs. Hurley's rooms?

A. All day with mama until he died about 8 P. M.

CROSS EXAMINED by Mr. Chanler:

Q. Did you go before the Coroner and make any statement when your mother went down there?

A. Make a statement before the Coroner?

A. No, I was in the room when the Coroner was there.

Q. When the Coroner was talking to Mrs. West?

A. No sir, I made no statement, I was right by the ice-box when the Coroner came in.

Q. You did not tell the Coroner about the rolling-pin?

A. No sir, because my folks would not allow me.

Q. How long have you been married?

A. Two years.

Q. Is your husband living with you now?

A. No sir.

Q. Is he in the penitentiary?

A. He is not.

Q. If your husband was convicted of larceny -

A. No, he was not.

Q. Let me finish. All the goods were found by the detective upon your person - clothes - stolen property?

A. No sir, he had him arrested for non-support and things he had taken from me.

Q. Was he sent away for two years to the penitentiary?

A. No sir, for a year.

Q. A year for non-support; is that true?

A. Yes sir.

By Mr. Osborne:

Q. Sent away for not supporting you?

A. Yes sir.

By Mr. Chanler:

Q. Have you been living with your mother?

A. No sir, -- have been in 77th Street - live by myself.

Q. In a furnished apartment?

A. No sir, my own furniture.

Q. Do you have more than one room?

A. I have.

Q. Two rooms?

A. Five rooms.

Q. Live alone?

A. Alone.

Q. With a family?

A. No sir, no family.

Q. How long have you lived alone in 77th Street?

A. Near Third Avenue; have been there about two months.

Q. On what floor?

A. Third floor.

Q. What is the number of the house?

A. 178 East 77th Street.

Q. East 77th?

A. That is what I said.

Q. What is your occupation?

A. Well, I don't know as it is right to tell you that.

Q. Question repeated?

A. I do sewing home.

Q. You dress yourself on the proceeds of what you make in sewing home?

A. Certainly.

Q. You do?

A. Yes.

Q. How many people do you employ at home?

A. None at all.

Q. How much do you make in sewing home?

A. \$10.

Q. You get regular employment?

A. I have regular employment, steady work.

Q. Who employs you to do sewing?

A. Mr. Wilkstadter, 108 Wooster Street.

Q. He sends goods every week to you?

A. Yes sir.

Q. And you sew for him?

A. Yes sir.

Q. And it is simply from the money he gives to you you live?

A. He did not give it to me; I worked for it.

Q. Are all those seven rooms furnished?

A. Did I say seven? I said five.

Q. Are all those five rooms furnished?

A. They are.

Q. How many parlors did you have?

A. I had none at all.

Q. Five bedrooms?

A. No sir, I have one bedroom and four rooms, sitting room, dining room and kitchen.

Q. Do you employ a servant?

A. No sir.

Q. Live all along in these rooms?

A. I had people with me, but they are not now no more.

Q. It was your mother who had the misfortune to die some time ago at 10 Willis Avenue - is it a fact (Pause).

Q. Is it a fact that she died from want and destitution?

A. It is not.

Q. Is it a fact that she had a small child living with her in want?

A. No sir.

Q. Then I ask you is it not a fact that she killed herself by taking poison?

A. She took the poison.

Q. Wasn't it because she was in want and destitution?

A. No sir, it was no such thing, that is not true.

RE-DIRECT EXAMINATION by Mr. Osborne:

Q. You say you work for -

A. Mr. Wilkstadter, 108 Wooster Street, New York, -- 108 and 110.

Q. What is the nature of his business?

A. Infants' wear.

Q. Are you an expert finisher of infants' wear?

A. No, I don't finish the dresses; I make them all except

the fancy work.

Q. How long have you been working and supporting yourself at that?

A. About a year.

Q. You lived with your mother how long?

A. I lived up to about a year ago with her, and then I went to housekeeping.

Q. How long have you been married altogether?

A. Two years - no, it will be two years this coming year.

Q. You brought an action against your husband?

A. No, it was my father brought it first.

Q. It was your father had him arrested for non-support?

A. Yes sir.

Q. Is your father living?

A. Yes.

Q. Where does he live?

A. 416 Willis Avenue.

Q. How long since you had the misfortune to lose your mother?

A. It was a week last Wednesday.

Q. She is only two weeks dead?

A. Yes.

Q. Is your father working now?

A. Yes.

Q. Whereabouts?

A. I can't tell exactly the place; somewhere in 125th Street.

Q. What is the nature of his work?

A. Decorative painter.

Q. Did he support your mother when she was alive?

A. He did not support her; he was away for two or three years.

Q. She was not in want?

A. No sir.

Q. You and your mother were on good terms?

A. Yes, I was up there the day before she died.

Q. You were three yourself the day before she died?

A. Yes.

By Mr. Chanler:

Q. You say your father did not support your mother for the last two years? (Witness leaves the witness-stand).

Mr. Osborne: Take your seat again.

Q. You say your father was not able to support your mother?

A. He was not.

Mr. Chanler: I would rest if I had the testimony of the doctor.

The Court: I understand you want to prove by the examination of the doctor that he reported deceased was dangerously ill.

Mr. Osborne: Yes sir; and I will submit an

affidavit. I think my friend has a statement from Dr. Broquett. I will read it, and you can see if you have any objection to it.

The Court: If you have no objection, it can be read to save time.

Mr. Chanler: I have no objection to this affidavit being read in evidence.

Mr. Osborne: Then I offer it in evidence. It is dated 7th August, 1892, -- about 6 or 7 o'clock in the morning I was called to 443 Willis Avenue - I diagnosed the case as cerebral hemorrhage.

A. Juryman: Is that the first time he called?

Mr. Osborne: That is the first time. He was called again at 2 o'clock when he performed an operation with the other doctor.

MRS. ELIZABETH ADELBERTH, recalled in rebuttal by the People:

By Mr. Osborne:

Q. Don't answer this question until Mr. Chanler has time to put in an objection. You remember standing on the stoop

of 443 Willis Avenue the Saturday after Jeremiah was hurt in the presence of Mrs. Boyd and Mrs. Dean?

A. Yes.

Q. Did Mrs. West say anything to you at that time?

A. Yes, she told me I had better keep my mouth shut.

Mr. Chanler: I have no objection to it, if I can put Mrs. West and Mr. Jones on the stand again.

The Court: We will see - you and Mrs. West had words and quarrels?

Witness: Yes.

Q. About this case?

A. Yes.

By the Court:

Q. There was considerable difficulty between you and Mrs. West?

A. About this case; it was all about the case.

Mr. Chanler: Mrs. West will say that she had no difficulty about the case - if you will concede that.

Mr. Osborne: I concede that.

The Court: The District Attorney of his own motion withdraws the counts of murder in the first and second degrees.

Mr. Chanler: Both sides can refer to the report of the Coroner's minutes as given in summing

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up. It is conceded that the person referred to in the indictment is dead, that he died on the 8th of August, 1892, from fracture of the skull.

The Court: The question is who killed him - that is one of the questions.

Counsel then proceeded to sum up.

## MR. OSBORNE'S SUMMING UP.

May it please the Court and Gentlemen of the Jury:

As I said to you, in the outset of this case, I have never, in my experience, encountered a case in a court where my sympathy was more closely drawn to the defence; and, if it lay in my power, I would have gladly dismissed the indictment and permitted the defendant to go.

As I said to you, also, at the outset of this case, the prosecution would prove that the deceased was a bad brother. It is conceded that the deceased came home that night drunk; it is conceded in this case that he demanded money from his mother; it is conceded in this case that he drove her mother out of her room; it is conceded in this case that the defendant woke up when his brother came home, and yet he wishes you to believe that he heard none of that quarrel. I ask you if you believed him, when he swore that he heard none of that quarrel? I ask you to believe that he heard it all. I ask you, do

you believe that he was there, and that he took the part in that quarrel that Mrs. Addeberth said he did?

I ask you, which of those two stories is the more natural? Mrs. Addeberth swears, and you must remember that they lived immediately above, and that there was an air-shaft running up into the building, and she says that she heard what took place at the time of the quarrel between Edward Hurley, Edward Hurley's brother, and Edward Hurley's mother. The defendant wants you to believe that he was there, and that he had been waked up by the deceased when he came in, but never heard him demand money from his mother or drive his mother out of her room and down into the cellar. I ask you to believe that that was one point where the defendant did not tell the truth. I ask you to find, as matter of fact, on that question, that the defendant was awake, that the defendant heard that entire quarrel, that the defendant saw his mother driven out, that, in his spirit of righteous indignation,

he was overcome, and that he said just what these men said that he said, down at the door, "I am tired of putting up with this thing." It is natural and reasonable that he should have said so.

Let us see what is the evidence of the witnesses on both sides in this case.

The witnesses who testified for the defence in this case are a sister, a brother, and a mother. You must remember that not only is it a case of sister, brother and mother, but it is a case of a good brother, of a brother to whom they have been under many continued and uninterrupted obligations. I ask you, could any one of you gentlemen of the jury stand the strain, when it came down to the question of punishing one brother for the crime committed against the other brother?

I said in the outset of this case, and I still say it, that that man was justified, to a very great degree, by the evidence in this case. I say that, if over there was a man justified by mere insults and provocations, to strike another a

blow that would produce death, that that defendant was justified in doing so. I say that he saw his own mother, who brought him forth into the world, driven out of her own room by a drunken brother; and I say that he had a motive to do what he did; and I ask you to find, as a part of the facts in this case, that the first thing that you start out with is a motive. In the minute that you find a motive, that minute you have started out to find a criminal. The very minute that you find a state of facts such as supply a motive to a human being to do a particular thing, I ask you if it is not the natural thing to expect him to go and do it. We have here before us one of the strongest and most powerful motives that ever moved a human being on the face of the earth to commit a violation of the statutory law. We have here the mother driven out of her room by a loafer, by a drunkard, coming and demanding money; and I say that the thing \*\*\* happened in such a quiet way, but that the defendant heard it.

I will ask you to find that as a fact, as Mrs. Addeberth swears to it.

Now, what really happened was this: The Coroner's representative came to that house.

MR. CHANLER: There is no evidence of that, Mr. Osborne.

MR. OSBORNE: You said that I could refer to the Coroner's minutes, and they have been referred to by both of us. He took a statement from Mrs. West, and he went down and gave a death certificate that the deceased came to his death by a fall, and it was not until reports went around, and that there began to be talk, that Mrs. Addeberth began to tell what she knew; and then it was that Mrs. West, and I ask you to find that as a fact, from her demeanor on the stand, to find that she is a woman who is likely to go up to any one and say, "You had better keep your mouth shut about this case," went to Mrs. Addeberth's. That is what produced the quarrel between them, and I ask you to find that, as a second fact, and I ask

you to find that from the inspection of the witness on the stand, that that was just the identical thing that she would say to any one that she thought was going to say anything against her brother. I ask you to find that Mrs. West there intimidated or attempted to intimidate Mrs. Addeberth, and I ask you to say that that is of a piece and of a similar character with the efforts that were brought to bear on the man Roddy, to endeavor to make him withdraw the charge against the defendant.

Now, let us analyse the evidence. We have to come down from the general to the particular in this case. It is absolutely impossible to take a glittering general view of the whole case. We must come down to the details. It is conceded by the defendant here that every word sworn to by the man Roddy, is the truth, except the mere fact of the rollingpin. It is conceded that every fact that Brennan swore to is the truth in this case. It is conceded that every

single fact that Mrs. Addeberth swore to is the truth, except as to the threats and as to the fact that Mrs. Addeberth looked out of the window. Every other fact is conceded. It is conceded that Mrs. Hurley went upstairs for protection, to Mrs. Addeberth. It is conceded that this defendant came up there, and there is a discrepancy between his testimony and that of his mother, to a certain extent. It is not of enough importance to make it my duty to go into it, but I say that he came up there, and that his mother heard him coming, and, thinking it was some other person, hid herself in the clothes-press, and she and Mrs. Addeberth agree about that. It is conceded here that, after that, Mrs. Addeberth, Mrs. Hurley and the defendant went downstairs together, and there they examined this wounded boy, and I say to you and reiterate to you that every single and solitary fact that Mrs. Addeberth swore to is conceded, except as to the matter of threats.

I want to say that this is the most astute defense that I have ever seen put up in a court of justice. They come in and concede everything, and it is one of the reasons why I have some respect for this defendant's intellect, together with his past character, for he had the astuteness to come in and admit everything, without placing himself in contradiction with the witnesses, and then attempt to explain away. For instance, he asks you to find that this affair took place as he expressed it, and I ask you to look at the collocation in which the words are placed, and see if it is possible for him to have entered into an unfounded quarrel with four men out there on the stoop, who had never seen his brother or himself before, as far as we know. One of them was a man named Durr. Why was he not put on the stand, why was he not called? The defendant says that he met Durr, and he told Durr he was going for a policeman. Why did he not prove that by Durr, if it took place? He asks you

To believe that this conversation between Roddy and himself could not possibly have happened in the way Roddy says it did. Roddy says, "We looked and saw one fellow stretched on the sidewalk. We walked up toward the fellow, and some fellows came across Willis Avenue, "and he gives the names," and one of them said to the defendant, "You ought to have a punch in the face for doing that." At this time the defendant was standing on the stoop."

MR. CHANLER: Are you reading from the evidence or an affidavit?

MR. OSBORNE: That is my recollection of the evidence. And if you find it is not the evidence, gentlemen, you will find the evidence as you recollect it. That is my memory of the evidence, and if you do not find that I quote the evidence correctly, gentlemen, you are not bound by any statement I make. You will be governed exclusively by your own memory of the evidence. My memory is that those were substantial-

ly the words that took place; that this man Roddy walked up and that then the conversation occurred, and that was a part of the res gestae, a part of what took place there. There was the defendant standing on the top of the stoop, and the deceased lying on the sidewalk, the defendant standing over him with the rollingpin in his hand, and one of the men exclaimed, "You ought to get a punch in the jaw for doing that.' What is his answer to that? "I will give it to any of you sons-of-bitches that come near me." I believe the witness said that he did not remember the words, "sons-of-bitches," but that there were words to that effect. Then he said, "You fellows would do the very same thing, if you were in my place."

The defendant says that, at that time, he had declined to take that drunken brother upstairs, and these for strangers, who did not know that they were brothers, and had never seen either of them before, were so outraged by his

conduct that they said that he ought to get a punch in the jaw. I say on the face of it that that proposition is absurd, and I say that I expect you to find that what took place there, and I think I have a right to claim it from the evidence, was that this defendant, struck him with a rollingpin, and that he fell on the sidewalk, and that these four men came across the street and said, "You ought to get a punch in the jaw for doing that," and then he said, "If any of you come up here and come near me, you will get the same dose."

Now, gentlemen of the jury you are to find the facts in accordance with the evidence, and you are governed by the evidence, and you have a right to be governed also by your usual experience with human nature and human affairs, and I believe that you will not allow yourselves to be stultified by any statement of facts that strikes you as absurd. I ask you if this statement of Roddy's does not bear upon it the impress and stamp of

truth, and it is not in accord with your ideas of common sense. Is it not exactly probable? I ask you if it would not have been the most improbable thing in the world that four strange men would have entered into any such conversation or made such remark at that, just simply because one man declined to take another man upstairs, who happened to be drunk? "You deserve to get a punch in the jaw for doing that." Observe the words. The natural remark would be, "You deserve a punch for not doing that," if that was the state of the case, as the defendant says it was. It was the not taking, according to his statement, that made him liable to the criticism of these four men; it was the refusal to take his brother upstairs; it was the declining on his part to do an act; and these men would say, under those circumstances, "You deserve a punch in the jaw for not taking the man upstairs," and not "for doing that." I ask you, now, gentlemen of the jury, if you can resist that view. Suppose you meet a

man. You see a man standing, and beneath him is another man, run through the body with a sword. In the right hand of the man who stands above him is the sword. In his body is found a wound, and four men are heard to exclaim, "You ought to have been treated so and so for doing that." Would not you naturally and reasonably infer that it was because he ran the other man through with a sword?

Let us take the facts here. You find, in this case, that the deceased had a dent, a depression, upon his head, that could have been produced by this rollingpin. You find him lying prone upon the sidewalk, which condition might naturally be produced by such a blow as could be administered with the rollingpin, and you hear as a part of that transaction, an exclamation arising from one of the witnesses, "You ought to get a punch in the jaw for doing that," and the defendant says, "You come up here and interfere, and you will get the same dose." Now, is that an

absolutely impossible situation, in regard to his refusing to take a drunken man upstairs? They have conceded that Roddy and Brennan have told the truth in every particular; they have conceded that all those things took place; and I ask you if it is possible that any such remark could have come forth, because the defendant declined to take his brother upstairs, his brother who was drunk.

"Come up here and you will get the same dose." The "dose" was what the brother got, not that he was to be taken upstairs when he was drunk. You see that such a remark made under such circumstances, would be utterly absurd, and could not, by any means, have taken place, in connection with this affair. You must remember, gentlemen of the jury, that the witness Roddy and the witness Brennan had no reason on earth to tell anything but the truth. They are absolutely disinterested witnesses, interfered with by no degree of passion. They have no motive but an honest one, a fear of the law, brought down here against their will. Both of

them, in their testimony on the stand, have demonstrated the fact that they have been in communication with the defendant, at least Roddy admitted, out and out, that he felt such a sense of sympathy for the defendant that he had been down to the Tombs to see him, and that the defendant had told him that, if he would withdraw his statement, he would be very much obliged to him, and that, when he got out, they could have a good time together.

I ask you if that act of the defendant was the act of a man who was innocent, or was it the act of a man who was innocent, or was it the act of a man who was guilty? I ask you whether he was now changed his defense and come to the conclusion that the testimony of Roddy was not going to hurt him anyhow. He admits that it is all true; and, if it is all true, and it is all written out in the stenographer's minutes of the Coroner's Office, and his lawyer knew that it was, I ask you why he wished him to withdraw it, I ask you why it was that he wanted Roddy to come down to the Tombs to see him, and why it was that he wanted to have

that statement withdrawn, if that statement was true.

I want you, gentlemen of the jury, to answer that question for me, and I want you to answer if the defendant has not been compelled to change his defense, in consequence of the fact that he must, if possible, fit in his testimony with the testimony of Roddy; and I ask you if this testimony about the quarrel with the men outside, about not taking his brother upstairs, about his refusal to take him upstairs, has not been made up out of whole cloth, since Roddy refused to change his statement. I ask that simple question, and now we will go on.

Brennan testifies to the same facts, but with more details, and the defendant stands on the stoop and gives a full explanation of his conduct. He says, "This man is my brother. This man has been drunk. This man has driven my mother out of her room. This man demanded money from my mother; and if you were on my place, you

Would do the same thing," not leave undone the same thing. You can see the difference. One of them is positive act. "you would do the same thing," not, gentlemen of the jury, "You would leave undone the same thing."

I say, to my mind, believing that Roddy tells the truth, and believing that Brennan tells the truth, believing that this defendant stood above his brother, with the rollingpin in his hand, and that he was lying down beneath him, and that these remarks were made, that it is impossible to feel otherwise than that the defendant struck his brother in the head with the rollingpin. I know it is possible for the human mind to, do a great many extraordinary things; but, if these two witnesses have told the truth, it is absolutely impossible, it seems to me, to come to any other conclusion than that the deceased was struck on the head by the defendant with the rollingpin.

Now, we come down to the question of

Flight. Dr. Potter, a disinterested and intelligent witness, tells you here in plain language that he came to the house that morning, and that the doctor diagnosed the case as cerebral hemorrhage. He said, "I found the defendant breathing stertorously and his pupils were dilated, and you need not tell me that the defendant, who displayed much intelligence, who seemed to know as much as any man in his condition of life ever knew, and who has put up the most a state defense that I have ever seen placed on the records of this court, did not know the full import of what the doctor said. Do you mean to say that the defendant does not know that cerebral hemorrhage---why the sound of it is enough to terrify the ordinary mind---is a most serious condition. Yet he swears that he stood by the bedside and heard the doctor speak, and that the doctor said it was only a plain case of drunk, and nothing more. Are you going to believe the doctor or this defendant who has a deep interest in this case.

I will concede, if it may be necessary, that this defendant was thinking of leaving the City. I have no doubt but that he was thinking about it, and I have no doubt but that, as this girl said, when she went on the stand, that his mother gave him all the money she had and a suit of clothes, and that he went out of town the Minute he heard those words, "cerebral hemorrhage." I don't say that he did not come back in three weeks, and I say that he came back in three weeks, and, having heard of the disturbance with Mrs. Addeberth, and knowing that it arose out of this case, that he again left town, and did not return for more than a year afterwards; and, when he was arrested by the officer, he said that he knew nothing about the case whatever; that he was in the country when the whole thing happened. That is what the officers swore to, both of them.

THE 7TH JUROR: Did the doctor---while you are talking of the diagnosis---did he write that before the second visit?

MR. OSBORNE: He did not write that, but he swore that it took place before his second visit.

THE JUROR: Well, you ought to have had that doctor here.

MR. CHANLER: He was here.

MR. OSBORNE: You could have called him.

MR. CHANLER: No, sir; you sent him away. He was subpoenaed by you.

THE 7TH JUROR: Was that before his second visit?

MR. OSBORNE: Yes; there is no question about that, at all. He will state it to you, the defendant's lawyer will state it, that it was on the doctor's first visit. I will read the whole affidavit. It is in evidence. (Reads.)

Now, gentlemen of the jury, let me show one of the internal evidences of truth in this case. I want to call your attention to a circumstance that gives a complexion of truth to the

case for the prosecution, the minute that I show it. Here are this mother and this sister and this son, all swearing that the doctor said that it was a case of plain drunk, and yet the doctor, of his own motion, and without any invitation, come back again in two hours. You heard them say that; didn't you?

Now, I ask you if that is not a palpably ridiculous statement on its face, that a doctor should go into a tenement house and find a man lying in a condition of plain drunkenness and go back of his own accord. That is the defendant's own testimony, and it is Mrs. Hurley's testimony that he came back of his own accord. That is perfectly ridiculous on the face of it. I asked Mrs. Hurley about that matter, how he happened to come back, and she said he came back of his own accord. It is in Mrs. Hurley's testimony, and, if you feel enough curiosity about it, I will read it to you from the testimony. It showed that that whole testimony was put up, and there is no doubt

about it, and the jury know it.

Now, I will go on with the doctor's affidavit to the end of it. (Mr. Osborne completes the reading of the affidavit.) I did not see that in the affidavit myself until now, as to the administration of ergot at the first visit, to contract the blood vessels. What does that mean, gentlemen of the jury? It means that a man is dying from blood pouring in on his brain, and you know that the ergot is an astringent.

MR. CHANLER: And that affidavit was made two years ago, and that visit was made then. He got the two visits mixed up.

MR. OSBORNE: Do you find, gentlemen of the jury, that a doctor of intelligence could mix up two visits? He says that, at the second visit, he put cracked ice on his head; and at the first visit, he injected ergot; and that was to stop a flow of blood on the brain, as everybody knows, where a blood vessel bursts and blood flows in

on the brain, which causes this condition known as cerebral hemorrhage and that is the reason why the ergot was injected. Yet the defendant and his sister and his mother, seeing that done, are prepared to come on the stand and swear that it was a plain case of drink, and that they were so informed by the doctor at the time.

Now, gentlemen, this is a plain case, and I ask you to find that the defendant's witnesses are, without a single exception, interested witnesses, and I wish you to take into consideration the fact that Mrs. Addeberth would have to be the most depraved, the meanest, the lowest, the most contemptible of all God's creatures to come on the stand and attempt to swear this man into a state of punishment. I could not tell you how loath - some that woman would be to you and to me and to all decent persons, if she was prepared to come on this witness-stand and swear falsely against an innocent man. I ask you, do you believe that that woman felt that way?

I have not a doubt that she was angry with Mrs. West. I tell you that I have not a doubt that she was embittered, and that Mrs. West told her that she had better keep her mouth shut, and that, in consequence, there was trouble, and that Mrs. West's conduct in regard to her was in accordance with the conduct of Mr. King in approaching the principal witness, as he thought, of the prosecution, Mr. King, the prospective father-in-law of the defendant. Who will stand by a man in trouble, if not his relatives? That is what we have had here. I concede that Jones told the truth, and that Mrs. Addeberth said possible, "I am going to get even with them," in a burst of passion, but you must remember that it was months and months after that that she testified before the Coroner, and that she had had time to think, that she had had an opportunity to reflect; that it was three months after that that she made her first statement, and that it was a year after that almost before she made the statement to me in the

District Attorney's Office, and from which I examined her, and that she had had all the opportunity in the world to reflect. Do you believe that that woman would carry in her mind all those months the bitter desire to send this man to state prison by reason of her perjury, can you believe it of Mrs. Addeberth? No motive has been suggested. It is not in accordance with human conduct that she should testify falsely without proof. I could not imagine her doing anything like that. As for this girl who was on the stand, Mrs. Dean, one circumstance seemed to excite the remarks of the counsel for the defendant, or give occasion for them in his opinion, and that was the fact that she had a pleasant appearance. She did not seem to me to be a woman who was dressed exceedingly gaudy. She looked to me like an ordinary girl who was at work. Perhaps you know how many tenement houses in this city there are where you can hire five rooms for ten dollars a month, if you have ten dollars a week. I know hundreds of

my acquaintances on the West side of the City, among the people where I live, who get rooms for twelve dollars a month, a set of rooms. She lives in a tenement house, and upon the balance of that income she could very well support herself.

Another suggestion that was made by counsel for the defendant against that woman was that her mother was so unfortunate as to take poison. Why, you would have thought that this little girl had poisoned her own mother, in view of the unkindness with which he attacked her. I saw nothing in her appearance or manner which called forth such vindictive remarks or suggestions from the counsel. The girl was asked where she worked and she gave the name of the man that she worked for, and she told you how long she had worked for that man. Those are not the ways of lying witnesses; they do not answer questions that way. You have been in this court for weeks, and you have found that, when the defendant goes on the stand, in a certain class of crimes, that that

Defendant will not be able to tell you where he was working. You have seen it a hundred times. He does not dare to say, "I was working for John Smith, at such and such a number in such and such street, and I worked for him a certain number of years." You know very well why he does not dare to do it. Because the lawyer on the other side will dispatch some one at once to that place, that he said he worked at. I am willing to, stop this argument now, and the Judge is going to hold the case open until to-morrow morning, and, if that girl has lied about that matter. I would like to know it. Do you believe that she has come on the stand and told a falsehood in that matter?

Now, then, if she has not, and no motive has been suggested for her telling a falsehood, not a suspicion of a motive, then a girl making her own living respectably in this City, comes on the stand and tells you that Mrs. West showed her the rollingpin---and she told it with such a degree of circumstance and detail and so naturally that I

know you must believe that she told the truth---and that the mother, at that time, took the boy's picture from the wall. Do you believe that that girl made up all of that out of her inner consciousness, do you believe that she is so spiteful and low and degraded that, without any motive, or the suggestion of any motive, but simply from malice, she would come here and testify against this boy untruthfully? I cannot believe it of her, and it is hard for me to believe that of any human being, that they will do that without any motive. Give me a motive, and I will concede usually that a person has committed a crime, but none is shown here.

Now, gentlemen, I have extended my remarks more than I intended to do, and I leave this case with you, as I said before, in the greatest degree of pity for the defendant and yet claiming, on behalf of the prosecution, that, in view of the facts proven here, that he struck his brother on the head with the rollingpin, from which blow he

died.

THE DEFENDANT: Will Your Honor allow me to tell the motive of this thing? I am an innocent man.

THE COURT: Yes; come around to the witness-stand here, if you want to talk. Say what you like to the Jury.

THE DEFENDANT: Then, Jury, on the first Sunday in June, 1892, I was playing ball all that afternoon. I came home. I was sweating and tired. I took off my clothes, as far as my shoes, and my mother had an empty room where she done cooking.

THE COURT: Has that anything to do with the case?

THE DEFENDANT: Yes, sir. It is the motive. If I have to turn away my mother and sister and all in the world, I will tell it to the public. I went into that room to wait for my supper, and this woman came

on to that sofa, and threw herself on top of me, and it put in the heat of passion. What could I do? I was young. And that woman lay there, and teased me and coaxed me, and my sister caught her with her arms around me, and I pushed her back and spit in her face, and I didn't know what to do, and there ain't ten men in this room would do what I done.

THE COURT: Is that all?

THE DEFENDANT: No, sir. I took and left the house, when I pushed her away from me. I spit in her face, and I said, "If you come around me again that way I will tell your husband," and which I will do to-day; and that is the motive.

THE COURT: Do not make a speech. If that is all you have to say you can go back to the bar.

MR. OSBORNE: Is that all you want to say?

THE DEFENDANT: Yes, sir. And I am very thankful, Your Honor, for allowing me to say it.

MR. OSBORNE: I would like to ask him a question or two on that subject, though I hate to prolong the case.

THE COURT: Yes; you may come back again. You may ask a question or two, Mr. Osborne.

Cross-Examination:

BY MR. OSBORNE:

Q. Was it Mrs. Addeberth or Mrs. Dean?

A. Mrs. Addeberth.

Q. It was this old lady, Mrs. Addeberth, that came in and threw her arms around your neck?

A. Yes, sir.

Q. And lay on top of you?

A. Yes, sir.

Q. And tried to excite your passions?

A. Yes, sir.

Q. And when was that?

A. That was on the first Sunday of June, if I ain't badly mistaken.

Q. Well, I would not be mistaken about a little thing

like that. And your mother was the janitress of that building?

A. Yes, sir.

Q. And Mrs. Addeberth was living there?

A. Yes, sir.

Q. And she was a woman of that character?

A. Yes, sir.

Q. And your mother never put her out?

A. She didn't know it.

Q. Your mother didn't know it?

A. No, sir.

Q. But your sister knew it?

A. My sister called me down twice about it.

Q. Then she knew about it?

A. Yes, sir.

Q. And she called you down again about it?

A. Yes, sir.

Q. And was that because she threw her arms around you again?

A. No, sir; because she saw her throw her arms around my neck again, and kiss me.

Q. Then it was twice that she offered herself to you?

A. Yes, sir.

Q. And did you spit in her face both times?

A. No, sir.

Q. It was only the second time?

A. No, sir; the first time.

Q. And yet again, after you had spat in her face, again she offered herself to you?

A. Yes, sir.

Q. And your sister knew of it both time?

A. I wont say the second time; no.

Q. Well, then, what did you tell the jury for, that she called you down twice about it?

A. She spoke to me about it twice.

Q. And when I asked you why your sister called you down twice then you said she did it twice?

A. That don't say that my sister didn't call me down twice about it. She said it a couple of days after, not in her presence. She seen her throw her arms around me and kiss me. Coming in the door she seen it and she said, "I am ashamed of you."

Q. Was that the third time?

A. No, sir; that was the first time.

Q. That was the first time?

A. Yes, sir.

Q. And you didn't spit in her face that time?

A. Yes, sir, I did.

Q. It was the first time, then?

A. Yes, sir.

Q. And where was that then?

A. I was in the empty room. The two apartments in the rear of the house were empty, and we had a sofa lying there.

Q. Where?

A. On the same floor of the house that I lived in.

Q. The rear rooms?

A. Yes, sir.

Q. And, of course, nobody was present but you?

A. No, sir; nobody was present but me. I lay on the sofa to get cooled off. I was sweating.

Q. And so it is unrequited love that makes Mrs. Addeberth make that charge against you?

(Objected to.)

A. No; it is not love.

Q. But it is unrequited passion, unsatisfied passion?

A. Yes, sir.

Q. What did you do to her the first time she put her arms around your neck.

A. I pushed her back and said, "Don't do that again," and I spit in her face.

Q. Well, did you spit largely in her face?

A. Well, I don't know how large or how small.

Q. And do you usually spit in ladies' faces that put their arms around your neck?

A. No sir; but I had respect for my mother and sister. One brother disgraced the family, and that was enough.

Q. And is that the way you are going to keep up the honor of the family?

A. Well, that is the proper thing to do.

BY THE 7TH JUROR:

Q. Did she make advances to you after you spat in her face?

A. Yes, sir; but not the same day.

BY MR. OSBORNE:

Q. Was it quite a long time after?

A. Yes, sir.

Q. And how many weeks or months after the first of July was it that she made the first advance?

A. Your Honor, I didn't say July.

Q. Well, you said it was the first Sunday in June, then?

A. Yes, sir.

Q. And when did she make the second advance?

A. The first was made before June and the second

about the 1st of June.

Q. When did you spit in her face?

A. The first time.

Q. Then you did not spit in her face on the first of June?

A. No, sir.

Q. Well, after you spat in her face did you go into your mother's rooms?

A. No sir; I left the house. Now, don't talk about the first and second time.

Q. Now, where did the thing take place the second time?

A. The first time in my bear room, and the second time in the empty room in the rear of the house.

Q. That was the second time?

A. Yes, sir.

Q. And what were you doing there?

A. I was laying there, simply waiting for my mother to get supper for me.

Re-Direct-Examination.

BY MR. CHANLER:

Q. Is that the woman over there, laughing over there, Mrs. Addeberth?

A. Yes, sir.

MR. ADDEBERTH: Oh, that is false.

MR. CHANLER: Wait, a minute. You will have time to answer that.

MR. CHANLER: Your Honor, I tried to keep this quarrel out of the case. I knew this was coming.

THE COURT: Well, that is all right. He has chosen his own part and he must judge whether it benefits or hurts him. I shall certainly allow this woman to be recalled to deny this.

MR. CHANLER: Can I prove that it was true by Mrs. West?

THE COURT: No; I am going to recall this lady. I am not going to allow the defendant to come on the stand in an open court-room and make such a charge, without giving the woman affected an opportunity to deny.

MR. ADDEBERTH being recollect by Mr. Osborne; testified as follows:

BY MR. OSBORNE:

Q. Mrs. Addeberth, you are a married woman?

A. Yes, sir.

Q. And you live with your husband?

A. Yes, sir.

Q. And what is your husband's business?

A. Plumber.

Q. A respectable plumber?

A. Yes, sir.

Q. How long have you been married?

A. Seven years on the 20th of February.

Q. How many children have you?

A. Two are dead and one is alive.

Q. Did you put your arms over, at any time, around the neck of the defendant?

A. No, sir.

Q. Or make any advances whatever to him?

A. No, sir.

Cross-Examination.

BY MR. CHANLER:

Q. I will ask but one question: Did you think it was amusing to hear such charges made against you in an open court?

A. No, sir.

Q. Well, then, why were you laughing?

A. I was not laughing, sir.

Q. You were not?

A. No, sir.

THE COURT: Now, gentlemen of the jury, the case is closed. This is a little diversion. I allowed the defendant to come on the stand again, because I think his disposition is such that I ought not to

Deny him any right that he asks. He wanted to make a statement, and I allowed it, and, having made a statement that implicated a woman, I allowed her, as I thought was just and right, to deny the charge, in just as public a manner. Now, the case is closed. We cannot finish the case to-day. it is near 5 o'clock, and I don't intend to charge you to-day, but I will charge you tomorrow morning at 11 o'clock, and then you can take the case and dispose of it. In the meantime, do not talk about the case among yourselves or with any one else until the case is finally submitted to you. You can go, now, until to-morrow morning at 11 o'clock, when I will place the case in your hands.