

The tendency of these remarks was towards creating an impression on the minds of the jury that on cross-examination Manzetto withdrew the statement that there were three Italians present when the stabbing occurred, whereas it was in his evidence-in-chief that he first made the statement that there were only himself and the prisoner there, while in cross-examination, and finally in answer to a further question through the interpreter, he averred that there were three Italians present. It can scarcely be doubted that the effect upon the jury of the learned Judge's remarks was to lead them to reject Manzetto's statement that there were three Italians present, and to come to the conclusion that there were only the prisoner and Manzetto there when the stabbing occurred; and, as Manzetto swore positively that he did not do the stabbing, the only person who could have done it was the prisoner. This is important to be borne in mind in considering the manner in which the Judge dealt with Pollikofsky's testimony in respect of which the second question is submitted. He was called at the instance of prisoner's counsel by leave of the Judge, reserving to prisoner's counsel the right to move for what he termed a nonsuit, at the conclusion of Pollikofsky's evidence. The latter was not examined in chief by the Crown counsel, but he was re-examined by him. To the prisoner's counsel he stated that he saw the fight in which Hoban was killed; he was going with another man to Glionna's tavern to have a glass of beer; he saw there was a fight there; two men, and after another man, two Italians, one tall one, big one, and one little one, and one English; he saw the big Italian take a knife—he pulled a knife and said "Come, I want to fight you." The witness then went into the tavern. He said the man who pulled the knife was not the prisoner.

To counsel for the Crown he said he did not see Manzetto there, but could not say whether he was there or not. He saw the small Italian hit the Englishman. Two Italians and one Englishman were all he saw in the row. Seeing a knife, he went into the tavern because he saw there was a fight with a knife, and did not like to see it. The small Italian and the Englishman were close together. The Englishman punched him, the big Italian came back holding the knife, and said, "Come, I will fight." He was then 20 or 25 feet from the Englishman. This was the position when he went into the tavern. He took a glass of beer and when he was