TRYING TO PROVE THAW WAS INSANE

Dr. Wagner, Expert Alienist, Believes He Was When He Shot Stanford White.

JEROME BLOCKED TESTIMONY.

He and Mr. Delmas Had Many Legal Skirmishes—Defendant's Attorney's Hypothetical Question.

New York, Feb. 12.—The real legal battle in the Thaw case has begun. Dist. Atty. Jerome and Attorney Delmas for the defense have found their gait and from now on, it is expected, the battle will be fought to the last.

In this legal battle, Mr. Jerome would seem to have a shade the better, for he is familiar with the details of practise under the New York law, while Mr. Delmas will have to depend very largely on his associates for advice on technicalities.

The fight to keep out the testimony, which would tend to show that Thaw was insane when he shot Stanford White, which was begun yesterday, will be continued today. Dr. B. D. Evans, who is in charge of the insane hospital at Moris Plains, N. J., will be the first witness for the defense. Whether he will meet a better fate than did Dr. Charles G. Wagner, of the state insane hospital at Binghampton, N. Y., yesterday, remains to be seen. Dr. Wagner succeeded in answering Mr. Delmas' hypothetical question, but he was unable to get into the record his impressions of Thaw based on six visits to him in the Tombs, and various personal and physical examinations. Dr. Evans accompanied Dr. Wagner on these visits. Unless he can make himself more definite in his statements than did Dr. Wagner, there is little doubt that the court, following its rulings of yesterday, will keep out the greater part of his testimony. The alienists who examined Thaw based a large part of their examinations on Thaw's own statements regarding himself and the personal and family history of the case. Under the law as interpreted by Justice Fitzgerald, Dr. Wagner was not allowed to testify to anything except his observations and when he said that he based his opinion as to Thaw's mental condition largely on Thaw's own statements, and the history of the case, Mr. Delmas was forced to withdraw the question, the answer to which would doubtless have been that the alienist considered Thaw insane when he fired the fatal shot.

Whether the answer of the alienists to the hypothetical questions will be considered prima facia proof that Thaw's mind was unbalanced at the time of the homicide, and will therefore open the way for the introduction of the cumulative evidence which Evelyn Nesbit Thaw, May McKenzie, and perhaps several others, are ready to give, is a question that can not be answered until the time comes when the court will pass on it.

If this evidence is allowed to come into the case, there may be more sensations, but with the exception of what may possibly develop from this testimony, it is probable that the sensational features of the trial are finished. The prosecution's inability under the law, to go into the truth or falsity of Evelyn Nesbit Thaw's story makes it certain that there will be comparatively little more in the rebuttal than when the battle started. It seems now that the rest of the trial will be largely technical and detailed testimony.

Counsel for Thaw unexpectedly announced last night that it would take about two days more to put in the direct case for the defense. This, of course, does not take into consideration the cross examination of Thaw's witnesses by Mr. Jerome, but it indicates plainly that Thaw will not go on the stand. What is regarded as an important document in connection with the trial was, it is understood, obtained yesterday by Dist. Atty. Jerome from Abram Hummell.

This document is a photographic copy of the statement which Evelyn Nesbit Thaw testified Lawyer Hummell dictated when she went to his office with Stanford White. The original copy, it is stated, was destroyed, probably at the time young Mrs. Thaw says she went to Hummell's office in search of a paper which she had signed. In the statement she made charges that Thaw ill-treated her, and even beat her, it is understood.

There is some talk that Hummell may be put on the stand as a witness in rebuttal, but it is more likely that Mr. Jerome is preparing for his cross-examination of the young woman.

Mr. Jerome and Mr. Hummell met in a restaurant yesterday and a brief conference followed, during which Mr. Jerome made a number of notes in a little book.

Although today is Lincoln's birthday, it was decided to hold court. It is also Harry Thaw's birthday. He is 36 years old, having been born in 1871.

Answering a hypothetical question covering every detail of the testimony up to this time in the Thaw trial, including Mrs. Evelyn Nesbit Thaw's narration of her life history, Dr. Charles G. Wagner, superintendent of the state hospital for the insane at Binghamton, N. Y., declared on the witness stand today that in his opinion Harry K. Thaw did not know that his act was wrong when he shot and killed Stanford White. Dr. Wagner stepped aside for later cross-examination by Dist.-Atty. Jerome, and as court adjourned for the day, it was announced that the defense would offer testimony from other alienists tomorrow morning.

Dr. Wagner's opinion of a hypothetical question, the man under consideration being the author of letters which have been introduced as emanating from Harry Thaw during his estrangement with Evelyn Nesbit after their return from Europe in 1903, furnished a day of legal sparring between Delphin M. Delmas, of the defense, and Mr. Jerome for the prosecution.

Mr. Jerome effectually blocked the completion for the time being of the testimony of Mrs. Evelyn Thaw by insisting that before she should go further competent testimony as to Thaw's unsoundness of mind should be given. Mr. Delmas tried to carry forward the young wife's story, but the district attorney was on his feet with an objection to every question.

After compelling the defense to begin expert testimony as to Thaw's insanity by his objections, Mr. Jerome next proceeded to block the testimony of Dr. Wagner as to the results of his six visits to the defendant in the Tombs and his tests as to the latter's mental condition. Dr. Wagner was not allowed to go into the conversations he had had with the defendant nor the conclusions he had reached from these conversations. He was confined to what he actually observed, and he declared his observations were so closely interlaced with his questioning of the defendant that he did not know whether he could separate them.

A long argument over the point resulted in Mr. Delmas withdrawing any further questians as to the tests, contenting himself with asking Dr. Wagner to give his opinion of the hypothetical question covering the evidence in the case. The question was almost record-breaking in length, a comprehensive resume of the entire case, including Mrs. Thaw's personal narrative.

In it Mr. Delmas accused Stanford White of having "drugged" Miss Nesbit, and of having attempted to renew "communication or relations" with her subsequent to her marriage. Mr. Jerome objected to these features, and it was amended to embrace the evidence of record as to the disputed points. It was on the amended question that Dr. Wagner gave it as his opinion that Harry Thaw did not know, because of defective reason, that his act in killing Stanford White was wrong. When the expert is taken in hand by Mr. Jerome he will have to give detailed reasons for his opinion.

MEDICAL TESTIMONY.

When the afternoon session began, Mr. Delmas proceeded with the introduction of medical testimony as to Thaw's condition of mind, calling first to the stand Dr. Charles Wagner. Dr. Wagner said:

"On the first visit to Thaw in the Tombs I talked with him, but did not make a thorough examination. I observed that he was suspicious, reticent and apprehensive. He was fearful that he would be declared insane. After a general conversation I made an arrangement for a future visit, which led to a second examination, September 19 I went to the Tombs with Dr. Evans, of the insane hospital at Morris Plains, N. J., for the purpose of making a thorough examination."

"What did you observe on the second visit?"

"Mr. Thaw was brought in, and we had just stated the object of our visit, when Mr. Thaw turned and abruptly left the room, notwithstanding that it was understood plainly beforehand that we were there to examine him."

Justice Fitzgerald, on motion of Dist. Atty. Jerome, ordered that all of the answer after the word "room" be stricken out.

Jerome admonished the witness that no conversations were wanted, and the court directed him to relate only what he observed.

"Tell us what you observed," said Delmas.

"He abruptly left the room."

"Did you observe anything else?"

"Yes, I observed more, but it was all in his conversation."

Delmas and Jerome had a long argument on the law covering the matter of expert testimony. Delmas argued that the declaration by Thaw tended to show his state of mind at the time the action complained of was committed, but all he desired from the witness now upon the stand was an opinion as to the defendant's condition at the time of the examination in September. He would ultimately show his condition June 25, 1906.

Dist. Atty. Jerome argued that the mental condition of Thaw at the time of the examination was not material. The only thing that was competent, he said, was testimony to show Thaw's mental condition at the time of the shooting and at the time when his wife told him the stories which the defense claims unhinged his mind.

Delmas asked Dr. Wagner to go over the details of his second visit and give the conversations. Jerome objected and was sustained.

"When did you make your next visit to the prison?" asked Delmas.

"I think it was Sept. 22."

"State what examination you made."

"The examination consisted of certain questions and answers to them."

"You must not give conversations," said Justice Fitzgerald.

"Was there anything else?"

"Yes."

"Wait a moment, doctor. Were those questions necessary to ascertain the mental condition of the defendant?"

"Yes, sir."

"Please state what those conditions were."

Dist. Atty. Jerome objected and was sustained.

"Did those questions and answers refer to the defendant's mental state or his condition at the time of the examination?"

"Both."

"Can you separate the questions and answers as between past events and his condition at the time of the examination?"

"To a certain extent, yes."

"Please state the questions and answers as to his condition at the time of the examination."

Mr. Jerome objected and was sustained.

"Well, doctor, what did you observe, or what did you do?"

"We took Mr. Thaw to where the light was strong. He watched us close and would not be placed in such a position where he could not have both Dr. Evans and myself under his eye all the time. We asked him certain questions as to his life, history, etc."

"What were your scientific deductions as to the man's mind?"

Mr. Jerome objected, saying the examination had not gone far enough for that.

"You put to him certain questions and received certain answers, was that all?"

"As I remember it, that was all."

"When did you next examine Thaw?"

"Sept. 27."

"What did it consist of?"

"The color of the hair, the general contour of the head, the expression of the eye, the condition of the heart, the reflexes and the state of the pulse. The matter was carried on in much detail. At the end of an hour the patient was exhausted and we deferred further examination."

"When was the next examination?"

"On Oct. 23. We went over some of the ground of the former physical examination and also went into the history of the case and the family history. This examination also lasted over an hour. The final examination was made Oct. 8. We reviewed the proceedings of previous examinations and went into the history of the case in more detail, including the events of June 25."

"Doctor, from your examination during six visits, could you form an opinion of the then mental condition of Mr. Thaw?"

"Yes."

"What was that opinion?"

At this point Mr. Jerome interrupted to ask a few questions.

"Doctor, your opinion," he said, "is based partly on what you observed and partly on hearsay and family history, is it not? Your opinion as to Thaw's sanity is in part based on matters not in evidence, is it not?"

"Yes."

"To a considerable extent, is it not?"

"Yes."

"As a matter of fact, you could not state an opinion after excluding the hearsay facts that were stated to you as to this man's history, etc.?"

"No, sir."

"Then I must submit, your honor," began Mr. Jerome, but he was interrupted by Mr. Delmas, who said he would withdraw the question and frame a hypothetical one.

As a basis for the portion of his hypothetical question Mr. Delmas first handed Dr. Wagner all the letters written by Thaw which have been admitted in evidence.

"Have you ever seen these before?"

"Some of them I have examined, and others I have heard read in court," said Dr. Wagner.

It was deemed best by both Mr. Delmas and Mr. Jerome that the witness should refresh his memory by reading all the letters. The doctor did so, and much time was thus consumed.

Dr. Wagner's examination of the letters required more than a half-hour.

"Have you examined these letters with a view to their tendency to show the mental condition of their author?" asked Mr. Delmas.

"I have."

THE HYPOTHETICAL QUESTION.

Mr. Delmas then proceeded with his hypothetical question.

"I will assume, doctor," he began, "that the author of these letters on June 25 last was in his thirty-sixth or thirty-seventh year; that one of his uncles was insane; that when he himself was a child he had suffered from the usual children's diseases, including Saint Vitus dance; that he was always of a nervous temperament; that he slept badly and often required the attention of two nurses; that in 1901 he met a young woman of between 16 and 17 years of age; that he paid honorable court to her and had gone to her mother, professed his love and his desire that the girl should become his wife; that in 1903, the young woman having undergone a serious operation, the man went to her bedsid, knelt and respectfully kissed her hand; that after her recovery he arranged to take her and her mother to Europe; that in Europe, during her period of debilitation following the operation he nursed her tenderly, carrying her to a carriage and up the stais in his arms; that in June 1903, he made formal offer of his hand to this young woman, his social position at that time being one of affluence and his family holding a position both in this country and Europe which might generally be termed enviable; that she declined his suit, and when pressed for a reason informed him that when she was about 16 years old a certain man in New York introduced himself into her life in the guise of a benefactor, expressing the utmost solicitude for her welfare; that this New York man displayed before her childish fancy, she having been brought up in poverty, all the splendor of appartments sumptuous in their fittings and furnishings, and after thus establishing himself in her family he had persuaded the mother of the child, her only natural protector—the father being dead—to absent herself from New York and go on a visit to Pittsburg, her former home, promising to care for the child as though he was her father and protect her from all harm; that one day he invited her to his apartments and there by means of drugs rendered her insensible and ravished her; that this revelation made to this young man who had offered his hand plunged the suitor into the utmost grief, causing him to walk the floor in an agitated manner and exclaim: 'Oh, God; Oh, God.' That he remained a long time with the young woman bemoaning what had happened to her; that after her return from Europe the young man was told that the man who had ravished this girl had so blackened his character to the girl that she would no longer see him; that he heard the man had threatened his life; that during the period of his estrangement with the girl he wrote the letters which have been introduced in evidence and which you have read; that he persevered in his suit through the intercession of friends, and, finally, on April 4, 1905, married the girl; that upon the occasion of a subsequent visit to New York, the man who had accomplished the girl's ruin sought by means that have been testified to, to re-establish communication with her."

Mr. Delmas continued to narrate the events leading up to the Madison Square Garden tragedy, and asked Dr. Wagner to state in his opinion as to the mental condition of the man who shot Stanford White.

Mr. Jerome was on his feet with many objections. He objected on the ground that the question embodied several matters which he declared were not in the evidence. He said the evidence did not show that one of Thaw's uncles was insane, but that he was of unsound mind, and that Evelyn Thaw did not state that she was drugged, but that the wine tasted bitter, and that in two minutes at the outside she became unconscious. Both of these points were changed to agree with Mr. Jerome's demands. He also objected to saying that White was attempting to renew relations with Mrs. Thaw. He said that had not been shown in the evidence. Mrs. Thaw had seen White only twice, and that there was nothing to show that White had attempted to renew relations. In re-forming this question, Mr. Delmas said that Mr. White's cab turned around and followed her on the second occasion that she saw him. Mr. Jerome produced the transcript of the testimony.

"There is nothing in the testimony to show that both cabs were not going in the same direction," said Mr. Jerome; "nothing to show that Stanford White was not building a house in that street at that time."

After considerable argument the question was amended to conform with the testimony.

"Now, doctor," said Mr. Delmas, "considering the question as amended, what is your opinion as to whether the man who committed the act complained of knew it was right or wrong?"

"My opinion,' replied Dr. Wagner, with much deliberation, "is that he did not know the act was wrong."

"You base your opinion on the fact that he must have been suffering from such a defect of reason as not to know the act was wrong?"

"I believe his reason was so defective he did not believe the act was wrong," came the reply.

"That is all," said Mr. Delmas.

Mr. Jerom said he would request the witness to step aside for cross-examination later.

Mr. Delmas announced that tomorrow he would call a second alienist, Dr. Evans, to the stand. To save the time of the court, he secured consent to submit Thaw's letters to Dr. Evans this evening, so he could be in a position tomorrow morning to testify regarding them.

Mr. Delmas also stated that the defense would not take up much more time. The statement that several weeks would be required to put in all the evidence for the defense, he asserted was not true.

Adjournment was then taken until tomorrow.

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PROBATE AND GUARDIANSHIP NOTICES.

Consult County Clerk or respective signers for further information.

IN THE DISTRICT COURT, Probate Division, in and for Salt Lake County, State of Utah. In the matter of the estate of John G. Smith, Deceased. Notice.—The petition of Hester Smith, the administratrix of the estate of John G. Smith, deceased, praying for an order to sell the following described personal property of said decedent, to-wit:

An undivided one-half interest in the property and business of the Salt Lake Transfer Company, has been set for hearing on Saturday, the 23rd day of February, A. D. 1907, at 10 o'clock a. m., at the County Court House, in the Court Room of said Court, in Salt Lake City, Salt Lake County, Utah.

Witness the Clerk of said Court, with the seal thereof affixed this 9th day of February, A. D. 1907.

(Seal) J. U. ELDREDGE, JR., Clerk.

By W. H. Farnsworth, Deputy Clerk.

Thurman, Wedgwood & Irvine, Attorneys for Petitioner.

DELINQUENT NOTICE.

CHERRY CREEK MINES CO. Principal place of business, Salt Lake City, Utah.—Notice.—There are delinquent upon the following described stock, on account of assessment No. 1, of two (2) cents per share, levied on the 20th day of December 1906, the several amounts set opposite the names of the respective shareholders, as follows:

Names.	No. of Cert.	No. of Shares.	Amount Due.
Orson Allen	87	500	$ 10.00
S. W. Anderson	81	2,000	40.00
Alex. C. Bong	6	12,500	250.00
H. S. Beatie	19	2,000	40.00
J. Henry C. Beekman	95	15,000	300.00
H. J. Foulger	7	6,000	120.00
W. H. Folland	40	1,000	20.00
H. C. Gaw	55	1,000	20.00
H. C. Gaw	59	1,000	20.00
H. C. Gaw	60	1,000	20.00
H. C. Gaw	61	1,000	20.00
H. C. Gaw	62	500	10.00
H. C. Gaw	63	500	10.00
H. C. Gaw	64	500	10.00
H. C. Gaw	65	500	10.00
H. C. Gaw	66	500	10.00
H. C. Gaw	67	500	10.00
H. C. Gaw	68	500	10.00
H. C. Gaw	69	500	10.00
H. C. Gaw	70	250	5.00
H. C. Gaw	71	250	5.00
H. C. Gaw	72	250	5.00
H. C. Gaw	73	250	5.00
H. C. Gaw	74	250	5.00
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H. C. Gaw	76	250	5.00
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Henry Green	82	2,000	40.00
Wm. Green	84	1,000	20.00
Geo. N. Lawrence	135	1,000	20.00
Geo. N. Lawrence	136	1,000	20.00
Geo. N. Lawrence	137	1,000	20.00
Geo. N. Lawrence	138	1,000	20.00
Geo. N. Lawrence	139	500	10.00
Geo. N. Lawrence	140	500	10.00
F. S. Maycock	22	500	10.00
Lester Merrill	24	1,000	20.00
Alvin E. McElhany	53	500	10.00
J. R. Reeve	83	1,000	20.00
E. M. Sherradan	96	750	15.00
M. Thomas	21	500	10.00

And in accordance with law and an order of the Board of Directors made on said 20th day of December, 1906, so many shares of each parcel of such stock as may be necessary will be sold at public auction at the office of the secretary of said company at the State Bank of Utah, Salt Lake City, Utah, on Monday, the 25th day of February, 1907, at 10 o'clock a. m., to pay the delinquent assessment thereon, together with the costs of advertising and expense of sale.

HENRY T. McEWAN, Secretary.

State Bank of Utah, Salt Lake City, Utah.

First publication, February 9, 1907.

SUMMONS.

In the Third Judicial District Court in and for the County of Salt Lake, State of Utah. George A. Lorenz, Plaintiff, vs. Lena Lorenz, Defendant. The State of Utah to the Said Defendant: You are hereby summoned to appear within twenty days after the service of this summons upon you, if served within the County in which this action is brought, otherwise within thirty days after service, and defend the above entitled action; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which within ten days after service of this summons upon you, will be filed with the Clerk of said Court.

ALEXANDER McMASTER, Plaintiff's Attorney.

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