

Thaw's Attorney Runs Him Against the Solid Wall of the **Rules of Evidence.**

KEPT JUDGE BUSY RULING.

Prosecuting Attorney Lined up His Forces for an Attack on Evelyn Thaw's Story.

New York, March II .- On the first day of the state's case in rebuttal at the Thaw trial, Dist. Atty. Jerome today came to a temporary standstill against the practically solid wall the rules of evidence have built around the story of Evelyn Nesbit Thaw. Mr. Jerome began to attack this story as soon as court opened this morning. There ensued a well nigh ceaseless battle between the prosecutor and Delphin M. tween the prosecutor and Deiphin M. Delmas, leading counsel for the defense, at the end of which Justice Fitzgerald upheid the rule laid down at the be-ginning of the trial--that young Mrs. Thaw's story was admissable only as touding to show the effect it might have had in unbalancing the defend-ant's mind, and that its truth or falsity is not material.

ant's mind, and that its truth or falsity is not material. Mr. Jerome tried to avoid this rule by declaring he was endeavoring mere-ly to show by inference—by dircum-stantial evidence as to facts and de-uails in the story—that Mrs. Thaw could not possibly have told the story to her husband. Although he will doubtless he blocked by the same rule when the time comes, it is said the dis-trict attorney may attempt in the same way to prove an alibit for Stanford White on the night he is alleged to have maltreated Miss Nesbit. Nine-tenths of today's sessions were spent in argument, and in nearly every instance Mr. Delmas won his point as

instance Mr. Delmas won his point as to the law, while Mr. Jerome in the very argument itself had got before the jury a perfect knowledge as to what his witnesses would have testified to had they been permitted. The district attorney called 10 witnesses during the day, but, aside from drawing from the state's evenutinesses to the theorem. state's eye-witnesses to the tragedy, the opinion that Thaw seemed rational the night he shot and killed Stanford White, little real headway was made.

JEROME'S LINE OF ATTACK.

Lining up all his forces in rebuttal, Lining up all his forces in resultal, Mr. Jerome decided to open his fight by attacking Evelyn Thaw's story. He called Frederick W. Longfellow, for-medy an attorney for Thaw, and asked him first concerning the case in which Ethel Thomas is alleged to have sued Thaw for damages because of cruel treatment. Mr. Deimas objected, but

treatment. Mr. Dermas objected, but before Justice Fitzgerald sustained the objection and ruled out the evidence. Mr. Jerome declared: "The story of the girl tied to the bed-post and whipped by Thaw is the story of Ethel Thomas. This poor girl is now dead." dead.

Here Mr. Delmas objected to the district attorney's remarks, and the lat-

He showed Mr. Longfellow the photo-He showed Mr. Longfellow the photo-graphic copy of the affdavit Evelyn Nesbli is said to have signed in the of-fice of Hummell, alleging that Thaw treated her cruelly while abroad in 1903, because she "would not tell lies against Stanford White." Mr. Jerome followed this up by ask-ing the witness if Mrs. Thaw had not turned over to him certain papers to

high the writess if ans. I have have not turned over to him certain papers to which she had subscribed. Mr. Long-fellow said she had. There was a long argument between Mr. Jerome and Mr. Deimas, at the conclusion of which Mr. Longfellow turned his entire examina-tion to naught by declaring that Mrs.



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to our coffee business being so much greater my family has tried other coffee only to than any competitors, in fact, it is larger than the come back to our old reliable, unchangenext four largest firms in the world combined. able Arbuckles." No other coffee has We naturally can and actually do give better this uniform never failing aroma, I care coffee in ARIOSA than anyone else can give for the price; Being the standard article it is not at what price. I have often wished sold at the narrowest margin of profit, I could tell you this." Many other Some grocers will try to sell people have the same opinion you instead loose coffee which the Arbuckles' was the first roasted packaged coffee, and its sales exceed all the others put | roaster is asharned to sell in a

Stanford White in the Twenty-fourth street studio house, and asked if there was any known poison which could cause insensibility in two minutes and permit of the quick recovery testified te by Thaw's wife.

POINT OF CONTEST.

Around this vital point, opening up as it did a path through which the prose-cutor could march his forces in attack upon the truth or faisity of Mrs. Thaw's story, the storm of argument raged for an hour or more. Mr. Jerome pleaded with Justice Fitzgerald at great length. Mr. Delmas, in reply, cited Mr. Je-rome's own words at the beginning of the trial. At that time the district at-torney had the court instruct the jury that young Mrs. Thaws testimony was what effect its relations to Thaw may have had in unseating his mind. The prosecutor further said that under the rules of evidence he would not be per-mitted to attack the truth of the story. "Now," said Mr. Delmas, in conclu-"Now," said Mr. Delmas, in conclu-sion, "he is attempting to do that very

thing. Mr. Jerome said he was not attacking Mr. Jerome said he was not attacking the truth of the story. He was calling for an expert opinion to the effect that no known drug would produce the ef-fect testified to by Mrs. Thaw. "My question indicates the answer I expect to get to this question," said Mr. Jerome, "and if I can show there is no such poison in the world: if I can

no such poison in the world; if I can show, in short, that there was no such occurrence in the Twenty-fourth streat house as testified to, then it is for the jury to infer whether or not Evelyn Thaw told her story to Thaw in Paris in 1992" 1903

Justice Fitzgerald sustained Mr. Delmas' objection. When, late in the afternoon, Mr. Je-rome called Jabez Clinch Smith, a brother-in-law of Stanford White, to

the stand, another long argument en-sued. Mr. Smith was on Madison the stand, another long argument en-sued. Mr. Smith was on Madison Square roof garden the night of the tragedy. He knew Thaw and spoke with him that evening. He said Thaw stood in the alsle a moment after leav-ing his seat, looking over the audience intentiv. intently.

Mr. Delmas objected, and this was

The attorney for the defense also ob-stricken out of the record. The attorney for the defense also ob-jected to Mr. Smith's testifying at all, saying he should have been produced during the presentation of the case in chief. Mr. Jerome said Smith was in Europe when the state's case first was Europe when the state's case first was presented. He threw himself upon the discretion of the court, and the matter was pending when adjournment until tomorrow morning was ordered. EIGHTH WEEK OF TRIAL.

With the trial entering its eighth week today, Dist, Atty, Jerome began the real work of the prosecution—the offering of testimony in rebuttal of the defense built up by Thaw's attorneys. The state's case in chief, which was concluded in less than two hours after the jury panel had been completed, con-sisted simply of the testimony of eveat she did tell Thaw any such story I asked her if she made all these state ments to Hummel in the affidavit, and ments to Hummel in the affidavit, and she said she had not. Having called her attention to contradictory evi-dence, I have a right under the law to go into the truth or falsity of her evidence as to material facts." Mr. Delmas finally withdrew his ob-jection to the question. The witness said she had telephoned him several times sisted simply of the testimony of eye-witnesses to the tragedy. The first witness called by Mr. Je-rome today was Frederick W. Longfel-

woman to a bed post and beating her.

woman to a bed post and beating her. That is the story of Ethel Thomas," declared the district attorney. Mr. Delmas arose to protest. "I must object to the learned district at-torney testifying in this case, and I beseech him not to continue to give the jury as facts his understanding of the points at issue," said Mr. Delmas. Justice Fitzg-raid instructed the jury to be guided only by the sworn

jury to be guided only by the sworn testimony of witnesses, The question was repeated as to whether the papers in the Ethel Phomas case were served upon Thaw. "Objection sustained," ruled the

court "Did there come into your posses-sion at any time letters written by this defendant to Ethel Thomas?" asked Mr. Jerome. Mr. Delmas object on the ground

that any such letters must have been written prior to 1903 and therefore had nothing to do with the sanity of

station house." "Was there anything more?" "Yes. When we were in Fifth avenue some one unknown asked me if I knew the prisoner or what he had done. I said I did not. I asked the defendant if he knew what he had done and he said he did. I asked him if he knew who it was he had klied. He said he would say nothing until he reached the station house." "Were his actions rational or irrathe defendant. "Why, your honor," said Mr. Jerome, "the defense has traced this man's dis-case back to the measies and mumps. We ought to have some right to show his condition down to 1903. May I

We ought to have some right to show his condition down to 1903. May I not go into other portions of his life to show he was same?" Mr. Jerome contended that if he was not allowed to go into matters prior to 1903, all evidence relating to matters before that time introduced by the defense must be stricken out. This Mr. Delmas agreed to, but when Mr. Jerome said this would cause the hypothetical question to be stricken "Were his actions rational or irra-tional?"

ht, berome said this would cause the hypothetical question to be stricken out as well, he withdrew his contest. Mr. Jerome showed the witness a document and asked if it refreshed his mind as to when he represented Thaw

Mind as to which he represented that in the Thomas case. Mr, Delmas objected to further ques-tioning of the witness as to the Ethel Thomas case upon the ground that Mr, Longfellow at the time was acting

ar, Longrenow at the time was acting as Thaw's counsel. "Of course," said Mr. Jerome, "if you are going to plead professional privilege as a bar, I cannot go ahead. But I thought counsel, in the interest of truth, might waive"—

DELMAS WAIVES NOTHING.

DELMAS WAIVES NOTHING. "Your honor," interrupted Mr. Del-mas, "in defending a man for his life I have no power to waive anything." Mr. Jerome asked Mr. Longfellow if he was telephoned to in 1904 by Evelyn Thaw from the office of Abra-ham Hummel, and Mr. Delmas ob-jected, asking Mr. Jerome what his purpose was in asking the question. "I am allowed by the rules of evi-dence," said Mr. Jerome, "to show whether or not this woness told her husband in Paris that she had been ravished by Stanford White. In Hum-mel's office we contend she made a statement which contradicted the fact that she did tell Thaw any such story. "It took about as long as it has taken you to tell it?" "A little longer; perhaps three times to long. as long. "Did you make a record of it?" "Yes." "Do you remember seeing Daniel Reilly, a learned counselor, that ave-

fied on the state's direct case, was re-called, "At the time of the tragedy," asked Mr. Garvan, "In your opinion, was de-fendant rational or irrational?" "Rational." Henry S. Blaise was called and said he thought Thaw's actions and man-

he thought rhaws actions and man-ner upon the night of the shooting were rational. Meyer Cohen, who was one of the witnesses for the state, was recalled and said he thought Thaw's actions

rational. EXPERT ON POISONS.

EXPERT ON POISONS, Dist.-Atty. Jerome recalled Dr. Ru-dolph Witthaus, an expert in poisons. "Doctor, are you familiar with all the known drugs that produce insensibility when taken through the mouth?" asked Mr. Jerome. "I think I am." "Doctor, I am now about to ask you an hypothetical question. Assume, sir, that a young woman 16% years of age drinks one glass of champagno at sup-per with a gentleman after theater; that, after 'eating, she passed into an-other room, played the plano there, and then passed into a bedroom, where there was another small bottle of chamthere was another small bottle of cham-pagne; that she drank a glass of this champagne; that it tasted to her the same as any other champagne, to-wit, bitter; that within two minutes she heard a pounding in her ears, the room became dark and the became insensiheard a pounding in her ears, the room became dark and she became insensi-ble; that while she was in a state of insensibility she was ravished; that she awakened in alarm and very shortly thereafter drove with the man to her hotel, where she sat down in a chair, remaining awake and looking out of the window until morning; assuming all these facts, is there any poison known to science that would produce the in-sensibility indicated in the question and permit of the quick recovery also in-

sensionity indicated in the question and permit of the quick recovery also in-dicated in the question?" Mr. Delmas objected on the ground that the question was immaterial, not rebuttal testimony and not permitted under the rules of evidence as attack-ing the truth of Mrs. Thaw's statement to her husband.

ADMISSION OF EVIDENCE.

ADMISSION OF EVIDENCE. "I take it as a general rule," said Mr. Jerome, "that when a witness testifies to an important point it can be dis-puted. The principal fact in this case is whether or not Mrs. Thaw told the story to the defendant in Paris as she has testified she did. If it can be shown that she did not make that statement to Thaw, then the contention that this caused insanity fails to the ground. There are two ways in which the failsi-ty of a fact may be proved. The first is by direct testimony, but it may also be proved by circumstantial evidence where direct evidence is not available. Therefore the people are driven to cir-cumstantial evidence. "I should say that the fact that we

cumstantial evidence. "I should say that the fact that we can prove that the things she described did not occur, for the answers to the hypothetical question is evidently cir-cumstantial evidence which tends to show that the main fact-her state-ment that she told these things to Mr. Thaw-is not true. "If I can show that there is no drug known to science which will produce

known to science which will produce the results she told of, I submit that it is plainly admissible." Mr. Jerome then read a case decided

Mr. Jerome then read a case decided by the supreme court of Kentucky which, he said, bore exactly on this point. "The material question here is whether or not Mrs. Thaw told this story to ber husband in Paris. If I can show that the things she is said to have related did not take place-if I can show that there is no drug to cause such effect, then that is evidence from which the jury may judge she never did tell these things she says she did." Mr. Delmas replied by again read-ing from Mr. Jerome's remarks at the beginning of the trial. DELMAS CRITICIZES JEROME DELMAS CRITICIZES JEROME.

DELMAS CRITICIZES JEROME. "The very things he is attempting to do now." said Mr. Delmas. "he said at the beginning of this trial he would not be permitted to do under the laws of this state. After a "trial fasting more than six weeks, we are told that the rule laid down by the judicial dis-trict attorney at the beginning of the, trial is not the law of this state at all." Mr. Jerome insisted that the ques-tion now before the court was an en-tirely different proposition. Justice Fitzgerald said he could not see the matter in that light and sus-tained the objection. Dr. Withaus was excused. WHITE'S BROTHER-IN-LAW.

WHITE'S BROTHER-IN-LAW

After the usual afternoon recess of is minutes Mr. Jerome called to the stand James C. Smith of Smithtown, N. Y. Mr. Smith said he was a broth-er-in-isw of Stanford White and is a

HEALTH OFFICERS SEEK PHYSICIANS' HELP IN FIGHT AGAINST CONSUMPTION.

The Kansas and Minnesota State Boards of Health have made a new move against tuberenlosis. Letters have been mailed to both physicians and patients, requesting that the former co-operate with the board in its fight against consumption by supplying full information relative to each case that comes under their observation, and advising the latter as to the best known methods of treatment. Among the instructions offered to tuberculosis patients are the following :

Men with consumption should not wear beard or musiache. Sleep alone. Keep the windows open day and night; fresh ale is essential. Dress warmly, and don't be afraid of the cold. Eat plenty of nonrishing food. Don't spit on the floors or in public places. Stay out of doors all you can; remember that sunshine kills the germs of consumption.

These are wise instructions, and should be observed by every one afflicted, as the most important duty is to get well. Colds and coughs should not be neglected, as colds inflame, the lungs, and the cough is extremely wearing on the system.

An eminent authority on lung trouble says that the following simple formula will break up a cold in twenty-four hours, and cure any cough that is curable: Virgin Oil of Pine (Pure), enc-half ounce; glycerine, two onnees; good whisky, a half pint. Shake well and use in teaspoonful doses every four hours. Great care should be exercised in securing pure ingredients, and, to, avoid substitution, it is best that they should be purchased separately and the mixture prepared by yourself. The Virgin Oil of Pine (Pure) can be secured from any good prescription druggist in the original half-ounce vials, as purchased for dispensing. Each vial is securely scaled in a round wooden case, with engraved wrapper, with the name-Virgin Oil of Plac (Pure), (guaranteed under the Food and Drugs Act, of June 30th, 1906, serial number 451), prepared only by Leach Chemical Co., Cincinnati, Ohio-plainly printed thereon. There are many rank initations of Virgin Oil of Pine (Pure), which are put out under similar names and style of package. Never accept these as a substitute for the Pure Virgin Oil of Pine, as they will invariably produce nausca, and never effect the desired result.



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efore and know nothing about it." After this Mr. Longfellow was ex-used and Coroner's Physician Dehaney ras called.

was called. "Did you find powder marks on his face?" asked Mr. Garvan. Mr. Delmas objected. Mr. Garvan said the testimony was to contradict Mrs. Thaw's statement that Thaw stood 12 feet from White when he fired. "There were powder marks upon the form?"

Justice Fitzgerald sustained an objec-

tion to the wilness hazarding a guess as to how far Thaw must have been from his victim.

OFFICER WRIGHT'S TESTIMONY.

Police Officer Wright was called next.

The witness said: "When, I was in Madison avenue the night of the shooting I saw Thaw. I asked him what the trouble was. He said he wanted me to take him away from the crowd, to take him to the

On cross-examination, Mr. Delmas asked the witness a few questions as to when he had first told his story.

POLICE SERGT. MCCARTHY.

McCarthay, "and he replied: 'I think I had better not say anything at pres-

Were his actions rational or irra-

Mr. Delmas asked: "Have you stated

all the conversation you had with the defendant?"

"Did you not go to Mr. Thaw's cell with him that night?"

"Then you do remember seeing O'-

Police Sergeant McCarthy next testi-

asked him who he had shot," said

house

"Rational."

'Rational."

Not at that time.'

New York City.

Thaw had never shown him a paper similar to the Hummel affidavit in any

similar to the Hummel affidavit in any way. The witness was therefore ex-cused without examination. Police officers who saw Thaw the night of the tragedy declared he acted rationally. Capt. Hodgins of the ten-derion precinct, however, qualified his answer to the question by saying, "for a man who had just committed murder, Thaw acted rationally." Thaw acted rationally."

Thaw acted rationally." This was stricken out, and he said: "Well, his eyes had a stare and a gaze such as they show as I now look at them." This answer also was stricken out and finally the captain declared:

SAYS THAW WAS RATIONAL.

"Well, he seemed more rational than irrational-and that's the best answer I can give.

Many of the witnesses called by the state during the presentation of the case in chief were called today. All declared Thaw seemed rational.

Mr. Jerome called Dr. Rudolph Witthaus, a chemist and expert in poisons. The district attorney framed a hypothetical question covering Evelyn Nes-bit's description of her night with

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Use

low, one of the Thaw family attorneys, who was called by the defense some time ago to identify certain letters which Harry K. Thaw wrote to him in 1963. Today Mr. Jerome wanted him to identify a letter handed him by Evelyn Nesbit Thaw upon her arrival from

Europe late in 1903. Mr. Longfellow met Mrs. Thaw at the ship when it docked Oct. 24. Mrs. Thaw, upon the witness stand, said she could not fix the date or the name of the steamer.

Mr. Longfellow said he had acted as Thaw's attorney for some years prior to

Thaw's attorney for some years prior to June 25, 1906. "Did you represent this defendant in the suit of Ethel Thomas against Harry K. Thaw?" asked Jerome. Mr. Delmas objected, but Justice Fitzgerald ruled that the witness might answer was on the

"My firm handled the case," said Mr.

Longfellow. "Were the papers served on this de-Reason fendant?"

what Stanford White had done to her and to other young women. "It has been said that the alleged acts of perversion by Stanford White added to the fury of his mental unbalance. I want to show that he knew all about such things—that they were set forth in the complaint in this suit by Ethel Themas the namers of which were

Thomas, the papers of which were served on him." Mrs. Evelyn Thaw had testified that she had been shown a copy of the Ethel Thomas affidavit by Abraham Hummel, who said the case had been dropped be-cause of the character of the complain-Mr. Delmas, replying to the district

Mr. Delmas, replying to the district attorney's argument, quoted at some length from Jerome's statement at the beginning of the trial when Evelyn Thew was upon the stand, that her tes-timony was permissible only as show-ing Thaw's state of mind and that he would not be allowed to contradict the ing Thaw's state of initia and that it would not be allowed to contradict it. "We told him," said Delmas, "we would have no objection to him attack-ing the truth of the wife's story." "Now do you object?" shapped Je-

rome

This normal condition. This result is effected painlessly and without the loss of a moment's time from your daily duties. The treatment is applied at home, in the privacy of your own room. The remedy is our own preparation and our name is the guarantee of its genuineness. Thousands of cases similar to the fol-lowing might be dided to prive our wing might be cited to prove our rlaims I tried the sample of your cure you

"I tried the sample of your ours you sent to me. I used it and then bought a 50-cent box. The results were imme-diate and surprising to me, I assure you. I had been to a dozen of the best doctors and paid inugh money to them with no results whatever. I had this affliction for 20 years. I was in the hespital for a long time, and I left it physically broken down. I owe you a debt of gratitude. I believe that plies would be banished from humanity and become an unknown thing, were every one afflicted with them to but spend from 50e to \$1.00 for Pyramid Pile Cure. Its speedy action also makes it ex-

from 50c to \$1.00 for Pyramid Pile Cure. is speedy action also makes it ex-tremely favorable for impatient peo-ple. I am yours succerely. George H. Bartlett, Maitapan, Mass." Momatter how badly you suffer from piles, we want to cure you. If your will try a free package to prove its merits yourself, we will gladly send it to your name and address at once. We will leave it to you to decide whether you can afford to discontinue the treat-ment. Pyramid Drug Co. 34 Pyramid Bidg. Marshalt, Mich. All druggists self the Pyramid Pile Cure, just the same as the sample, at 50 cents per box.

him several times. "Did any of the conversations relate to an affidavit?" asked Mr. Jerome. Mr. Delmas then renewed his objecons

"Evidence which is introduced for the Evidence which is introduced for the purpose of showing that Mrs. Thaw's story is untrue is of course not admis-sible," said Mr. Delmas, "but evidence tending to show that she never told this story to her husband is clearly admisdble. But I cannot see that this is any-but an effort to controvert the of what she says she told her hus-

band Justice Fitzgerald ruled that the witess might answer whether or not his onversations over the telephone with lvelyn Nesbit had to do with the affi-

ia vit "They are not," said Mr. Longfellow,

ositively Mr. Jerome then showed the witness

the photographic copy of a portion of the Hummel affidavit and another docunent, and asked. "Are you familiar with these and the

writings of Mrs. Evelyn Thaw?" Mr. Delmas demanded to see the doc-

Mr. Longfellow said he thought he could recognize Evelyn Thaw's hand-"Did she ever deliver to you," con

tinued Mr. Jerome, "a paper subscribed to by her, the contents of which were the same as the copy I have shown Mr. Delmas objected,

"Did she ever deliver a paper to you which she had subscribed to?" asked Mr. Jerome. "Tes, but you must understand I am not referring to the paper you have handed me. I have no reference to that whatever."

JEROME DEMANDS PAPERS. Mr. Jerome demanded from Thaw's lawyers the production of the papers. Mr. Delmas hotly reforted that Mr. Longfellow had delivered to coursel no paper similar in any way to the one in juestion.

I prefer to take the statement of

snapped Je-"Yes: because you would not accept

AN EYE OPENER-POSTUM In place of COFFEE. "There's a Reason" Read "The Read to Wellyille" in

'Yes; but it was not until an hour Did Mr. Thaw at that time say any thing about hearing the screams of unfortunate women upstairs?"

'Not in my presence.' DELMAS LOSES TEMPER.

Here Mr. O'Reilly approached Mr. Delmas and began whispering to him. Mr. Jerome jumped to his feet. "I object to consel consulting here in whispers loud enough for the jury to tear," he said.

'I had no intention of saying things or the jury to hear," said Mr. O'Reilly. "I don't suppose you did," said Mr. erome, "but they can't help hearing

you. I can hear you myself." Mr. Delmas and Mr. O'Reilly moved further away, but again Mr. Jerome thought they were too close to the jury. This caused Mr. Delmas to lose his

I cannot see why the district attorney should be so insistent. The jury cannot hear what we are saying. I am the district attorney and his assistants have talked about since the case be-

Justice Fitzgerald rapped for order and Mr. Delmas continued his cross-examination.

"Did you tell Mr. O'Reilly that he could not talk to Mr. Thaw except in the presence of an officer?" The witness was not sure whether

This W. "Why "Why are you so sure of Mr. Thaw's talk and not sure of that?" "Because I made a record of what the

prisoner said. Have you consulted that record

sine

He sold he had been summoned to the district attorney's office about three weeks after the shooting. He swore his statement at that time

was true, but he was not sure that a formal oath had been administered. This ended the cross-examintion and recess was ordered.

AFTERNOON SESSION.

AFTERNOON SESSION. Police Capt. Hodgins. who was in command of the precinct in which Mad-ison Square Garden is located, was called as a witness this afternoon. "I asked Thaw if he had any law-yer or relatives he wanted to send for. He said he would like to send for Long-fellow, Delafield or Hornblower." "What other conversation did you have with Thaw?" asked Mr. Garvan. "He was in foll evening dress, and I told him he was in no place for such clothes, and he had better get others. He made no answer." "Was Thaw rational or irrational?" He made no answer." "Was Thaw rational or irrational?"

HODGINS CREATES A STIR.

Capt. Hodgins caused a decided stir

by his answer. In his actions and answers he was rational; in his appearance he had a stare and gaze such as he has now as I

look at him." On motion of Mr. Deimas the answer was stricken out. Mr. Garvan repeated the question. "I think he was very rational in some in the answer of the cautain ook at his

"T think he was very rational in some ways," answered the captain. Again the answer was stricken out and the question repeated. "Th have to qualify my answers," said the witness. "I believe he was more rational than irrational." Once more Mr. Garvan repeated the question and Capt. Hodgins repeated his last answer. Mr. Defmas had no questions to ask, and the witness was excused.

Mr. Deimas had no questions to ask, and the witness was excused. Sol Warren Paxton, apperintendent of Madison Square Garden, who had testi-tion.

On Jan. 21, the day the Thaw trial began, the witness said he was in Paris and out of the court's jurisdic-tion when the prosecution put in its case in chief. Mr. Smith said he was

on Madison Square Roof Garden the night of the tragedy. "After you were seated, did you see the defendant enter?" asked Mr. Je-

Mr. Delmas objected upon the round that the evidence was not in

rebuttal. Mr. Jerome said it was important Mr. Delmae said it was important testimony in rebuild and not part of the case in chief. Mr. Delmas declared it meant the reopening of the entire case. Justice Fitzgarald said that the dis-tried stituence, should said that the dis-

trict attorney should confine himself to the evidence in examining the wit-

ss. Mr. Smith said that when Thaw came into the garden the night of June 23, he did not speak to him. Mr. Delmas confinued to object to every question and when overrulod he noted exceptions. Mr. Smith said that Thaw hater came

ver to where he was sitting and chat-

ed with him, Mr. Jerome ssked what the conver-ations were and again Mr. Delmas obeted.

'I want to show that this man's con-

I object," said Mr. Delmas, and was

"Now, you see, your honor," con-nued Mr. Delmas, "the danger of al-wing this witness to testify in rebut.

timbed ar, Definits, "the danger of al-lowing this witness to testify in rebut, thi. He says Thaw stood in the aisle hooking over the heads of the audi-ance. Why is that statement brought in here? I think I understand why. It is not proper. This is evidence in chief, not evidence in rebuttal." Mr. Jerome said the interests of the state in the case are as great as those of the defendant. "I am not allowed to produce wit-nesses to testify as to many material points," he said, "and in this instance I must appeal to the discretion of the court. I will no longer try to examine the witness as in rebuttal, but appeal to you as a matter of judicial discre-tion to allow me to proceed with the witness as part of the case in chief." Mr. Jerome said he would like to cite some authorities to the al.c.e. Thereupon an adjournment was tak-ment in the case in a discust the disc."

Theretupon an adjournment was tak-en until tomorrow morning, the dis-triet attorney saying he would send the authorities to the justice at his home this evening.

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"I prefer to take the statement of the witness," said Jerome. "He is un-der oath." "That is an unnecessarily insulting remark." said Mr. Delmas. "You will find out that the witness did not de-liver any such paper to us." "Did Evelyn Thaw ever sive you a document signed by herself in the form of an affidavit?" asked Mr. Jerome. "Not to m 's nowledge. To the best of my knowledge. I never saw that paper "Yes: because you would not accept our offer to waive our right when the story began." retorted Mr. Delmas. Mr. Jerome declared that Mr. Del-mas' argument did not cover the point at issue. It was the effect of Evelyn Nesbi's story on Thaw's mind he was attempting to contradict. "I am not trying to show that Ethel Thomas' accusations were true." said Mr. Jerome. "That would be a collat-eral fact Anywhere, this poor girl is now dead".--

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fendant?" Again Mr. Delmas objected. Jerome said the contention is that Thaw's mind was unseated by his wife's revelation of what Stanford White had done to her