

DELMAS BLOCKS JEROME'S MOVES

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 11.—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 of the rules of evidence 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 high ceaseless battle between the prosecutor and Delmas M. Delmas, leading counsel for the defense, at the end of which Judge Fitzgerald, at the bidding of the trial judge, Mrs. Thaw's story was admissible only as tending to show the defendant's mental condition, and that its truth or falsity is not material.

Mr. Jerome tried to avoid this rule by declaring he was endeavoring merely to show by inference—by circumstantial evidence—as to facts and details in the story—that Mrs. Thaw could not possibly have told the story to her husband. Although he will doubtless be blocked by the same rule when the time comes, it is said the district attorney may attempt in the same way to prove an alibi for Stanford White on the night he is alleged to have murdered Miss Nesbit.

Nine-tenths of today's sessions were spent in argument and in the afternoon 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 be testified to had they been permitted. The district attorney called 10 witnesses during the day, but aside from drawing from the 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, Mr. Jerome decided to open his fight by attacking Evelyn Thaw's story. He called Frederick W. Longfellow, formerly 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. Delmas objected, but before Justice Fitzgerald sustained the objection and ruled out the evidence, Mr. Jerome declared:

"The story of the girl tied to the bedpost and whipped by Thaw is the story of Ethel Thomas. This poor girl is now dead."

Here Mr. Delmas objected to the district attorney's remarks, and the latter began an attack along a different line.

He showed Mr. Longfellow the photographic copy of the affidavit Evelyn Nesbit is said to have signed in the office of Hummel, 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 asking the witness if Mrs. Thaw had not turned over to him certain papers to which she had subscribed. Mr. Longfellow said she had. There was a long argument between Mr. Jerome and Mr. Delmas, at the conclusion of which Mr. Longfellow turned his entire examination to naught by declaring that Mrs. Thaw had never shown him a paper similar to the Hummel affidavit in any way. The witness was therefore excused without examination.

Police officers who saw Thaw the night of the tragedy declared he acted rationally. Capt. Hodgins of the tenderloin precinct, however, qualified his answer to the question by saying, "for the man who has committed murder, Thaw acted rationally."

This was stricken out, and he said: "Well, his eyes had a stare and a mad such as you would see in a man at the time." 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.

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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 to by Thaw's wife.

POINT OUT. Around this vital point, opening up as it did a path through which the prosecutor could march his forces in attack upon the truth or falsity 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. Jerome's own words at the beginning of the trial, that the time the district attorney had the court instruct the jury that young Mrs. Thaw's testimony was permissible only as tending to show 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 permitted to attack the truth of the story.

"Now," said Mr. Delmas, in conclusion, "he is attempting to do that very thing."

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 effect 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 show, in short, that there was no such occurrence in the Twenty-fourth street 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 1903."

Justice Fitzgerald sustained Mr. Delmas' objection.

When, late in the afternoon, Mr. Jerome called Jabez Clinch Smith, a brother-in-law of Stanford White, to the stand, another long argument ensued. 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 aisle a moment after seeing his heart, looking over the audience intently.

Mr. Delmas objected, and this was stricken out of the record.

The attorney for the defense also objected to Mr. Smith's testimony at all, saying he should have been produced during the presentation of the case in chief. Mr. Jerome said he had produced him in 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, consisted simply of the testimony of eye-witnesses to the tragedy.

The first witness called by Mr. Jerome today was Frederick W. Longfellow, a brother-in-law of Stanford White, who was called by the defense some time ago to identify certain letters which Harry K. Thaw wrote to him in 1903. Mr. Longfellow testified that he identified 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 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 yes or no.

"My firm handled the case," said Mr. Longfellow.

"Were the papers served on this defendant?" asked Mr. Delmas.

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 and to other young women.

Mr. Delmas 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 Thomas, the papers of which were served on him."

Mr. Longfellow 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 because of the character of the complaint against him."

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 Thaw was upon the stand, that her testimony was permissible only as showing Thaw's state of mind and that he would not be allowed to contradict her. "It has been said that my attack might have no objection to him attacking the truth of the wife's story."

"Now do you object?" snapped Jerome.

Yes; because you would not accept date and waive our right when this story began," retorted Mr. Delmas.

Mr. Jerome declared that Mr. Delmas' argument did not cover the point at issue. It was the effect of Evelyn Nesbit's story on Thaw's mind he was attempting to contradict.

And on the state's direct case, was recalled.

"At the time of the tragedy," asked Mr. Garvan, "in your opinion, was defendant rational or irrational?"

"Rational,"

Henry S. Blaise was called and said he thought Thaw's actions and manner 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 were rational.

EXPERT ON POISONS.

Dist. Atty. Jerome recalled Dr. Rudolph 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,"

Dr. Witthaus then asked you a hypothetical question, assuming that a young woman 18½ years of age drinks one glass of champagne, and that a young man after theater; that, after taking one glass of champagne, played the piano there, and then passed into a bedroom, where there was another small bottle of champagne, that she took one 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 she became insensible; that while she was in a state of insensibility she was ravished; that she awoke in a dazed condition, 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 insensibility indicated in the question and permit of the quick recovery also indicated in the question?"

Mr. Delmas objected on the ground that the question was immaterial, not pertinent, and not permitted under the rules of evidence, and that, under the truth of Mrs. Thaw's statement to her husband.

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 disputed. The principal fact in this case is whether or not Mrs. Thaw told the story to the defendant in Paris as she testified she did. If it can be shown that she did not make that statement to Thaw, then the contention that this caused insanity falls to the ground. There are two ways in which this fact 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 circumstantial 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 circumstantial evidence which tends to show that the man who made her statement told her these things to Thaw—that is not true.

If I can show that there is no drug 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 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 her 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 told these things she says she did."

Mr. Delmas replied by again reading from Mr. Jerome's remarks at the beginning of the trial.

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 law of this state. After a trial lasting more than six weeks, we are told that the rule laid down by the judicial district attorney at the beginning of the trial is not the law of this state at all."

Mr. Jerome insisted that the question before the court was an entirely different proposition.

Justice Fitzgerald said he could not see the matter in that light and sustained the objection.

Dr. Witthaus was excused.

WHITE'S BROTHER-IN-LAW.

After the usual afternoon recess of 15 minutes Mr. Jerome called to the stand Jabez C. Smith of Smithtown, N. Y. Mr. Smith said he was a brother-in-law of Stanford White and is a lawyer.

On Jan. 21, the day the Thaw trial began, the witness said he was in Paris and out of the court's jurisdiction 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. Jerome.

Mr. Delmas objected upon the ground that the evidence was not in rebuttal.

Mr. Jerome said it was important testimony in rebuttal and not part of the case in chief.

Mr. Delmas declared it meant the reopening of the entire case.

Justice Fitzgerald said that the district attorney should confine himself to the evidence in examining the witness.

Mr. Smith said that when Thaw came into the garden the night of June 25, he did not speak to him.

Mr. Delmas continued to object to every question and when overruled he noted exceptions.

Mr. Smith said that Thaw later came over to where he was sitting and chatted with him.

HEALTH OFFICERS SEEK PHYSICIANS' HELP IN FIGHT AGAINST CONSUMPTION.

The Kansas and Minnesota State Boards of Health have made a new move against tuberculosis. 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 mustache. Sleep alone. Keep the windows open day and night; fresh air is essential. Dress warmly, and don't be afraid of the cold. Eat plenty of nourishing 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.

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