POOR DOCUMENT

MC2034

FATES DEALT UNMERCIFULLY WITH HARRY THAW THROUGHOUT WHOLE DAY; JUDGE'S CHARGE CONSIDERED ADVERSE; PRISONER DOWNCAST.

(Continued from Page 8.)

Mr. Jerome's Address

Mr. Jerome began his address to the jury by saying that the jurors for the past two days had been "wandering through a mere field of romance." He added that the life of a human being is not to be judged on such a premise and that the issues cannot be determined by Scripture quotations. The verdict must be upon the evidence. Here Mr. Jerome dwelt upon the difficulties to all concerned attending the trial of the case—jurors, court and counsel.

"The law is not cruel," he declared later; "it punishes only to protect those who live."

Mr. Jerome expressed regret if in the heat of battle he had transcended the courtesy due the counsel. The issue was not to be determined upon personality of counsel, he explained. This is not a trial to determine whether Evelyn Nesbit was ravished by Stanford White, Mr. Jerome said.

"It is not a trial of rape, but an issue between the people of New York and Harry K. Thaw to determine whether what he did was justifiable or excusable, or whether he should be punished for it."

The district attorney again reminded the jury that it must be guided not by words of counsel but solely by the evidence. Mr. Jerome then went briefly into the law covering the various classes into which homicide is divided and continued:

"If you find that this defendant was insane when he killed Stanford White it is your duty to say so in your verdict. If you do not say so, it is because you believe that the killing was justifiable. Justifiable does not mean 'dementia Americana;' it means self-defense. But when a man sits with his head in his hand and is deliberately shot with a pistol held so close to him that after the shooting the victim's own brother-in-law did not recognize him it can hardly be called self-defense east of the Mississippi river.

"There can be logically but one of four verdicts—murder in the first degree, where there was not only design but premeditation; murder in the second degree, because there was design, but no premeditation; manslaughter, because there was neither design nor premeditation, but merely the heat of passion; or, lastly, 'not guilty because of insanity.' To base an appeal to your sympathies, to your passions, is a broad, wide departure from the duty of counsel.

"You must reach your verdict by purely and plainly an intellectual process. You are to be the sole judges of this issue and you are to judge by the facts. You must take the law as the court gives it to you. You cannot shake your personal responsibility by evading it.

"The proposition of sympathy can be played upon by both sides. Have you thought of the widow in Cambridge and the fatherless boy in Harvard? I mention this, men, that you may see that the question of sympathy has nought to do with the issues here."

Mr. Jerome next quoted from the examinations of the jurors, reminding them of their oaths.

"Whether you believe the story told by this girl, whether you believe in the sublime renunciations she made of Thaw's offers of marriage for another whim, your sympathies are bound to assert themselves in one form or another. There is here every element to arouse your passions, but when you retire to consider your verdict, you must guide yourselves solely by intellectual process."

Reasonable doubts were only such a doubt, he said, as a man would entertain in matters pertaining to his own private affairs.

"It must be a doubt of which you are reasonably or morally certain. A reasonable doubt is not a mere whim."

Mr. Jerome said on the subject of insanity: "You jurors swore you would not inject any ideas of your own into your judgment, but take the law as it was laid down to you by the court. You swore you would accept only the form of insanity which deprives a man of the knowledge that his act is wrong, that it is against the current morality of the community.

"You did not swear to consider 'dementia Americana' in the case.

"'Dementia Americana' has no place in your verdicet. You swore to take no higher law than the law of your state. 'Dementia Americana'—what is this? 'Dementia Americana'—it glares at its enemy three years and then kills; 'dementia Americana'—that flaunts the woman for whom it kills through the capitals of Europe for two years as its mistress; is that the higher law? No; the higher law does not hide itself under the hem of a woman's skirt. 'Dementia Americana'—is that the law which puts a woman up to tell of her shame or misfortune to all the world in the hope it will shield a worthless life from a people's just demand? That is not the kind of law you swore to accept, and if you do it, men, you violate your oaths."

Mr. Jerome took up the evidence of witnesses for the people, and, using a diagram, showed the jury how Thaw moved about the roof-garden before and after the shooting. He referred to the testimony of James Clinch Smith.

"'Do you remember Truxton Beale and the case of two men and a woman?' Thaw asked Smith. Perhaps, gentlemen, my learned friend from the Pacific slope remembers it; perhaps he remembers that case of 'dementia Americana.' Thaw walked deliberately across the room, and in such a manner that his enemy should have no chance, no opportunity to defend himself, but we find Thaw holding the pistol so close to Stanford White's head that his brother-in-law did not know him because of the powder marks; fired once, twice, three times."

Mr. Jerome picked up the pistol and punctuated his words by pulling the trigger three times.

"Deliberately he shot the man who had barred him from clubs, who had once taken from him the woman he loved, and threatened to take her away again; and then, my learned opponent tells you, he stood with his arms extended like a priest dismissing a congregation. I did not see anything in the evidence about that. He held the pistol aloft that the people present might know that there would be no more shooting, in order to prevent a panic. When the man who arrested him asked why he did it Thaw answered: "He ruined my wife." He did not say: "I am the apostle of God appointed to slay the ravisher of American virgins.' No, my friends, this 'apostle of God' business came after Thaw had obtained the advice of my friend, Dr. Evans."

Mr. Jerome went into the details of Thaw's actions after the killing and said that there was nothing that did not show absolute calmness, coolness and rationality.

"He walks up to his enemy, after carefully locating him, and carefully takes aim. He does not take any chances of hitting anyone else. You are to face this fact—here was a man who had nursed a grudge for three years, who for three years had glared at his enemy, until after a good dinner, and hearing the story of two men and a woman in which Truxton Beale had figured, deliberately shoots down his enemy. Is it any wonder he was white?

"You locate your enemy, you shoot him down and then come here with your 'dementia Americana.' Why, the crime bristles with premeditation. Unexplained, it is murder in the first degree. A man shoots down his enemy who, no matter how bad he may be, is entitled to the protection of the law. Let him be blacker than the cloak of midnight, and I still say he had a right to be where he was on the night of June 25th. He had a right to believe that the laws of this land would protect him. Who appointed this man to be the excutioner of Stanford White? Had he not a right to put his faith in the laws of this state? Must a man go armed here, as in a mining camp?

"There is nothing in this direct case that does not show bloody, premeditated murder. And to this, what answer is made? 'I was insane when I went thirty feet across that room and fired three shots in a man's head. I did not know it was a pistol I had in my hand, I did not know it was Stanford White, my enemy, I was shooting. I did not know the nature and quality of my act; and I did not know that it was wrong.'

"Gentlemen, when the law says that when a man does not know an act is wrong, he is excusable, it does not mean that in his opinion it is not wrong but that his mental condition is such he does not know the act is legally wrong."

When Mr. Jerome reached the testimony of Evelyn Thaw he spoke with much vehemence, and his words vibrated with sarcasm when he referred to Thaw as the "modern St. George" and Evelyn as the "angel child." White he designated as a man of position and genius. He pointed out that there is no evidence to show that White made any insidious advances toward Evelyn or filled her childish mind with vicious thoughts, but on the contrary that he helped her on by presents of necessary wearing apparel. White, he declared, supplied the girl with wine moderately for she declared that he never permitted her to drink more than one glass. "It does not follow that he is a brute," Mr. Jerome asserted.

Mr. Jerome pointed out alleged discrepancies in Evelyn Thaw's testimony about occurrences in the Seventh street house, dwelling on the fact that she could not fix the time when, as she reported, she was outraged. This, he thought, "was most extraordinary, particularly as she was a member of the Floradora chorus."

"It can hardly be conceived," he continued, "that this chorus girl should have been dragged into a den and attacked."

Mr. Jerome referred at ength to the offer of the defense to allow the prosecution to contradict, and then declared that when he made a move to avail himself of it, the doors were closed. He said he knew his efforts to introduce evidence in refutation would fail, but that the evidence "was offered to call the cheap bluff of my learned opponent."

"How strange it is, my friends, that this 'angel child,' this girl of the chorus, should believe what she says White told her about all women being bad, and some simply so unfortunate as to be found out. Does what she did afterward appe l to your sense? Can it appeal to any man's common sense?

"Contrast her actions with that of other girls. Was she brought up any more carefully than your own daughters have been brought up? Go back to when they were sixteen and a half years old, and think what such a thing as we have heard would have meant to them; what does this girl do? Does she shrink from this man? Does she abhor him?

"No," thundered the district attorney; "she meets him again and again and and again and again. Far from repelling his fearful attacks, we find her, by her own words, resting in a room down-stairs, while White was talking with a friend on the floor above. This dragon, preying on female virtues; this 'angel child'; wrote her letter after letter, scores of them; we have shown them to be in the possession of the defense. They were not all put in evidence, but some were identified.

"No, there is nothing to show that the letters contained anything that was bad.

"Now, contrast this with the modern St. George, who led this angel child into the paths of virtue, in 1903 writing her letters in which he discussed sexual perversion. You were not permitted to hear all the evidence. I have not been allowed by law to show you where White was the night after the pictures were taken of this 'angel child'; the night she says she was raped.

Heard White's Voice

"As I have been unable to reply to some of the things that have been uttered, it has seemed to me that I have heard the voice of Stanford White asking me if I could not utter one word for him: 'Must I be blackened as by the fires of hell, unheard and undefended?'

"Gentlemen, I am not here to defend Stanford White, but I am compelled to say that there is a difference between unchastity and brutality; there is a difference between the man of the world and the brute who ravishes.

"Stanford White was a wealthy man who found enjoyment in this class of people. He sees this child blown into his horizon. It was natural that a rich man like White should have tried to help this girl to the extent that when she was out of work he would give her money. It would be natural, he thought, to give her the little gifts of wearing apparel which tended to comfort her. There is nothing in his conduct consistent with the theory that the relations between the two were not pure. There is nothing consistent with the theory that they were not pure, I repeat.

"Gentlemen, I must submit in all solemnity that this girl does not tell the truth. You have not a scintilla of evidence outside of her own story that the relations between here and White were impure. And then the character of her story may best be judged by her statement that all of her experiences with this man were against her will, that they were all rape, yet we find her voluntarily in his rooms."

At this point the luncheon recess was ordered.

Evelyn Thaw's Character

Resuming after recess Mr. Jerome briefly reviewed his previous remarks and emphasizing the statement that the only issue was that of the state of New York against Harry K. Thaw.

"It is hard for a man to speak of a woman, and especially when, no matter what you think of her you must pity her," he continued, returning to the subject of Evelyn Thaw. "We find the girl at 16 years old taken up with the study of New York and the story progresses from there.

"We know what the life of the stage is. We pass along the great white way of this city and see something of it."

Mr. Jerome commented on the early age at which she made her appearance on that notorious thoroughfare, and continued:

"Now, what do you think Mr. Garland was paying her attentions for, and he a married man. Then Thaw followed her up with 'American beauties' and presents of money. Sure her home life did not contribute much towards the shaping of a career, but I do not wish to judge the mother harshly.

"Lead me read you a passage from Evelyn Thaw's testimony which may give you a better insight of this mother.

"Asked if her mother was pleased with the attentions Garland paid her, Evelyn replied: 'Yes, she was.'

"'I mean the attentions Garland paid you, was she pleased with that?'

"'Yes, she was.'

"That was the kind of life she lived before White came. Then came Barrymore. She was so attached to him that she contemplated marrying him. He had offered his hand in marriage, but White had said: 'You are children, you would have nothing to live on,' and she was sent away to school.

"Now we see the whole situation centres about the girl. It was she who brought it about, and so I will endeavor to give you a deeper insidght into the life and thoughts of this 'angel-child.'"

Mr. Jerome here asserted that the diary of Evelyn was not given to him by her mother.

"I would suggest that when Mr. Hartridge gives away documents or papers belonging to a client he should be more careful in seeing what goes ont of his hands," Mr. Jerome said.

Mr. Hartridge objected that Mr. Jerome was going outside of the evidence, and Mr. Jerome proceeded to read several passages from the diary, which are in evidence. These passages, he argued, clearly showed the mind of this "angel child" was not as simple and as unsophisticated as Mr. Delmas would have the jury believe.

"I have been rebuked," said Mr. Jerome, "because it has been said I sneered. It seems to me there is certainly a sneer when 'virtuous' is placed in quotation marks by this girl. There is one quotation I wish to read to you because I believe in it lies the whole key to the tragedy.

"'A girl who is good and never has had a word of scandal against her is fortunate,' she writes. 'The girls here (at school) are all just of that kind. There is not one of them who will ever be anything. When I say anything, I mean just that. They will, perhaps, be good wives and mothers, but I want to be a good actress first.'

"It was the desire of this girl to be a great actress that caused her to play between these two men until she brought one of them to his grave."

The Hummel Affidavit

"'Dementia Americana.' This what they call it. Fine specimen of the higher or unwritten law."

Mr. Jerome then directed his attention to the Hummel affidavit.

"I don't think Hummel is an upright man," he said. "I was after him for years and finally got him.

"He will go to jail if I can put him there and he'll stay there if I can keep him there. Anything that comes from his hands can justly be viewed with suspicion, but in this affidavit there also figure two reputable clerks, Snydecker and Jacobson.

"Snydecker testified that he witnessed the affixing of the signature by Evelyn Nesbit.

"He asked her if she had read the affidavit and if so what was contained therein was true.

"She answered, 'Yes,' and then signed it. The defense had every opportunity to call Jacobson to refute this, but they did not do so."

Mr. Jerome picked up the photographic copy of the signature and last page of the affidavit and pointed out to the jury how it would be impossible to piece together Evelyn's signature with that of the affidavit. The date of the affidavit, October 27, 1904, was there, as was the name of Snydecker.

The affidavit itself, the district attorney continued, contained a complete itinerary of Evelyn's journey through Europe, which she said she told Hummel.

"Mention is also made of the finding of a small silver box in Thaw's room in Paris containing needles and a hypodermic syringe, and this, Jerome argued, bears out the testimony which Evelyn gave on the stand. The district attorney scouted the suggestion that Hummel concocted the charges set forth in the affidavit, contending the connections between the affidavit and part of the girl's testimony were so clear as to remove all doubt as to the document's authenticity.

"You heard the story of that Christmas eve when this Sir Galahad again rescued the maiden from the brute. You have heard how they remained in Rector's until four o'clock in the morning, and then went to Thaw's apartments. Again he had made up with her; again he had told her that he put his stalwart arm about her and they would go through life side by side. So Sir Galahad lived with her as his mistress at the Grand Hotel and in Europe, going to the Dead Rat and the Cafe de Paris and doing cakewalks at 2 o'clock in the morning. This is the Sir Galahad who, almost within the sound of his wife's voice asked James Clinch Smith if he was a "very much married" man and if he does not want to meet a 'buxom brunette.' He was going to Europe and would be glad to 'put him next.' This, gentlemen, was the St. George who is going out into the world and rescuing American maidenhood.

"Men of this jury, there is in this case every element of the simply vulgar, every day Tenderloin homicide.

"If the defendant were any person but Harry Thaw of Pittsburg—the rich Harry Thaw of Pittsburg—if he were the son of a padrona in Elizabeth street; if Stanford White were not a leading architect, but a Chinaman in Mott street; if this girl were a chorus girl in 'the London theatre' on the Bowery—how long would the brainstorm or the paranoia theory be listened to?

"There were two ordinary men in this case, and between them was a tigress urging them on. With Thaw she was seduced by White; with White she was the victim of Thaw's perversion. Why, men, there are the same old elements here that have made criminal history since the world began.

"This 'angel child' comes here and weaves a web of lies like this to fool you, to induce you to acquit a cold-blooded, cowardly murderer on a defense of dementia Americana.

"She, herself, tells you she was constantly egging him on. She told him Stanford White was trying to get her back; that he had followed her, that May Mackenzie had told her things Stanford White had said. In Paris she received letters from Stanford White. After she returned from Europe Thaw himself accused her of having resumed relations with White.

"Why shouldn't he hate Stanford White? Why shouldn't he fear him? Why shouldn't he be angry when he talked about him? He would glare at his enemy in the theatre, but smile on others. He would even sit at the table with Dillingham, who told Evelyn the stories of his perversion.

"Is there anything in all this evidence to show that when Harry Thaw shot and killed Stanford White he did not know the nature and quality of his act, or that the act was wrong?"

Mr. Jerome reviewed the letters Thaw wrote from Paris and Pittsburg to Attorney Longfellow and which were introduced to show the effect of Evelyn's story on the young man's mind.

He declared that the letters showed all through them the writer's appreciation of legal rights and wrongs.

"They are nothing more," continued Mr. Jerome, "than the erratic and vulgar production of a rich illiterate, who always had had his own way in life until he was locked up in the city prison."

Referring again to Thaw's insanity, District Attorney Jerome said he knew enough to automobile all through Europe with Evelyn Nesbit and knew enough to write to his attorney to see the girl through the custom house when she landed. The will and codicil next were taken up and discussed.

The will showed a cowardly fear of death, declared the prosecutor, but nothing more.

"Do you see, gentlemen," he went on, "it was easy for such a cowardly man as this to withhold his dementia Americana for three years and then kill the victim who could not see him approach."

Mr. Jerome again picked up the will and held it aloft.

"Where is the delusion in that will? Didn't he leave his money to the right people? Where is the delusion in his reference to the Twenty-fourth street house? Hasn't the girl described it; where is the delusion there?

"Don't let us assume she was telling the truth once and in the next breath say the same thing shows that Thaw had delusions.

"Now turn to the mother's testimony. When he went home the girl had thrown him over again, perhaps for the very reason mentioned in that affidavit. There is nothing to show there was any other reason. He loved her all right, loved her in his own brute way. There is the scene in the church when the music moved him and he shed tears. Where was the delusion there? He was nervous and worried on the day of his marriage. Why Evelyn was not 21 and he was afraid her mother would not give her consent. Did Thaw show a delusion? Didn't it rather show a sense of the requirements of the law? What one of the many people who must have known him during his life has been called here to show that he was ever irrational? Not one.

"Did his mother say he was irrational? No. She simply said he was nervous and depressed and after we hear what happened after he left New York.

Now for the witnesses. First, Dr. Wiley. I see Mr. Delmas does not place him among the experts. He seems to treat these experts as so much junk. If he puts seven in one basket against six in the other, he seems to think the seven win. I had the delusion that quality counted for something and that it was not merely a matter of quantity."

Taking up the testimony of the defense's witnesses one by one, Mr. Jerome passed lightly over that given by Dr. Wiley of Pittsburg and practically ignored it altogether. Of Dr. Bingaman, the Thaw family physician, he spoke in the highest respect.

"This physician, who frankly tells you that he is a general practitioner," Jerome continued, "who is not a hired expert, testified that Thaw, as a child, had all the ailments incidental to childhood. He tells you that he was called in to attend Thaw in the latter part of 1904 and found him depressed and nervous. That is only natural. Any man who had had the interviews Thaw had with the girl he loved, saw her go to his hated rival and make the affidavit she did, he would also be depressed and dejected.

"The doctor also saw Thaw in prison and found that Thaw had stuffed some paper in the cell door to keep out the draft so as not to catch cold. Perfectly natural, is it not? Thaw told Dr. Bingaman that his counsel desired to put him in a mad-house and that a conspiracy was on foot to commit him to an asylum so as to prevent the life of White from being made public in court.

"For that reason he changed his counsel, rational proceeding if Thaw wanted to take the chance of fighting out his case before a jury.

"Now as to Dr. Deemar. He merely testified that Thaw was nervous, that's all.

"Dr. Evans and Dr. Wagner came next. Evans told you that Thaw suffered an exaggerated ego. That is merely another name for vanity. Dr. Bingaman when asked about it said that Thaw always had a great opinion of himself.

"For two days you will recall we tried to find a definition for a brainstorm, but couldn't find out.

"We were told that Thaw was like a rudderless ship which had lost its balance wheel cast off from its moorings, and the nearest we get to a definition was a mental fulmination, a psychic explosion.

"When Dr. Wagner took the stand he said Dr. Evans' explanation of Thaw's state of mind when he killed White was a good one. When asked if he knew of a similar case recorded in medical literature, out of the many cases he said he knew, he cited this one."

Mr. Jerome then read the case of a woman which has several times been referred to in the course of the trial. After reading this case Mr. Jerome remarked:

"I think one can truly say as Dr. Hirsch that there is as much similarity between this case and that of Harry Thaw as there is between smallpox and a broken leg.

"After Evans and Wagner came Mrs. Caine. She merely testified that Thaw glared every time he saw White. Nothing unnatural in that.

"This is practically all the evidence with the exception of that of the experts which the defense has submitted in support of the plea of insanity."

Mr. Jerome then rehearsed the testimony of the state's experts and dwelt upon the fact that they all expressed the fact that Thaw knew the nature of his act and knew that it was wrong.

"Every one of these experts admitted that at the time of the killing Thaw had a knowledge of what he was doing, but said it was an insane knowledge. They could not tell the difference between sane and insane knowledge, but said the only knowledge that Thaw had was insane.

"Now let us come back to the killing. There is not, in any of the acts of that night, one thing that shows a lack of appreciation of what he was doing. You remember the conversation with Mr. Smith Was there anything irrational there? And after the killing did he say that he was the agent of Almighty God who had been directed to make way with this ravisher of American womanhood? No, he said, 'he ruined my wife.' There was nothing about Providence until after his consultation with my friend, Dr. Evans. In the words "ruined my wife" he expressed a motive for his crime. But there was nothing irrational there. And there was, nothing irrational about anything he did that night.

"When he got to the station house, he gave a fictitious name. That was not the insane man, the agent of providence, the man chosen by God to avenge a woman. that was not a man glorying in a righteous act.

"Mr. Delmas said he would not appeal to such a shadowy thing as the unwritten law. But he ended by an appeal to dementia Americana, which he said afflicted the whole nation.

"He might better have adhered to his original purpose, because if this man was insane you might acquit him.

"But when this defendant is presented to you as the supposed avenger of American womanhood, of American virture—a champion who has lain dormant for three years, until he becomes in some way exalted—he does not come within the classification of dementia Americana. He killed for a motive and when you are asked to acquit such a man you are asked to give something which you have not the power to bestow.

"The real question here is whether New York city is to become a mining camp.

"If this sort of thing can go on, the only thing between a citizen and his enemy, is a brain-storm, then every man had better pack a gun.

"Mr. Delmas appealed to the Scriptures. Let me too, direct your attention to them, to what the Lord said, "Vengeance is mine, and I shall repay."

"Let me also remind you of the great funtamental law sounded down the ages—the commandment of God, "thou shalt not kill."

Mr. Jerome sat down. Justice Fitzgerald ordered twenty-five minutes recess before beginning his charge to the jury.

Judge Fitzgerald's Charge

Justice Fitzgerald began his charge by saying:

"Gentlemen of the jury, it now becomes my duty to give you such instructions upon the law as are necessary to enable you to perform your duties as jurors and to define to you the legal guides by which you are to be governed in considering the evidence and reaching your conclusions.

"It has been particularly gratifying to me to realize that you were selected by the people and by the defendant as fair-minded men, after the examination of 337 talesmen and before the peremptory challenges allowed by law had been exhausted.

"Let me impress upon you the importance of the issue you are to decide. The life of a citizen within the protection of the law, it is charged, has been taken by the defendant and the defendant is here to answer to the law for that.

"You must take the law absolutely from the court—of the facts you are the sole judges.

"A defendant in a criminal action is supposed to be innocent until the contrary is proved and in case of a reasonable doubt that his guilt is satisfactorily shown he is entitled to an acquittal.

"Let me begin by instructing you on the general construction of the law The statute of homicide is divided into two general divisions which in turn are divided as I will later explain. The two chief divisions are homicide that is criminal, and homicide that is not criminal.

"Criminal homicides are murder in the first degree; murder in the second degree and manslaughter in the first and second degrees.

"Such homicide, unless excusable or justifiable is murder in the first degree, when committed from deliberation and premeditation with a design to affect the death of the person killed. If it is committed without premeditation or deliberation, but with a design to kill, it is murder in the second degree. If the homicide is committed in the heat of passion without design to kill, but with a dangerous weapon, it would be manslaughter in the first degree. All lesser criminal homicides are classed as manslaughters in the second degree.

"Homicide, which is not criminal is classed as justifiable or excusable. Homicide is justiable when committed in the lawful defense of the slayer or his wife or child, brother, or sister, master or servant, or other person when there is a reasnable ground to apprehend that a crime is about to be committed against such person and there is imminent danger of the design being carried out.

"Homicide is excusable when by accident or misfortune it is committed, in lawfully correcting a child or doing some other lawful act in a lawful way.

"Homicide is also excused by insanity. The law is contained in sections 20 and 21 of the penal code. Section 20 says an act done by an imbecile, idiot, lunatic or insane person is not a crime. This language is very broad and would at first glance appear to apply to all persons of unsound mind with regard to the degree of the insanity.

"But section 21 limits section 20 as follows: 'A person is not excused from criminal liability as an idiot, imbecile, lunatic or insane person except upon proof that at the time of committing the alleged crime he was laboring under such a defect of reason as either not to know the nature or quality of the act or to know that the act was wrong.'

"Before murder in the first degree can be done, a distinguished jurist has said it must appear that there was some act of deliberation and premeditation. This, of necessity, is the consideration of the jury. What may be deliberation and premeditation in one man might fall far short in another. Men differ physically and mentally. Each case must depend upon its own facts, one case may be proved by a long train of circumstances; another by a few sharp facts.

"And in still another case the jury may find the act in the manner in which it was done, the weapon used, the time and the place, the disposition of the victim, everything necessary to satisfy them of the presence of deliberation and premeditation.

"If you are dissatisfied that there was a design to effect death, but without deliberation and premeditation, you may find murder in the second degree. The defendant may be convicted under this indictment of murder in the first or second degree, or manslaughter in the first degree.

"When it appears that the defendant committed a crime and there is reasonable doubt of which degree he is guilty, he can be convicted of the lowest only.

"As I have tried to impress upon you since this trial began the character of the victim furnishes neither excuse nor justification. The general character of the victim is not the issue and no matter how bad he may have been he was entitled to the protection of the law.

"The personal avenge of private or public wrongs is not recognized under our law. Every person is under the protection of the law, good or bad, exalted or humble, all are alike covered by its shield.

"The plea of not guilty is a denial of every material allegation charged against the defendant, and such evidence may be presented as will offset those allegations and establish his insanity at the time of the commission of the act. The law presumes that sanity, is the normal condition of man and where insanity is the plea, as the condition of mind of the defendant at the time of the act, that becomes the crucial question of the jury to decide.

"If there existed in the mind of the defendant an insane illusion it is not an excuse unless the illusion is of such a character that if true it would result in his injury.

"Proof of partial or incipient insanity is not sufficient as an excuse. The settled law of the state is that so long as that power to appreciate the nature and quality of the act is present, no man must commit crime if he would escape the consequences.

"If he cocks, aims and discharges a revolver, as it is alleged here, did he know when he cocked and fired the weapon that the act was wrong and that it would probably destroy a life, and did he know that the act was forbidden by law? That is the question which the law must have answered.

"Under the rule of evidence the story, claimed by the defendant's wife to have been told by her to the defendant, is admitted not as affecting the character of the deceased, but that you might consider what effect such story had on the defendant's mind. In considering her story her credibility as a witness is highly material, and everything that she has said or done must be taken into consideration.

"Her admission regarding the relations existing between herself and the defendant prior and subsequent to this tragedy and prior to her marriage, or any act, should be weighed in connection with the story.

"A wide latitude was allowed on cross-examination. You should give due credit to all that was developed along with all other facts. The letters, the will and the codicil which are before you were not admitted under any ruling as to their competency, but by consent of counsel.

"There has been no denial entered here that death resulted from pistol shot wounds inflicted by the defendant.

"The legal presumption is that the defendant was sane when he committed the act. It was not incumbent upon the prosecution to introduce preliminary testimony to show that he was sane.

"The burden of proof is upon the defense. Whoever denies sanity must prove that insanity is present. The law assumes that all men are sane and it assumes all men innocent. The burden of proving a crime is on the prosecution, but the burden of overthrowing sanity is on the person claiming iti. The defendant is entitled to the benefit of the doubt in this case.

"The so-called irresistible impulse," continued Justice Fitzgerald, "has no place in the law and is not an excuse, nor is every person of a disordered mind excused. While the burden of proof of insanity is on the defendant, he is also entitled to every reasonable doubt on the subject.

"If the defendant knew the nature or the quality of his act, or knew that the act was wrong, then he committed a crime. All men differ mentally and physically and this makes it impossible, as I said before, for the court to lay down a fixed rule as showing deliberation and premeditation.

"As to the distinction between reasonable doubt and a possible doubt, you were thoroughly examined when you were about to become jurors. The law does not require that the prosecution shall know beyond a reasonable doubt.

"A reasonable doubt is such a doubt as might arise in the mind of an intelligent man, who is called upon to give a reason for such doubt would not be at a loss to do so. A reasonable doubt is not an imaginary thing.

"If any of you have a reasonable doubt that this defendant is guilty of murder in the first degree, but you have no doubt that he is guilty of murder in the second degree, you may find in the second degree. And so with manslaughter. In all your deliberations the defendant is entitled to the benefit of every reasonable doubt.

"You may, in this case, let me say once more, find the defendant guilty of murder in the first degree, guilty of murder in the second degree, or guilty of manslaughter in the first degree.

"If you vote for acquittal on the ground of insanity you may state that ground in your verdict.

"You must be guided, gentlemen, entirely by the evidence. Clamor, prejudice or sympathy must not prevail. You must be guided by your reason and your judgment.

"The case has been fully tried, and I have not attempted to make any epitome of the evidence. If in any allusion I have made to the facts my statement does not agree with your recollection you should take your own recollection.

"It is the duty of each juror to consider the evidence, all the pertinent statements of counsel and the suggestions of your fellow-jurors.

"I have endeavored to faithfully guard the rights of the defendant as well as the rights of the people in the many rulings I have had to make, and I have tried with clearness and fairness to instruct you in the law.

"The facts must be thoroughly weighed. Remember the oaths you had to take to 'well and truly try' this issue.

"Weigh the evidence carefully, consider and discuss it and return your verdict according to your oaths."

Justice Fitzgerald supplemented his charge by again clearly defining the legal definition of reasonable doubt, and saying that no man should vote for a verdict so long as a reasonable doubt existed in his mind. He did this by request of Mr. Jerome. The defense also requested a special charge on several points, but Justice Fitzgerald said that he had practically dwelt on all of them, with the exception of a few, upon which he declined to say anything. He granted the defense an exception to his ruling.

Thaw Downcast

The jury then retired at 5.17 p. m., and the atmosphere about Thaw and the members of the family was heavy with gloom during the judge's charge. The defendant sat in a dejected mood, his head bowed, his face pallid and his entire appearance denoting a nervous, apprehensive state of mind. It seemed as though every vestige of hope had been taken away from him. All the confidence and cheerfulness which were so strongly in evidence yesterday had disappeared. Fear and doubt had supplanted them.

A complete change had come over him by the time the judge had concluded his charge. He began to realize that real danger menaced him, that his acquittal was by no means a certainty, and as he was led out of the room the debonair style which marked his entrance yesterday morning had entirely disappeared. The members of Thaw's family were equally as low in spirits. They recognized the fact that the judge's charge was by no means favorable to Harry.

None of Thaw's counsel would comment on the charge, but they shared in the general opinion that it was adverse to Thaw.

Shortly after visiting Harry in the pen Mrs. Evelyn Thaw left the building with Dan. O'Reilly after telephoning.

At 5.30 o'clock the other members of the family left the building. Thaw's counsel denied a report that the best they hoped for was a hung jury.