

...in this case. There is not a man who has watched this defendant sitting here at this table... The District Attorney turned about his head and said: "Who does not know that, as he sits here, he is incapable of properly advising with his counsel?"

All this followed. Mr. Jerome's demand that if Dr. Hamilton was to be allowed to testify he must be allowed to tell all that he knew about the case and not be confined to stating whether he thought Thaw was sane or insane when he shot Stanford White.

Throughout the latter part of the debate between Mr. Delmas and Mr. Jerome, Mr. Gleason had been vainly trying to poke his nose into the fray. At last he succeeded in making an attempt to vindicate himself from Mr. Jerome's implied charges of unprofessional conduct.

"I have practiced law in this community for twenty-eight years," he said excitedly, "and no suggestion has ever been made to me before that my conduct would be made the subject of an inquiry before the Appellate Division. One of the things that this statement is based upon here is that this witness sitting here will say that defendant is not capable of advising his counsel. Now, no man can come into court and accuse me of such a thing, and ask the District Attorney to ask this witness whether he will say that."

"You may ask him," said the Court. Mr. Gleason thereupon whizzed the boomerang around his head and launched it at Dr. Hamilton.

"Dr. Hamilton," said he, "I desire to ask you whether in your opinion at the present moment this defendant is incapable of instructing his counsel."

"I think he is," said Dr. Hamilton shortly. Mr. Gleason blinked a moment but returned to the charge.

"Have you made any such statement to his counsel?" he asked.

"I have," was the answer.

"At what time did you make that statement?"

"Several months ago."

Mr. Gleason choked up, but he recovered himself and gave the boomerang a final swing.

"Did you ever make any such statement to me?"

"I did," said Dr. Hamilton.

"Did you not state to me, sir, that in your opinion the defendant was probably able to instruct counsel and that you would so testify?"

"I made no such remark," replied the witness calmly.

"Did you not state to me, sir," persisted Mr. Gleason, while the entire court room cruelly grinned, "that you would testify that the form of insanity from which the defendant was suffering was one from which, according to reliable authorities, the defendant might recover?"

"I did not," said Dr. Hamilton. "I told you that two per cent. of them might recover."

The boomerang had returned. Mr. Gleason, though obviously jarred, was not crushed.

"I desire to state," said he, "that in my opinion the defendant has been able at all times to instruct counsel, and in my opinion counsel acted under the honest belief that the defendant was sufficiently able to instruct counsel to entitle him to do so."

The Court said any affidavit from Mr. Gleason would be considered and that he did not think Mr. Jerome desired to make any suggestion upon Mr. Gleason.

Mr. Jerome explained that he made no charges against any of the Thaw's lawyers, and there the matter dropped.

Other Lawyers Desert Gleason. Contrariness seized among Thaw's lawyers while Mr. Gleason was interrogating Dr. Hamilton. Any outside observer would have thought they considered him to be making the break of his life. When he had finished his questions, but was still talking, the five other lawyers employed by the defense picked up their papers and walked out of court, leaving him most pointedly alone.

After court had adjourned Daniel O'Reilly, counsel for the defense was asked in the presence of Mr. Delmas if it was by consent agreement of counsel that they had left the court room while Mr. Gleason was still talking.

"It certainly was," said Mr. O'Reilly.

Mr. Delmas asked if the report that he would leave the case was correct. Before he could answer Mr. O'Reilly, who seemed to have been selected as spokesman, replied:

"Mr. Delmas is not out of the case. He has been and will continue to be chief counsel. No was made so by Mr. Thaw after the first day that the taking of testimony began. There will be no change of counsel because of what has taken place to-day."

So far as Mr. Gleason is concerned, I speak by authority when I say that his voice will not be heard again in court during the progress of the trial.

They'll Find Thaw Sane, Say His Lawyers. Mr. O'Reilly expressed the opinion that a commission in lunacy would surely be appointed. Mr. Hartridge would not go as far as that, but they agreed that the commission, if appointed, would certainly report that Thaw was legally sane at the present time because it could be shown that Thaw is perfectly able properly to advise his counsel.

was allowed to tell everything he knew and believed about Thaw or nothing at all.

The Thaw Family Record. In the course of the arguments Mr. Jerome outlined the information laid before him by Dr. Bingham, formerly the Thaw family physician. This evidence the District Attorney had prevented from getting before the jury when Dr. Bingham was on trial. Dr. Bingham had told him that Thaw's maternal aunt was an epileptic from childhood, that Dr. Deemar, another of the Thaw family physicians, had told him that a brother of Mrs. William Thaw was violently insane and that a first cousin of Mrs. Thaw was now in an asylum for the insane.

Mr. Jerome also asserted that all seven of the alienists employed by the prosecution had informed him that Thaw was suffering from paranoia and that "acting under the influence" characteristic of that state he killed Stanford White, but that within the legal definition of insanity he knew the nature and quality of his act and that it was wrong. The seven experts had also told Mr. Jerome, he said, that in their judgment the defendant was not able properly to advise his counsel. But these opinions were based on the information obtained from Dr. Bingham and Deemar, which the District Attorney had not been able to get in evidence, and hence these opinions were inadmissible in evidence.

It was only when Dr. Hamilton was called to the stand, Mr. Jerome said, that he saw any opportunity to get this evidence before the Court. Mr. Delmas then waited until the scramble, after impartially tossing aside a note that Thaw had sent him by Mr. McKie.

"We have," said he, "on the basis of what the learned District Attorney has said, the singular spectacle of the District Attorney prosecuting this man to his death while at the same time he states that he has known and has been convinced that during all of that time he was absolutely insane that in the eyes of the law he ought not to have been tried."

It was now plain that the Court would consider an application for a commission in lunacy, and before Mr. Gleason burst in so brazenly it had been arranged that the District Attorney would make his application in the form of an affidavit. Justice Fitzgerald asked counsel to submit to him a list of alienists in no way connected with the case to guide him in his selection of the commission, in case he should appoint one. The commission will consist of an alienist, a lawyer and a layman. It is empowered to take all the testimony available, and counsel for Thaw said the defendant would introduce no objection to a physical examination.

In dismissing the jury until to-morrow morning, Justice Fitzgerald laid special stress upon the warning that the jurors should not read any newspaper articles on the case.

The Affidavit Prepared. The District Attorney and his staff put in three hours of hard work yesterday afternoon on the preparation of the affidavit. Mr. Jerome had all his alienists before him in the library of the Criminal Courts building, as well as two or three reporters who have sat near Thaw in the course of the trial. Before dark the affidavit had been completed. It will consist of about forty printed pages.

A DAY OF SURPRISES. Calling of Dr. Hamilton Results in Bringing Trial to a Halt. The day began with a surprise from Mr. Delmas. As soon as court opened he announced that "for the present" he would not attempt to have put in evidence the letter he tried to introduce before the proceedings adjourned on Tuesday. This was one of the letters Thaw wrote to J. Dennison Lyon, the banker of Pittsburg, since White was killed.

"Call Dr. Allan McLane Hamilton," said Mr. Delmas quietly, "and everybody in court sit up." Mr. Delmas's move caused a sensation, as it was known that Dr. Hamilton had examined Thaw after White was shot, and he had expressed his belief that Thaw was insane.

Dr. Hamilton described how he had examined Thaw in the Criminal Courts Building two days after White was killed. He had been employed, he said, by the firm of Black, O'Neil, Gruber & Bonyng, then counsel for Thaw, and there were several persons at the examination, including Assistant District Attorney Garvan and Drs. Flint, Mabon, MacDonald and McGuire, the last named being the Tombs physician.

"Was there any medical or scientific examination of Mr. Thaw?" asked Mr. Delmas.

"There was a medical examination so far as it went," said Dr. Hamilton.

Then Mr. Delmas asked for the details of the examination. Mr. Jerome objected, saying that it was a reopening of the case. Justice Fitzgerald inquired as to the purpose of the testimony, and Mr. Delmas replied that it was to support the defense's theory that Thaw was insane when he killed White.

Dr. Hamilton had been in the city all the time and the former counsel knew that Dr. Hamilton had examined Thaw. These facts were known to the defense and Dr. Hamilton should have called in its direct case.

"Dr. Hamilton may have observed facts which may be very important," said Mr. Jerome. "They may be of such a character as to require me to recall all my experts and reframe the hypothetical question. Of course, if your Honor thinks that in the interest of justice this case should be opened again, why I have tried all through this case to bring out all the facts so far as I have been concerned personally—and I have wanted to stop at nothing—but I submit that it is not in accordance with the principles of law and that it threatens the indefinite continuance of this case. This evidence is not strictly in rebuttal."

Mr. Delmas turned on his oratory full force. Through the trial Mr. Jerome had announced that he was a quasi judicial impartiality. Coupled with that Mr. Jerome had said that all he desired was to get at the truth.

"It is hardly conceivable," said Mr. Delmas, "that the District Attorney should seek the conviction of a man, especially

upon a capital offense, by shutting out or suppressing the truth."

Mr. Delmas said with a great flourish. Mr. Jerome was on his feet in a jiffy. "I do no such thing," he said, "and if it is put on any such grounds as that my objection to the question is withdrawn."

Jerome insists on Full Examination. So Mr. Delmas asked Dr. Hamilton to tell of the details of the examination he made of Thaw. Mr. Jerome said that if Dr. Hamilton answered the question he should not be limited in his examination of the witness. Justice Fitzgerald said that when matters of law had been submitted him he had made his decisions, "and on matters not submitted to me as matters of law, I have used my discretion, but when I have no discretion in the matter I shall rule strictly in accordance with the law."

It was apparent that Justice Fitzgerald was not going to be tied up in any stipulations made by counsel. Mr. Jerome said something about the "learned counsel from the Pacific Slope" imputing unfairness to him, and Mr. Delmas broke in to deny that he had made any imputation of unfairness.

"Gentlemen, I will hear you both, but only one at a time," said Justice Fitzgerald. Mr. Jerome said he had no objection to Dr. Hamilton testifying if he was allowed to tell everything including the heretofore information he learned about the Thaw family.

Mr. Delmas declined to make any stipulation. The purpose of Mr. Jerome was a technical objection to Dr. Hamilton answering the question. Mr. Delmas said that Mr. Jerome could get all the truth from Dr. Hamilton on cross-examination. Mr. Jerome said he had not called Dr. Hamilton, and Mr. Delmas replied that he had been subpoenaed by the District Attorney's office and had been sitting through the trial. To which Mr. Jerome made a technical objection to Dr. Hamilton answering the question. Mr. Delmas said that Mr. Jerome could get all the truth from Dr. Hamilton on cross-examination. Mr. Jerome said he had not called Dr. Hamilton, and Mr. Delmas replied that he had been subpoenaed by the District Attorney's office and had been sitting through the trial.

Mr. Delmas then tried to convince the Court that it had the discretion to allow Dr. Hamilton's evidence as part of its case in the case of the same time he states that he had subpoenaed May McKenzie, but hadn't called her. He only subpoenaed her because he thought the defense might want to call her.

"Most kind," said Mr. Delmas, sarcastically. "It was a most notable act for the District Attorney."

It was to prevent you," said Mr. Jerome, "from referring to their absence as an excuse for not calling her."

Mr. Delmas declared that Mr. Jerome had pledged himself by virtue of his oath as his officer and with solemnity which necessarily attends all his utterances to call Dr. Hamilton. Mr. Delmas called the attention of Justice Fitzgerald to the fact that the prosecution had been allowed to examine James Clinch Smith, White's brother-in-law, as one of the witnesses in chief after the defense had opened its case. Mr. Delmas also said that the prosecution had plenty of opportunity to call Smith, but didn't do so until long after it was known that Mr. Smith was available as a witness.

Mr. Jerome declared that Mr. Delmas's remarks were not quite accurate. At the time when Mr. Smith was available the defense had a right to call him. Mr. Jerome said, "The same thing was done by the defense in the cases of Lawyers Longfellow and Hartridge. In addition Mr. Delmas withdrew his offer that the District Attorney could inquire into all the facts concerning Evelyn Nesbit Thaw's story, yet the defense objected to the testimony of the photographer as to what the pictures of Evelyn Nesbit were taken. Mr. Jerome went on:

Throw the Doors Wide Open. Now, under those circumstances, I am willing that the doors be thrown wide open; but if they are thrown open let them be entirely thrown open and let everything that is true and fact be given to this jury so they can say whether this man is sane or not. If McLane Hamilton is to testify let him testify to all the facts that he knows in this case, and I have no objection to his testifying, but after the jury has heard him repudiated on the record, I am unwilling again to get in a position of that kind, and if I waive my legal objection which is properly taken to get the family to testify, I would spring up and enforce the strict rules of law against me on a technical ground."

Now, this question asked Dr. Hamilton to reopen the case. If the case is to be reopened I am perfectly willing to have it, but I am not willing to have it reopened unless counsel of record for the defense says that he considers it a reopening of the case and consents to our going into the full facts again, and he does not do that. Unless he does that I press my objection that this question is reopening the case.

Mr. Delmas asked Mr. Jerome's remarks and said "it would be an injustice to the Court and to the defendant to let them pass unchallenged." He said that after he made the offer that he had no objection to Evelyn Nesbit Thaw's story being inquired into by Mr. Jerome turned on him and said the rules of law would not allow him to test whether the young woman's story was true or false. In addition, Mr. Delmas said, the District Attorney had the Court instruct the jury on that particular point. After the District Attorney had repudiated the waiver what could he [Delmas] do? It was only after weeks had elapsed that Mr. Jerome said he would accept the offer.

"That, if your Honor please," said Mr. Delmas, "is the way the record stands, and let any fair minded man judge whether the charge that the defense here has repudiated any agreement that it has tendered or gone back on any offer that it has tendered as long as it was open—let any fair minded man determine where the truth stands. I am not afraid of the decision."

As the Court implied in the present record," said Justice Fitzgerald quietly, "the Court is ruling upon the present attitude of the case. It is not a discretionary matter with the Court whether it will not exercise its discretion. It is a matter of law. I maintain the objection and I will allow an exception to the defendant."

Delmas Keen for an Argument. Mr. Delmas said he would like to argue on what he expected to prove by Dr. Hamilton. Mr. Jerome said he had no objection if the argument was made to the Court, but the jury should not hear it.

Every time I have attempted to state what I intended to prove," said Mr. Jerome, "I make a speech to the jury if I have any objection to the question, but I have been sustained."

Justice Fitzgerald said that several times had intimated that it was proper for the counsel to state in their arguments the facts they intended to prove, but there had been no objection, and there was nothing for the Court to do. If it was desired that the jury should retire this time, he would so order.

Then Mr. Delmas referred to the long speech made by the other day characterizing the contents of the affidavit made by Evelyn Nesbit in Abe Hummel's office. It was probably the most sensational piece of evidence since the trial began. Mr. Delmas said:

I listened some days ago to an argument, or what was called an argument, that took over a full hour, forty minutes, made by the learned District Attorney in this case, in which he believed the court room, and in which the facts that he proposed to prove were stated from beginning to end. That was made in the presence and hearing of the jury. I did not object to the argument and never have your Honor will bear me out—I never have, during the course of this trial, whenever my learned adversary has undertaken to state what he proposed to prove, or for instance, when this photographer was on the stand he proposed to prove, and he stated it with a degree of emphasis which made the table before him vibrate, that he proposed to prove an alibi. I was not blind enough to do, if it was desired that the marks were not addressed to the judicial officer, the Court, but were addressed in another quarter, and I contented myself with simply saying that as your Honor had been repeatedly intimated that the purpose of trying this man for his life upon the evidence and not upon the impassioned utterance of mere exaggerated statements of counsel, their intelligence as my protection against that, that they should retire for the time being, that intelligence would not afford me a protection.

A Recess for Consultation. Mr. Delmas then tried to convince the Court that it had the discretion to allow Dr. Hamilton's evidence as part of its case in the case of the same time he states that he had subpoenaed May McKenzie, but hadn't called her. He only subpoenaed her because he thought the defense might want to call her.

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that I have cannot be put in any least form, but a mere hearsay which would shock the conscience of the Court, and that instantly the case would be stopped. So deeply have I been impressed with that that I have gone to the extent of serving notice practically upon counsel of record in this case that when this case is over if it shows them to have been in possession of knowledge which I believe to exist I will see that the matter is brought before the Appellate Division of the Supreme Court.

I feel bitterly on this, because I submit that my proceeding is strictly with due regard to law; because I cannot get the evidence out to lay before the jury from open and have these facts come out. The law says that if he knew the nature and quality of the act and knew that it was wrong under this proposition he is guilty. Now, the Gaylor case was taken to the Court of Appeals; it was held that he knew the nature and quality of the acts and that they were wrong, and he was brought to death, one of the most brutal things that the law has ever done. Today we are trying a man who under the law of this State is absolutely sane, and is not a paranoiac, and every competent medical man honestly giving his opinion in this case, with a full knowledge of the facts, would say that he knew the nature and quality of the act that he committed and knew that it was wrong, and still he was insane!

Mr. Delmas interrupted to say that he could not understand what Mr. Jerome was doing. Mr. Jerome said he was appealing to the Court.

As I understand the position of the District Attorney," said Justice Fitzgerald, "the object of it is to make an appeal of some kind to the conscience of the Court in regard to the power vested in the Court."

Mr. Jerome said that was what he was doing. Then Justice Fitzgerald said he would allow Dr. Hamilton to answer.

"I suggest," said the learned District Attorney, "that the defendant at the bar is in the mental state that he is incapable of advising counsel for the defense and therefore under the statute which I have mentioned, I am going to ask the Court to appoint a commission to inquire into the facts of this case."

On the statement of the District Attorney," said Justice Fitzgerald, "the Court asks for the facts of the case, and there are no facts before the Court, by deposition or otherwise, on this subject."

"No, I state that to the District Attorney now," said Justice Fitzgerald. "The Court asks on the statement of the District Attorney for all the information that he has spoken of in regard to counsel and in regard to other people. I want all of the information that is in the possession of the District Attorney from sources that are in his judgment reliable, so as to warrant me at this stage of the proceeding in instituting the proceedings that I have mentioned."

Mr. Delmas wanted to know if it was an ex parte proceeding, and he was told by the Court that it wasn't. Mr. Jerome then said:

I referred to the statements made by Dr. Bingham in the presence of Drs. Flint, Mabon and MacDonald. I deem it my duty to suggest on the record that the mental condition of the defendant at the present moment, and throughout this trial has been such that he is incapable of properly advising his counsel in his defence upon the merits. I know that is a serious charge. He is mentally incapable of properly advising his counsel. I make that statement before you and I repeat it is a serious charge. Your Honor asked me to lay before you such information on that subject as I have.

Epilepsy and Insanity in Thaw Family. The information from Dr. Bingham, which has been communicated to me in the presence of this defendant's counsel and Drs. Flint, Mabon and MacDonald, was that the defendant was epileptic from childhood, and that he lived to over 30 years of age and had frequent attacks which increased frequently and finally became an epileptic. Dr. Deemar in the same presence informed me that H. W. Copley, one of the fathers of the mother, was also an epileptic. That Josiah Copley, another brother of his mother, was violently insane; that John Ross, the first cousin on the mother's side, was an epileptic and is now in an institution for the insane.

Though the gentlemen whom I have called as witnesses in this case—three of whom have been constantly in court—looking at the defendant and studying him, have heard all the testimony in this case, and there are two or three of them in court; they were present immediately after the homicide and they looked the defendant over to see what his condition was. I think I am correct in stating in the opinion of these gentlemen, and these gentlemen, one and all of them, advised me that the defendant is suffering from a disease called paranoia, a mental disease, the chief characteristic of which is insane delusions of some kind, systematized character, that acting under those insane delusions he killed Stanford White, but that within the legal definition of insanity he knew the nature and quality of his act, and that he was charged into the body of Stanford White a loaded pistol, and that it was a loaded pistol and that he knew it was conferrable to the law of the land, and that he was sane, and that in their judgment, while he knew the nature and quality of the act and that it was wrong, he was in that state of unreasoned mind that rendered him incapable of acting in the opinion of these gentlemen, and Justice Fitzgerald wanted to be sure of one thing.

Before the time they had studied the hypothetical question they had formed that opinion?" he asked.

Not Asking for Lunacy Commission. Mr. Delmas asked if Mr. Jerome was making a formal application for a lunacy commission, and the Court said that he was prepared to meet it. Mr. Jerome said:

There is no application of any kind made for the first time the District Attorney, by reason of their putting Dr. Hamilton on the stand, has been given to the Court, and the sworn testimony in a matter of a character that it might require the Court's action. That being so, and the evidence being here and available, the District Attorney has a duty to do, and I suggest that he should do so for such action as the Court might see fit to take that the defendant as he now sits at the counsel table is of unsound mind and incapable of advising his counsel in the merits of the case. The District Attorney has made no application. The District Attorney has stated facts that he believes exist and can be proved, and merely states it on the record that he is the position of the defendant and leaves it to the Court to take such action as its conscience advises.

Mr. Delmas pointed out that Mr. Jerome had had for some time the information from the files of the physicians in his possession. Mr. Delmas added:

Dr. Bingham and Dr. Deemar were brought here at his request and their information could have been given to the Court upon a suggestion of this kind, or upon an application for a commission, if that had been the purpose of the learned District Attorney at that time, instead of which, with this information in his mind for weeks since he obtained it, he has a singular spectacle of the District Attorney prosecuting this man to his death while at the same time he states that he has known and been convinced that during all of that time he was absolutely insane in the eyes of the law he ought not to have been tried because he could not communicate intelligently with his counsel. These facts, if your Honor please, ought to supplement the facts that have been stated and in order that your Honor may weigh in your judicial mind the character and the value of the mere suggestions made.

Thaw and His Lawyers Excited. All this time the lawyers for the defense were very much upset. Most of them crowded into the railing. Thaw became excited. He wrote a note and tried to get it to Mr. Delmas. No one wanted to take it. Lawyer McKie argued with Thaw, but in some way Mr. Delmas finally got the note. Mr. Delmas glanced at it and threw it aside.

"Anything further to be submitted to the Court?" asked Justice Fitzgerald.

"No, on our side," said Mr. Delmas. "Things began to move pretty fast then."

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I feel bitterly on this, because I submit that my proceeding is strictly with due regard to law; because I cannot get the evidence out to lay before the jury from open and have these facts come out. The law says that if he knew the nature and quality of the act and knew that it was wrong under this proposition he is guilty. Now, the Gaylor case was taken to the Court of Appeals; it was held that he knew the nature and quality of the acts and that they were wrong, and he was brought to death, one of the most brutal things that the law has ever done. Today we are trying a man who under the law of this State is absolutely sane, and is not a paranoiac, and every competent medical man honestly giving his opinion in this case, with a full knowledge of the facts, would say that he knew the nature and quality of the act that he committed and knew that it was wrong, and still he was insane!

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Before the time they had studied the hypothetical question they had formed that opinion?" he asked.

Not Asking for Lunacy Commission. Mr. Delmas asked if Mr. Jerome was making a formal application for a lunacy commission, and the Court said that he was prepared to meet it. Mr. Jerome said:

There is no application of any kind made for the first time the District Attorney, by reason of their putting Dr. Hamilton on the stand, has been given to the Court, and the sworn testimony in a matter of a character that it might require the Court's action. That being so, and the evidence being here and available, the District Attorney has a duty to do, and I suggest that he should do so for such action as the Court might see fit to take that the defendant as he now sits at the counsel table is of unsound mind and incapable of advising his counsel in the merits of the case. The District Attorney has made no application. The District Attorney has stated facts that he believes exist and can be proved, and merely states it on the record that he is the position of the defendant and leaves it to the Court to take such action as its conscience advises.

Mr. Delmas pointed out that Mr. Jerome had had for some time the information from the files of the physicians in his possession. Mr. Delmas added:

Dr. Bingham and Dr. Deemar were brought here at his request and their information could have been given to the Court upon a suggestion of this kind, or upon an application for a commission, if that had been the purpose of the learned District Attorney at that time, instead of which, with this information in his mind for weeks since he obtained it, he has a singular spectacle of the District Attorney prosecuting this man to his death while at the same time he states that he has known and been convinced that during all of that time he was absolutely insane in the eyes of the law he ought not to have been tried because he could not communicate intelligently with his counsel. These facts, if your Honor please, ought to supplement the facts that have been stated and in order that your Honor may weigh in your judicial mind the character and the value of the mere suggestions made.

Thaw and His Lawyers Excited. All this time the lawyers for the defense were very much upset. Most of them crowded into the railing. Thaw became excited. He wrote a note and tried to get it to Mr. Delmas. No one wanted to take it. Lawyer McKie argued with Thaw, but in some way Mr. Delmas finally got the note. Mr. Delmas glanced at it and threw it aside.

"Anything further to be submitted to the Court?" asked Justice Fitzgerald.

"No, on our side," said Mr. Delmas. "Things began to move pretty fast then."

### LENTEN RECITALS on the ORCHESTRELE