

THE SPIRIT OF OLD WEST POINT

By GENERAL MORRIS SCHAFF
Vivid, varied, and picturesque Reminiscences of Academy Days
Before the War, 1819-1865

THE ATLANTIC MONTHLY

Beginning with the February issue now published.
SPECIAL OFFER.—Three issues (October, November, and December, 1906) will be mailed without charge to new subscribers for 1907, upon receipt of \$4.00.

NEW YORK CRIMINAL LAW AS APPLIED TO THAW CASE

Distinguished Criminal Lawyer Tells Times-Dispatch Readers Exactly How Justice Fitzgerald Will Instruct the Jury Which Will Sit in the Case.

(Special to The Times-Dispatch.)
NEW YORK, February 1.—In view of the importance of the trial of Harry K. Thaw for the killing of Stanford White and the great interest it excites, not only locally, but throughout the country, and even abroad, a statement of the law by which the guilt or innocence of the accused must be determined will be of interest not only to lawyers who make no special study of the criminal law, but to laymen as well.

able. N. Y. Penal Code, 186, 159, 152; People vs. Beckwith, 103 N. Y. 269.
"Nor was the homicide excusable or justifiable either at common law or under the New York statute, for, to be excusable, it must have been committed by accident in doing a lawful act, and to be justifiable, it must have been in the lawful defense of Thaw or his wife, when there was a reasonable ground to apprehend a design on the part of the person slain to commit a felony, or to do some great personal injury, etc., and when there was 'imminent danger of such design being accomplished.' N. Y. Penal Code, 293, 295. See 21 Cyc. 794, 812, 824.

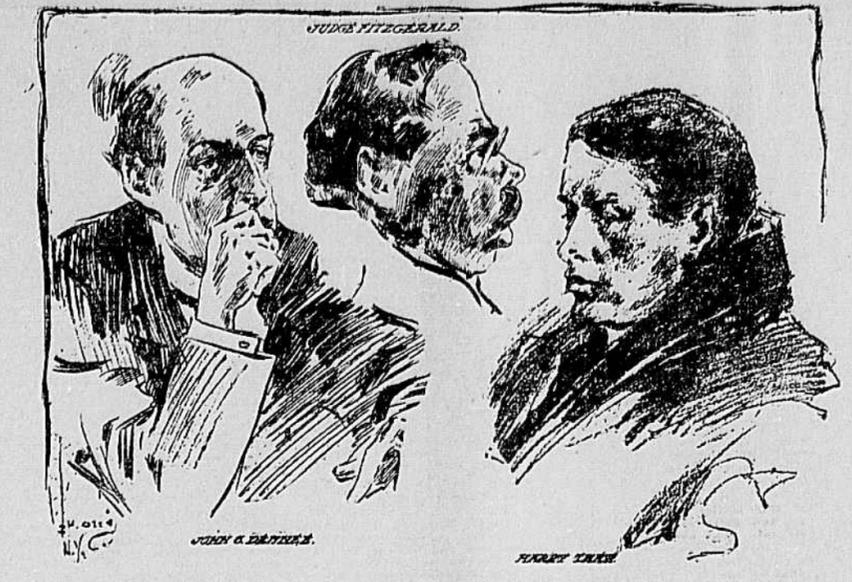
Question of Insanity.
"With respect to the defense of insanity, if Thaw was insane when he killed White, he not only cannot be punished, but he was guilty of no crime; and this is true, although he may have been sane before he committed the act, and may be sane now. 12 Cyc. 155; 21 Cyc. 653. Whether or not he was insane is, of course, a question of fact which must be determined by the jury from the evidence; but there are certain tests established by law in this State, elsewhere, for the determination of the question whether he was to some extent insane. 12 Cyc. 155; 21 Cyc. 653.

Intention Is Presumed.
"Independently of statutory provisions, if a sane man intentionally kills another, he is guilty of murder, unless the circumstances are proven to have been such as to justify or excuse his act, or to reduce it, by reason of provocation, to manslaughter; and if a person intentionally fires a pistol at another, an intention to kill is presumed. As it is conclusively said in the Cyclopaedia of Law and Procedure, malice is implied in every intentional and premeditated homicide. If there are no circumstances serving to mitigate, excuse, or justify the act. (21 Cyc. 788.)

Other States.
"In some States a phase of insanity known as insane impulse, impulse, or irresistible impulse, is recognized as a ground of exemption from responsibility for a crime committed by the offender. It is being held in these States that, if an insane impulse so overmasters the will of a sane person as to induce him to the commission of a homicide, he is not responsible, although he may know the nature and quality of his act, and may know that it is wrong. 12 Cyc. 159; 21 Cyc. 655.

No Manslaughter.
"Under the supposed facts and circumstances of the killing it seems clear that there can be no question as to manslaughter. At common law, a homicide is not murder, but manslaughter only, although intentionally committed, if it is committed in the heat of passion caused by adequate provocation. It is, however, great, is not sufficient to reduce the killing to manslaughter. If the provocation is not in its nature adequate in the eye of the law, or if there has been time after the provocation was given for the passion of a reasonable man to cool, whether it does in fact cool or not, since the safety of the community requires that persons shall reasonably control their passions.

If He Realized the Crime.
"His view has been adhered to in the later cases, as in People vs. Ferraro, 141 N. Y. 365, 377, and People vs. Silverman, 181 N. Y. 235. In the latter case a convicted murderer in the first degree was sustained, although the evidence showed that the defendant had been eccentric, morose, and of bad temper, and had been treated in a severe manner a little more than a year before the homicide, and although some physicians testified that he was insane.



Character studies of the Judge the defendant and the Southern member of the jury in the Thaw trial.

WANTED RICHMOND LAWYER ADDED TO THAW'S COUNSEL

Rumors current some days ago to the effect that Mr. H. M. Smith, Jr., the well known Richmond lawyer, was being considered as a probable addition to counsel for Harry Thaw, in the trial now absorbing the attention of the entire country, are partially confirmed from New York. Inquiries made of Mr. Smith at that city, however, have shown that he is not in the city, and that he is justly proud of his position and his relief from suffering the supreme penalty of the law.

PRESIDENT KEITH. The Supreme Court of Appeals Formally Reorganized.

The new terms of the judges of the Supreme Court of Appeals commenced yesterday, and in accordance with the statutes bearing on the subject, the highest court known to Virginia law was formally reorganized.
Judge Cardwell presided at the reorganization. Judge James Keith was unanimously re-elected president of the court, and then the following order was entered by Clerk Stewart Jones:
"James Keith, Richard H. Cardwell, John A. Buchanan, George M. Harrison and Stafford G. Whittle, Esquires, who have been severally elected and commissioned as judges of the Supreme Court of Appeals of Virginia—George M. Harrison, for the period of six years, from February 1, 1907; James Keith, for the period of ten years, from February 1, 1907; John A. Buchanan, for the period of eight years, from February 1, 1907; Stafford G. Whittle, for the period of six years, from February 1, 1907; and R. H. Cardwell, for the period of four years, from February 1, 1907—each having qualified as such by taking the oaths, prescribed by law this day, delivered for record in this court (being the first in which they did), certificates of the said qualifications, stating the fact of their having been taken, which certificates are ordered to be recorded."

SMILE THAT STAYS ON. Congressmen Happy at Sight of Blanks for Increased Pay.

WASHINGTON, February 1.—There was a smile that refused to come off on the face of every member of the House to-day when the clerks connected with the sergeant-at-arms's office distributed the blank salary slips, which, when signed by the members, will warrant the payment of their salaries from December 31, the amount of which each member will receive when the bill raising the salaries goes into effect, as against \$417, the present monthly salary. Anticipating the passage of the bill, the clerks, in order to expedite the work attendant upon marking up the rolls, have had these slips printed in advance of the approval of the bill by the President, but there is no fear that the increase will fail.

JURY COMPLETE AND READY FOR TRIAL OF THAW

men had been examined in vain during the day, and every one in the courtroom, including the defendant himself, was waiting listlessly for the hour of adjournment to arrive, when Bernard Gerstman, who said he was a manufacturer's agent, declared he had no such opinion in the case as would prevent his rendering a fair and impartial verdict, and he was not prejudiced against any line of defense, and would give the prisoner the benefit of every reasonable doubt.
"But," suggested District Attorney Jerome, "would you go further than that and require the State to remove every possibility of doubt?"
"I would certainly want every doubt removed," replied Gerstman, "before I would vote to convict in a capital case."

Challenged, But Kept.

The district attorney challenged the juror for cause, declaring he was inclined to be more exacting than the law required, but the juror was kept.
Thaw's attorneys were not content to let the juror go, and on cross-examination they brought his answers within the legal requirements. Mr. Gerstman replying to Mr. Hartridge, said he meant by "doubt" any doubt that a reasonable man might entertain. Justice Fitzgerald held this to be a competent answer and overruled District Attorney Jerome's challenge.
"The people are content," announced Mr. Jerome.
This was a complete surprise, for it was the impression in the courtroom that a peremptory challenge would be interposed by the prosecution. The juror was sworn. Thaw smiled in evident satisfaction, and his wife exchanging satisfied glances.

TABLED BY PARTY VOTE. Military Committee Put Lid on Sims Brownsville Resolution.

WASHINGTON, February 1.—The Subcommittee of the Military Affairs Committee of the House, by a strict party vote, to-day laid on the table the resolution of Representative Sims, of Tennessee, commending the President for his action in discharging the colored soldiers in "shooting up" the town of Brownsville, Texas. The motion to lay on the table was made by a Republican and carried by the Republicans, the Democrats voting against the motion. Mr. Sims will now bring the resolution before the House on a motion to discharge the military committee from further consideration and have the resolution considered by the House, providing the Speaker will recognize him for that purpose. Messrs. Hay, of Virginia, and Clayton, of Texas, the only two Democrats on the subcommittee, voted against tabling the resolution. The other four members of the subcommittee, all Republicans, who voted to table the measure, were Messrs. Hull, of Iowa; Capron, of Rhode Island; Young, of Michigan, and Bradley, of New York.

Oliver—Brooks. FREDRICKSBURG, Va., February 1.—J. T. Oliver and Miss Cora Lee Brooks, daughter of John Brooks, of Mine Run, Orange county, were married yesterday by Rev. C. E. Saunders.

The Old Shoulder. At a reception in Washington some time ago one of the guests, a man with a poor memory for faces, and, in addition, a little nearsighted, took the host aside and spoke to him in a confidential whisper, says Harper's Weekly.

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RAN A BUCKET-SHOP WITH WOMEN PATRONS. CLEVELAND, O., February 1.—A verdict finding Robert E. Gill, Euclid Avenue stockbroker, guilty of operating a bucket-shop, was returned by a jury in the Common Pleas Court late this afternoon. A majority of the witnesses in the case were women, who declared that they had speculated on margins entirely at Gill's place of business.

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THE HARVEY STORE
CATERING TO THE PEOPLE

Sale of New Spring Waists To-Day
Two excellent values just received in White Lawn Waists, tucked front and back, with single and double panel of embroidery, new sleeve and collar; special \$1.25
Fine White Lawn Waists, with embroidery yoke and panel, trimmed with Val, open back, shirt sleeves; special for \$1.48
White Jap Silk Waist, full tucked front, beautifully embroidered open front, at \$2.98
White and Black Jap Silk Waists, allover embroidered front, scroll effect, open back, short sleeves, at \$3.48
Splendid values in Best Quality Jap Silk Waists, daintily tucked and trimmed in Val lace, with Cluny medallions let in; very effective styles, at \$4.98
Pretty styles in White Net Waists just received. These are made over silk, tucked full and finished with handsome medallions, at \$4.98
New styles in Messaline and Lace Waists, dainty creations, handsomely trimmed in baby Irish and Cluny, \$8.48, \$10.00 and \$12.50



SIR JAMES ALEXANDER SWETTENHAM

HAS SWETTENHAM RESIGNED POST? Rumor Has It That His Successor Will Be Appointed at Once.

LONDON, February 1.—There is reason to believe that the resignation of Sir Alexander Swettenham as governor of Jamaica has been accepted, although the officials of the foreign office refuse all information on the subject. This official reticence is attributed to a desire to complete the arrangements for a succession to the post before announcing Swettenham's retirement. It is expected that the latter will leave the island as soon as details can be completed for handing over the affairs of his office.

ESCAPED DROWNING, BUT NOW MARRIES. Miss Mabel Heaberlin, Witness Against Clyde McGhee, Weds James R. Murray.

(Special to The Times-Dispatch.)
BRISTOL, TENN., February 1.—Rev. A. H. Burroughs, of the Bristol Matrimonial Mecca, to-day revealed that on Monday James R. Murray, of Greene county, Tenn., and Mabel Heaberlin were married by him. The Heaberlin girl, who is only seventeen years old, is the one who Clyde McGhee, a Virginia young man, is charged with having attempted to drown in Clinch River ten days ago in order, as alleged, to cover up a crime. The girl admitted to the officiating minister that it was she who narrowly escaped drowning at the hands of McGhee.

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Try It To-day!
A wine glass full during meals and before retiring.
Fehr's Malt Tonic
will make you feel brighter, better, stronger. Will strengthen and invigorate you so that your daily work will not seem burdensome. Will make you as well and keep you as well as it does thousands of others.
Get It of Your Druggist.
The most wonderful reconstructive Tonic of the age, a health builder.
Fehr's Malt Tonic Dept. Louisville, Ky.

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