MURDER IN SECOND DEGREE

Jury Reported at 8.15 A. M. Saturday in Fairbanks Case and Judge Haselton Pronounced Sentence of Life Imprisonment Monday—Closing Scenes

"Guilty of murder in the second degree." Those were the words spoken by the jurymen Saturday morning in the case of the state of Vermont against William Fairbanks of Grafton, on trial in the court house at Newfane on the charge of murdering Mrs. Mary Page Grout, his wife's niece, at Saxtons River on the night of May 25.

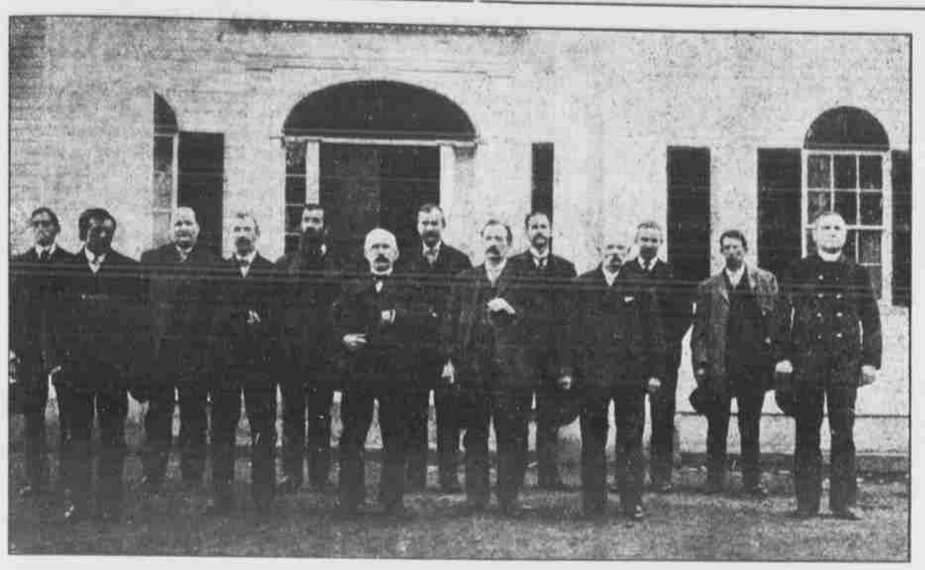
The verdict fell upon Fairbanks's ears at 8.15 o'clock and he knew that he was doomed to spend the rest of his days within prison walls. He betrayed not the slightest emotion, however, being absolutely unmoved by the verdict and maintaining the same indifferent attitude that he assumed at the opening of the trial.

The jury took the case at 3.53 oclock and Judge Seneca Haselton announced just before 5 o'clock that if the jury was ready to report by 9 o'clock that night he would have the court house bell rung so that the people might come in to hear the verdict. The bell was not rung, however, so people knew that no verdict would be announced before morning, and many looked upon the failure of the jury to report as indicating a disagreement.

An agreement was reached, however, about 9.30 o'clock Friday night, after which the jurymen went to bed without announcing whether they had finished balloting. They had breakfast at the usual hour Saturday and at 8 o'clock, an hour before the usual time for court to assemble, the ringing of the bell told the people that the jury was ready to state the result of its deliberations. Aside from the court officers and lawyers very few people gathered to hear the verdict.

The court directed Fairbanks to stand up and then County Clerk F. D. E. Stowe of Brattleboro asked the foreman, Amos S. Gallup of Guilford, whether an agreement had been reached and received a reply in the affirmative. The clerk then asked what the verdict was and Mr. Gallup said: "Guilty of murder in the second degree." Judge E. W. Gibson of Brattleboro, whom the court assigned to defend the prisoner, asked that the jury be polled, and each juryman repeated the verdict. Judge Haselton then thanked the jurymen for their patient attentiveness and the faithful performance of their duty and discharged them.

When the regular time arrived for court to open other matters were taken up, but about 10 o'clock sentence was imposed. Judge Haselton again directed Fairbanks to stand up, and then he asked the prisoner if he had anything to say why sentence should not be pronounced. Fairbanks replied: "No sir," and with an upward swing of his left arm he added, "only I am not guilty." Judge Haselton then sentenced Fairbanks to hard labor in the state prison at Windsor for the rest of his natural life. The few spectators looked toward Fairbanks to see how he received the sentence, but they saw no change in his countenance and no variation in his demeanor. The trial being over, Deputy Sheriff George P. Alexander of Saxtons River, who had charge of the respondent throughout the trial, led Fairbanks back to the jail. On his arrival at the jail one of the prisoners asked Fairbanks how he felt, and by way of response Fairbanks jumped into the air and gave a "war-whoop" that was heard throughout the building and on the streets. He immediately became talkative and much of his lameness disappeared.



The Jury in the Fairbanks Case.

Judge Haselton's Charge.

Judge Haselton began his charge to the jury at 2 o'clock Friday and concluded at 3.41, but it was several minutes before the jury was left alone in its room to begin its deliberations. Judge Haselton reviewed some of the salient points in the evidence and gave a concise and lucid statement of what constituted murder in the first and second degrees and manslaughter. His charge was a clear exposition of the law covering the case, and that he made it plain to the jurymen is apparent from the fact that not once did they return for instruction or information on any point. He began by stating that the respondent was presumed to be innocent until proven otherwise by the state. He said the first question to be considered was whether Mary Grout was shot and killed by a bullet fired by Fairbanks. "If there is any question in your mind as to who did the shooting," said he, "then your verdict should be 'not guilty.'" In regard to the confessions or admissions which were received the judge said the jury should determine whether they were made freely and voluntarily and not under compulsion or hope of leniency, also whether the mental condition of the respondent was such that he realized and understood the nature of what he was saying. "Confessions not made in open court," he said, "are not conclusive, but they may be considered along with all the other evidence."

The jury was told that if it was decided that Fairbanks fired the shot that killed the girl the question of criminal responsibility should be considered. If he knew that the act was wrong and if he was able to distinguish the nature and character of the act and had the will power to refrain from shooting rather than to shoot he was criminally responsible. If he was unable to distinguish the nature and character of the act and did not have such a power of choice in this instance, then his condition was what the law terms insanity. "Fairbanks may be and may have been below par intellectually, and a degraded character, and may at times have been insane," said Judge Haselton, "and still at this particular time have been criminally responsible. Depravity and wickedness are to be distinguished from insanity."

Continuing, Judge Haselton said: "If you find that William Fairbanks shot and killed Mary Grout and is criminally responsible, then you come to the question: Of what is he guilty? Murder in the first or second degree, or manslaughter?" He then explained that in order to have been murder in the first degree it must have been a premeditated murder, the result of deliberation and premeditation. To be murder in the second degree it must have been committed with malice, but without premeditation, and if committed without either malice or premeditation then the crime would be manslaughter.

As to the testimony of Mrs. Myra Tuttle, who said that Fairbanks made threats against Mary Grout on the railroad platform in Bellows Falls, Judge Haselton said the jury should consider what had appeared as to her truthfulness, "and if you make up your mind that she is not on a par with the other people in her community and you feel that you cannot rely upon her testimony you may reject it. You may consider her manner of testifying. She has been called a good talker by counsel on both sides. Has she remembered exactly what he said at that time? Her testimony as to what Fairbanks said stands uncorroborated. In one part she testified that Fairbanks said Mary Grout would not go back to Grafton and live, and in another part she said Fairbanks told her Mary Grout never would go back to Grafton alive. You see how much depends on a slight change of words."

Judge Haselton then took up the matter of the shoes and stockings which were found in a grip which Fairbanks hid before going to the house where Mary Grout was on the night of the shooting. After directing officers to the place where it was hid Fairbanks expressed a wish to have his victim laid out in the shoes and stockings, and the state argued this was an indication of premeditation. As to this the court said: "If he had a deliberate, premeditated determination to kill her and not kill himself then he could hardly be expected to have any voice in the matter of how she should be laid out. If he intended to kill both Mary Grout and himself how could it be expected that anybody would find the grip and get the shoes and stockings? His going up to the house has no bearing upon the question of whether the murder was deliberate. The fact that he had a revolver, if he did have one, was a circumstance. The law in this state does not make it a crime to carry a concealed weapon."

The court said that if the shooting was done in the passion and heat of blood resulting from mere provocation and there was no malice the crime would be manslaughter. If the provocation resulted from mere words, like the calling of names, that would not be sufficient in itself to constitute a greater crime than manslaughter. During his charge Judge Haselton read several requests from the defense covering points upon which they wished him to charge the jury specifically. The court and attorneys then held a brief conference, after which Deputy Sheriff J. W. Melendy retiged with the jury to the jury room, and at 3.53 Deputy Sheriff Melendy left the jurymen to themselves.

William C. Fairbanks.

700,000 Words of Testimony.

The trial of Fairbanks was the longest trial ever known in Windham county. It began Oct. 17, and several days were consumed in securing a jury. From then until Saturday the case was on trial continuously, excepting Sundays and the Saturday and Monday half days which are taken up in getting to and from court. Within half a dozen of 100 witnesses were examined, including those summoned by both sides, and all the testimony was taken down in shorthand by court stenographer, Charles S. Chase of Brattleboro, as was also Judge Haselton's charge. The arguments of counsel were not recorded other than as the newspaper men present recorded them. Mr. Chase says the testimony exceeded 700,000 words. The judge's charge and the arguments of counsel probably would make 100,000 more.

State's Attorney Robert C. Bacon and Attorney General C. C. Fitts of Brattleboro represented the state, assisted to some extent by T. E. O'Brien of Bellows Falls. The court assigned Judge E. W. Gibson of Brattleboro to defend the prisoner, and Judge Gibson associated with himself Arthur P. Carpenter of Brattleboro and A. E. Cudworth of South Londonderry. A. V. D. Piper of Jamaica also assisted the defense in an advisory capacity in the earlier part of the trial. The entire cost of the trial will be borne by the state, as Fairbanks had no financial means with which to defend himself. The cost, including witness fees, counsel fees, jurymen, officers, stenographer and other expenses, will be about $5000.

The jury, in the order in which their names were called each day through the trial, was made up of these men: Amos Gallup of Guilford, Dana Angier of Putney, Fred Wheeler of Stratton, Frank E. Yeaw of Dover, W. C. Phelps of Halifax, F. E. Johnson of Dover, Leon F. Bogle of Dover, Frank Weeden of Rockingham, N. E. Thurber of Halifax, F. E. Faulkner of Whitingham, W. J. Perry of Putney and Samuel H. Yeaw of Dover. They took exercise every day and none had any illness. There were no laggards, and all were ready to agree to any proposal which any one of them might make while not on duty. Deputy Sheriff J. W. Melendy of South Londonderry, who had charge of them throughout the trial, said it was the best jury to get along with that ever was placed in his charge. They slept in the Windham County house, in a large room which was supplied with 12 beds, one for each juryman and one for the officer, and they ate at one table. At no time were they allowed to talk to anybody aside from the officer and they were not allowed to read the newspapers.

Previous to this case, the last murder trial in Windham county was in 1895. The respondent was Stella Green of Bellows Falls, who was charged with the murder of her illegitimate child. Judge J. M. Tyler of Brattleboro was the presiding judge and C. C. Fitts was state's attorney. The child was placed in an empty starch box and the box was wrapped in clothing and paper and thrown into Saxtons river, floating down to the rack of the raceway of a paper mill at Bellows Falls, where it became lodged and was fished out by a workman. On the finding of the jury Stella Green was sentenced to three years at hard labor in the house of correction.

After the Trial.

Immediately after the jury retired Friday afternoon Fairbanks, who was seated in a rattan arm chair at the end of a long table, raised his right leg and rested it across one corner of the table, slid down into his chair and appeared to go to sleep. His appearance indicated anything but a man on trial for his life. He remained in that position until Sheriff A. H. Thompson of Bellows Falls told him to take his leg down.

The jurymen scattered after they were discharged. Two of them talked with a representative of The Phœnix. They said the choice of a foreman lay between Mr. Gallup and Mr. Johnson, but that Mr. Johnson said he would not be foreman under any conditions. They said they balloted 12 times. The first ballot was to determine whether Fairbanks was guilty of anything. This ballot was unanimous. Then the question of the degree of guilt was taken up. A number voted for a verdict of murder in the first degree. They were outnumbered by those who voted for a verdict of guilty in the second degree. One man voted for a verdict of guilty of manslaughter and continued to vote so for several ballots. After each ballot there was considerable argument, and on the 12th ballot, taken about 9.30 o'clock, the vote was unanimous for a verdict of guilty of murder in the second degree. They voted not to tell outside the jury room how the ballots stood.

Scarcely any person was surprised at the result or had expected any other verdict. Those who heard Judge Haselton's charge regarded it as having a swing toward the verdict which was rendered. Counsel for the state expected that the jury would vote as it did, although they regarded the evidence as pointing to premeditated murder beyond a reasonable doubt. Counsel for the defense said they hardly could expect anything better than the verdict as rendered, and they added that they believed that if Fairbanks had "kept his mouth shut" and made no confessions or admissions he would have been acquitted.

After Fairbanks had received his sentence and had been taken back to the jail he said that he was not satisfied with the verdict, that it was not just, that he was not guilty, that he never had the revolver that killed Mary Grout and that Myra Tuttle's testimony was a lie from beginning to end. It was evident, however, that Fairbanks was glad to escape the gallows, and those around the prison the next day said he appeared to be a changed man, or in other words that he was "enjoying a lucid interval."

The Jurymen in the Picture.

The jurymen as they appear in the illustration, reading from left to right, are Weeden of Rockingham, Wheeler of Stratton, Johnson of Dover, Phelps of Halifax, S. H. Yeaw of Dover, Angier of Putney, Faulkner of Whitingham, Perry of Putney, Thurber of Halifax, Gallup of Guilford, F. E. Yeaw of Dover, Bogle of Dover, Deputy Sheriff J. W. Melendy.

The photographs from which the cuts of the jury and of Fairbanks were made were taken by Porter C. Thayer of Williamsville.

Fairbanks at Windsor.

Deputy Sheriff D. P. Thompson of Bellows Falls took Fairbanks to Windsor yesterday, Thursday, to enter upon his life sentence. Thompson was with his prisoner in Brattleboro between 10 and 11.07 in the forenoon, going north with the prisoner at the latter hour.

The state has received this year $1,032.75 in licenses from non-resident hunters, $707.75 being paid from 149 bird licenses, $285 from 19 deer licenses, and $40 from four combination licenses.

AUDITORIUM NOTES.

"The Heart of Maryland" Monday Nov. 18.

David Belasco's famous play "The Heart of Maryland," will again be seen here on Monday, Nov. 18. No play presented in a decade has won a more lasting regard or evoked a greater share of admiration from all classes of playgoers than was awarded to this American idyl of love and war upon the occasion of its former performance. Its intense and culminative heart interest; the heroic struggles of its heroine, Maryland Calvert, to rescue her lover from the ignominious death of a spy, and her final triumph; the typical individuality of the numerous characters, the romanticism of the story and the realistic and picturesque beauty of its scenic illustrations all combined have made "The Heart of Maryland" a marvelous triumph of the great dramatist's genius.

ALUMINUM FROM CLAY.

Readsboro Man Has Made a Large Investment in Montague, Mass.

An interesting project for developing aluminum from clay at Montague City is reported at Montague City, where W. C. Davis of Readsboro has secured options on the Burnham Brothers' brick yard, with land of 50 acres, and also on a place of 12 acres belonging to C. P. Wise.

Mr. Davis states that he has a secret process, which he has patented, for making a much harder type of aluminum than has heretofore been made, and that after trying the clay of about 200 yards, he has concluded that that at Montague City is best. He says this process came to him accidentally, and that only his wife and he know it. The price rumored to have been paid for the Burnham Brothers' brick yard is $35,000. He has been experimenting at Readsboro, and as is announced will soon begin work here. It is not known what the plans are for conducting the brick yard, which it is expected will run along as it has. Mr. Davis has had mining interests about here for a number of years.—[Greenfield Gazette.

MASSACHUSETTS NOTES.

Abram H. Dailey, 76, formerly judge of one of the municipal courts in New York city, and promiently identified with the New England Spiritualists' Camp Meeting association at Lake Pleasant a score of years and 14 consecutive years its president, died recently at his home in Brooklyn.

Aretus L. Denison, 63, a well-known farmer in Bernardston, died Tuesday from a shock. He is survived by four daughters and three sons. He also leaves three brothers, Charles B. of Colrain, Frank B. of Bernardston and Warner of Athol. Mr. Denison was a native of Halifax, Vt.

Fred Seavey, 50, was fatally injured Saturday night at the railroad station in Athol. He was standing upon the Boston & Albany tracks when he was run down by a train which had arrived from Springfield and was backing to the yard. Seavey was placed upon a train to be taken to the hospital in Greenfield, but died before that town was reached. Both of his legs were cut off by the car wheels. He had worked for the George H. Cutting company in Athol the past year in the L. S. Starrett shop and had lived at the Windsor House. He leaves a wife and several daughters.

SPORTING.

The Carlisle Indian school, for the first time in its history, defeated Harvard in the annual football game at Cambridge Saturday, the score being 23 to 15. The Indians mystified the Harvard players with forward, delayed, double and fake passes and other plays and Mt. Pleasant, the little quarter back on one occasion ran 75 yards for a touchdown after receiving the ball on the kick-off on his own 25 yard line. Yale showed up strongly against Brown, winning 22 to 6. Princeton did not have the expected cinch against Amherst, but won 14-9. Cornell defeated West Point 14-10, and Swarthmore triumphed over Annapolis 18-0. Other games: Dartmouth 52, Holy Cross 0; Norwich 5, Middlebury 0; University of Vermont 35, New Hampshire State college, 0; Andover 9, Exeter 5.

Former Windham County Pastors Resign Their Charges.

Rev. John L. Sewall has resigned the pastorate of the First Congregational church in Randolph, Mass., to become field secretary of the Sabbath Protective league of New England. Mr. Sewall, who is a native of Lunenburg, this state, and a graduate of Dartmouth college in 1877, has filled pastorates in Westminster, Milton and St. Albans in Vermont, Kansas City, Mo., and Plymouth and Randolph, Mass., and for three years was engaged in city missionary work in St. Louis.

Rev. William A. Estabrook, who went from Wilmington, Vt., in June, 1902, to Amherst, Mass., has resigned his pastorate over the Second Congregational church in the latter place, to take effect Dec. 31. Mr. Estabrook has accepted a call to Middlefield. The church in Amherst has added 30 members under his direction and its spiritual and financial condition was never better than at present.

The statement is made that 55,000,000 cabs and other vehicles passed through Liverpool-street station, London, during last year.

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