

BARKER CONVICTED OF SHOOTING MR. KELLER

Speedily Found Guilty of Assault with Intent to Kill.

SENTENCE MAY BE SEVEN YEARS

The Clergyman, It Is Understood, Will Take Legal Action to Refute Mrs. Barker's Charges.

Thomas G. Barker, who has been on trial since Monday last before Judge Blair and a jury in the Hudson County Court of General Sessions, in Jersey City, for the shooting of the Rev. John Keller in the streets of Arlington on Sunday morning, Feb. 3 last, was found guilty yesterday afternoon of assault with intent to kill, as charged in the indictment. Those twelve Jersey men required but eight minutes by the clock to arrive at their verdict, which brings to a close one of the most sensational and absorbing criminal trials of recent years and establishes once for all the fact that, in New Jersey at least, there is no "unwritten law" that gives a husband the right to take into his own hands the avenging of a violation of his home.

Only two ballots were taken by this jury after the case had finally been placed in their hands—one as to the guilt of the defendant and one as to the degree of the crime. Both were unanimous, and the verdict recognized the highest count in the indictment.

After nearly five days of legal warfare, fought with stubbornness and bitterness, during which a nameless crime upon the wife of the defendant by the victim of the Arlington tragedy was brought out piecemeal in a mass of testimony, the case was finally placed in the hands of the jury by the presiding Justice, stripped of every detail except those which were directly concerned with the shooting and maiming for life of John Keller by Thomas G. Barker.

The lawyer for the defense in an impassioned plea for his client appealed to the jury for a justification of the acts under that nameless moral law that has set free many an avenging husband in other States. On behalf of the nominal defendant he struck about him unmercifully with sarcasm and invective, aiming primarily at the victim of Barker's bullets, who sat near by, and at the knot of clergymen who were grouped in the courtroom awaiting the verdict. With all the eloquence at his command he called upon the jury to recognize that the honor of the home called for the vindication of any man who avenged the most grievous wrong that could be done a husband. He made a personal appeal to the jurymen, calling them by name. He singled them out and held imaginary conversations with them.

The attorney for the prosecution, on the other hand, devoted nearly the entire hour and a half allotted to him in which to sum up his case to a denunciation of the woman. He attacked her character for truth and veracity, and went out of his way to flay her as being the direct cause of the tragedy that has attracted the attention of the whole country.

THE JUDGE'S CHARGE.

Then the Judge took up the case, and in calm and dispassionate tones applied the laws of the State to the case and eliminated from it the clergyman and the wife. He brought out the fact that in the eyes of the written law there was only one defendant in the case, and that the man at the bar, who had been practically ignored in the lofty periods of the attorneys on both sides. It was a simple case of assault to be dealt with as such under the statutes of the State. It was treated as such.

The case was given to the jury at 2:34 o'clock in the afternoon, and 2:42 o'clock there was a knock on the jury room door announcing the fact that a verdict had been reached. A moment later and the verdict was announced by the foreman, and the twelve men, after having been thanked for their services to the State, took their hats down from the pegs behind the jury box and went about their business.

The defendant, who had sat alone during the afternoon session, his wife having gone to her home in Arlington at noon, heard the verdict without so much as a quiver of an eyelid. There was no braggadocio in his demeanor, neither did he appear stunned, nor even cast down. When for the first time since the trial began an officer gently tapped him on the shoulder he arose, and, after shaking hands with his lawyers, who had worked so hard in his behalf, walked quietly off to jail.

Lawyer Van Winkle had promptly asked that the Judge fix bail for his client pending an appeal, which he said he would make to the Supreme Court, and bail was fixed at \$10,000, or double the amount on which Barker has been at liberty since a short time after the shooting. There were no bondsmen present. Within a few moments the crowd that had jammed the little courtroom almost to suffocation had filed down the stairs and into the sparsely settled street or on to the little lawn over which the prisoner was to be led to the county jail. As the court officer and his prisoner made this short journey they were regarded by thousands of curious eyes, but there were no comments and no manifestation of approval or disapproval.

A half hour after the verdict had been announced the deserted courtroom that had been the theatre of one of the strangest and most dramatic trials ever witnessed in the country was deserted save for a stout man in his shirt sleeves, who was sweeping vigorously with a big broom.

"'T appears like Jersey justice was still on top," said this man by way of comment. The Rev. Mr. Keller, who had sat in the courtroom during every hour of the trial up to the time when the last lawyer to speak had made his peroration, was not present when the verdict was announced, but waited downstairs in the Prosecuting Attorney's office, surrounded by a party of his friends of the cloth, and the news that the man who had maimed him for life had been found guilty was quickly conveyed to him. Whether or not he exulted over the verdict is not known, but that he feels that he has not yet been vindicated of the charge made against him by Mrs. Barker, and which was the impelling force sweeping on to the tragedy, was shown by a statement which he drew up and presented to the representatives of the press.

REV. MR. KELLER'S STATEMENT.

He had this statement read by the Rev. Alban Richey of the Union Theological Seminary, while he himself stood by and indorsed it by nods. The statement is in refutation of a statement printed two days ago purporting to have been made by Mrs. Barker, in which is set forth the details of an atrocious assault committed upon the woman in her own home by the minister, and which, being told by her to her husband, led to the shooting. It is as follows:

"To the Press:
"I learn of the publication in several newspapers of the statement of Mrs. Barker as to an alleged outrage by me upon her. It is false. I never outraged or ever attempted to outrage Mrs. Barker. I now understand the rules of evidence, however, would not permit my denial under oath in the trial just concluded.

"JOHN KELLER."

Mr. Keller refused to state what his future course might be with regard to the charges made by the woman, but which were rejected at this trial as waste ma-

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terial. "Until I have consulted my counsel," he said, "I cannot answer any questions as to my future course." Even this reply was given in writing and read to the reporters by one of the clergyman's friends. It is definitely understood, however, that the man is not content to remain under the charges made against him by Mrs. Barker, and which are now known throughout the country, and will early take legal means to bring out the whole story.

Joseph Parker, his personal counsel, who sat beside him throughout the trial, would not state what form these proceedings would take, but in a few words he threw a shaft of light on one of the mysterious passages in the charge made against Keller by Mrs. Barker on the witness stand. She was allowed to testify that she had at various times made loans to the clergyman unknown to her husband, and produced her accounts as well as letters to show that he had borrowed money from her, and had repaid it only at her urgent requests. The minister was not allowed to explain these alleged loans on the stand, but his lawyer said yesterday that they represented some donations which Mrs. Barker had made to Trinity Church, and after she had ceased to attend the church through pique she had demanded that the money be returned, and the minister had returned it. And this is all that this trial has produced toward the clearing up of this still unfathomed mystery.

The clergyman remained in the prosecutor's office in the Court House for an hour after the conclusion of the trial, and then left by a back door and with a company of ministerial friends returned to his home in Arlington.

Lawyer Van Winkle, counsel for Barker, after the trial announced that he would at once take an appeal, and would file a writ of error on Monday or Tuesday. He said it would be based on the exceptions taken during the trial. He said that Barker's friends would hold a conference soon to take some action regarding the securing of bail. The Supreme Court opens in November next and the result of its decision will probably be announced in February.

PENALTY FOR THE CRIME.

Barker will be arraigned for sentence on Thursday next. The maximum penalty for the offense of which he stands convicted is seven years in State Prison and a fine of \$2,000. The minimum penalty is left to the discretion of the Judge. It is the opinion of many lawyers who expressed themselves yesterday that the maximum penalty will be imposed. It is believed further that there is not the slightest hope for interference by the Supreme Court, as the charge against Barker was practically undefended at this trial at which the defendant's only hope was an acquittal under the "unwritten law."

Barker, when seen in the Little County Jail, expressed himself as full of hope. "When my wife's story is once fully told, fairly and without reservation," he said, "no twelve men on the face of the earth will convict me. I did not expect such a verdict. It appeared to me that there was a reasonable doubt. I have full confidence, however, that the Supreme Court will give me a new trial. Furthermore, I believe that my wife's story will then be told in full for the first time."

As for the woman, the central figure in the remarkable trial, she was sought in vain by the eager crowd of spectators at the conclusion of the trial. She staid during the morning and listened with tears in her eyes and heard the lawyers extoll her virtues or denounce what was characterized as her crime, and during the noon recess had gone back to her home in Arlington. Her absence robbed the closing scenes of the trial of one of its most dramatic features. From her actions throughout the week, however, it is believed by observers that she would have passed the climax of the trial without making a scene of any kind.

The final day of the trial was begun with a summing up for Barker by Marshall Van Winkle. It was expected that his address to the jury would be sensational, and that in his plea for the upholding of the "unwritten law" he would include a lashing of reputations and a flaying of characters, and by far the largest crowd of the week assembled to witness the final act of the drama. The crowd inside the courtroom itself was larger than on preceding days only by the added few who squeezed in aisles or in window niches, for the room has been filled almost to suffocation since the second day, but the throngs of men and women who surged through the corridors and tried in vain to get past the guards after the last available space inside had been filled was greater by many hundreds than on any previous day. It was an orderly crowd, however, and it only required the almost superhuman exertions of two small chin-whiskered constables to stop the disappointed mobs at the doors.

Only once during the day was the Judge called upon to quiet a slight demonstration. This was during the summing up of Prosecutor Erwin, when he referred to the testimony of Keller who had given as a reason for not recognizing Barker's voice when the latter was brought before him when he lay in darkness after the shooting, that he thought he was about to die and did not purpose to accuse any man of crime whom he could not see. The Prosecutor brought these words out with fine effect, and a ripple of applause started among a group of clergymen in the body of the courtroom and was traveling back toward the gallery when it was sharply stopped by the Judge.

THE CASE OF THE DEFENSE.

Lawyer Van Winkle opened for the defense at 10 o'clock, and as he faced the twelve men who were to decide the fate of the man at the bar, the silence of the throng showed how intently they were listening. Mrs. Barker sat between her husband and Mrs. Molloy, her friend, as usual, but all three changed their seats when Mr. Van Winkle began his address, so they could face the jury. Mrs. Barker looked grave, but her husband displayed no emotion.

Only a few feet away Keller, wearing his clerical clothes and the great blue goggles hiding his most serious wounds, sat with bowed head and hands clasped before him listening attentively to the stirring invective of the young lawyer without the betrayal of the slightest emotion.

Mr. Van Winkle immediately took up that part of the case directly concerned with the charges made by Mrs. Barker to her husband against the clergyman, and which led to the shooting. As was expected, he soon showed that his real defense lay in the appeal to the feelings of the jury.

"The evidence," said he, "even in its present unsatisfactory condition, owing to the rulings of the Judge, discloses that an outrage of an undefined character was committed by Keller upon Mrs. Barker. The public wants to know what that outrage was. Now, gentlemen, you have a right to conjure up in your minds one of the darkest pictures you can paint. The Court cannot tie the jury down in its methods of considering this case.

"We tried to get before you why this man shot this minister. Millions of persons in this broad land want to know. If Barker thought the shooting was right and it was wrong in law, he did not know right from wrong, and you can excuse him. If the story were true, as a matter of fact, and he believed it, then by the law of God and man and the verdict of every jury in the land in a case like this he must be excused. Any man would have done what Barker did under like circumstances. The crime that Keller committed was far more serious than that committed by Barker. A man who commits rape commits a higher crime than that of which this defendant stands accused. Compare the offenses."

The great crowd craned forward to see what effect the words would have on Keller. The man sat like a graven image. Not the movement of a muscle served to give an inkling of what was going on in his mind. Many persons wondered why the Court allowed the lawyer to go on talking that way.

"The Church is not in question in this case," continued the lawyer, fixing his eyes on a group of clergymen in the body of the room. "This is not the Church's way of trying a case. The Church wants the truth, and not its suppression. Christianity has been woman's best friend. Women from the time of Christ have turned toward it as their greatest solace and consolation."

Mr. Van Winkle went on to describe Barker's peaceful family life. He told how Keller had for years been a frequent and welcome visitor there. Barker's wife stood for all that was good to him. She was his life, his hope, his happiness. When Keller entered into their home, Keller was a minister of the Gospel. He came in and out of the house freely and was trusted like a brother by Barker.

"Now," continued the lawyer, "Mr. Keller is forty years old and a celibate. A man who leads a normal life does not commit bestial crimes; but a celibate, who has the passions restrained, commits crimes that others would not think of. You find the man, you find the woman, you find the opportunity."

The lawyer then described the defendant's mental sufferings following the story told him by his wife, and built up his plea of temporary irresponsibility. He scoffed at the testimony of alienists that Barker was perfectly sane at the time of the shooting. "You can buy all the medical testimony you want," he said. Then he fiercely attacked the women witnesses who had testified against Mrs. Barker's veracity, referring to them as "women who had

PROSECUTOR ERWIN'S ADDRESS.

Prosecutor Erwin began his summary in a hard, dry, matter-of-fact way, and stated at the outset that the defense's summary was not an argument, only an appeal for sympathy.

"The State could not go into this story of which the counsel speaks," said he. "The Court decides what the State may or may not do. Remember the State of New Jersey is on trial to-day. It is a State famed for the rapidity of its administration of justice. The whole country is waiting to see if you are going to uphold the law or open the door to anarchy or mob violence."

The prosecutor, however, plunged into a discussion of the story of Mrs. Barker, and devoted most of his time to it. "Did Mr. Barker hear this story from his wife first?" said he. "It seems to me that about the first thing a good woman would do about the awful thing this woman said had happened to her would be to rush straightway to her husband and tell him of it. Yet she keeps it from him nearly two years, and even then she hears it from a Massachusetts grass widower. This woman kept her secret until it became fishy. It was a story that demanded the most rigid investigation."

At this point Mrs. Barker, who had kept up bravely, began to cry softly and continued to do so during the remainder of the Prosecutor's address.

JUDGE BLAIR'S CHARGE.

After recess the Judge began his charge to the jury in calm, deliberate tones. This charge was the feature of absorbing interest. It was listened to in perfect silence so that not a word should be lost. The Court spoke to the twelve men in part as follows:

"There is nothing in the character of this prosecution that is unusual in this court. This case has, to be sure, acquired great publicity, and achieved a large measure of meretricious notoriety, but, after all, the charge upon which this defendant is being tried is that of an atrocious assault, or an assault with intent to kill—by no means an unusual form of crime. This matter, though important, and in more than one particular most unfortunate, is attended with no serious complications. Your simple duty is to discover whether from the evidence produced before you this defendant is guilty or not guilty. You are to act without prejudice, without passion, and without sympathy, and be guided solely by your oaths, to return a verdict according to the evidence. The crime alleged is that of an assault with intent to kill. If it is proved to your satisfaction that the accused fired the pistol as alleged in the indictment that proof alone will not justify his conviction."

The Court here went over the details of the shooting as testified to by the various witnesses, and pointed out testimony to be considered in determining whether the shooting was done with intent to kill. Coming to the question of insanity, which constituted the defense's main contention, the Court said:

"Where insanity is set up as a defense to a criminal charge, the question for the jury to consider is that of the mental incapacity of the accused. Upon that question the law adopts a standard of its own as a test of criminal responsibility, a standard not always in harmony with the views of scientists or members of the medical profession. Many of the forms and degrees of mental disorder which in the opinion of doctors of medicine are regarded as insanity are repudiated in the administration of the law. The defense must show affirmatively that the insanity existed at the very time of the commission of the crime, and that the insanity was the immediate cause of the commission of the crime, in order to relieve the prisoner from responsibility. Mere passion or frenzy resulting from the anger or jealousy or viciousness of a sane man is no defense to criminal prosecution for acts resulting from such anger or such passion.

You will recall that reference is made in the testimony and in the argument of counsel to some outrage alleged to have been committed by Mr. Keller upon Mrs. Barker, and which she related to her husband, the defendant. There is no legal proof of what that outrage was. Mrs. Barker's story is not before you. It was excluded, because if it had been admitted in evidence it would have constituted no defense to this action. It was excluded because it was irrelevant and incompetent evidence, as affording no justification for this crime."

"As a matter of justification to this prosecution you will give it no thought. The fact that Mrs. Barker told her husband that an outrage had been committed upon her was permitted to be given in evidence because it was thought that the knowledge of that fact might have had some effect upon the mind of the defendant, that that story by his wife to him might have affected his mind to such a degree as to render him irresponsible for his act of shooting. The story of the alleged outrage, or the outrage itself, if true, was no justification for the defendant's assault. You must say whether the story told to him affected his mind to a degree that excuses him from criminal responsibility."

"If you believe the defendant to have been sane at the time of doing this act, you must be convinced beyond a reasonable doubt, first, that he did the shooting, and second, that he did it with the intent to kill. If these facts be established beyond a reasonable doubt in your minds, you should find the defendant guilty as charged in the indictment."

This calm and dispassionate thrusting aside of practically the entire evidence presented by the defense left little doubt in the minds of the spectators that the jury would bring in a verdict of guilty, but when the twelve jurors filed out, it was scarcely expected that they would return as soon as they did. The foreman announced his verdict in a matter-of-fact way, and it was all over in a few moments, and the "unwritten law" was a dead letter in New Jersey.

JURORS ARE RETICENT.

Efforts were made to see the jurymen in relation to the statement published and said to be a close reproduction of Mrs. Barker's affidavit concerning the alleged assault upon her.

Juror Robert McAndrews, in discussing the matter, said:

"We followed the Court's instructions. We did not consider Mrs. Barker's statement at all. It cut no figure one way or another. I read Mrs. Barker's statement, and I guess the other eleven did. For my reasons for convicting Barker read the evidence and the charge. I consider it is no one's business whether I believe Mrs. Barker's statement or not. It had nothing to do with the trial."

Foreman John G. Gopsill said:

"That statement is to come before the court in the contempt proceedings. I don't want to mix up in it."

This was the sentiment of the others, who refused to discuss the matter in any shape.