

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AMZI B. KELLY, DEFENDANT AND APPELLANT.

G.R. No. 12109. December 01, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of libel.

The complaint was presented in the Court of First Instance of the city of Manila. The complaint alleged:

"That on or about and during the period beginning from January 1,1916, to February 11,1916, in the city of Manila, Philippine Islands, with malicious intent to injure and disgrace Isidro Paredes, then judge of the court of Tayabas Province, Philippine Islands; Felicisimo R. Feria and Salvador Zaragoza, assistant attorneys in the Bureau of Justice of the Insular Government; Vicente Jocson, then judge of the Court of First Instance of Batangas Province, Philippine Islands; Rafael Crame, then a colonel in the Philippine Constabulary; Eusebio Orense, an attorney-at-law, and Captains Frank L. Pyle and E. I. Small, both of the Philippine Scouts, United States Army, the said Amzi B. Kelly did then and there willfully, unlawfully, and feloniously write and publish and procured to be written and publ rished a certain false, scandalous, malicious, defamatory and injurious publication, defamation and libel , of and concerning the said Isidro Paredes, Felicisimo R. Feria, Salvador Zaragoza, Vicente Jocson, Rafael Crame, Eusebio Orense, Frank L. Pyle and E. I. Small, in the form of a book or pamphlet entitled: general mariano noriel, innocent WHO, WITH MAYOR LUIS J. LANDAS AND ROMAN MALA. BANAN, ALSO INNOCENT, WERE TRIED, CONVICTED, AND HANGED 6.30 A. M., JANUARY 27, 1915, AS HORRIBLE A DEED AS EVER FESTERED IN THE BRAIN OP MAN—THE RESULT OP CRIMINALS, JUDICIAL CRIMINALITY, AND CARELESSNESS, ARMY MEDDLING, EXECUTIVE STUPIDITY, OFFICIAL CORRUPTION, AND inefficiency. A copy of which is hereto attached and made an integral part of this information as Exhibit A tending to impeach the honesty, virtue and reputation of the said Isidro Paredes, Felicisimo R. Feria, Salvador Zaragoza, Vicente Jocson, Rafael Crame, Eusebio Orense, Frank L. Pyle, and E. I. Small in their dual capacity as private citizens and Government officials, thereby exposing them to public hatred, contempt, and ridicule. "All contrary to law.

(Sgd.) "Anacleto Diaz,

"Assistant Prosecuting Attorney.

"Subscribed and sworn to before me this 19th day of February, 1916, in the city of Manila, Philippine Islands, by Anacleto Diaz, assistant prosecuting attorney for the city of Manila.

(Sgd.) "S. del Rosario,

"Judge, Court of First Instance.

"A preliminary investigation has been conducted in this case under my direction, having examined witnesses under oath in accordance with the provisions of section 39 of Act No. 18S (Manila Charter), as amended by section 2 of Act No. 612 of the Philippine Commission.

(Sgd.) "Anacleto Diaz,

"Assistant Prosecuting Attorney.

"Subscribed and sworn to before me this 19th day of February, 1916, in the city of Manila, Philippine Islands, by Anacleto Diaz, assistant prosecuting attorney for the city of Manila.

(Sgd.) "S. del Rosario,

"Judge, Court of First Instance.

"Witnesses:

"Judge Isidro Paredes, Lucena, Tayabas.

"Judge Vicente Jocson, Batangas, Batangas.

"Col. Rafael Crame, Philippine Constabulary, Manila.

"Mr. Felicisimo R. Feria, Attorney-General's Office, Manila.

"Mr. Salvador Zaragoza, Attorney-General's Office, Manila.

"Mr. Alfonso Felix, 379 Cabildo, Manila.

"Detective Flynn, Secret Service Bureau.

"Detective Schaefer, Secret Service Bureau.

"Detective Black, Secret Service Bureau.

"Mr. Eusebio Orense, 52 Plaza McKinley.

"Capt. E. I. Small, Philippine Scouts, c/o Adjutant General, Division of the Philippines.

"Capt. Frank L. Pyle, Philippine Scouts, c/o Adjutant General, Division of the Philippines.

"Mr. Gregorio de Guia, Bacoar, Cavite.

"The clerk of court, Cavite, Cavite."

From a reading of the complaint, it will be seen that the following persons have been libeled, if the facts stated in the complaint are true:

(a) Isidro Paredes, who at the time mentioned in the information was one of the judges of the Court of First Instance of the Philippine Islands; (b) Vicente Jocson, who at the time mentioned in the information was one of the judges of the Court of First Instance of the Philippine Islands; (c) Salvador Zaragoza, who was an assistant attorney in the Office of the Attorney-General at the time mentioned in the information; (d) Felicisimo R. Feria, who was an assistant attorney in the Office of the Attorney-General at the time mentioned in the information; (e) Rafael Crame, who was a Colonel in the Philippine Constabulary, connected with the Bureau of Information thereof at the time mentioned in the information; (f) E. I. Small, a captain of the Philippine Scouts of the United States Army at the time mentioned in the information; (g) Frank L. Pyle, a captain of the Philippine Scouts of the United States Army at the time mentioned in the information; (h) Jose M. Quintero, prosecuting attorney of the Province of Laguna at the time mentioned in the information ; (i) Eusebio Orense, a member of the bar of the Philippine Islands and an active practicing attorney of the city of Manila at the time mentioned in the information.

Upon said complaint the defendant was duly arrested.

Upon arraignment he interposed first a plea of double jeopardy which plea, after the respective parties were heard, was overruled. A plea of not guilty was then entered for the defendant upon his refusal to plead guilty or not guilty.

The cause was then set down for trial. The Government was represented by Diaz, one of the prosecuting attorneys of the city of Manila, and F. C. Fisher, who had been employed to assist the prosecution. The defendant, upon being asked whether he desired an attorney to represent him, stated that he desired to represent himself, which he did.

The cause then proceeded to trial, at the close of which and after a careful consideration of the evidence adduced during the trial and of the arguments presented by the respective counsel, the lower court found that the defendant was guilty of the crime charged in the complaint, beyond a reasonable doubt, and sentenced him to be imprisoned in the Insular penitentiary of Bilibid in the city of Manila for a period of eight months and to pay a fine of P2,500 and the costs, and in default of the payment of the fine to suffer the corresponding subsidiary imprisonment. From that sentence the defendant appealed to this court.

In this court the defendant makes the following assignments of error:

"First. The court erred in refusing to permit defendant to read his plea, therefore forcing defendant to make a plea as directed by the court.

"Second. The court erred in not sustaining defendant's plea of jeopardy.

"Third. The court erred in excluding defendant's testimony on the ground that said testimony was manifestly against and an outrage on the rights of the complainants.

"Fourth. The court erred in ruling that the innocence of Noriel and his companions was irrelevant and immaterial and therefore all evidence excluded by virtue of this ruling was erroneous and prevented defendant from making a defense of the material allegations in his book and prevented him from sustaining the very object of its publication.

"Fifth. The court erred by interfering, in the absence of defendant, with his principal witness, Gregorio Buendia, and instructing said witness that he need not communicate with defendant if he did not wish to.

"Sixth. The court erred in finding that: 'The defendant not only failed to sustain his charges during the trial but he has reiterated them again in his brief and in other pleadings filed in this court. All publications, as we have seen, are printed [presumed] to be characterized by legal malice, but the defendant by his repeated iterations has shown beyond question of doubt that he is guilty of express or actual malice by his dogged pursuit of the complainants and his persistent repetition of the defamatory and libelous imputations contained in his book, even after he has signally failed to prove them/ (Pages 94, 95, Kelly libel decision.)

"Seventh. The court erred in excluding testimony of ex- Judge Amos Crossfield, Chief of Police Seaver, Chief of the Secret Service John W. Green, and ex-Chief Harding. "Eighth. The court erred in finding defendant guilty on the peculiar ground that defendant did not conduct his defense as the trial judge would have conducted it. "Ninth. The court erred in finding that defendant had alleged that the 'ocular inspection' was suppressed for the reason that said document and the De Guia and Buendia records would have been immaterial and irrelevant as evidence.

"Tenth. The court erred in constantly ruling out evidence on the ground that new evidence not before Judge Paredes was manifestly unjust to him, as there were other people connected with the Noriel case aside from the trial judge.

"Eleventh. The court erred in finding that there is only one defense under a charge of libel: that is, as found by

the court, the proof of the truth of the allegations. "Twelfth. The court erred in finding the defendant guilty of libeling Judge Jocson and Attorney Feria.

"Thirteenth. The court erred in finding that Isidro Paredes and Vicente Jocson acted correctly and with good judgment in the acquittal of De Guia and Buendia and the conviction of Noriel and his companions.

"Fourteenth. The court erred in finding: 'But this attitude of the defendant is entirely comprehensible when we take into account his testimony in open court to the effect that he had made no investigation or inquiry whatever with respect to the charges imputed in his book to the complainants, before the book was published.

"Fifteenth. The court erred in finding that the testimony of Eusebio Orense, De Guia and Buendia's attorney was more worthy of belief than Troadio Diaz', an ignorant witness.

"Sixteenth. The court erred in appreciating favorable to E. I. Small his conduct with regard to the certified copy of the morning report as covered by defendant from page 105 to page 107, and finding against defendant upon this point.

"Seventeenth. The court erred in permitting Mr. Fred C. Fisher, a private and special attorney, in no way connected with the Government, to take part in and conduct the prosecution of defendant."

From an examination of the complaint it will be found that the particular, willfull, unlawful, malicious, scandalous, and defamatory matter written and published of and concerning the different persons libeled may be stated as follows :

First. With reference to the said Judge Isidro Paredes, the defendant charges:

"There is only one judge in the Philippine Islands before whom they could have consummated this deed; that was Isidro Paredes. He was assigned as a special judge. This Paredes was removed for misconduct shortly after his appointment as a judge 10 or 12 years ago. He has even now (and has always been the same) about as much judicial ability as a tom-cat. For years he has held the title of being an excellent friend of the Constabulary; good to the Army; and a convictor. Just the other day an excellent American judge spontaneously remarked: 'Kelly, that man Paredes is a mad man; he is the wildest thing in these Islands.'

"My answer was this: 'You are mistaken, you can not point to one travesty of justice that he has perpetrated upon his own friends; against the Constabulary or against the Army. He has brains enough to draw his salary; hold his position, and has held it for ten years with jurisdiction over both the life and liberty of his fellow men, and he should be made to suffer the responsibility of his illegal acts.'

"Malabanan was tried first, then Noriel, and I do not believe, and will submit them to any board of lawyers, Americans or Filipinos, in the Assembly or in the Congress of the United States, that any two criminal records anywhere disclose such prejudice, such meanness, such illegal acts and such plain connivance of a judge with prosecutionary or murderous persecution. His acts will be exposed in Volumes II and III. They have no parallel in criminal jurisprudence, and they are done wantonly and maliciously with full knowledge of the innocence of the men whom he convicts and sentences to death.

"Before such an individual as a judge, quite naturally, Noriel, Landas and Malabanan were convicted; the three sentenced to death, two others now serving life imprisonment in Bilibid. Noriel's attorney, Mr. Agoncillo—and he only had one, and the poor man was hardly able to pay him—is an excellent man, in fact he was too honorable and clean a man and high-class member of the bar to have been able to properly combat the consummate, organized gang of criminals that confronted him. What was needed there in that court with those officers in command, was a red-blooded man with a club or a double-barrelled shot gun." (Exhibit AA, pp. 3 and 4.)

"IMPORTANT NOTICE.

"Nothing said herein must be taken as a reflection upon the honorable majority of men in the Army, in the Scouts, in the Constabulary, on the bench or in different official positions connected with this Government. My remarks are aimed directly at the criminal, the inefficient, the careless, the conceited and the stupid. In order to expose them it has been necessary to point out their location or branch of service." (Exhibit AA, p. 16.)

"If the judge had acted in good faith, the men would have been acquitted, as Mr. Agoncillo's defense, as an honorable member of the bar and a clean practitioner, was clean and correct, free of wrong and on a high plane. Decisions of conviction were written in such strong convincing language; facts twisted and turned; artfully worded and written in such a manner that to the laymen who read it, no idea but that of guilt would be thought of. When rendered, three years ago, and its contents published, my wife will confirm the statement that I said to her: 'There is something wrong with Paredes in that Noriel case. He not only convicts these men but he beats them over the head with the decision.' (Exhibit A A, p. 4.)

"Isidro Paredes, corrupt or crazy—whichever you desire— issued this long abusive decision. * * * Paredes had but one of two objects in view: 'To write a decision so strong and convincing, knowing the carelessness of the Supreme Court, that they would take it for granted and confirm it; or make it so vile and contrary to the record that they would be bound to see it and would reverse it'" (Exhibit AA, p. 4.)

"This record is not a circumstance to the errors and illegal acts perpetrated by Paredes in the trials of Noriel, Malabanan et al, but no attention was paid to them by the Supreme Court." (Exhibit AA, p. 180.)

"But there was one who could do this; Judge Isidro Paredes, and the way he did it in the face of the testimony is as perverse a piece of changing of testimony to help murder innocent people as I have ever seen, and I do not believe that its equal exists in any record of criminal jurisprudence." (Exhibit AA, p. 197.)

"Had this 'ocular inspection' been in its proper place, not hidden by the fiscals, three human lives might have been saved. Great is this lesson to judges and prosecutionary functions to see to it that every written document from the first step in a criminal case to the last is attached to the record, and remains there, and attorneys upon both sides should call the court's attention to the contents of these documents. I am not referring to Paredes; if Attorney Agoncillo had offered it in evidence, Zaragoza would have objected to it and Paredes would have sustained the objection, but all other of our judges would have acted right though this one would not and did not at any stage of the Noriel or Malabanan trials.

"I want you to go back and re-read Paredes' artful removal of this 'bench.' Remember this appeared so beautifully (?) and conscientiously (?) and logically (?) written in a horrible slanderous forty-page decision. Supreme Court judges who pay no attention to the records, inexperienced attorneys, busy newspaper reporters and the reading public would never dream that there was ought wrong with this concoction; but be not deceived. When Isidro Paredes penned those words, he did it with full knowledge that he was strangling justice and describing with apparent perfect accuracy a statement that by no conceivable conception of truth or justice, logic or reason, law or rule of evidence, is ought but fraud, rascality and judicial connivance with criminal persecutors." (Exhibit A A, p. 198.)

"THE WAYS OF A CROOKED JUDGE.

"A corrupt, a tyrannical or mean judge is one of the most debased and dangerous of all criminals. Clothed with almost infallible power, he is the first to misuse it, knowing full well that most attorneys are timid and afraid for many reasons to break with him and force him to obey the law and follow the evidence. Usually he begins by brow-beating counsel and litigants. Unchecked, he then makes slight false legal deductions; encouraged by this he then puts false statements into the mouths of witnesses and quotes these. He watches the appeals and is the first to note the carelessness or the indolence of the higher court. Then when the day arrives in which for pure meanness, criminal tyranny, politics, or a desire to please higher authority, or friends, he takes the judicial bit in his mouth; overrides every procedure of criminal evidence; of criminal law and tramples down every safe guard placed in the statutes for the protection of the citizen, be he guilty or innocent, and then closes the whole with a decision so long, powerful, strong and slanderous against the condemned that the judges of the Supreme

Court if indolent and careless are completely taken off from their feet and take his decision as a matter of fact. Even counsel of the accused is staggered; relatives and friends are dumbfounded and fear to assist; the public and the press, that can never know all the details, publish and imbibe this judicial chastisement, and all believe and tremble before the words. But right here, and remember it through life, whenever a court uses vile and strong language in a decision and really beats the convicted over the head with said decision, investigate thoroughly the reason for this personal animosity, for such is not the way of the legal judicial unprejudiced mind. It is the act of the partisan or prosecutor—never the judge, usually the act of a criminal in the bench.

"That is exactly what has occurred in this case and in my opinion, Isidro Paredes knew this and planned his acts accordingly in this case, as he probably has done in others, or he deliberately made the mass of errors and wrote the long unfounded, slanderous decision with the desire to please someone, believing that the Supreme Court would note both and reverse it, and no permanent harm would result.

But in either event his acts were criminal." (Exhibit A A, p. 211.)

"In the Noriel and Malabanan cases, you will see the sad result of trying to administer justice by paying no attention to law, criminal procedure or rules of evidence; giving heed to outside opinion and convicting upon general principles." (Exhibit A A, last cover.)

Second. With reference to Judge Vicente Jocson, the defendant charges:

"The trials of these men commenced October 8, 1909, and through corruption, bribery, perjury, judicial weakness, and official incompetency, assisted by military interference on the part of the Scout soldier's company commander, and the meddling of a Constabulary secret service chief, the cases were delayed, tried and retried, opened and reopened at the will of these individuals for a period of almost three years, until finally (December 20, 1911) due to the schemes of the real murderers, Gregorio de Guia and Gregorio Buendia, assisted by the individuals referred to and other friends and officials, they were acquitted." (Exhibit AA, p. 1.)

"IMPORTANT NOTICE.

"Nothing said herein must be taken as a reflection upon the honorable majority of men in the Army, in the Scouts, in the Constabulary, on the bench or in different official positions connected with this Government. My remarks are aimed directly at the criminals, the inefficient, the careless, the conceited and the stupid. In order to expose them it has been necessary to point out their location or branch of service." (Exhibit AA, p. 16.)

"What has been gained by this for you or for your clients? You are as well aware as the writer that Vicente Jocson convicted these men, sentenced them to life imprisonment, but was afraid or hesitated or was blocked from filing this decision." (Exhibit AA, p. 124.)

"The defense has played its last card for the present in so far as evidence is concerned. So something was done and as you see on August 26, 1910, Mr. Jose M. Quintero files the following motion to which as you see Judge Jocson agrees in humble submission: * * *." (Exhibit AA, p. 126.)

"I am well aware that powerful influences overwhelmed you, but rather than violate the law of this land and your oath, you should have resigned from that bench. There was no law in your court room after November 20, 1910, except the law of the will of a Scout captain or a colonel of Constabulary." (Exhibit AA, p. 134.)

"You have noted that Mr. Adriatico, on account of his employment in the Assembly, asks that the case only be tried in the mornings. This is objected to by the defense, and, of course, as this court for the past three years has only been conducted for the convenience of Buendia and De Guia, the objection was sustained. Anything the defendants wanted was readily granted, but practically nothing was granted for the prosecution, though their requests were very few, legal, and reasonable." (Exhibit AA, p. 138.)

"Then, owing to inefficient, ignorant prosecutory functions and courts, the egg of crime was not only laid in their presence, but through their incompetency and weakness, a monster was hatched, lived, thrived, grew, and

murdered three innocent men." (Exhibit AA, p. 8.)

"Later on you are going to see that after they did enter Jocson allowed Gregorio de Guia out on bail (P20,000). He had no legal reason for doing it, but he probably did have executive, Constabulary, Attorney-General, or military secret instructions, or orders or influence that force him to do it." (Exhibit AA, p. 16.)

"* * * and when a judge who has heard the strong and clean-cut testimony of a witness of this kind permits before his eyes the strangling of testimony in this manner, such a judge lacks those qualifications necessary for a judge of Court of First Instance." (Exhibit AA, p. 99.)

"It is disgraceful to see the conduct of some judges(Americans and Filipinos) when engaged in taking the testimony of officials in these Islands. I have not the slightest doubt, but what if a ranking Army or Constabulary officer presented to many of these judges a 'chunk of green cheese' and identified it as a piece of the silver moon, these judges (Americans or Filipinos) would so find that it was a piece of the moon presented by el capitan or el general.

"Officialdom has played a sad and serious part throughout this whole case; in fact, Nortel, Landas, and Malabanan were hung by virtue of this influence, and both De Guia and Buendia acquitted by the same judicial slavery." (Exhibit AA, p. 107.)

"Foolish then, indeed, is the judge who, for any reason, delays the writing of a decision when his mind is fresh with the facts, and dangerous too and destructive of the administration of justice as you are now destined to see when you turn over this page." (Exhibit AA, p. 110.)

"The judge did not dare render his decision, nor even REOPEN THE CASE UNTIL permitted TO DO SO BY CAPTAIN Small and so-called Attorney-General Feria." Exhibit A A, p. 128.)

"No; since August 26, 1910, these cases are no longer in the hands of the courts, or the attorneys. 'Superior authority,' acting under Constabulary secret service corrupt instructions, have now taken charge and Vicente Jocson has either verbally or in writing been told to grant this bail, and he granted it." (Exhibit AA, p. 129.)

"A court of justice, under command of Captain E. I. Small of the Philippine Scouts and Colonel Rafael Crame of the Philippine Constabulary." (Exhibit AA, p. 181.)

"On the same date—perhaps instantly, and trembling with fear at the 'August presence' of this captain, Judge Vicente Jocson grants the motion, timidly suggesting, however, 'that it is not strictly in accordance with criminal procedure or law.' " (Exhibit AA, p. 133.)

"Men have waded into blood up to their necks in order to wring from kings and tyrants, arrogant powers, and have placed these rules and regulations, these safe-guards and protections, into the written law, and you have sworn to follow and obey them. Did you do it? You did not. And what is the result? Two guilty scoundrels acquitted, and before your eyes the bars and safe-guards of three innocent men are torn down and a bunch of criminals let in, and they—the innocent ones—are murdered." (Exhibit A A, p 134.)

"Legally, professionally, and morally this was a pernicious act upon the part of every one who took part in it, including Judge Jocson, who permitted it, and Fiscal Quintero who agreed to it. * * *

"Written law, rules of criminal procedure, rules of evidence are nothing. Just fool things passed by the Legislature to be laughed at and disregarded by a bunch of incompetent, ignorant, careless judges, Americans and Filipinos, without distinction." (Exhibit AA, p. 155.)

"To this, (admission of Simon Velasquez's affidavit) the fiscal foolishly agrees; and to it Judge Jocson more foolishly agrees, because the fiscal had foolishly agreed." (Exhibit AA, p. 157.)

"* * * and absurd and ridiculous, illegal and highly improper in Judge Jocson to have admitted them

(affidavits) even if he personally knew that they were true." (Exhibit AA, p. 171.)

"And have you forgotten that immediately after the termination of the first new trial, when Judge Jocson was ready for the second time to render a verdict of guilty that superior authority' stepped in with the following and held the decision in this case from August 26, 1910, until November 28, 1911—fifteen months?" (Exhibit AA, p. 172.)

"Orense, Crame et al, prepared all these affidavits, all these witnesses; bribed them, intimidated them, instructed them and forced them to appear. Both being Filipinos, they thought—in fact they knew—that neither one nor the other could perpetrate this brazen stunt on Judge Jocson; but they were confident that Judge Jocson would not offend or interfere with Captain E. I. Small of the United States Army; no matter what he did or tried to do; legal or illegal; right or wrong. Small knew this as well as they." (Exhibit AA, p. 175.)

"I wish to say right here that it is a crime to permit ftscales and attorneys and judges and Constabulary officials to hold office who show no more ability, justice, or sense than is shown in this transaction. It is disgraceful and the life, liberty, or property of no man is safe in the hands of such officials." (Exhibit AA, p. 180.)

"Certainly you have seen in this volume that it is not difficult to acquit guilty men, when officials are with you and the court is weak, and you are destined to see in the Noriel and Malabanan cases that it is equally as easy to convict innocent men, when the officials are against them and the court is corrupt. (Exhibit AA, p. 197.)

"Vicente Jocson would have convicted; in fact he did dictate a decision of conviction against De Guia and Buendia—the law giving him the jurisdiction to decide these matters and some Chief Executive assumed when he appointed him that he had the brains, the ability, and sufficient honor to attend to these matters properly, but the same named Executive officials, led like a trio of silly girls and deceived by criminals, 'butted' in and prevented Jocson from administering proper justice in these two cases just as they have in the trial of Landas before the provincial board." Exhibit AA, p. 218.)

"There is, however, this difference: Jocson was an employee of the Government—thank God I am not of such a Government—and it was made to appear to him that all the head officials of the Government desired and expected an acquittal. They got it. He gave it to them, not because he thought it was right, but because he knew not how to combat and meet the scoundrels that had polluted the channels of justice in his court. The prosecutionary functions of the same Government that employed and paid his salary, not only laid down, but connived and schemed with the criminals and assisted in their acquittal. It would have taken a strong man and one fully aware and experienced in schemes of this kind to have driven back this powerful gang of cut-throats and criminals headed by Captain Small and Colonel Crame." (Exhibit AA, p. 189.)

"A PROSECUTING ATTORNEY WHO WOULD PILE A COMPLAINT FOR VAGRANCY IN 1912, FOR SAID OFFENSE PRESUMED TO HAVE BEEN COMMITTED IN 1910, AND A JUDGE WHO WOULD GO TO TRIAL ON SUCH A THING ARE UNFIT TO BE AT LIBERTY, MUCH LESS ACTING AS PROSECUTING ATTORNEYS AND JUDGES." (Exhibit AA, p. 214.)

"By the acquittals of De Guia and Buendia, you have observed the result of administering justice as a matter of courtesy to defendants, their friends and attorneys." (Exhibit AA, last cover.)

Third. With reference to Felicisimo Feria, the defendant charges:

"Then, owing to inefficient, ignorant prosecutionary functions and courts, the egg of crime was not only laid in their presence, but through their incompetency and weakness, a monster was hatched, lived, thrived, grew and murdered three innocent men." (Exhibit AA, page 8.)

"The most important testimony given at this preliminary investigation and at that of De Guia's is the declaration of Paula Cuenca. It is not attached nor did it ever appear in the record at the trial of De Guia or Buendia nor either of the Noriel or Malabanan trials. Forming as it did an important part of case No. 403,

'preliminary investigation of Gregorio De Guia,' the fiscals through the influence of the gang kept it hidden." (Exhibit AA, p. 13.)

"Attorney Feria (from the office of the Attorney-General) , when you conformed to this verbal motion; when you permitted the presentation of this proof in this case against Buendia and De Guia, you too assisted in destroying the protecting bars placed by the Legislature in the law to safe-guard the rights of the citizens. You assisted and confirmed in the throwing of sand into the eyes of the court. You were not representing the Government nor the people. You. were not practicing law as an attorney. You were a helpless child carried off your feet by a bunch of criminals." (Exhibit AA, p. 134.)

"Perhaps Colonel Crame and Captain Small, two military men, influenced you. Then why did you study and become admitted to the bar? What are you doing in the Attorney-General's office? * * *" (Exhibit AA, p. 135.)

"Muchacho (servant) Attorney-General F. Feria." (Exhibit AA, page 177.)

"I wish to say right here that it is a crime to permit fiscals and attorneys and judges and Constabulary officiate to hold office who show no more ability, justice, or sense than is shown in this transaction. It is disgraceful and the life, liberty, or property of no man is safe in the hands of such officials." (Exhibit AA, page 180.)

"Aside from what I have already said, regarding this case throughout the three years, I wish to state for the benefit of Judge Jocson and other judges that while such acts as have been perpetrated in this case are not of every day occurrence, still there are a few criminal cases, especially for serious crimes like assassination where the penalty is death, and frequently, in fact too often, in lesser crimes, corruption of witnesses is one of the schemes of desperate accused. The lawyers in this country, mostly young men with no instructions and little example from older men, often, through a foolish desire to win, fall victims to the schemes of their clients. Sometimes they actually take part in and themselves effect this seduction of witnesses and instructions of witnesses in false testimony in order to acquit This is seldom, I am glad to say. The great danger and error is the apparent misunderstanding by virtue of youth and inexperience, lack of example and a weak and incompetent Supreme Court, that the members of the bar of the Philippine Islands do not take the time or the trouble; in fact, tacitly agree to and present to the courts any witness or document desired, by their clients, assuming what you frequently hear from the squeaky voice of one of our boy-attorney-generals that: 'in its last analysis, the decision of the matter is for the determination of the court'

"This is the statement of a lazy, incompetent, worthless, or crooked prosecutionary function or member of the bar. No attorney for the prosecution or for the defendant should present to a court witnesses or documents unless they have thoroughly investigated and are convinced that the witness is telling the truth and that the document is valid and good. And judges henceforth should firmly put a stop to lawyers permitting their clients to run the case and direct them; should discontinue the practise of fiscals in permitting Army officers, Constabulary officers, secret service men or others, from dominating and directing them in the presentation of criminal cases. Under this system, the very object and design of the long study, examination and admission to the bar is destroyed, for in such cases the court is not receiving the protection of a trained lawyer, but the lawyer is being used as a shield by the crooks, the criminals or the inexperienced, and incompetent who happen to be interested either in an acquittal or a conviction.

"With all the legal safe-guards efficiently working it is difficult for a judge in many cases to arrive at the exact truth and administer correct and impartial justice. But when you have upon one side a prosecuting attorney too weak to say 'no' too lazy to 'dip deep' and presents any and everything to a court on the ground that 'in its last analysis the determination is for the judge' You have been deprived of one of the essential sifting processes primarily required for the protection of the citizen and secondarily required for the protection of the judge.

"Add to that situation men, not only ignorant but prejudiced, and attorneys, if not crooked and corrupt then idiots, who, without any investigation present to the court brazen perjury or anything delivered to them by their clients; you then have a status that is not only hopeless and bewildering to you, but that cats the heart out of the

proper administration of justice, and both safe-guards, to the citizen and to the courts are removed, and, you the judge, are the helpless victim of this misconception of duty or deliberate criminality or criminality by inactivity of the members of the bar. * * *

"I cannot really express, for a respectable reading public, what ought to be said or done to a prosecuting attorney or a so-called attorney-general, who, in order to avoid responsibility, and in neglect of duty, presents any old thing to a court and then bleats, 'in its last analysis the decision of the matter is for the determination of the judge.*'" (Exhibit AA, pp. 184, 185.)

"Above all, take nothing for granted; pay no attention to the rank, social, or political standing or official status of any witness; verify and investigate every fact testified to, more with officials than ordinary witnesses because as a rule they are more ignorant of the facts and details than these witnesses, and are testifying or working purely upon hearsay or their opinions; and your care will not only protect them but the citizen and the courts; and remember that in the trial of a case the trial judge is supreme and no authority, except the Supreme Court after proper hearing, has the slightest jurisdiction to interfere; to hold up or move forward any prosecution or case. That even the Attorney-General—much less these children that he sends out and who disgrace the nation by virtue of their fool and inexperienced acts—is naught but an attorney for one side of the case, and has no more authority to direct the court to stay its decision or hurry it than the attorney for the humblest citizen in these Islands. And beware of these young men from the Attorney-General's office who pose as assistant attorney-generals. They are not. In fact, seldom are they lawyers, but just 'young sons' or young attorneys with no experience in the Attorney-General's Office, used mostly to look up decisions, carry books, and assist in the writing of briefs. They have had no experience even in Manila and know even less of provincial conditions, and should not be permitted to come into a province under assumed authority and supplant the provincial fiscal, who, necessarily, is more competent, more experienced, and, of course, more familiar with local conditions and facts.

"These children should be removed and only experienced practitioners of more age should be employed in that office. But until this is done, remember these are the facts, and when you meet one of these youngsters and pay attention to his assumed rank, instead of his ability and experience, you only make your court the victim of his childish folly: Furthermore, these fake attorney-generals never leave Manila to prosecute a case in the province without first ascertaining the desires of the Constabulary. If conviction is the order, that is what they work for. If an acquittal is desired, they labor for this. They are not lawyers, but just illegal things that in the past fifteen years, both Americans and Filipinos, have caused much more trouble than they are worth, yet many of them are receiving enormous salaries while capable experienced provincial fiscals and lawyers of ability are receiving practically nothing." (Exhibit AA, pp. 189, 190.)

Fourth. With reference to Salvador Zaragoza, the defendant charges:

"The most important testimony given at this preliminary investigation and at that of De Guia's is the declaration of Pauja Cuenca. It is not attached nor did it ever appear in the record at the trial of De Guia and Buendia nor either of the Noriel or Malabanan trials. Forming as it did an important part of Case No. 403, 'Preliminary Investigation of Gregorio de Guia,' the fiscals through the influence of the gang kept it hidden." (Exhibit AA, page 13.)

"Above all, take nothing for granted; pay no attention to the rank, social or political standing or official status of any witness; verify and investigate every fact testified to, more with officials than ordinary witnesses because as a rule they are more ignorant of the facts and details than these witnesses, and are testifying or "working purely upon hearsay or their opinion; and your care will not only protect them but the citizen and the courts; and remember that in the trial of a case the trial judge is supreme and no authority except the Supreme Court after proper hearing, has the slightest jurisdiction to interfere; to hold up or move forward any prosecution or case. That even the Attorney-General—much less these children that he sends out and who disgrace the nation by virtue of their fool and inexperienced acts—is naught but an attorney for one side in the

case, and has no more authority to direct the court to stay its decision or hurry it than the attorney for the humblest citizen in these Islands. And beware of these young men from the Attorney-General's Office who pose as assistant attorney-generals. They are not. In fact, seldom are they lawyers but just 'young sons' or young attorneys with no experience in the Attorney-General's Office, used mostly to look up decisions, carry books and assist in the writing of briefs. They have had no experience even in Manila and know even less of provincial conditions, and should not be permitted to come into a province under assumed authority and supplant the provincial fiscal who necessarily is more competent, more experienced, and, of course, more familiar with local conditions and facts.

"These children should be removed and only experienced practitioners of more age should be employed in that office. But until this is done, remember these are the facts, and when you meet one of these youngsters and pay attention to his assumed rank, instead of his ability and experience, you only make your court the victim of his childish folly.

Furthermore, these fake attorney-generals never leave Manila to prosecute a case in the province without first ascertaining the desires of the Constabulary. If conviction is the order, that is what they work for. If an acquittal is desired, they labor for this: They are not lawyers but just illegal things that in the past fifteen years, both Americans and Filipinos, have caused much more trouble than they are worth yet many of them are receiving enormous salaries while capable experienced provincial fiscals and lawyers of ability are receiving practically nothing." (Exhibit AA, pp. 189, 190.)

"Certainly you have seen in this volume that it is not difficult to acquit guilty men when officials are with you and the court is weak, and you are destined to see in the Noriel and Malabanan cases that it is equally as easy to convict innocent men when the officials are against them and the court is corrupt. Crame and Small had much power; Attorney-General Zaragoza and Captain Pyle were artful * * *." (Exhibit AA, p. 197.)

"Had this 'ocular inspection' been in its proper place, not hidden by the fiscal, three human lives might have been saved. Great is this lesson to judges and prosecutory functions to see to it that every written document from the first step in a criminal case to the last is attached to the record, and remains there, and attorneys upon both sides should call the court's attention to the contents of these documents. I am not referring to Paredes; if Attorney Agoncillo had offered it in evidence, Zaragoza would have objected to it and Paredes would have sustained the objection, but all other of our judges would have acted right though this one would not and did not at any stage of the Noriel or Malabanan trials." (Exhibit AA, p. 198.)

"To better cinch Noriel et al. and strengthen with positive certainty the concocted conspiracy, it was arranged that Maximo Javier was to be the warm friend of Fausto Diftoso, to whom Fausto is presumed to have told Javier all about his participation in the crime. Malabanan's warm friend, or Judas, produced by the 'gang' to tell what Malabanan had told about the crime was one Bruno Ramirez. The arrangement of this proof bears the earmarks of having been prepared by one with some knowledge of law. As Zaragoza was not only the attorney-general but also the legal representative of the 'cut-throats,' it is natural to presume that this is his work and it bears all of the Zaragoza earmarks." (Exhibit AA, p. 207.)

"When the preliminary investigation commenced later (March, 1912) against Noriel et al. they had Hugh Minturn, Forbes' private secretary, regularly attend the trial. When Quintero, the prosecuting attorney of Cavite, informed the Executive as mentioned, that Noriel et al. were innocent, the same ones forced him to proceed and prosecute and Forbes or Gilbert demanded of Gregorio Araneta, the Secretary of Finance and Justice, that a member of his family attend to the prosecution in the Court of First Instance.

That is why young Zaragoza, Araneta's brother-in-law, represented the Government in these proceedings and nearly every morning Minturn, Forbes' secretary under order from Forbes or Gilbert, accompanied Zaragoza in the auto- mobile to Cavite to see that Judge Paredes performed his duties properly and convicted the accused because the criminals had convinced Welch, Forbes, Gilbert et al. that Noriel and companions were guilty. Zaragoza and Qdntero obeyed orders and prosecuted both with full knowledge of Noriel's innocence—Quintero

having so informed Newton W. Gilbert" (Ex. AA, p. 218.)

Fifth. with reference to Colonel Rafael Crame, the defendant charges:

"The trials of these men commenced October 8, 1909, and through corruption, bribery, perjury, judicial weakness and official incompetency, assisted by military interference on the part of the Scout soldier's company commander, and the meddling of a Constabulary secret service chief, the cases were delayed, tried and retried, opened and reopened at the will of these individuals for a period of almost three years, until finally (December 20, 1911) due to the schemes of the real murderers, Gregorio de Guia and Gregorio Buendia, assisted by the individuals referred to and other friends and officials, they were acquitted.

"One of the schemes used by the conspirators, and the last one commenced November 28, 1911, was the production of nine false affidavits and the declarations of ten perjurers whose statements insinuated that General Mariano Noriel, an ex-brigade commander of the Philippine Revolution, who allied with us, commanded the right wing of Aguinaldo's forces when we took Manila against the Spaniards, and Mayor Luis J. Landas and one, Roman Malabanan, had committed the crime instead of De Guia and Buendia.

"* * * The Scout commander was interested in clearing his soldiers; the colonel of Constabulary, who at the close of the Revolution had been a Constabulary officer in Cavite, was a bitter enemy of General Noriel whom he had persecuted in the courts three times under charges of bandolerismo; each time Noriel being acquitted.

"* * * 'By all means we must save this poor Scout soldier, and this friend of Americans, De Guia, and punish General Noriel et al.'

"I am not referring to Gregorio Buendia's company commander, nor to this colonel of Constabulary. Both knew better, in my opinion, and their actions in this volume and throughout the Malabanan and Noriel trials show conclusively that these two officers knew the truth and willingly took part in and assisted in deceiving the American officials of the Government and the officers in the United States Army—the latter, of course knowing nothing of the details, and being thus basely and doubly deceived by their own corrupt officials.

"There is no doubt—and the record shows it—that this vile insinuation and scheme of using General Noriel's name, was only originated for the purpose of acquitting the real culprits, but the case hung on so long and became so prominent and the lie was told so often to the American Governor-General, to the Commanding-General, Division of the Philippines, and to the officers—more ignorant still—in the Bureau of Insular Affairs, that this version sponsored by these corrupt officers was taken and considered as true." (Exhibit AA, pp. 1, 2.)

"The Scout captain returned to his company; the colonel of Constabulary to his post in Manila. Both no doubt proud of their slick but dirty work; yet thankful and thinking it all over and finished. But honorable, conscientious, well-meaning officials, Governor Forbes, or Governor Gilbert, General Bell, General Bandholtz, honestly believed what the Scout captain maintained and what the Constabulary colonel proclaimed to effect this acquittal, to wit: 'That General Mariano Noriel, a demon incarnate, with his henchman, young Landas, the Mayor of Bacoar, and his butcher, as they called poor Roman Malabanan, had murdered Gregorio Magtibay, and in order to escape and wreck (sic) vengeance on Scout Buendia and traitor De Guia, oldtime friend of the Americans, they schemed to charge them with a crime and effected their prosecution and almost conviction for it'

"It was perfectly natural and reasonable for the rascals, who used this false scheme to acquit their friend and soldier, to cease operations as soon as the end in view was accomplished and the two at liberty, but it was perfectly unnatural, unbelievable, and unexpected that honorable men acting in good faith like Forbes, Gilbert, Bell, and Bandholtz would entertain for one minute the dropping or discontinuance of prosecution and punishment against such a demon incarnate and his henchman and butcher. So doubtless all of these or some of them demanded the prosecution of Noriel, Landas, and Malabanan, either verbally, in writing, or by

implication.

"The opinions perfectly proper and highly commendable of these honorable men, placed this Scout captain and this colonel of Constabulary in a serious predicament. In the beginning, as frequently occurs with men of all ages and ranks in life, they had come to two roads; one of right, the other of wrong. They had selected the wrong; spent three years on it and accomplished the purpose for which they had taken it: acquitted their friends. That was the only way they could have been acquitted. The deed was done; the deception, final and complete; they could not go back and admit to any one of these men that they had lied; that they had basely deceived them. If they had, both would have not only lost his commission and been dismissed from the service in disgrace, but both would have probably been criminally prosecuted. Again they faced the two roads: RIGHT OR WRONG ? Again they chose the WRONG. "Encouraged by their success in the deception practised on the officials referred to, and again by the success of the deception practiced on the court by which the acquittal resulted; taking as a basis the false insinuations of as plain a bunch of perjurers as ever operated in a court, with the assistance of De Guia and Buendia, they built up and perfected about as perfect a line of evidence against Noriel, Landas, Malabanan et al. as has ever been witnessed upon any court "record." (Exhibit AA, p. 3.)

"I wish to say right here that it is a crime to permit fiscals and attorneys and judges and Constabulary officials to hold office who show no more ability, justice, or sense than is shown in this transaction. It is disgraceful and the life, liberty, or property of no man is safe in the hands of such officials." (Exhibit A A, p. 180.)

" 'I was called to Manila by Colonel Crame one month, I think August' (That was to commit a crime—A. B. K.)." (Exhibit AAt p. 182.)

"So you will see that the Constabulary, through two of its valuable officers, produced the witnesses against De Guia and Buendia, and then the same Constabulary, through one of its damnable secret service officers, blackened the name of this young man or permitted witnesses to do it before his eyes and with his knowledge, and yet, this Crame did nothing to refute these lying charges. As a matter of fact, he aided and abetted this shameful scheme, as you will see when he testified and presents Kalaw's report made to him. The report is really favorable to Landas, but it is presented by Crame to show that Landas instructed the witnesses but it shows that either Kalaw was a fool or consummate rascal, or Crame an unmitigated liar—the latter is my opinion of Crame and will be yours." (Exhibit AA, pp. 8-0.)

" 'Guilty' then is the verdict against De Guia, Buendia, and Asuncion on August the 7, 1909. Why? Simply because the trial proceeded in ordinary channels. No Scout or Constabulary officers were engaged in strangling justice. Small, Crame et al. and their 'secretas' had not yet entered the court room." (Exhibit A A, p. 14.)

"On August 17, 1909, Gregorio de Guia made application for a bond, and as you see, on the same date, Judge Vicente Jocson very properly, orderly, and legally refused it. This before military and Constabulary meddle-some, ignorant hands had entered the case." (Exhibit A A, p. 16.) "Understand right here that the object and reason for all the dirty work that has appeared and is yet to appear was for the purpose of protecting this ex-Constabulary and now Scout soldier, Gregorio Buendia. The corrupt men of both organizations united and determined, regardless of consequences, to save him.

"* * * and it is in this case, Buendia's, where most of the dirty work is perpetrated and where practically all of it is originated and launched. You see this being done, and being backed by officers of the Scouts and high ranking Constabulary officers, who hoodwinked and intimidated the judge on the bench. Even if he saw it, he was helpless. These same individuals deceived the head men of both the Army and the Constabulary, as well as the Chief Executive, and made it appear in Cavite that all of these head officials were protecting Buendia and De Guia and desired to hang General Mariano Nortel, Mayor Landas, and Roman Malabanan." (Exhibit AA, p. 94.)

"But in 1912, three years afterwards, the gang, encouraged by judicial carelessness; assisted by Constabulary

and Scout rascality, built up against Noriel, Landas, and Malabanan a case that resulted in their conviction and death." (Exhibit AA, p. 110.)

"That criminals in the Constabulary have now entered this case, is clear by virtue of Kalaw's absence and their failure to bring him back to rebut this declaration or at least remove him for his conduct. There is no doubt, but what Kalaw was removed from Cavite and silenced through the machinations of the criminal element in the secret service of the Philippine Constabulary" (Exhibit AA, p. 116.) "No; since August 26, 1910, these cases are no longer in the hands of the courts, or the attorneys. 'Superior authority' acting under Constabulary secret service corrupt instructions, have now taken charge and Vicente Jocson has either verbally or in writing been told to grant this bail, and he granted it." (Exhibit AA, p. 129.)

"You are now destined to see as brazen as corrupt and premeditated piece of 'strangling of justices' as has ever been witnessed, attempted or consummated in the trial of guilty men. (Nortel's case is worse but that was in the trial of innocent men.)

"This move is under the direction of Lieutenant Colonel Rafael Crame, chief of the secret service of the Philippine Constabulary, and Captain E. I. Small, an officer of the Scouts of the United States Army.

"Yes; the situation has become too critical for the schemes of the ignorant Scout Buendia or his companion Gregorio de Guia. Yes; not even a member of the bar, Mr. Eusebio Orense, can handle this situation and clear these guilty men. It takes the combined efforts of these officers of Scouts, the Constabulary and the Attorney-General's Office to do this, and it must be done if necessary in the absence of Paula Cuenca and her attorney." (Exhibit AA, p. 130.)

"A Court of justice, under command of Captain E. I. Small of the Philippine Scouts, and Colonel Rafael Crame, of the Philippine Constabulary." (Exhibit AA, p. 131.) "When De Guia was a prisoner, Bruno Ramirez was with him in jail and there and then received his instructions as another prisoner so wrote General Noriel. The charge against Ramirez was doubtless dismissed on condition that he assist Crame murder Noriel, as Ramirez is Crame's chief criminal clerk all through the persecution." (Exhibit AA, p. 146.)

"Crame False Affidavit No. 1." (Exhibit AA, p. 156.)

"Crame False Affidavit No. 2." (Exhibit AA, p. 157.)

"Crame False Affidavit No. 3." (Exhibit AA, p. 158.)

"Crame False Affidavit No. 4." (Exhibit AA, p. 160.)

"Crame False Affidavit No. 5." (Exhibit AA, p. 162.)

"Crame False Affidavit No. 6." (Exhibit AA, p. 163.)

"Crame False Affidavit No. 7." (Exhibit AA, p. 165.)

"Crame False Affidavit No. 8." (Exhibit AA, p. 166.)

"This ends the comments upon the Crame false affidavits, not one of which was verified or backed by its signer; not one of which was admissible under any rule of proof; not one of which was identified by either of the signers or the witnesses; not one susceptible of cross-examination, and each and all, false and perjurious as you can plainly see. "Beautiful work for a colonel of Constabulary, a captain of Scouts, a youth from the Attorney-General's Office, and a provincial fiscal." (Exhibit AA, p. 171.)

"Orense, Crame et al. prepared all these affidavits, all these witnesses; bribe them, intimidated them, instructed them and forced them to appear" (Exhibit AA, p. 175.) "It would have taken a strong man and one fully aware and experienced in schemes of this kind to have driven back this powerful gang of cutthroats and criminals headed by Captain Small and Colonel Crame." (Exhibit AA, page 189.)

"* * * you would not have played your criminal part in assisting Captain E. I. Small and Colonel Rafael Crame in protecting Scout Buendia and 'leading citizen De Guia,' and in the murder of Noriel, Landas, and Malabanan." (Exhibit AA, page 198.)

"There was, of course, but one reason for. confining poor Malabanan under this small penalty in Bilibid, and that was for the purpose of making his maltreatment more handy for the gang, whose heads—Small and Crame—were residing in Manila." (Exhibit AA, p. 216.) .

Sixth. With reference to Captain E. I. Small, the defendant charges:

"The trials of these men commenced October 8, 1909, and through corruption, bribery, perjury, judicial weakness and official incompetency, assisted by military interference on the part Of the Scout soldier's company commander, and the meddling of a Constabulary secret service chief, the cases were delayed, tried and retried, opened and reopened at the will of these individuals for a period of almost three years, until finally (December 20, 1911) due to the schemes of the real murderers—Gregorio de Guia and Gregorio Buendia—assisted by the individuals referred to and other friends and officials, they were acquitted.

"One of the schemes used by the conspirators, and the last one commenced November 28, 1911, was the production of nine false affidavits and the declarations of ten perjurers whose statements insinuated that General Mariano Norielt an ex-brigade commander of the Philippine Revolution, who allied with us, commanded the right wing of Aguinaldo's forces when we took Manila against the Spaniards, and Mayor Luis J. Landas and one, Roman Malabanan, had committed the crime instead of De Guia and Buendia." (Exhibit AA, p. 1.)

" 'By all means, we must save this poor Scout soldier, this friend of Americans, De Guia, and punish General Noriel et al.' I am not referring to Gregorio Buendia's company commander, nor to this Colonel of Constabulary. Both knew better in my opinion, and their actions in this volume and throughout the Malabanan and Noriel trials show conclusively that these two officers knew the truth and willingly took part in and assisted in deceiving the American officials of the Government and the officers in the United States Army—the latter, of course knowing nothing of the details, and being thus basely and doubly deceived by their own corrupt officials.

"There is no doubt—and the record shows it—that this vile insinuation and scheme of using General Nortel's name was only originated for the purpose of acquitting the real culprits, but the case hung on so long and became so prominent and the He was told so often to the American Governor-General, to the Commanding General, Division of the Philippines, and the officers—more ignorant still—in the Bureau of Insular Affairs, that this version sponsored by these corrupt officers, was taken and considered as true."(Exhibit AA, p. 2.)

"* * * The Scout captain returned to his company; the colonel of Constabulary to his post in Manila. Both no doubt proud of their slick but dirty work; yet thankful and thinking it all over and finished. But honorable, conscientious, well-meaning officials, Governor Forbes, or Governor Gilbert, General Bell, General Bandholtz, honestly thieved what the Scouts captain maintained and what the Constabulary colonel proclaimed to effect this acquittal, to frit: That General Mariano Noriel, a demon incarnate, with his henchman, young Landas, the Mayor of Bacoar, and his butcher, as they called poor Roman Malabanan, had murdered Gregorio Magtibay, and in order to escape and wreck (sic) vengeance on the Scout Buendia and traitor De Guia, old-time friend of the Americans, they schemed to charge them with a crime and effected their prosecution and almost conviction for it.

"It was perfectly natural and reasonable for the roseate, who used this false scheme to acquit their friend and soldier, to cease operation as soon as the end in view was accomplished and the two at liberty, but it was perfectly unnatural, unbelievable and unexpectable that honorable men, acting in good faith like Forbes, Gilbert, Bell, and Bandholtz, would entertain for one minute the dropping or discontinuance of prosecution and punishment against such a demon incarnate and his henchman and butcher. So doubtless all of these or some of them demanded the prosecution of Noriel, Landas, and Malabanan either verbally, in writing or by implication.

"The opinions perfectly proper and highly commendable of these honorable men, placed this Scout captain and

this colonel of Constabulary in a serious predicament. In the beginning, as frequently occurs with men of all ages and ranks in life, they had come to two roads; one of right the other of wrong. They had selected the wrong; spent three years on it and accomplished the purpose for which they had taken it; acquitted their friends. That was the only way they could have been acquitted. The deed was done; the deception, final and complete; they could not go back and admit to any one of these men that they had lied; that they had basely deceived them. If they had, both would have not only lost his commission and been dismissed from the service in disgrace, but both would have probably been criminally prosecuted. Again they faced the two roads: Right or wrong? Again they choose the wrong.

"Encouraged by their success in the deception practiced on the officials referred to, and again by the success of the deception practiced on the court by which the acquittal resulted; taking as a basis the false insinuations of as plain a bunch of perjurers as ever operated in a court, with the assistance of De Guia and Buendia, they built up and perfected about as perfect a line of evidence against Noriel, Landas, Malabanan et al., as has ever been witnessed upon any court record." (Exhibit AA, p. 3.)

"* * * You see this being done, and being backed by officers of the Scouts and high ranking Constabulary officers, who hoodwinked and intimidated the judge on the bench." (Exhibit AA, p. 94.)

"'Guilty,' then is the verdict against De Guia, Buendia, and Asuncion on August 7, 1909. Why? Simply because the trial proceeded in ordinary channels. No Scout or Constabulary officers were engaged in strangling justice. Small, Crame et al., and their 'secretas' had not yet entered the court room." (Exhibit A A, p. 14.)

"On August 17, 1909, Gregorio de Guia made application for a bond and as you see, on the same date, Judge Vicente Joc8ont very properly, orderly, and legally refused it. This was before military and Constabulary meddlesome, ignorant hands had entered the case." (Exhibit AA, p. 16.)

"Understand right here that the object and reason for all the dirty work that has appeared and is yet to appear was for the purpose of protecting this ex-constabulary and now scout soldier, Gregorio Buendia. The corrupt men of both organizations united and determined, regardless of consequences, to save him. * * * and it is in this case, Buendia's, where most of the dirty work is perpetrated and where practically all of it is originated and launched. You see this being done, and being backed by officers of the Scouts and high ranking Constabulary officers, who hoodwinked and intimidated the judge on the bench. Even if he saw it, he was helpless. These same individuals deceived the head men of both the Army and the Constabulary as well as the Chief Executive, and made it appear in Cavite that all of these head officials were protecting Buendia and De Guia and desired to hang General Mariano Noriel, Mayor Landas, and Roman Maldaban". (Exhibit AA, p. 94.)

"But in 1912, three years afterwards, the gang, encouraged by judicial carelessness; assisted by Constabulary and Scout rascality; built up against Noriel, Landas, and Malabanan a case that resulted in their conviction and death.¹¹ (Exhibit AA, p. 110.)

"You are now destined to see as brazen as corrupt and premeditated piece of 'strangling of justices' as has ever been witnessed, attempted, or consummated in the trial of guilty men. (Noriel's case is worse but that was in the trial of innocent men.)

"This move is under the direction of Lieutenant-Colonel Rafael Crame, chief of the secret service of the Philippine Constabulary, and Captain E. I. Small, an officer of the Scouts of the United States Army.

"Yes; the situation has become too critical for the schemes of the ignorant Scout Buendia or his companion Gregorio De Guia. Yes; not even a member of the bar, Mr. Eusebio Orense, can handle this situation and clear these guilty men. It takes the combined efforts of these officers of Scouts, of the Constabulary and the

Attorney-General's Office to do this, and it must be done if necessary in the absence of Paula Cuenca and her attorney. (Exhibit AA, p. 130.)

"On November 20, 1911, after fifteen months of preparation and scheming and connivance and rascality, Captain E. I. Small, in representation of these Scout soldiers, appears and verbally makes a motion for a new trial." (Exhibit AA, p. 133.)

"The excuse for the presentation of these affidavits is the same that has been used by crooks and rascals for hundred of years 'In order to save time, we offer them.' Nothing of the sort. The presenters of these documents knew the makers were perjurers, and feared to have these ignorant men cross-examined by Paula Cuenca's attorney (Exhibit AA, p. 134.)

"Captain Small's liar No. 1." (Maximo Saliva.)

"Captain Small's liar No. 2." (Alfonso Cuenca.)

"Captain Small's liar No. 3." (Bruno Ramirez.)

"Captain Small's liar No. 4." (Maximo Javier.)

"Captain Small's liar No. 6." (Balbina Alameda.)

"Captain Small's liar No. 6." (Donate Javier.)

"Captain Small's liar No. 7." (Gomelio Bernardo.) ,.

"Captain Small's liar No. 8." (Saturnino Marquez.)

"Captain Small's liar No. 9." (Alejandro Marquez.)

(Exhibit AA, pp. 138, 140, 144, 146, 148, 152, 153, 164 respectively.)

"Slick work on the part of Crame, Small, Orense et al. "The reader's attention is called to the scheme of the 'gang' shrewdly worked before your, eyes, yet perhaps by you unnoticed.

"Orense, Crame, et al. prepared all these affidavits, all these witnesses; bribed them, intimidated them, instructed them and forced them to appear. Both being Filipinos, they thought—in fact they knew—that neither one nor the other could perpetrate this brazen stunt on Judge Jocson; but they were confident that Judge Jocson would not offend or interfere with Captain E. I. Small of the United States Army; no matter what he did or tried to do; legal or illegal; right or wrong. Small knew this as well as they." (Exhibit AA, p. 175.)

"* * * The prosecutionary functions of the same Government that employed and paid his salary, not only laid down but connived and schemed with the criminals and assisted in their acquittal. It would have taken a strong man and one fully aware and experienced in schemes of this kind to have driven back this powerful gang of cut-throats and criminals headed by Captain Small and Colonel Crame." (Exhibit AA, p. 189.)

"* * * If you have had so found—which was true and you knew it—you would not have played your criminal part in assisting Captain E. I. Small and Colonel Rafael Crame in protecting Scout Buendia and 'leading citizen De Quia' and in the murder of Noriel, Landas, and Malabanan." (Exhibit AA, p. 198.)

"There was, of course, but one reason for confining poor Malabanan under this small penalty in Bilibid, and that was for the purpose of making his maltreatment more handy for the gang, whose heads—Small and Crame—were residing in Manila." (Exhibit AA, p. 215.)

Seventh. With reference to Jose M. Quintero, the defendant charges:)

"Then, owing to inefficient, ignorant prosecutionary functions and courts, the egg of crime was not only laid in their presence, but through their incompetency and weakness, a monster was hatched, lived, grew and murdered three innocent men." (Exhibit AA, p. 8.)

"The most important testimony given at this preliminary investigation and at that of De Guia's is the declaration of

Paula Cuenca. It is not attached nor did it ever appear in the record at the trial of De Guia or Buendia nor either of the Noriel or Malabanan trials. Forming as it did an important part of case No. 403, 'Preliminary investigation of Gregorio De Guia,' the fiscals through the influence of the gang kept it hidden." (Exhibit AA, p. 13.)

"On June 18, Attorney Orense files an affidavit of Justo Felix, a Government witness who testified twice against De Guia and once against Buendia. In this affidavit, he (Felix) admits or claims that his testimony was false. Before the court there is positive proof that some one, either the prosecutionary functions or the attorney for the defendant; has been guilty of 'the corruption of witnesses.' Of this, there is no doubt. (Exhibit AA, pp. 112, 113.)"

"As you have noticed, since Captain Small took charge; Attorney-General Feria has gone over to the opposition; Quintero has laid down; Santiago is absent and the Government and the people are now only represented by this frail but valiant woman. She asks not for time, but only for an attorney—a lawyer. Would to God that she had even at this late date found one—a lawyer!" (Exhibit AA, p. 136.)

"Simon Velasquez—as appears in the indorsement of Fiscal Quintero—appeared before him, Lieutenant Colonel Rafael Crame of the Constabulary and the Senior Inspector at that time of Cavite, Mr. O. C. Whitaker, and Esteban Torres, the fiscal's clerk, and made this declaration, in Cavite, on January 13, 1911. It is not. presented in evidence until December 29, 1911, practically one year, lacking a few days, after it was made. You have noted that this man took the stand and was sworn in. This was doubtless a shrewd bluff as immediately before asking him a question and in the absence of Paula Cuenca's attorney, with only her present, Captain Small asked, in order to shorten the case, that this man's affidavit together with those of the others be admitted instead of requiring him to testify. To this, the fiscal foolishly agrees; and to it Judge Jocson more foolishly agrees, because the fiscal had foolishly agreed." (Exhibit AA, p. 157.)

"On December 11, 1911, case 1666, against Gregorio De Guia, waB reopened by Attorney Orense, as you see, for the purpose of including by motion all the evidence and affidavits presented by Captain Small in the Buendia case.

These were admitted without objection not only by the foolish fiscal but also by the ridiculous attorney for Paula Cuenca, and Judge Jocson admitted them. Then Mr. Adriatico humbly asked permission to present Roman Malabanan as a witness." (Exhibit AA, 179.)

"I wish to say right here that it is a crime to permit fiacals and attorneys and judges and Constabulary officials to hold office who show no more ability, justice, or sense than is shown in this transaction. It is disgraceful and the life, liberty, or property of no man is safe in the hands of such officials. And if there is a superior being, and that being is just—as he is—he will severely punish a nation, a party and a people who impose such incompetency upon helpless, ignorant people, and there is no excuse for such pretenders, untrained and with no knowledge of their profession or duties filling such positions. There are many, many capable Filipinos who could and should be given these positions." (Exhibit AA, p. 180.)

"So you see, on December 20, 1911—now four years ago— at the termination of this case, Vicente Jocson, who looked into the eyes of Small, Crame and their witnesses, comes to practically the same conclusion in this case that I have four years later, with naught before me but coal-black type.

There is, however, this difference: Jocson was an employee of the Government—thank God I I am not of such a Gov ernment—and it was made to appear to him that all the head officials of the Government desired and expected an acquittal. They got it. He gave it to them, not because he thought it was right but because he knew not how to combat and meet the scoundrels that had polluted the channels of justice in his court. The prosecutionary functions of the game Government that employed and paid his salary, not pnly laid down but connived and

schemed with the criminals and assisted in their acquittal. It would have taken a strong man and one fully aware and experienced in schemes of this kind to have driven back this powerful gang of cutthroats and criminals headed by Captain Small and Colonel Crame:" (Exhibit AA, p. 189.)

"Certainly you have seen in this volume that it is not difficult to acquit guilty men when officials are with you and the court is weak, and you are destined to see in the Noriel and Malabanan cases that it is equally as easy to convict innocent men when the officials are against them and the court is corrupt. Crame and Small had much power; Attorney-General Zaragoza and Captain Pyle were artful and strong, but none of the four—thanks to the testimony in the Noriel and Malabanan cases—could remove this bench so that the gang's scheme of Malabanan entering the window upon Dinoso's shoulders could be carried out. But there was one who could do this: Judge Isidro Paredes, and the way he did it in the face of the testimony is as perverse a piece of changing of testimony to help murder innocent people as I have ever seen, and I do not believe that its equal exists in any record of criminal jurisprudence " * * * (Exhibit AA, p. 197.)

"Had this 'ocular inspection' been in its proper place, not hidden by the fiscal, three human lives might have been saved. Great is this lesson to judges and prosecutionary functions to see to it that every written document from the first step in a criminal case to the last is attached to the record, and remains there, and attorneys upon both sides should call the court's attention to the contents of these documents. I am not referring to Paredes; if Attorney Agoncillo had offered it in evidence, Zaragoza would have objected to it and Paredes would have sustained the objection, but all other of our judges would have acted right though this one would not and did not at any stage of the Nortel and Malabanan trials." (Exhibit AA, p. 198.)

"It would be a very dumb person who would read this, the first testimony given at the first investigation made in this celebrated case to ascertain who committed this crime, if they did not see with positive certainty why 'the gang' through its henchmen in the office of the clerk of the court and the fiscal's office of Cavite have kept this document and its contents secret and hidden." (Exhibit AA, p. 202.)

"Note particularly that this complaint, dated February 21, 1912, charges Malabanan with 'vagrancy' committed during the year 1910, two years prior. The object of the Vagrancy Act is to remove from the community at the time 'nonworking, worthless characters.' Vagrancy is also a misdemeanor and the offense prescribes two months after its commission. The object of this, of course, was not to punish Malabanan for being a vagrant, imaginary or real; its object was to blacken his name and hold him in jail, so Crame and Small could intimidate him and thereby force him to declare against Noriel. You, of course, remember that the fiscal filed this complaint four months after the 'nine false Crame affidavits' and 'Small's ten liars' had been heard in the Court of First Instance. Could evidence of blackmailing and criminal persecution be plainer than this This was a standing complaint to be used at will by Crame, Small et al. It was used in 1910, and with it they held Malabanan in Crame's 'dungeon of hell.' A prosecuting attorney who would file a complaint for vagrancy in 1912, for said offense presumed to have been committed in 1910, and a judge who would go to trial on such a thing are unfit to be at liberty, much less acting as prosecuting attorneys and judges. But are Jocson or Quintero at fault? Certainly not. The same hand that appears on page 128 is still at work and both of these are not administering justice but obeying corrupt orders." (Exhibit AA, p. 214.)

"When Quintero, the prosecuting attorney of Cavite, informed the executive, as mentioned, that Noriel et al. were innocent, the same ones forced him to proceed and prosecute, and Forbes or Gilbert demanded of Gregorio Araneta, the Secretary of Finance and Justice, that a member of his family attend to the prosecution in the Court of First Instance. That is why young Zaragoza, Araneta's brother-in-law, represented the Government in these proceedings, and nearly every morning Minium, Forbes' secretary, under orders from Forbes or Gilbert accompanied Zaragoza in the automobile to Cavite to see that Judge Paredes performed his duties properly and

convicted the accused, because the criminals had convinced Welch, Forbes, Gilbert et al. that Noriel and companions were guilty. Zaragoza and Quintero obeyed orders and prosecuted both with full knowledge of Noriel's innocence— Quintero having so informed Newton W. Gilbert. Paredes carried out what appeared to him to be desired by the Chief Executive. Later when the Supreme Court did not move with sufficient executive rapidity in the Noriel case, the following was sent over: * * * (Exhibit AA, p. 218.)

Eighth. With reference to Eusebio Orense, the defendant charges:

"You are destined to see that within a few months, defendant and his attorney realizing that it did not fool the court, it was completely abandoned, and the perjury or 'corrupting-of-witness-defense' tried. When this failed both were abandoned, and the 'other-fellow-defense' was tried, and it succeeded in an acquittal—temporarily. Yea; temporarily, for the wheels of justice may grind slowly, but they are grinding, grinding, with unerring truth." (Exhibit AA, p. 61.)

Gradana Santero (witness in rebuttal for prosecution) . I do not believe that it could be easier to show the deliberate perjury of the witness for the defense than through the testimony of this woman, the owner of the band, and Domingo Batayan, a member of same. A friendly notary public, Pedro Malinis, testified that on the Sunday night when De Gufa was proven to have been in a fuss with Goito, testified to by Ugalde, that the said De Gufa was peacefully attending a band concert in a store near where the band of Bacoor was rehearsing. * * * Assuming that each has fifteen pieces, which is few, there would be thirty men available for De Guia to get and prove this concert.

"If the owner of this band, Santero, and Batayan were lying, how could you more easily show this than by some of the members of the band? Who ever heard of such rot as this? De Gufa presents a friendly notary to testify that the band did play, while the owner of the band testified that it did not.

"Prosecuting attorneys and courts ought to be ashamed to let such plain perjury pass unnoticed. Orense actually has the nerve to comment upon this as though the concert actually took place. If it had, not only would the members of the two bands been produced as witnesses but everybody in that vicinity. But, from a 'sick child' to a 'band concert,' it is not far when perjurers are handy." (Exhibit A A, pp. 66-67.)

"De Gufa's original trial closed March 10, 1910; Buendia's March 11 or 12, 1910. Three months with all the facts before him, Judge Jocson neglected his duty and failed to dictate a decision or, at least, to make it a matter of record.

"On June 18, Attorney Orense files an affidavit of Justo Felix, a Government witness who testified twice against De Gufa and once against Buendia. In this affidavit he (Felix), admits or claims that his testimony was false. Before the court there is positive proof that some one, either the prosecutory functions or the attorney for the defendant, has been guilty of 'the corruption of witnesses.' Of this there is no doubt.

"Upon receipt of this affidavit, Justo Felix should have been arrested; charged with perjury and convicted with documentary proof; and this case should have stopped right there until the court, by thorough investigation, ascertained who were the guilty ones. This would have been easy, as Felix, sentenced to jail, would have realized that he had been imposed upon and that his deceivers could not, as they probably promised him, keep him from punishment and out of jail. Furthermore, as a result of this investigation, the taking of further testimony would have been unnecessary, as the ones guilty of perpetrating Felix' perjury, were the ones who murdered Goito. If the prosecutory functions, they could all have been dealt with and the case against Buendia and De Guia dismissed; if defendants, a conviction could and would have been rendered at once against them, and other perjurers, then waiting in fear or being prepared, would not only have refused to commit it, but their sponsors and

instructors would have ceased this class of work; and a great number of ignorant and intelligent people, officials and citizens, Constabulary and Scouts, lawyers and governors, judges and court officials from the highest to the lowest court would have avoided being drawn into the vortex of this cyclone of crime.

"Perjury in a court of justice is worse than cholera, plague, or smallpox in a community, and this changing testimony type is its most vile, flagrant, and destructive kind for the reason that when a witness has testified one way and then changes and testifies just the opposite, the witness is destroyed, as the court in many instances cannot be sure which is true. So it is a game, that if played, those who use it win regardless of truth or falsehood, and none understands this better than rotten, corrupt members of the bar. They don't care; money is what they want, and money comes with victory. They don't make the affidavits; it is done by the witness. They submit it to the court for its decision as to the veracity, but to their benefit true or false.

"Remember this: the ratio of lawyers who present false testimony or affidavits of this kind and don't know that they are false, is about one in ten million. So the rule should be—and it should never vary—when presented, if found to be false, the attorney with the affiant, should be prosecuted and imprisoned. Disbarment or suspension is not sufficient. Such attorneys are criminal cancers on the judiciary, and the whole structure, in fact, the whole government and its people are constantly in the gravest danger with such individuals as members of the bar—no matter where you find them, in the office of the prosecuting attorney appearing to labor for the state, or in the ranks of the attorneys for the defense. They are not lawyers; they are legal, cancerous hyenas, disgracing and bringing into disrepute one of the greatest and noblest of all professions—the law." (Exhibit AA, p. 113.)

"Naturally when cross-examined, Felix would have some sort of tale, so 'he was instructed by Lipana,' and 'maltreated by Lieutenant Kalaw.' But he does not detail this maltreatment; confines himself to short answers and requires constant prodding. Judge Jocson takes charge of him and he first says he was 'afraid of Kalaw,' then he admits that he was 'not afraid of him;' he then says that he is doing this now in the interest of truth and justice;' he then says 'his conscience hurts him/ 'He could not sleep.'

"You will note this is the form used by Orense in the false affidavits. I do not believe that any witness ever testified who more plainly demonstrates perjury.":: (Exhibit AA, p. 116.)

"(Remember that I called the reader's attention to the fact that the 'cedula' of both of these men was of the same dates as the 'Orense false affidavits'—A. B. K.)" (Exhibit AA, p. 117.)

"Attorney Orense's perjurious affidavit No. 1. (Justo Felix.)" (Exhibit AA, p. 112.)

"Attorney Orense's perjurious affidavit No. 2. (Troadio Diaz.)" (Exhibit AA, p. 119.)

"Orense in his cross-examination as usual avoids asking any question regarding the main point in issue, but contents himself with impudently and brazenly presenting to the court a false affidavit that he (Orense) had been instrumental in obtaining." (Exhibit AA, p. 120.)

"Attorney Orense's perjurious affidavit No. 3. (Pedro Tovera.)", (Exhibit AA, p. 121.)

"We now have four holes in the judicial dike made by Dionisio Banayad, Justo Felix, Pedro Tovera, and Troadio Diaz. Nothing is done to repair them, and, of course, De Guia and Buendia and their criminal gang are encouraged by this and are delighted at the success of their good work. Note, however, that up-to-date, Buendia has not taken the stand to deny the allegations against Mm nor explain his letter; neither has Gregorio de Guia taken the stand or denied directly nor indirectly the proofs against him. This is plain to Judge Jocson, to the prosecuting attorney, to Orense and all those taking part in this case. The defense is avoiding the true issue, by throwing perjurious sand into the eyes of the court; adding to the crime of murder, the corruption of witnesses, perjury and the pollution of

the judicial channels. All of this is both brazenly and amazingly carried oh without opposition or reprimand.

"Do you wonder that guilty men escape and go free while innocent ones are convicted and hanged? Murderers are not only dangerous, but desperate characters, with nothing to lose and everything to gain by a continuance of crime and wrong." (Exhibit AA, p. 123.)

"Am I then to presume that you think your obligation to a client, your duty to the court, your responsibility to the public and your high duty for the honor of your profession, does not obligate you to investigate and be positive that witnesses of such a deubtful character have not been tampered with prior to advising even in the manner stated by you, them to appear before a notary and make an affidavit declaring false their testimony given in open court on two occasion? Is it proper; is it right; is it honorable for a member of the bar—even to protect his client—to permit an ignorant man, or three of them, to commit the crime of perjury in order to assist in strangling the administration of justice? Were you properly performing your high. est duty to Judge Jocson when you permitted or advised these men or any of them to make this affidavit without any investigation upon your part? If so, sir, you hold a different view of these matters from what I do, then from your statement made before Judge Jocson, he would have been justifiable in appointing for you one of the high school girls of Cavite as a 'guardian ad litem.'"

"You did not obligate Troadio Diaz to sign this affidavit, and you just happened to meet him at the court room, and these three formal affidavits, showing positively that they were works of the same legal brain as the one of Justo Felix made in your office, just happened to be made in this form by these three ignorant, illiterate men. Do you think that the reader, that the writer, or that Judge Jocson does not know that the statements made by Troadio Diaz and Segundo Francisco are true? Admitting as true your testimony in this page of flimsy, dodging explanation, you do not state one word that shows that you did one thing to ascertain whether or not you were presenting to the court a true or false affidavit. If it is made in legal form and handed to you you present it. Would you do the same with a false will and any other document? Is it not the very first duty of a member of our profession to investigate and verify all proof prior to presenting it to a court? Did you do this? You did not. And what is more you knew the character of each of these affidavits; knew their source; knew their importance when presented—whether true or false.

"What has been gained by this for you or for your clients? You are as well aware as the writer that Vicente Jocson convicted these men, sentenced them to life imprisonment, but was afraid or hesitated or was blocked from filing this decision. Do you think that you had rendered any benefit to De Guia and Buendia by permitting them in their eagerness for self-protection to do the deeds that they have done? Don't you know that in the face of facts as plain as the face of Almighty God's sun, that with Noriel, Landas and Malabanan, sleeping in their cold and silent graves; convicted for this crime committed by Buendia and De Guia, that all the powers of earth and hell can not now save their lives? Mentally, young man, from the justice of the peace court, through the trial of De Guia and Buendia, of Malabanan, Noriel, Landas et al., through the Court of First Instance, and then through the Supreme Court, review the acts and actors in this horrible deed and then hang your head in shame as mine is bowed for you as a member of the same profession. And what was the gain? A few paltry pesos. Well, God knows, you are welcome to them, for they are stained with innocent blood; marred by strangled justice; smeared with perjury and scarred with professional dishonor. Yes, ghastly spectre, peering at you and me from the wreck and ruin of a judicial system. A people's shame and a nation's sorrow." (Exhibit A A, p. 124.)

"At the first reopening you have seen the corruption of witnesses by the defense and noted their perjury as instructed and bribed by the accused and assisted and directed by a member of the bar." (Exhibit AA, p. 180.)

"Captain Small: The representative of the defense also presents an affidavit of Bernardino Carpio, retracting from his testimony given by him as a witness for the prosecution in the trial of this case. (This is an Orense false

affidavit—A. B. K.)" (Exhibit AA, p. 155.)

"Bernardino Carpio, (admitted liar No. 5 in chief for the defense). If you have paid any attention to the form and general character of the affidavits of these 'admitted liars' you will recognize in the form of this—the last—the artful hand of Attorney Orense. It is made in Manila, and it is made before notary Antonio Javier, and it was made October 12, 1910; but it is just now being presented (November 29, 1911). It was so valuable for the defense that they kept it hidden for one year and one month.

When you read it, you will see that they have worked the Kalaw intimidation racket as much as they dared. Perhaps Kalaw was in Manila about the date when it was made, so Carpio says that Paula and General Noriel offered him twenty pesos and gave him five.

"Carpio testified in the De Guia case in October 1909; in the Buendia case in March, 1910. What reason he would have had to have testified against De Guia or Buendia in this way, I am unable to see. There was no enmity between them, nor was there any reason why Paula should have offered him money to make this statement as his evidence is only corroborative and of no great importance. Having been with De Guia and Buendia when Felizardo was killed, there was a reason why when they wanted to kill somebody else they would go again to him. This man, who had been a Constabulary soldier, has either been bribed, seduced or intimidated to make this affidavit.

"The presenters of the document artfully kept him away from the court and we can't cross-examine this document. There is one thing sure. If true he would have taken the stand. But Orense had one experience on June 80, 1910, in the first De Guia new trial with putting false affidavit makers, Justo Felix and Rivera, on the stand, and doubtless he decided it was safer just to present the inanimate affidavits, especially as Judge Jocson had acquired the habit of being inquisitive regarding the changing of testimony. This affidavit is false, and it has all the earmarks of it. At any rate, we can not assume otherwise unbacked by the testimony of its signer. Nevertheless, we can agree to accept it at par, at its face value, if Captain Small, Colonel Crame, or Mr. Orense will inform us when, where, and how much Paula and General Noriel paid Buendia to write that letter to his wife or how much, when and where they paid De Guia a married man to write the love letters to Apolonia Reyes, Buendia's sister-in-law. Come on, gentlemen, here is a chance for your life. The best proof that this Carpio affidavit is false and that Paula Cuenca had no reason to pay him to testify is her own declaration given every time she takes the stand in these two cases, in the Noriel and Malabanan cases and in the preliminary investigation against De Guia and in the preliminary investigation against Buendia." (Exhibit AA, p. 156.)

"There is nothing in his affidavit that assists De Guia or Buendia, nor that in the least damages the testimony of the prosecution up-to-date. He confines himself to slandering a young lieutenant of Constabulary in the face of and before the eyes of a colonel of Constabulary. Neither this colonel or the provincial fiscal, who was dominated by Crame, asked him sufficient questions for us to plainly see that he is lying. What he says is in the usual form in which appear the falsehoods fabricated by Orense against Lieutenant Kalaw." (Exhibit AA, p. 157.)

"No. 2 is one of the articles that bears the earmarks of Orense manufacture and it was presented to the court by this attorney. Most certainly Tovera in June, 1910, a little over eight months after his declaration in October, 1909, against De Guia, and a little over four months after his declaration against Buendia in March, 1910, remembered well the reasons why he testified adversely against these defendants. Not only this, but the attorney who superintended the making of this affidavit had Tovera put in it every excuse known or thought of as an avoidance scheme at this date. (June 21, 1910.)" (Exhibit AA, p. 163.)

"Slick work on the part of Crame, Small, Orense et al. "The reader's attention is called to the scheme of the 'gang' shrewdly worked before your eyes, yet perhaps, by you unnoticed.

"Orense, Crame et al. prepared all these affidavits, all these witnesses; bribed them, intimidated them, instructed them, and forced them to appear. Both being Filipinos, they thought—in fact they knew—that neither one nor the other could perpetrate this brazen stunt on Judge Jocson; but they were confident that Judge Jocson would not offend or interfere with Captain E. I. Small, of the United States Army; no matter what he did or tried to do; legal or illegal; right or wrong. Small knew this as well as they." (Exhibit AA, p. 175.)

"Add to that situation men, not only ignorant but prejudiced, and attorneys, if not crooked and corrupt then idiots who, without any investigation, present to the court brazen perjury or anything delivered to them by their clients; you then have a status that is not only hopeless and bewildering to you, but that eats the heart out of the proper administration of justice, and both safe-guards, to the citizen and to the courts, are removed and you, the judge, are the helpless victim of this misconception of duty or deliberate criminality or criminality by inactivity of the members of the bar." (Exhibit AA, p. 185, in connection with page 124 of the same exhibit, left column.)

From an examination of the record made in the lower court, including the various exhibits presented, we find that the present alleged libel grew out of several criminal actions which were commenced and tried in the Court of First Instance of the Province of Cavite, the most important of which and the ones upon which the greatest stress is laid are the cases of:

- (a) United States vs. Gregorio de Guia, Gregorio Buendia, and Hermogenes Asuncion.
- (b) United States vs. Mariano Noriel, Luis J. Landas, Macario Eusebio, and Fausto Difioso.
- (c) United States vs. Roman Malabanan.

The record shows that on the 12th of August, 1909, a complaint was filed in the Court of First Instance of the Province of Cavite against the said Gregorio de Guia, Gregorio Buendia, and Hermogenes Asuncion in which each was charged with the assassination of Gregorio Magtibay. The complaint alleged:

"That the men named Gregorio de Guia (alias Odiong), Gregorio Buendia, and Hermogenes Asuncion, on or about May 24, 1909, did agree, premeditate, and determine to kill Gregorio Magtibay (alias Goito), and, for this purpose, the said Gregorio de Guia (alias Odiong), Gregorio Buendia, and Hermogenes Asuncion, on the night of the said 24th of May, in the municipality of Bacoar, Province of Cavite, p. I., did, willfully, unlawfully, and maliciously, meet, armed with deadly weapons, and protected by the darkness of the night, and did warily station themselves in ambush in the vicinity of the house in which Gregorio Magtibay was sleeping, and then and there await a favorable opportunity to carry out their criminal design; and when the said Gregorio Magtibay was sound asleep and unable to defend himself from any aggression that might be made upon him, the said accused assaulted the house inhabited by Gregorio Magtibay, climbing up through a window, and treacherously killed Gregorio Magtibay, by inflicting upon him, with a sharp-pointed, double-edged, cutting weapon, three wounds in his neck and right shoulder, which wounds caused the death of the said Gregorio Magtibay immediately after their infliction. Acts committed in violation of law and attended by the aggravating circumstances of deliberate premeditation, treachery, and the use of a prohibited weapon.

"F. Santamaria,

"Provincial Fiscal."

On the 28th of September, 1909, the said Gregorio Buendia presented a motion requesting that he be given a separate trial, which motion was granted.

Upon said complaint each of said defendants was duly arrested. On the 8th of October, 1909, they were each

arraigned and each plead not guilty of the crime charged in the complaint.

On the 8th of October, 1909, the complaint against Gregorio de Guia and Hermogenes Asuncion was brought on for trial. At the close of the presentation of the proof on the part of the prosecution, the attorney for the defendants, Eusebio Orense, presented a motion asking that the complaint against Hermogenes Asuncion be dismissed and that he be discharged from the custody of the law, with costs de officio, for the reason that the proof adduced failed to show that he was guilty in any manner of the crime charged, which motion, upon consideration, was granted and Hermogenes Asuncion was discharged from the custody of the law. The trial then proceeded against Gregorio de Guia alone, with various transfers of hearings until its close.

On the 4th of March, 1910, the attorney for the prosecution presented a written argument.

On the 8th of March, 1910, the attorney for the defendants presented his argument.

On the 18th of June, 1910, a decision not yet having been rendered, Eusebio Orense, attorney for the defendant, Gregorio de Guia, presented a motion for a reopening of the case. Said motion was accompanied by the affidavit of Justo Felix, one of the principal witnesses, who appeared and declared for the prosecution during the first hearing. In said affidavit Justo Felix declared:

"That the testimony which I then gave (a copy of which is attached) is not the truth; that I then gave the said testimony against the defendants De Guia and Buendia on account of my having been seduced and coached so to declare by one Pedro Lipana, and because I was afraid of Lieutenant Kalaw of the Constabulary; and that the truth is that on the Monday night of the month of May when Gregorio Magtibay died I was not fishing, by artificial light, in the sea at Bacoar, for I was then in the pueblo of Naic where I had gone to sell buyo; and that, at the same time that the said Pedro Lipana seduced me and coached me to give the testimony that I did give in court against the said defendants Gregorio de Guia and Gregorio Buendia, he also seduced and coached, in his own house, the witnesses named Tomas Ugalde, Troadio Diaz, Pedro Tobera, Bernardino Carpio, and a woman named Vicenta, whose surname I do not know."

On the 27th of June, 1910, said motion came on for hearing, at which hearing the attorneys for the respective parties were present and took part in the argument. The "declaration" to which Justo Felix, referred and which accompanied his affidavit was his declaration made in the Court of First Instance during the first trial.

On the 28th of June, 1910, the presiding judge, the Honorable Vicente Jocson, after hearing the respective parties on the motion for a reopening of the case, granted the same for, the purpose only of hearing the testimony of the said Justo Felix.

On the 30th of June, 1910, a new hearing was given.

During the second hearing the declarations of several witnesses were taken beside the declaration of Justo Felix.

The other witnesses who declared were Alipio Lokso, Troadio Diaz, and Pedro Tuvera. During said hearing, in addition to the declarations of said witnesses, Exhibits E, F, and G and No. 1, No. 2, and the sworn statement of Eusebio Orense were also presented. Exhibit E is an affidavit by Troadio Diaz, in which he declares that the statement which he had theretofore made in open court on the first trial was false, and gives his reasons why his first declaration was false. Exhibit G is an affidavit presented by Segundo Francisco, justice of the peace of the municipality of Bacoar, Province of Cavite, which supports some of the facts stated in the affidavit of Troadio Dim. Exhibit No. 1 is another affidavit of the said Troadio Diaz, in which he again declares that the testimony which he gave at the first hearing was false and his reasons therefor. Exhibit No. 2 is an affidavit by Pedro Tovera, in which he retracts his declaration in the first trial and gives his reasons therefor. The affidavit presented

by Eusebio Orense is a statement explaining the circumstances under which the affidavit of Justo Felix and the other affidavits above referred to were made.

On the 26th of August, 1910, the prosecuting attorney of the Province of Cavite presented a motion in the Court of First Instance requesting that the decision in said cause be suspended, for the reasons stated therein.

On the 21st of November, 1911, Eusebio Orense, attorney for the defendant, Gregorio de Guia, renewed his motion for a reopening of the hearing of said cause, for the following reasons:

"First. Because, according to the information which the defendant has received and which he believes and alleges to be true, some days after the close of the hearing in the above-entitled cause, the witness Bernardino Carpio made statements contradictory and opposed to those he made at the trial, saying that if, at the trial, he gave testimony against the defendant, notwithstanding its not being true, he did so through the inducement of other persons.

"Second. Because, likewise, according to the information which the defendant has received and which he believes and alleges to be true, from the investigations conducted by the lieutenant-colonel of the Constabulary, Mr. Rafael Crame, with the assistance of the provincial fiscal of Cavite, some days after the close of the hearing in the above-entitled cause, new evidence was discovered which has a strong and decisive bearing on the disposition of this cause, which new evidence consists in the testimony of several witnesses who affirm that other persons are responsible for the crime erroneously charged against the defendant, he, before the trial of the case, not having had an opportunity to know the testimony of said witnesses, in spite of his exercise of all due diligence, and for this reason could not then present said witnesses.

"Third. Because, also, according to the information which the defendant has received and which he believes and alleges to be true, a new hearing has been requested in the cause of 'The United States vs. Gregorio Buendia' with which the above-entitled cause is related, the said reopening of the case having been granted on the ground of the discovery of new evidence consisting of the same evidence above-mentioned.

"For all the foregoing reasons, renewing the petition for a reopening of the case, made in the beginning of this motion, the undersigned prays the court to grant a reopening of the case, and for this purpose to set the day and hour therefor sufficiently in advance so as to allow the petitioner an opportunity to summon said witnesses."

On the 24th of November, 1911, and after hearing the respective parties upon the motion for a reopening of the trial, the Honorable Vicente Jocson granted the same.

After a careful consideration of the proof adduced after the trial of the cause had been reopened and during a consideration of the motion to reopen the trial and for the reason that the said witnesses above mentioned had retracted their declarations made during the first hearing, the Honorable Vicente Jocson reached the conclusion that the evidence adduced during the trial, taking into consideration said retractions, was not sufficient to show that the said Gregorio de Guia was guilty of the crime charged. The reasons for absolving the defendant are best stated by the Judge himself. He said, among other things:

"After the prosecution submitted its evidence, the defense moved for the acquittal of Hermdgenes Asuncion, inasmuch as no charge whatever had been proven against him and no circumstantial evidence was developed to warrant any suspicion that he had a hand in the crime under prosecution. The court granted this motion and acquitted Hermogenes Asunci6n, ordering his final release and the assessment de officio of his proportional share of the costs.

"The evidence introduced by the prosecution was documentary and oral. The oral evidence was the testimony of

the widow of the deceased, Paula Cuenca, who testified, substantially, that on the night of the crime she and her husband with their little children were sleeping in their small house situated in the midst of their salt lands, in the sitio of Talaba, Bacoor; that she and her husband were sleeping together with one of their little children; that early in the morning of Tuesday, May 25, 1909, she heard a noise and saw her husband raise himself from the bed and fall near the window as he cried out 'Mother of mine!' that she likewise saw a man jump through the window, and heard voices from below and the words 'Odiong, Odiong' and another voice which replied: 'This way, this way,' witness understanding the name 'Odiong' to refer to the defendant Gregorio de Guia; that she suspected that there was rivalry between her husband and the defendant De Guia on account of the amorous relations which her husband had with a woman named Apolonia Reyes (alias Onang), whom the defendant De Guia was also courting. In this connection, witness produced Exhibits A, B, and C of the prosecution, on file in the record, Exhibit A being a letter signed by Apolonia, and the other two exhibits, letters signed by Gregorio de Guia.

"The prosecution also presented Bernardino Garpio who testified that on the night of the 22d or 23d of May, 1909, the defendant came to him, accompanied by Gregorio Buendia, and offered to pay him "P100 if he would kill Gregorio Magtibay (altos Goito), but that he rejected the proposal. "Another witness presented by the prosecution was Justo Felix who testified, substantially, that on the night of the crime, while returning home from the sea where he had been fishing with a light, he met on his way, at a certain distance from Goito's house, three persons, two of whom he knew to be Gregorio de Guia and Gregorio Buendia; and that he recognized them because they ordered him to put out the light that he was carrying, and threatened him with death if he should tell anybody that he had seen them in that place.

"Pedro Tovera testified in terms similar to those found in the testimony of the preceding witness. He stated that he recognized Gregorio de Guia and Gregorio Buendia for the reason that he heard the former say to the latter the following words: 'Walk faster, Buendia.'

"Troadio Diaz also testified that, while engaged that night in fishing with a light in the sea, he saw two persons who were walking along fast; that he recognized only one of them Gregorio Buendia, but did not recognize the other, for the reason that he drew back when he saw witness; and that the said Buendia appeared to be carrying a bayonet.

"The witnesses Justo Felix and Pedro Tovera, in their testimony, said nothing as to whether Buendia was carrying any weapon, notwithstanding that they positively stated that they had seen him; only Troadio Diaz said that Buendia was carrying a bayonet.

"The defense presented exculpatory evidence, among which was the testimony of several witnesses whereby it proved that on the day of the crime, or from the afternoon of the 24th of May, 1909, until the 28th of the same month, Gregorio Buendia was in Fort Santiago, Manila, together with other Scout soldiers. This alibi was supported by the testimony of the soldier who was on guard duty on the night of the 24th, and by the records kept by the military, relative to guard service, which, also by agreement between the prosecution and the defense, are considered as proofs in this cause. Said records are on file in cause No. 1713 instituted against Gregorio Buendia for the same crime. "The defense also presented witnesses for the purpose of rebutting the evidence that, on the night of the crime, or some hours prior to the killing of Goito, the witnesses for the prosecution were not in the places referred to by them in their testimony, and set up an alibi.

"Upon a careful examination of all the evidence in this cause, I am of the opinion that it has been proven that there was in fact rivalry between the deceased Gregorio Magtibay (alias Goito) and Gregorio de Guia, owing to the former's amorous relations with Apolonia Reyes (alias Onang), as shown by the prosecution's Exhibits A, B, and C, this particular fact being circumstantial evidence of a more or less direct nature sufficient to justify the

suspicion entertained by the widow Paula Cuenca that, if it was not Gregorio de Guia who killed her husband, he at least instigated someone else to commit the deed.

"The testimony of the other witnesses for the prosecution might also be considered as circumstantial evidence against the defendant and Buendia. But that testimony has been contradicted, and besides there is the alibi set up by the defendant De Guia to the effect that on the night of the crime he did not leave his house. That circumstantial evidence would, of course, be serious, if those witnesses had not subsequently retracted their testimony; according to the evidence introduced in the second reopening of the cause No. 1713 against Gregorio Buendia, which evidence, by agreement between the prosecution and the defense, is deemed also to have been presented in this cause against De Guia and to be effective, in such wise that these retractions and other statements on file in the record of the cause against Buendia, taken by the prosecuting attorney subsequent to the first hearing of these causes and presented in evidence by the defense in both causes, in the second reopening, have virtually discredited and destroyed the credibility of the witnesses for the prosecution, who made retractions, and against the said testimony other corroborative testimony was introduced showing that the witnesses for the prosecution did not tell the truth, and some of these explained that if the first time they gave incriminatory testimony, it was due to certain threats made by certain Government officials.

"The testimony of Paula Cuenca, even omitting consideration of the fact that she is an interested party, bears, in my opinion, the stamp of improbability, inasmuch as, if the defendant Gregorio de Guia was actually a companion of the person who killed Goito, I cannot reasonably believe that those criminals would call their companions by name and in a loud voice, for the instinct of self-preservation requires that in such cases the criminal shall endeavor to conceal his identity and mislead the offended parties, and for this reason I cannot believe that the name of 'Odiong' was uttered. But, however, supposing that the widow did tell the truth, that she did hear those nicknames, there would still be room to suppose the probability of there being some other Gregorio who also bore the same nickname; furthermore, it may also be supposed that the criminal who killed Goito might have uttered those nicknames in order to better mislead the authorities. It cannot therefore rationally be admitted that the therein defendant Odiong was one of the companions of the slayer of Goito.

"The testimony of Paula Cuenca, with respect to the designation of the author or authors of the crime, likewise was belied by the provincial governor, Leonardo Osorio, who testified before the court that he had inquired of the widow as to whom she suspected to be the authors of her husband's death, and that she replied that she did not know who they were and heard no voices. This testimony of the governor appears to me more impartial and acceptable than that given by the widow herself, and virtually destroys all the circumstantial evidence relative to the designation of Gregorio de Guia as being the perpetrator of the crime; so that, of the diverse circumstantial evidence set up against Gregorio de Guia at the commencement of this cause, only one such proof, in my opinion, still stands, because the rest were totally rebutted by the evidence for the defense and by the retractions of the very witnesses for the prosecution, made in the above-mentioned investigation held by the fiscal, and that investigation is in no wise subject to suspicion, for it was conducted by the very Government officials interested in the punishment of the crime; and the result of this last investigation being contradictory, it radically destroys the probatory force of the testimony produced by the prosecution at the commencement of this cause and necessarily engenders in the mind of the court a reasonable doubt with respect to the defendant's guilt—a doubt which, in accordance with the Code of Criminal Procedure now in force, must be applied in the defendant's favor.

"Pursuant to the Provisional Law for the Application of the Penal Code in the Philippine Islands, in order that a conviction may be founded solely on circumstantial evidence, it is necessary that there be more than one of such proofs; second, that the facts from which the evidence is derived be proven; and, third, that the conviction produced in the mind by a combination of the evidence be such as to leave no room for any reasonable doubt as to

the defendant's guilt, in accordance with the ordinary and natural course of things.

"In the present case, there remains only the sole circumstantial evidence, of a more or less probable nature, that there was rivalry between Goito and Gregorio de Guia on account of the amorous relations maintained by the former with Apolonia Reyes (alias Onang)—only one circumstantial proof insufficient to ground thereon a judgment of conviction, inasmuch as all the rest of the circumstantial evidence was duly refuted by the defense.

"For the foregoing reasons, the court freely acquits Gregorio de Guia, and orders his final release and the cancellation of the bond given, with the costs de oficio. So ordered.

(Sgd.) "Vicente Jocson,

"Judge of the Sixth District"

The foregoing concluded the case against Gregorio de Guia.

It will be remembered that a separate trial had been granted to Gregorio Buendia. For some reason or other, not explained by the record, the action against him was given a separate number. The original action against the said three defendants (De Guia, Buendia, and Asuncion) was numbered 1666. The action proceeded against De Guia and Asuncion with that number. The separate action against Buendia was numbered 1713. The complaint, however, was exactly the same. Finally, notwithstanding the fact that Gregorio Buendia had been arraigned, as it appears from the record in cause No. 1666, on October 8th, 1909, he was again arraigned under the same complaint on March 9th, 1910, and again plead not guilty. Upon his arraignment (March 9th, 1910), the cause was immediately called for trial on the same date. During the trial a number of witnesses declared for the prosecution as well as for the defense and apparently both the prosecution and the defense closed their proof on the 10th of March, 1910, and each presented oral arguments to the court.

Nothing further seems to have occurred until the 18th of June, 1910, when Eusebio Orense, attorney for the defendant, presented a motion for a new trial or that the trial of the cause be reopened. In support of his motion he presented the affidavit of Justo Felix, together with a copy of his declaration given during the first trial of the cause. The affidavit of Justo Felix is the same as that which was presented as the basis of a new trial in the case of United States vs. Gregorio de Guia, which is copied above. Upon hearing said motion for a reopening of the trial, the Honorable Vicente Jocson, judge, on the 28th of June, 1910, granted the same for the purpose of hearing the declaration of the said Justo Felix.

On the 26th of August, 1910, the prosecuting attorney of the Province of Cavite asked for a suspension of the decision in said cause.

On the 20th of November, 1911, the defendant, through his attorney, presented a further motion for a reopening of the trial. Said motion was as follows:

"As counsel for the defendant, we respectfully pray the court for a reopening of this cause, for the introduction of additional evidence. We have sufficient evidence to show that a third person, not Buendia nor De Guia, committed this crime. We have also evidence to contradict that adduced by the witnesses for the prosecution, and we pray the court to set a date for the hearing of this cause."

On the 20th of November, 1911, said motion of the defendant for a reopening of the trial was brought on for hearing and there being no opposition to the same, the court immediately granted it and set the cause down for a rehearing on the 27th of November, 1911.

On the 27th of November, 1911, Paula Cuenca presented a motion opposing the granting of a new trial but requested that in case the motion for a new trial should be granted, that the trial of the same be set down for the 29th of November, 1911, instead of the 27th day of said month.

On the same day (the 27th of November, 1911), the Honorable Vicente Jocson, judge, transferred the trial of said cause from the 27th of November to the 29th.

During the consideration of the cause, after the granting of the rehearing, there were presented to the court the sworn declarations of Bernardino Carpio, Simon Velasquez, Canute Vasquez, Cirilo Diaz, Justo Felix, Pedro Tuvera, Remigio Mendoza, Dionisio Banayad, Cornelio Tortona, Maximo Saliva, Alfonso Guenca, Bruno Ramirez, Maximo Javier, Balbino Alameda, Donate Javier, Cornelio Bernardo, Saturnino Marquez, and Alejandro Marquez. Practically all of said witnesses had declared during the first trial of the cause and stated facts which inculpated the defendant, Gregorio Buendia. In their declarations during the second trial, they stated that their first statements were untrue and that they had been induced or intimidated to make the statements which they had made during the first hearing. From an examination of said affidavits and said declarations we find the following:

That Bernardino Garpio was induced by Paula and Noriel to swear that Buendia had offered him P100 to kill Gregorio Magtibay; that Paula and Noriel had paid him P5.

That Simon Velasquez had declared falsely on the first hearing because of intimidation and threats made by Teniente Kalaw.

That Canuto Vasquez had declared falsely during the first hearing, by reason of the threats and intimidation of Teniente Kalaw and Luis Landas.

That Justo Felix had declared falsely during the first trial by reason of inducements and the intimidations and threats of Pedro Lipana, Teniente Kalaw, and Luis Landas; that Pedro Lipana had offered him P25, but that he had received only P14.

That Dionisio Banayad had declared falsely during the first trial by the inducements of Luis Landas.

That Cornelio Tortona had declared falsely during the first hearing" by reason of inducements and intimidation of Luis Landas and Teniente Kalaw.

Alfonso Cuenca testified as follows on the second hearing:

"Q. Do you know Gregorio Magtibay, alias Goito?— A. Yes, sir.

"Q. Where is Gregorio Magtibay now?—A. He is buried in the cemetery.

"Q. Do you know when and how he died?—A. Yes, sir.

"Q. Tell the court when Gregorio Magtibay died, and what you know of his death.—A. He died on Wednesday, May 24, 1909.

"Q. What do you know about the cause of his death?— A. What I know is that Mariano Noriel gave me an invitation on account of the trouble that he had with Gregorio Magtibay in the cockpit, and we, Mariano Noriel and I, went to await him on the bridge one afternoon at 5 o'clock.

"Q. What was the reason that you and Mariano Noriel awaited Gregorio Magtibay on the bridge?—A. The reason was because, as it seems to me, Mariano Noriel, without having any money, had wagered in the cockpit and lost, and on account of this loss, Gregorio Magtibay insulted Mariano Noriel by calling him "sin verguenza," and Mariano Noriel resented the insult.

"Q. I ask you, what was the reason that both of you waited there on the bridge?—A. I do not know the reason; he only invited me to go there to the bridge; he only told me that he wished to talk to Goito.

"Q. When you and Noriel waited on the bridge, did you talk with any other persons?—A. No, sir.

"Q. Do you know one Macario Eusebio?—A. Yes, sir. Macario Eusebio arrived at about 7 o'clock and said to Noriel that he would accomplish nothing because he was coming with some companions.

"Q. Who is it that has companions?—A. Gregorio Magtibay.

"Q. After that conversation with Macario Eusebio did Noriel talk with you?—A. Yes, sir.

"Q. Tell us what the conversation was.—A. I inquired of him the reason why he had invited me there to that place, and I insisted on asking him the reason why he had invited me to that place, and he replied that he wished to talk to Goito, and as a result of this conversation with Goito, he told me that I should take care of him.

"Q. When you went to the bridge and waited for Goito, did you carry anything with you?—A. Each one of us carried a revolver.

"Q. To whom did those revolvers belong?—A. To Mariano Noriel.

"Q. Who gave you that revolver?—A. Noriel.

"Q. Where is that revolver, do you have it now?—A. No, sir; he took it from me; he took it away that same night.

"Q. In the month of May of that same year, did you at any time have conversation with, or did you again see, Mariano Noriel?—A. Yes, sir.

"Q. What were the subjects of that conversation?—A. It was in the evening; at 8 o'clock sharp he invited me, saying, 'Follow me, for we shall go to a big feast here.' When he made me that invitation, as I was in my house, which was near his, I went to his house and there he handed a revolver to me. In that house I met Roman Malabanan and Luis Landas.

"Q. What else? Tell the court all that occurred that night.—A. We went down to Nortel's house; Luis Landas and Roman Malabanan went ahead of us, and when we arrived at the railroad track, we there met two persons.

"Q. Tell the names of those persons whom you met there, if you know.—A. Roman Malabanan and Luis Landas. From there we walked, we went away, we passed to a place where there were no houses, a place adjoining Cornelio Tortona's house and from there we walked to the house of Macario Eusebio, in which we rested. When we arrived there I inquired about the dinner we were to eat, and even went to the place where the pots were, but there was nothing there, and then he told me to wait that the dinner would soon come. At midnight I felt hungry, and loaves of bread and some sweetmeats were brought in. After I had eaten, he said to me, 'Rest yourself here, and later we will return.' After a little while, he, Noriel, took out his watch and saw that it was 12 o'clock, and he told me and Roman Malabanan to go to Goito's house to see if he was there and we went there and found that Goito was not there in his house, but that he was in his salt land working there with a light together with some men. Then when we saw that, we withdrew, and we met Noriel on the bridge near an embornal.

"Q. When you went with Roman Malabanan to lie in wait for Goito, did you carry anything?—A. Yes, sir. I carried a revolver, and so also did Malabanan, Mariano Noriel, and Luis Landas.

"Q. When you and Roman Malabanan saw that Goito was not in his house, did Roman say anything to you?—A. No, sir, nothing.

"Q. When you and Malabanan withdrew from lying in wait near Goito's house and met Noriel, Luis Landas, and

Fausto, did either you or Malabanan say anything to Noriel?—A. Yes, sir. Noriel then said to me, 'You and Fausto should now withdraw, for after all nothing will be accomplished, nothing will happen.

"Q. When did this happen that you have just stated to the court? State what day it was, if you remember.—A. It was on a certain Tuesday (witness afterwards corrected himself, saying that it was on a certain Monday).

"Q. Did you again see Noriel on that day, Monday?—A. Yes, sir. He went to get me on that night.

"Q. Was that Monday on which you say that Noriel went at night to look for you in your house, the same day on which what you have related to the court occurred?—A. No, sir.

"Q. When, then, did those facts that you have related occur?—A. He went to my house on Monday night and asked me whether on Tuesday night he could be assured that I would be with him, and I replied that he could.

"Q. Did Noriel again see you that Tuesday you mention, and did you go with him?—A. Yes, sir. He returned to my house to get me, but I did not go with him.

"Q. Do you know why Noriel was in your house to see you on Monday night?—A. Yes, sir.

"Q. Tell why.—A. Because we were to return again to Goito's house.

"Q. When did you learn of Goito's death?—A. I learned of it on the next morning after Tuesday, that is, on Wednesday.

"Q. How many days elapsed between the day when Noriel was in your house to visit you and the day when you learned that Goito had died?—A. Two days elapsed.

"Q. Did you again see Noriel after the date when you learned that Goito had died?—A. Yes, sir.

"Q. Did you say anything to each other?—A. Yes, sir. He told me that it had already been accomplished.

"Q. What is it that Noriel said had been accomplished?—A. He told me that he was now dead, and warned me to say nothing about it to anybody.

"Q. In that conversation you had with Noriel, who is this person that Noriel told you had died?—A. Gregorio Magtibay.

"Q. After this conversation that you have just related, did you and Noriel at any other time talk about Goito's death?—A. Yes, sir.

"Q. About what?—A. He told me to appear as a witness and to testify that it was Buendia who did the killing, and that if I would do so, he would give me P30 for it.

Q. You state that Noriel talked with you in order that you may testify that it was Gregorio Buendia who did the killing. Who was it that he wished you to say that Buendia had killed?—A. Gregorio Magtibay.

"Q. Are you in any way related to Gregorio Magtibay, alias Goito?—A. Yes, sir.

"Q. What was your relationship with him?—A. Yes, sir; because his grandfather is Cuenca and my surname is also Cuenca.

"Q. What relation or degree of kinship was there between you?—A. My father told me that we are relatives. You cannot know what conception that man Noriel may have of a person, for, when you see him with a smile on his lips, you cannot be assured that it is one of friendship, as he sacrifices everything to diplomacy.

"Q. You have not answered my question. My question is whether you know what relations there were between

Noriel and Gregorio Magtibay, whether they were friendly relations.—A. They were on bad terms.

"Q. Why?—A. On account of what happened to them in the month of April.

* * * * *

"Q. On that occasion when you and Noriel, armed with revolvers, went to lie in wait on the bridge for Goito, whence had you come?—A. We had come from the central part of the town.

"Q. On what date did this occur?—A. It was on Sunday.

"Q. In the cockpit?—A. Yes, sir.

"Q. And there in the cockpit did he invite you to accompany him on the bridge?—A. No, sir; in my house.

"Q. But the trouble took place in the cockpit that day, didn't it?—A. Yes, sir.

* * * * *

"Q. At what hour of that day did Noriel go to see you in your house?—A. At 5 o'clock in the afternoon.

"Q. And when did the trouble in the cockpit arise, at what hour?—A. I do not know; he only told me that they had had trouble.

* * * * *

"Q. But did each one of you carry a revolver?—A. Yes, sir; each one of us two.

"Q. That is to say, that when he returned from your house and went with you, he carried two revolvers ?—A. Yes, sir.

* * * * *

"Q. But subsequently, in the evening of a certain Monday, when you were in Noriel's house and there met Luis Landas and Roman Palayoc, you already knew, didn't you, that it had been planned to kill Magtibay?—A. Yes, sir.

"Q. And you were willing to kill Goito, if they had confided the task to you?—A. Yes, sir; Noriel and I were friends, and I was willing.

"Q. Are you and Noriel still friends at the present time ?- A. No longer, sir.

"Q. Since when have you ceased to be friends?—A. A long time ago.

"Q. When proceedings were first instituted in this cause, were you and Noriel still friends?—A. We were still friends.

* * * * *

"Q. Were you in company with Noriel, Landas, and Malabanan, on the last Monday prior to the Wednesday when you learned of Magtibay's death?—A. Yes, sir.

"Q. Until what hour were you in their company?—A Until 2 o'clock in the morning.

* * * * *

"Q. On the night of that day, Monday, what other kind of weapons were your companions, or you yourself, carrying?—A. A revolver, a dagger, and a bolo; Roman Malabanan carried a dagger besides a revolver and Macario Eusebio a long bolo, when we met him in the barrio of Talaba.

"Q. However, on that Monday night when you with another companion went to lie in wait for Goito, in his house, and, not finding him there, but in the salt land, returned to the place where Noriel was waiting for you, the latter assured you that nothing would happen on that night, is that not so?—A. Yes, sir, he told me that nothing would occur."

* * * * *

After hearing all of the witnesses presented at the new hearing, the Honorable Vicente Jocson, judge, reached the conclusion that the proof did not show, beyond a reasonable doubt, taking into consideration the retractions of the numerous witnesses, that Buendia was guilty of the crime charged, and therefore absolved him from all liability under the law and dismissed the complaint against him, with costs de officio. The reasons for absolving the defendant are best stated by the judge himself. They are as follows:

"The trial of this cause may be divided into three stages.

During the first, the prosecution presented the witness Vicenta Enriquez who testified that, on the night of May 23, 1909, she slept in a house near the one belonging to Gregorio Buendia's mother-in-law, and that she did so because she had no companion in her own house, as her husband was out at sea fishing; that at about midnight she was awakened by a noise made by the door of the house of Buendia's mother-in-law, and heard the latter inquire who it was that was entering the house; that the defendant replied that 'it was he;' that after a light had been lit, she heard Buendia's mother-in-law say, 'Why are you stained with blood?' and heard the reply which was, 'Please put out the light.' She further testified that the house of Teang, Buendia's mother-in-law, was 5 brazas distant from that belonging to one Damiana in which the witness passed the night. It was also brought out that Vicenta Enriquez had been a tenant-on-shares of the deceased Gregorio Magtibay (alias Goito).

"The second witness, Luis J. Landas, municipal president of Bacoar, of this province of Cavite, testified that as municipal president he went to the house of Buendia's mother-in-law in the month of July, 1909, as at the time he was conducting an investigation to ascertain who had killed Gregorio Magtibay, and that he found in a wall or partition in the said house a letter (the prosecution's Exhibit A), which he delivered to Captain Shutan of the Constabulary of this province. During the trial this letter was duly identified as actually having been written by Gregorio Buendia. In it the defendant said to his wife, named Mentang, that he was sick and that after leaving the hospital he would go directly to jail, as he suspected that two Constabulary lieutenants were working against him. He also warned his wife that if anybody inquired whether he had returned there to his house (in Bacoar) that she should say that since he left for Los Banos he had gone there (to Bacoar) only once, which was on the night of the 28th (May, 1909), and that she should not say that he had returned to his house on any other date. He also told her that if [they inquired whether] he (the defendant) was there in his house (in Bacoar) on the night when Goito died, she should answer 'no,' because that was the truth, as he was not there in his house, and that she should avoid saying anything about them.

"Another of the witnesses for the prosecution, Buenaventura de los Reyes, testified that on May 21 he met Gregorio Buendia in the sitio of Malicsi, Bacoar, and that he [Buendia] was in a caiTomata or calesa and was getting out of it in front of his [Buendia's] mother-in-law's house. "Another of the witnesses for the prosecution, Justo Felix, testified that he saw Buendia on the Monday night immediately preceding the day on which Gregorio Magtibay (alias Goito) died; that Buendia, in company with another man, was in a fishery near the house of the deceased, and that they were going toward the sea; that witness was then coming from the sea; that those men were Buendia and Odiong, and that they warned witness not to say anything about them to anybody; that witness was carrying a torch; that Gregorio de Guia and Gregorio Buendia were coming from the highway, and that the place where they and the witness met was 15 brazas from the house of the deceased Gregorio Magtibay.

"Another witness for the prosecution, Bernardo [Bernardino] Carpio, positively stated that some time about the 22d or 23d of May, 1909, Gregorio Buendia and Gregorio de Guia were in his house in Pamplona and proposed to him that he should kill Goito, for which they offered to give him P100; and that he rejected the proposal.

"The witness Troadio Diaz testified that he saw Buendia near the sea and in front of the house of the deceased Gregorio Magtibay (alias Goito); that Buendia was with another man whom witness did not recognize, because this man was running; that Buendia and his companion did not make themselves known to witness; that it seemed to witness that Buendia was carrying a bayonet; that the meeting took place at 1 o'clock in the morning; that it was at day-break of that same day that he heard the wailings in Goito's house.

"Defendant's counsel introduced evidence to support an alibi. He maintained that long before the said date of May 23, 1909, Gregorio Buendia, together with other Scout soldiers, went to San Pablo, Laguna, and that they returned from said province only on the 24th of May of the same year. Edward Cowyers, a soldier previously detailed in Los Bafios, testified that he was in Fort Santiago on the afternoon of May 24th and until the following day; that Buendia and his companions arrived at about 6 o'clock in the evening of May 24, 1909; and that only at the midday of the 28th of that same month of May did he meet the defendant and the latter's companions, who were boarding the train bound for Cavite.

"Alejandro Decena, also a witness for the defense, corroborated the alibi set up by the defendant Buendia, with respect to the latter's arrival in Manila in the afternoon of the 24th of May, 1909, and stay in Fort Santiago until the 28th of that same month, when they returned to Imus.

"Exhibits Nos. 1 and 2 of the defense were also presented. Exhibit No. 1 shows that from the 24th to the 29th of May, 1909, the Scouts Buendia, Decena, and Lozada were in Fort Santiago; and Exhibit No. 2 shows the guard duty performed by the soldier Steffes who also supported the defendant Buendia's alibi, stating that when he (Steffes) was doing guard duty on the afternoon of May 24, 1909, he saw Buendia. Both of these exhibits have been duly identified.

"Captain Small of the Scouts testified that he went to Bacoar to measure the distance between the house belonging to Damiana, in which Vicenta Enriquez stated that she stayed during the night of the crime, and that belonging to Teang, Buendia's mother-in-law, and found that it was 25 yards.

"The soldier Juan Lozada corroborated Buendia's alibi with respect to the defendant's stay in Laguna, arrival at Fort Santiago, and departure for Imus.

"The second stage of this prosecution was due to the fact that, on motion of the defense, the court allowed, on June 28, 1910, the reopening of the case, in order to introduce the additional evidence found in cause No. 1666 against Gregorio de Guia for murder, which evidence, also by agreement between both parties, to wit, the fiscal and the defense, was to be considered the same for both causes and to produce its effects in the cause against Gregorio Buendia.

"At this reopening, Justo Felix, a previous witness for the prosecution, was presented as a witness for the defense. This witness, retracting his original sworn statements, testified that all the testimony he had previously given in the cause against Gregorio de Guia was false; that he gave such false testimony through fear and shame; and that he had been induced so to testify by the person who accompanied him to this court room.

"The fiscal, on his part, presented rebuttal evidence against said retraction, and introduced the witness Alipio Lokso who testified that he had met Justo Felix and Pedro Tovera in the month of June, 1910, that is, some days prior to the time the retraction was made before this court; that they, Felix and Tovera, engaging in conversation with witness, told him that they were going to the house of Doray, wife of the defendant De Guia; that when

witness inquired of them as to what they were to do there, Justo Felix replied that he (Felix) and Pedro Tovera were De Guia's witnesses; that when Lokso expressed surprised and made the remark to them that they were witnesses for the prosecution, Felix replied that the governor had begged them, that he (Felix) could not refuse nor take back his promise, that he had received from Isidora P4 to buy a personal registration certificate, and P30 which they spent.

"The fiscal also presented Troadio Diaz who, in substance, testified that nobody had coerced him when he previously came before this court to testify, for neither Pedro Lipana nor Lieutenant Kalaw intimidated him to give testimony before this court. He also stated that he had made a retraction before the attorney for the defense, in the office of the clerk of the court. On his being questioned by the fiscal as to whether he (Diaz) had appeared and made a new declaration, retracting the one formerly made by him, he replied that he had done so before the justice of the peace of Bacoar, and, when he was shown the exhibit E, he identified it. The fiscal also presented Exhibits E and F. The latter is a certificate by the clerk of the court, and recites that, on June 27, 1910, Troadio Diaz appeared before the affiant and swore that in fact he had executed the previous document, Exhibit E, before the justice of the peace of Bacoar, after it had been read to him in the presence of the provincial fiscal, whereupon he freely and voluntarily affirmed, ratified, and signed it.

"The fiscal also presented Exhibit G, which is an affidavit by the justice of the peace of Bacoar, Segundo Francisco, who stated therein that on the morning of June 23, 1910, Troadio Diaz came to the office of the affiant, delivered to him five pesos, and told him that he had received this sum from Doray, Gregorio de Guia's wife, for a certain retraction that he made of the testimony given by him in the said cause against Gregorio de Guia and Gregorio Buendia. These statements by Diaz were taken down in writing and constitute the aforementioned Exhibit E.

"The defense had presented before the Notary Teofilo Viado the affidavit made by Troadio Diaz of the retraction of his testimony given in the present case and in the one against De Guia; and likewise the affidavit whereby Pedro Tovera also retracted his testimony.

"The third stage of this cause is the new reopening granted on November 20, 1911, at the verbal request of the defense, with the acquiescence of the fiscal, for the introduction of additional evidence in the defendant's behalf.

"In this second reopening, the defense introduced several witnesses whose testimony tended to show that the principal author of the death of Gregorio Magtibay is one Roman Malabanan and that his accomplices are Luis J. Landas, municipal president of Bacoar, and Mariano Noriel, a resident of the said pueblo of Bacoar. These witnesses positively testified that during the night and on the early morning when the crime was committed, May 23, 1909, they had not seen there in the environs of the house or in the neighborhood of Goito's house the defendant Buendia, and only the aforementioned Roman Malabanan, who was walking along and carrying a kind of dagger, and, at a certain distance from said place, Luis Landas and Mariano Noriel. The defense also presented an affidavit by Bernardo (Bernardino) Carpio in which he retracted his original testimony relative to the proposal and the offer of reward said to have been made to him by the defendants Gregorio Buendia and Gregorio de Guia; and likewise another affidavit by Simeon Velazquez in which he states that Lieutenant Kalaw went several times to the affiant's house to induce him to testify against the defendants Buendia and De Guia, and that said Kalaw even resorted to the extreme of trying to intimidate the affiant by threatening to send him to Bilibid. The latter affidavit was taken before the provincial fiscal as an amplification of the investigation which he subsequently made before witnesses.

"There was also presented the affidavit made by Canute Vazquez, likewise before the provincial fiscal and witnesses, wherein it is set forth that the affiant was arrested at the instigation of Luis J. Landas, as suspected of

having taken part in the killing of Goito, but was subsequently set at liberty; that one week afterwards he was taken to the office of the president of Bacoar, before Lieutenant Kalaw, and that the latter tried to induce him to testify against Gregorio de Guia and affirm that it was De Guia who killed Goito; that affiant was promised his liberty if he would so testify, but that, as he would not agree to do so, he was taken to the provincial jail and confined there, though later he was released; and that, while a prisoner, Luis Landas tried to induce him to testify against Gregorio de Guia, offering him P40, notwithstanding which he refused.

"Cirilo Diaz also testified. He stated that during the night or in the early morning when Gregorio Magtibay died, he (witness) together with others named Mariano, Silverio, Remigio, and Troadio Diaz were engaged in catching prawns in the sea; that at about 4 o'clock in the morning they heard a woman shrieking the words, "Naku, naku" (My mother, my mother); that the shrieks came from Goito's house; that afterwards witness and all his said companions, including Troadio Diaz, returned to their houses. This witness positively stated that when they heard the shrieks they did not see anybody pass on the seashore.

"Justo Feliz testified before the provincial fiscal, in this amplificatory investigation, that on the night when Gregorio Magtibay was murdered witness was not in Bacoar, but in Maragondon, and returned only at the time of Goito's burial. This testimony is virtually a retraction of the original testimony that this witness gave against the defendant.

"Pedro Tovera also testified before the provincial fiscal and witnesses. He stated that he had testified before this court the first time to the effect that he was with Justo Felix on the night when Goito was murdered, and that they saw Gregorio de Guia, Gregorio Buendia, and Hermogenes Asuncion pass; while in this last declaration before the fiscal he testified that it was not true that that night they were catching fish with a light, but that he was sleeping that night, and that if he so testified before the court the first time, it was at the instigation of Landas and Noriel. "Remigio Mendoza testified before the provincial fiscal that, on the night when Goito was murdered, witness, together with Mariano Guinto, Troadio Diaz, and two other persons named Cirilo and Silverio, was on the sea catching fish; that then and there they heard the words, "Naku, naku" shrieked; and that they paid no attention, but continued their fishing until 4 o'clock in the morning, when they returned to their respective houses.

"Dionisio Banayad, who said he was a police corporal, made statements constituting a mass of accusations against several persons who were witnesses for the prosecution in this cause, which accusations substantially seek to rebut those made by the witnesses, against the defendants Buendia and Gregorio de Guia.

"A careful examination of the voluminous record in this cause shows the following unquestionable facts which were admitted by the defense itself and fully proven at the trial: That on the early morning of Tuesday, May 24, 1909, Gregorio Magtibay (alias Goito) was in his house in the sitio of Talaba of the municipality of Bacoar, and was sleeping together with his wife and one of his little children, all under the same mosquito net, when on a sudden he rose up from his bed, straightened himself, and immediately thereupon cried out, "Mother of mine!" and then fell to the floor wounded and bathed in his own blood. The wound was inflicted in his jugular vein and caused Magtibay's immediate death. His wife saw a man jump out of the window.

"Now, then, if the court relied solely upon the evidence for the prosecution presented at the first hearing of this cause, that is, the proofs adduced before the first reopening of the case, the preponderance of such evidence, taken in connection with certain more or less important circumstantial evidence, especially that adduced from the Exhibit A above epitomized, would corroborate the facts involved in the charges made by the fiscal, in such wise that it might be deemed probable that the defendant Buendia had a hand in the killing of Goito, but this presumption, produced by said circumstantial evidence, has been weakened and negated by the proofs presented in the reopening of the cause, particularly in the second reopening, inasmuch as the chief witnesses for the

prosecution retracted their original testimony in such wise that the court is embarrassed in deciding which of the two testimonies is true, because the original testimony was given before the court and the subsequent testimony, as well as others, by the defense, was also taken before the court, and the last retractive testimony, with other testimony by the defense, was taken also, partly, before the court, but mostly, before the provincial fiscal, Lieutenant Colonel Crame and the captain of the Constabulary of this province who were present at said investigation. So that this testimony taken by the fiscal virtually destroys the probatory force of the prosecution's original evidence presented before this court, or, at least, weakens and destroys the very credibility of the witnesses for the Government. I cannot suspect that the declarations last made before the fiscal were drawn out by threats and cajolery on the part of the fiscal, and, as they were voluntarily made before this official, they cannot but be accepted by the court. These later declarations were used by the defense to prove, in the present proceedings, the defendant Buendia's innocence, or, in other words, it is the very prosecution itself that has, by its investigations, weakened or removed the probatory value of its own evidence presented before the court in the first stage of the proceedings; and if it is evident that these last proofs taken by the fiscal exculpate, as in fact they do, the defendant Buendia, the conclusion is inevitable that the prosecution's evidence with respect to the defendant's guilt has produced a reasonable doubt in the mind of the court, in such manner that the conflict originated by the very evidence adduced by the prosecution makes it impossible for the court to determine which of these declarations is true; and as this conflict exists, the consequence of which is the creation of doubt in the mind of the court, there is no legal ground for a finding of the defendant's guilt, taking due account of the provisions of section 67 of General Orders No. 58, and such doubt must redound to the defendant's favor.

"However, notwithstanding that these last proofs, presented by the defense and taken by the prosecution in its amplificatory investigation, point to Roman Malabanah, Luis J. Landas, and Mariano Noriel as being Goito's slayers, said proofs cannot be taken into account, inasmuch as these men have not had an opportunity to defend themselves in this cause, nor is it necessary that they do so, because no charge is pending against them. I cannot, therefore, in the present cause give credit to the declarations of the witnesses in regard to this matter, there being a notable improbability of the truth of the accusation against Luis J. Landas and Mariano Noriel, particularly against the former who, in my opinion, is the victim of some revenge harbored by his having been one of the chief witnesses for the prosecution.

"The prosecution's oral testimony taken in the first and second stages of the proceedings have been completely offset by its subsequent investigation, and the witnesses who testified in it and their testimony therein were, with the consent of the prosecution, used by the defense to establish exculpatory evidence. The only circumstantial evidence that stands is that deduced from the prosecution's Exhibit A, to wit, Buendia's letter to his wife, but, as there is only that, it cannot afford sufficient ground for a conviction, pursuant to paragraph 6 of article 52 of the Provisional Law for the Application in the Philippine Islands of the Provisions of the Penal Code. Furthermore, that sole circumstantial evidence was negated by sufficient proof that Gregorio Buendia did not leave Fort Santiago, in Manila, from the afternoon of May 24, 1909, until noon of the 28th of the same month, particularly during the whole night of the 24th until the following day, according to the witnesses who testified in respect to this point.

"In short, reasonable doubt having been raised by the very proofs presented before this court by the prosecution and by those taken in the subsequent investigations made by the prosecuting attorney and which were presented in evidence by the defense, and due account having been taken of the alibi set up by Buendia, and unrebutted by the prosecution, the court, therefore, freely acquits Gregorio Buendia and orders his final release from custody, with costs de officio. The P5 deposited shall be confiscated."

From an examination of the decision of the Honorable Vicente Jolson, judge, it will be seen that he absolved the

defendant Buendia by reason of the retractions made by the witnesses for the prosecution and the additional proof adduced during the hearing, after the reopening of the trial. He acted in entire good faith. Whether or not Judge Jocson was imposed upon by wicked and designing attorneys and malicious, perjured, suborned, and intimidated witnesses is a question which we will discuss when we reach that question. There is nothing in the record which shows or even tends to show, in the slightest degree, that Judge Jocson believed or had any reason to suspect that the retractions were not genuine and had not been made in entire good faith. There is absolutely nothing in the record of the trial court to justify, in the slightest degree, the charges made against him in the alleged libel, that—

"Through corruption, bribery, perjury, judicial weakness and official incompetency * * * Gregorio de Guia and Gregorio Buendia assisted by the individuals referred to * * * were acquitted; that Vicente Jocson convicted these men, and sentenced them to life imprisonment, but was afraid or hesitated or was blocked from filing this decision; that there was no law in your court room (court of Judge Jocson) after November 20, 1911, except the law of the will of a Scout captain or a colonel of Constabulary, that when a judge who has heard the strong and clean-cut testimony of a witness of this kind permits before his eyes the strangling of testimony in this manner, such a judge lacks those qualifications necessary for a judge of the Court of First Instance; that the judge did not dare to render his decision, nor even reopen the case until permitted to do so by Captain Small and so-called Attorney-General Feria; that on the same date, perhaps instantly, and trembling with fear at the august presence of this captain, Judge Vicente Jocson granted the motion immediately, timidly suggesting, however, that it is not strictly in accordance with criminal procedure or law; that legally, professionally, and morally this was a pernicious act upon the part of every one who took part in it, including Judge Jocson, who permitted it; that absurd and ridiculous, illegal and highly improper in Judge Jocson to have admitted them (the affidavits) even if he personally knew that they were true; that Judge Jocson would have convicted, in fact, he did dictate a decision of conviction against De Guia and Buendia, the law giving him the jurisdiction to decide these matters—and some Chief Executive assumed when they appointed him that he had the brains and ability and sufficient honor to attend to these matters properly—but the same named Executive officials, like a trio of silly girls and deceived by criminals 'buted in' and prevented Jocson from administering proper justice in these two cases, just as they have in the trial of Landas before the provincial board; that Jocson was an employee of the Government, and it was made to appear to him that all the head officials of the Government desired and expected an acquittal. They got it. He gave it to them, not because he thought it was right, but because he knew not how to combat and meet the scoundrels that had polluted the channels of justice in his court; that by the acquittals of De Guia and Buendia, you (Judge Jocson) have observed the result of administering justice as a matter of courtesy to defendants, their friends, and attorneys."

By an examination of said alleged libel against Judge Jocson, we find that the defendant attempts to make it appear that the affidavit of Simon Velasquez, in which he attempted to retract his former declaration and in which he gives his reasons therefor, should not have been admitted by Judge Jocson. The defendant says:

"The fiscal foolishly agrees; and to it Judge Jocson more foolishly agrees because the fiscal has foolishly agreed; and absurd and ridiculous, illegal and highly improper in Judge Jocson to have admitted the affidavits, even if he personally knew that they were true." (Exhibit AA, pages 157,171.)

By reference to page 96 of the record in the case of United States vs. Buendia, said affidavit will be found. His declaration as a witness during the rehearing in said case will be found on page 28 of said testimony. A reading of said affidavit and said declaration is sufficient to justify any judge in admitting them for the purpose of weighing their effect in considering and granting a motion for a rehearing.

There was nothing in the record up to that time which in any way could have caused Judge Jocson to believe that Simon Velasquez was attempting to impose upon him, and there is nothing in the record since that time which

justifies the belief that the statements made by Simon Velasquez were not true.

Moreover, the defendant constantly charges that Judge Jocson, after the close of the first hearing and before the motions for a reopening of the different cases were made, had written a decision convicting the two defendants De Guia and Buendia. That fact is denied and there is no proof adduced during the trial of the present case which supports it. During the trial of the present case Judge Jocson appeared as a witness. The defendant had an opportunity to ask him whether or not he had written a decision convicting De Guia and Buendia before the motions for a reopening of the cases had been made. No question upon that subject was presented to Judge Jocson by the defendant. The stenographer of Judge Jocson was called as a witness. He said that he had never heard of said decision. The clerk of the court was called as a witness. He denied that he had ever heard of such a decision. There is, therefore, no proof whatever in the record, outside of the declaration of the defendant himself, that such a decision was ever written. And, moreover, even granting that Judge Jocson had written a decision based upon the original testimony taken, he was at perfect liberty, and it was his duty as a judge, if he later found that the testimony was insufficient to justify his first conclusions, to change his mind.

The defendant further charges in his alleged libel that the declaration of Paula Cuenca, given during the preliminary examination, was willfully suppressed by the parties most interested in the actions against De Guia and Buendia. In answer to that allegation, it may be said that a preliminary examination constitutes no part of the record of the Court of First Instance, unless it is presented during the trial of the cause. There is no proof in the record that the preliminary examination was ever presented during the trial of the cause. Therefore there is no reason why the same should appear as a part of the record. Upon the other hand, however, by reference to the preliminary examination which appears in Case No. 1713, it will be found that the declaration of Paula Cuenca, as appears in the preliminary examination in Case No. 1666, was expressly made a part of the preliminary examination in that case, but not having been presented as a part of the record in the trial of the cause, it does not legally constitute any part of the record of the Court of First Instance.

We have made a searching examination of the record made in the Court of First Instance of the Province of Cavite in the cases of United States vs. Gregorio de Guia and Gregorio Buendia, not for the purpose of ascertaining whether or not they were guilty of the crime charged against them, but only and for the sole purpose of determining whether or not there was anything in said record justifying the malicious defamation found in the alleged libel, which tends to blacken the memory of Judge Jocson or to impeach his honesty, virtue and reputation. After such an examination, in which every page of the record has been carefully examined, we find nothing therein which tends, even remotely, to impeach the honesty, virtue, and reputation of Judge Jocson. We believe that in granting the new trial, based upon the retractions made by several of the important witnesses, he in no way abused his discretion or power; that such retractions and the new evidence adduced during the new trial, were such as might fairly create, and did create a reasonable doubt in the mind of Judge Jocson.

Our conclusions, therefore, with reference to the alleged libel against the Honorable Vicente Jocson, judge, must be that said publication is a malicious defamation, which was intended to and which does impeach the honesty, virtue, and good reputation of the Honorable Vicente Jocson, judge, and that there is nothing in the record in the present case which justifies the publication of said libelous, defamatory matter. The defendant is, therefore, guilty of the crime charged in the complaint, with reference to the said Honorable Vicente Jocson, judge.

We now come to an examination of the alleged libel against the Honorable Isidro Paredes, judge. The said alleged libel against Judge Paredes grew out of the trial of certain criminal causes tried in the Court of First Instance of the Province of Cavite. The most important of said criminal actions was that of United States vs. Roman Malabanan, Mariano Noriel, Luis Landas, Fausto Dinoso, and Macario Eusebio.

It will be remembered that the action of *The United States vs. Gregorio de Guia* was concluded on the 24th of November, 1911, and that the action against Gregorio Buendia was concluded on the 20th of December, 1911. It will also be remembered that in some of the proof presented during the new trial in the cases against De Guia and Buendia there was a strong indication that the assassination of Gregorio Magtibay had been committed by Mariano Noriel and others.

The record shows that on the 26th of March, 1912, the prosecuting attorney of the Province of Cavite presented a complaint in the court of the justice of the peace of the municipality of Cavite, in which the said Malabanan, Noriel, Landas, Dinoso, and Eusebio were charged with the crime of having assassinated Gregorio Magtibay, on or about the 24th of May, 1909. Upon the presentation of said complaint, the said defendants were duly arrested and brought before the said justice of the peace. Upon said complaint a preliminary examination was held before said justice of the peace and was concluded on the 10th of April, 1912. At the conclusion of said preliminary examination, the said justice of the peace reached the conclusion that there was probable cause for believing that said defendants were guilty of the crime charged and held them for trial in the Court of First Instance of said province. During said preliminary examination a number of witnesses were presented by the prosecuting attorney. They were Segundo Francisco, Pedro Banas, Alfonso Cuenca, Bruno Ramirez, Maximo Javier, and Balbino Alameda. At the close of the proof by the prosecuting attorney, the said defendants renounced their right to present any proof at all.

An examination of the proof of said Alfonso Guenca given during said preliminary examination, shows that his declarations were practically the same, in effect, as the declarations which he made on the 28th of November, 1911 during the rehearing which Judge Jocson had granted in the case of *United States vs. Gregorio Buendia*.

After the conclusion of said preliminary examination before the justice of the peace, the prosecuting attorney for the Province of Cavite, on the 27th of April, 1912, presented a complaint in the Court of First Instance of said province against the said Roman Malabanan, Mariano Noriel, Luis Landas, Fausto Dinoso, and Macario Eusebio, in which said defendants were charged with the crime of assassination. The complaint alleged:

"That, on or about the 24th day of May, 1909, in the municipality of Bacoor, province of Cavite, Philippine Islands, the said accused, by previous personal persuasion and promised reward by the two accused Mariano Noriel and Luis Landas to the other accused, and by having previously arranged among themselves, determined upon, and premeditated the killing of one Gregorio Magtibay, alias Goito, did, willfully, unlawfully, and criminally kill the said Gregorio Magtibay in the following manner, to wit: on the night of the said 24th day of May, 1909, in the municipality of Bacoor, the aforementioned accused, all of them armed with deadly weapons, went to the dwelling house of the said Gregorio Magtibay, alias Goito, situated in an uninhabited place, and, taking advantage of the darkness of the night, awaited for their purpose, the accused Roman Malabanan, in obedience to orders given by the accused Mariano Noriel and assisted by the accused Fausto Dinoso, scaled the window of the dwelling house of the said Gregorio Magtibay, alias Goito, which window is not a way intended for entrance into the said house, and, while the other accused, with their weapons, were cautiously lying in ambush around the said house for the purpose of aiding the assailant and insuring the commission of the crime, the said Roman Malabanan, once inside the said house, taking advantage of a moment when the said Gregorio Magtibay, alias Goito, was asleep, did, willfully, unlawfully, criminally, and treacherously, with a dagger that he carried, inflict three wounds in the neck and right shoulder of the said Gregorio Magtibay, alias Goito, which immediately caused the latter's death.

"Acts committed in violation of law and attended by the following aggravating circumstances: (1) treachery, (2) price, reward, and promise, (3) deliberate premeditation, (4) nocturnity, (5) an armed band, (6) in an uninhabited place, (7) in the dwelling of the offended party, (8) entering through any opening not intended for entrance or

egress, and (9) the use of prohibited weapons.

"Cavite, Cavite, April 27, 1912.

"Jose M. Quintebo,

"Provincial Fiscal.

"Subscribed and sworn to before me, this 27th day of April, 1912.

"Ladislao Diwa,

"Clerk of Court"

Upon the 29th of April, 1912, the said defendants were brought before the Court of First Instance for arraignment. Before said defendants were arraigned, upon motion of the prosecuting attorney, the defendant Fausto Dinoso was discharged from the custody of the law with costs de oficio. It appears from an examination of the entire record that Fausto Difioso was dismissed for the; reason that he had theretofore made a confession to the prosecuting officers relating to the crime, and that he was dismissed at the request of the prosecuting attorney, for the purpose of using him as a witness for the prosecution. It further appears from the record that when he was sworn as a witness for the prosecution, he repudiated his confession made to the prosecuting officers; whereupon the prosecuting attorney again presented a complaint against him, accusing him of the crime of the assassination of the said Gregorio Magtibay, committed in relation with the other defendants, and he was duly arraigned upon the new complaint, without any objection whatever to the fact that he had theretofore been discharged before arraignment, on the 15th of May, 1912, and plead not guilty to the crime described in the complaint. No objection was made by Fausto Dinoso upon the presentation of the new complaint against him at that time nor has any objection been made since. Reference is made to that fact here simply for the purpose of giving a full and complete history of all that occurred in the trial of the cause against Noriel et al. in the Court of First Instance. Fausto Dinoso not having been arraigned and having obtained his discharge by reason of fraud and deceit practiced upon the prosecuting officers, the Government was justified in presenting a new complaint against him and bringing him on for trial. (U. S. vs. De Guzman, 30 Phil. Rep., 416.)

On the 29th of April, 1912, the other defendants, Roman Malabanan, Mariano Noriel, Luis Landas, and Macario Eusebio were duly arraigned and each plead not guilty. Said defendants immediately demanded a separate trial, which was granted.

Later, the exact date not appearing of record (see page 8 of first portion of cause No. 2347 of the Court of First Instance of the Province of Cavite), the Honorable Vicente Jocson inhibited himself, for the reasons stated in his order, from trying the cause against the said defendants.

Later the Honorable Isidro Paredes was duly designated as a special judge for the trial of said cause.

On the 10th of May, 1912, the separate trial of the cause theretofore granted against Roman Malabanan was brought on for hearing. Notwithstanding the fact that the defendant had theretofore been arraigned before the Honorable Vicente Jocson, Judge Paredes ordered that he be again arraigned, that the complaint against him be read to him and that he be again asked to plead whether he was guilty or not guilty of the crime charged in the complaint, and again the defendant Roman Malabanan plead not guilty to the charge against him and he proceeded to trial. At the trial the prosecution was represented by Salvador Zaragoza and Jose Martinez Quintero and the defendant was represented by Felipe Agoncilio and Jose Bernabe. During the trial of the cause a great

number of witnesses declared in favor of the prosecution and for the defense.

Attention is again called to the fact that the witness Alfonso Cuenca, whose testimony greatly influenced Judge Jocson in granting a new trial to the defendants De Guia and Buendia, and who testified during the preliminary examination in the case against the present defendants, again testified and again inculpated the said defendants with reference to the crime with which they were charged. It is also a fact worthy of notice that other witnesses whose declarations during the new trial granted to De Guia and Buendia, and which evidently influenced Judge Jocson in granting a new trial to them and in absolving them from liability under the law, also declared as witnesses for the prosecution during the trial against Roman Malabanan. These witnesses were Bruno Ramirez, Maximo Javier, Balbino Alameda, and Dionisio Banayad.

During the trial of the cause against Roman Malabanan no intimation or suggestion of any kind or nature was made by either the attorneys for the prosecution or the defense, that any of the witnesses presented by either of the parties had been suborned or intimidated. There was not even a suggestion that any of the witnesses had been meddled with. There was no intimation that any of said witnesses had been intimidated.

After the close of the trial and after hearing the arguments of the respective counsel, the Honorable Isidro Paredes, judge, reached the conclusion that the said Roman Malabanan was guilty of the crime charged in the complaint, with the qualifying circumstance of premeditation and the aggravating circumstances of alevosia, [treachery], nocturnity, morada [inhabited place], cuadrilla [an armed band], and escalamiento [through any opening not intended for entrance or egress], and sentenced him with the penalty of death, and to indemnify the family of the deceased in the sum of P2,000. Said sentence was rendered on the 28th of June, 1912. On the same day the decision was read to the defendant.

On the 8th of July, 1912 the defendant, Malabanan, through his attorney, appealed to the Supreme Court. An examination of the proof adduced during the trial of the cause, in relation with the analysis made of the same by Judge Paredes, shows that he deals with the evidence in a most exhaustive manner from every point of view. He marshals all the facts and circumstances, gives the motives and purpose of the defendants in the commission of the crime, in a way that leaves little to be said in addition thereto. Judge Paredes not only gives the reasons why he believed the witnesses for the prosecution, but also gives the reasons why he did not believe the witnesses for the defense. Judge Paredes not only presents the strength of the proof for the prosecution, but clearly points out the weakness of the defense. The reasons upon which Judge Paredes found the defendant, Roman Malabanan, guilty of the crime charged in the complaint, are best stated by himself. Judge Paredes said:

"Gregorio Magtibay alias Goito and his wife Paula Cuenca lived together in their house situated within the poblacion of the municipality of Bacoar, Province of Cavite, but during the hot season, that is, about the month of May, 1909, they moved to another small house that they had near the seashore in the barrio of Talaba of said municipality. There, on the night of the 23d of May, 1909, they slept with a female servant and a daughter of tender age. The house they occupied was situated on a lot isolated from the other houses of the barrio, the nearest of which was a small house at the other side of a salt land, at a distance of 80 brazas, so that a man standing in any of said houses could recognize another in the other house, or, in other words, screams made in one of the houses could be heard in the other. The house referred to is rather low; its floor, which is of sahig (bamboo), stands above the surface of the land about 1 meter and 20 centimeters, and from the sahig to the window ledge there is a height of 84 centimeters. There was a light in the house and its door and windows were closed when its occupants went to sleep. A short while after midnight of the 23d, or at daybreak of the 24th of May, 1909, Paula Cuenca suddenly awoke because she had been stumbled upon by her husband Magtibay, who rose from his bed, making violent movements such as are made by a person in the convulsions of agony; and on opening her eyes, she saw her husband fall dead, without being able to utter anything else than the words, "Mother of mine! Mother of mine!" Thereupon Paula threw herself upon the corpse, picked it

up, placed it, all stained with blood, on her lap, and began to weep, screaming for help. In response to the screams, there came residents of the place, the justice of the peace, the municipal president, the president of the board of health, and the municipal police. They found the woman weeping, with the corpse bathed in blood still on her lap; one of the windows of the house was found open and the ledge of this window had stains of blood, and in front of it, in the lot, there was a bamboo bench, and on the bench a stone and a piece of wood. Upon examination, the body was found to have three wounds, caused by a double-edged weapon like a dagger, one in the jugular region, another in the subclavian, and the third in the shoulder; all of them were necessarily fatal and caused the instantaneous death of Magtibay. Later, the corpse was removed to his house in the town and thence to the cemetery and there buried. (Exhibits A and B.)

"Before this Court of First Instance, Gregorio Buendia, a soldier of the Philippine Scouts, Gregorio de Guia, a prominent resident of Bacoar, and Hermogenes Asuncion, a civilian of the same neighborhood, were charged, as principals, with the murder of Magtibay. A Constabulary lieutenant named Eleuterio Kalaw, now deceased, and Luis J. Landas, then municipal president of Bacoar, one of the herein defendants, took an active part in the prosecution, assisting the provincial fiscal of Cavite and furnishing him with evidence. The trial and its incidents (for said defendants were tried separately) underwent various stages, as during its course there was a reopening and a second reopening of the case, with retractions and counterretractions of the witnesses who testified in the proceedings. The final result was a judgment of acquittal in favor of De Guia, Buendia, and Asuncion. Upon the reopening of the case, some of said witnesses made incriminatory statements against the now accused Noriel and Landas, and when the provincial fiscal made a closer investigation in this matter, he filed said criminal complaint, not only against Noriel and Landas, but also against their coaccused, Fausto Dinoso, Roman Malabanan, and Macario Eusebio. This complaint gave rise to the case which is now the subject of this decision.

"With respect to the crime, the mode and form of its commission, and the participation therein of the defendant Roman Malabanan, the evidence of the prosecution, in spite of the contrary evidence adduced by the defense, clearly shows that the crime was committed by Malabanan, following a conspiracy with his codefendants and after he had been accompanied by the latter on the night of the occurrence. The evidence discloses that Noriel and Landas, to take revenge for some trouble they respectively had had with Magtibay, resolved to kill him, and for this purpose, solicited the help of their codefendants, who agreed to render it. One night they all met in Macario Eusebio's house and there conspired and planned the execution of the crime. All being armed with revolvers, which Noriel furnished them, except Malabanan who was armed with a dagger, about midnight of the 23d of May, 1909, they left said house and walked toward Magtibay's house, and upon arriving in its neighborhood, Noriel ordered Malabanan to enter the house through the window, surprise Magtibay in his sleep, and murder him, while they, that is, Noriel, Landas, and one Zacarias Hernandez, each posted himself around the house to watch the roads and prevent all help. Fausto Dinoso helped Malabanan to climb up into the house through the window, and for this purpose first seated himself, then placed Malabanan on his shoulders and rose in an erect posture so as to raise him up, and in this way Malabanan reached the window. Immediately afterwards, Dinoso left the place and stationed himself in another, which had been designated by Noriel, in order that, like his companions, he might watch the road where people might pass.

"A few moments afterwards, Malabanan came out of the house and, upon reaching the ground, he' whistled. This signal, as the one previously agreed upon, brought his companions around him. Thereupon Noriel asked him whether he had already executed the crime, Malabanan answered that he had, and, to better convince Noriel, showed him his dagger, the blade of which was bathed with blood, and, explaining how he had committed the deed, said that Goito was asleep, lying on his side on the floor, and that with said dagger he cut Goito's throat. Then Noriel and his band left the house, and had not yet gone far from it when they heard Goito's wife sobbing and crying for help. Finally, Noriel's band dispersed and each of its members went to his respective house. That was not the first time that Noriel and his codefendants had gone to the house of Magtibay with the intent to murder him. On the preceding night, they met at the house of Macario Eusebio, whence Noriel sent two of his companions to watch his victim; but the crime was not committed that night,

because, after looking through a crevice that they had made in the wall by thrusting into it the point of a dagger, they saw that their victim was absent from the house, and so they returned to the house of Macario Eusebio in order to explain this fact to Noriel and the others, all of whom then separated and agreed to meet again, as in fact they did, on the following night in the same house of Macario Eusebio whence they departed and went to that of the deceased, as above stated. The five defendants and Zacarias Hernandez, when on their way to the house of Goito, were seen by a fisherman, Maximo Javier, who came from the beach and after fishing was on his way home. On their withdrawal from Goito's house after the crime had been consummated, these same defendants with Hernandez, were seen by another fisherman, Albino Alameda, who at that time was also returning home after fishing in the sea. It is to be borne in mind that, although in the beginning Alfonso Cuenca was invited by Noriel to assault Goito's house and even accepted this invitation, and for that purpose, met the others in Macario Eusebio's house, yet the facts are that on the night of the 23d, Cuenca remained in his house, and, on the pretext that he had stomach-ache, did not follow Noriel and his companions. However, he learned of the commission of the crime, because some days later Noriel went to his house and told him not to trouble himself further about following him (Noriel), inasmuch as the deed for which he had been invited a few days before had already been accomplished. One week after the crime, the witness Maximo Javier also learned of it and its authors, for having gone to the house of Fausto Dinoso to engage his rooster in a fight with that of the latter, said Dinoso secretly related to him all that had occurred. It should also be noted that Noriel, when he first invited, and caused to be invited, Cuenca and Zacarias Hernandez, made them understand that the purpose of the invitation was a grand feast in Macario Eusebio's house, and it was only at the last hour, after they had been informed of the intended crime, that he revealed to them that the real purpose of the gang was to assault and kill Magtibay. Finally, it should also be noted that the witness, Bruno Ramirez, was one of those whom Noriel and Landas had ordered Roman Malabanan to invite for the assault above referred to, but that Ramirez failed to follow them either through fear or through distrust that they would not be able to get money from Magtibay, or that, if they did, his companions would not give him any share of it. Notwithstanding this, he learned of the crime, because Malabanan himself, a few days after its commission, on seeing him at the cockpit, related to him all that had happened, and taunted him by telling him that he was a coward, because, after agreeing to the plan, he had not had the courage to follow them, and that, had he done so, he would have had enough money to bet on the cocks.

"As will be seen, the evidence of the prosecution proved that the death of Magtibay, alias Goito, was the result of a conspiracy among the defendants who, under the inducements and orders of Noriel, committed the crime, accompanied by Noriel and Landas themselves. Such is the conclusion drawn from the positive and conclusive testimony of the eyewitness Zacarias Hernandez, corroborated by that of the above-mentioned Alfonso Cuenca and Bruno Ramirez, all of which is sustained by the testimony of the fishermen who saw the defendants go to Goito's house before the crime and withdraw therefrom after its commission. And if all that proof is not enough, we have the evidence that the commission of the crime and the share therein of each and every one of the defendants was confessed first by Fausto Dinoso to Maximo Javier, then by Roman Malabanan to Bruno Ramirez, and finally by Mariano Noriel himself to Alfonso Cuenca. Of course, the confession and admission relative to the crime made by any of the defendants must be admitted as evidence, not against him alone, but also against his codefendants, because it was proved that the conspiracy was plotted by all of them.

"The motive of the crime, both with respect to the other defendants in general, and to Roman Malabanan in particular, is stated in the third finding of the judgment rendered in the joined causes, and as the evidence in these latter, in regard to the motive, is the same as that in the case at bar, all that was said therein is herein reproduced, for the sake of brevity.

"In his exculpation, the defendant Malabanan at first set up an alibi, stating that on the night and at the hour the crime was committed he was in Pelagio Dias' house in the barrio of Banalo, municipality of Bacoor, there helping in the preparations for the wedding of Placido Monzon, who was to be married the next day. To prove these allegations he produced the witnesses Esperanza Monzon, Domingo Reyes, and Santiago Medina, who confirmed the statements made regarding the alibi. But a careful examination of the alibi discloses that it is

improbable in itself; that the witnesses fell into gross contradictions which cast doubt upon the truth of their testimony; and that said alibi is entirely false, because, as it appears from the evidence in rebuttal, the accused Malabanan was elsewhere on the occasion referred to. At about 4 o'clock in the morning, after the commission of the crime, witness Saturnino Marquez met Malabanan on the other side of the railway bridge in the barrio of Alina, in Banalo, and witness having asked whence he came, Malabanan replied that he came from the beach; witness stated that at that time Malabanan was dressed in a short-sleeved undershirt with black or red transversal stripes, and trousers which appeared to be of khaki which were tucked up and seemed to be wet. Alejandro Marquez testified that, early that morning, he met Malabanan near the beach; that Malabanan at the time had a dagger in his hand, the blade of which he concealed under his arm with the point inward; and that he was dressed in the same undershirt with colored, transversal stripes and the same khaki trousers.

"In order to destroy the testimony of the witness of the prosecution, Zacarias Hernandez, some of Malabanan's witnesses testified in this cause that on the night of the crime and also on that same afternoon, Hernandez was sick in his house in the barrio of Malicsi. The purpose of this testimony was to make room for the conclusion that Hernandez was unable to leave the house, and, consequently, could not have been present at the commission of the crime, as it is alleged he was. That purpose, however, was false, and so also are the witnesses who corroborated that testimony, for such falsity is clearly proven by rebuttal evidence. These witnesses of the defense positively state that on that night Hernandez was in his house in company with his wife who was then taking care of him, and that he spoke with the witnesses; but the rebuttal evidence, Exhibit D, the certificate of death of Tomasa Calinisan, Hernandez's wife, shows that she died on May 17, 1909, that is, one week before the above-mentioned night.

"In his exculpation, the defendant Malabanan testified that he was a relative of the deceased and had no reason whatever to kill him, but, on the contrary, much to thank him for, inasmuch as he owed him favors. But the court is of the opinion that these statements cannot be taken into account, because, in the first place, the kinship to which Malabanan alludes is very remote. Goito was merely the son-in-law of Malabanan's niece; and, in the second place, because the friendly relations which Malabanan pretends to have had with Goito, as well as the favors which he says he received from the latter can be considered as false as Malabanan's alibi and as false as the proof regarding Hernandez's sickness. Furthermore, by the testimony of Paula Cuenca, widow of the deceased, the defense has here come to support the prosecution in the identification of the person who, after murdering Goito, jumped out through the window of the house. This woman stated that the person just mentioned was wearing an undershirt with transversal stripes, and was of about the same height as Melquiades Reyes, whom she pointed out among the spectators; and, in accordance with the evidence of the prosecution, it appears that the defendant Malabanan, on the night in question, also wore an undershirt with transversal stripes, and when Malabanan was placed side by side with Reyes, their height was found to be the same. This same woman testified as to the favors which Malabanan received from Magtibay during the latter's lifetime; but, as she was very partial in this cause because of her illicit relations with Landas, Malabanan's codefendant, it is clear that her testimony on this particular point is unworthy of credence. What should not be lost sight of in regard to Malabanan's guilt is what the aforementioned Alejandro Marquez testified, to wit, that after the crime was committed he went to visit Cornelio Bernardo in his house and there met Malabanan; that, as these two men were talking in secret, they had him go down from the house, but that, once below, he secretly watched said Bernardo and Malabanan and overheard a conversation wherein Malabanan said to Bernardo, 'I'll be arrested, and in that case something very bad will happen to two prominent people of the town, Noriel and Landas.'

"Besides the evidence already mentioned, the defense presented other evidence to prove that the persons really guilty of the crime here under prosecution were the former defendants De Guia, Buendia, and Asuncion, and that the witnesses for the prosecution could not be believed; but the prosecution produced evidence in rebuttal, which in the opinion of the court should prevail. As the evidence by both sides in regard to these points is the same in the present cause as in the joined ones, the court here reproduces his discussion and appreciation of the proofs in both instances.

"The court is convinced, beyond reasonable doubt, of Malabanan's guilt, not only because of the reasons aforestated, but also because of the acts hereinafter mentioned, performed by him, which show his natural propensity to commit crimes similar to the one here under prosecution. It appears from the testimony of the witnesses for the government, that Malabanan had no other occupation than that of a 'collector' of jueteng (a game of chance) and devoted himself to robbery, and in fact did rob the jewels and money of one Candong, of Bacoar; that he was prosecuted for, and convicted of, vagrancy; that he was paid by Noriel to kill Captain Pyle and Treasurer Santos; that he was sent to Manila to abduct Elias Guinto and assault the Trozo Club; that he attempted to murder Agapito Bonzon merely because the latter refused to give him the money which he demanded; and finally, that he treacherously murdered an American in a billiard hall, took him to the seashore and there threw him into a well, without any known motive, and, adding insult to injury, related that dastardly act to a great many people in the billiard hall, as if to boast of his valor or of his unheard of cynicism. Could a man who, like Malabanan, has committed so many crimes without any known motive, or for a trivial one, a hardened criminal like Malabanan, who apparently commits crimes for the sake of committing them, make us believe that, though ordered by Noriel, he did not dare to commit the crime against the person of Goito, on account of his, Malabanan's, remote kinship with the deceased, or because of the alleged debt of favors? By no means. We have already seen above that Malabanan belonged, heart and soul, to Noriel, and that he performed all the fetter's orders, even though they were to commit a crime, because Noriel was his master, his chief, and his protector, and on him Malabanan had placed all his hope for salvation. These conclusions are in no way opposed to the fact, alleged by the defense, that Noriel, in the vagrancy case against Malabanan, testified against him.

"The acts proven by the prosecution constitute the crime of murder, qualified by the circumstance of deliberate premeditation and modified by the generic, aggravating ones of treachery, nocturnity, the dwelling of the deceased, a band, and access through any opening not intended for entrance or egress. Malabanan is liable for said crime, as principal by direct participation, and the mitigating circumstance of race does not lie in his favor; although he has scant education, yet by his conduct and character, and by the acts which he himself performed, staining his hands with the blood of his victim, Malabanan has shown that he acted with greater perversity than his codefendants Macario Eusebio and Fausto Diñoso.

"In view of the foregoing, the court adjudges Roman Malabanan guilty of the crime charged in the complaint, and sentences him to the death penalty, which shall be executed in the place and manner prescribed by Act No. 1577. He is further sentenced to indemnify the family of the deceased in the sum of P2,000 and to pay the costs of the proceedings. For the review of this judgment, let the original record, together with all the testimony and other evidence adduced during the trial, be brought before the Supreme Court of these Islands for review, whether or not an appeal be taken from this judgment. So ordered. "Rendered in the Court of First Instance of Cavite, this 28th day of June, 1912.

"ISIDRO PAREDES,

"Judge of First Instance,

"Acting in the Sixth District.

"Exact copy of the original,

"Ladislao Diwa,

"Clerk of Court, Cavite."

On the 22d of May, 1912, the complaint against Mariano Noriel, Luis J. Landas, Fausto Dinoso, and Macario Eusebio was brought on for trial. The Government was represented by Salvador Zaragoza and Jose Martinez Quintero. The defendants were represented by Felipe Agoncillo and Jose Bernabe. During the trial other attorneys appeared for the defendants. While each of the defendants had theretofore been granted a separate trial, by an agreement of the parties, they were tried together. Evidence was adduced by both the prosecution and the defense.

A large number of witnesses were presented by both parties, and a number of exhibits were presented. The trial proceeded from day to day from the 22d of May, until the 17th of June.

After the close of the trial and after hearing the arguments of the respective parties, and after a careful examinations of the evidence adduced, together with the exhibits presented, the Honorable Isidro Paredes, judge, in a very carefully prepared opinion, in which he analyzed the evidence, pro and con, reached the conclusion that the said defendants were guilty of the crime charged in the complaint, with the qualifying circumstance of known premeditation, together with the aggravating circumstances of treachery, morada (inhabited place), escalamiento (through any opening not intended for entrance or egress), and cuadrilla (in a band), and on the 28th of June, 1912, sentenced the said Mariano Noriel and Luis J. Landas with the penalty of death, to be executed in accordance with the provisions of Act No. 1577, and the said Fausto Dinoso and Macario Eusebio with the penalty of life imprisonment, with the accessory penalties of the law, and' each to indemnify, jointly and severally, the family of the deceased in the sum of P2,000 and each to pay one-fourth part of the costs.

On the 28th of June, 1912, the sentence of Judge Paredes was pronounced to the defendants. On the 8th of July, 1912, each of said defendants appealed to the Supreme Court.

We have read the record made during the trial of the cause, in relation with the numerous exhibits presented, brought to this court, for the purpose of ascertaining whether or not there was anything in the record which would induce Judge Paredes, or any other fair-minded judge, to believe or in any way to suspect that any of the witnesses who declared during the trial of the cause, had been unduly influenced in their declarations or had been intimidated in any way. We have found nothing in the record which, in the slightest degree, would induce any fair-minded man to believe that the principal witnesses for the prosecution had not, in fact, declared the truth. The analysis of the evidence adduced during the trial of the cause is stated so carefully, so minutely, and so fully by Judge Paredes, that we can do no better than to allow his decision to speak for itself. Judge Paredes, in the course of his decision, said:

"Gregorio Magtibay, alias Goito, and his wife Paula Cuenca lived together in their house situated within the limits of the municipality of Bacoar, Province of Cavite, but during the hot season, that is, about the month of May, 1909, they moved to another small house that they had near the seashore in the barrio of Talaba of said municipality. There, on the night of the 23d of May, 1909, they slept with a female servant and a daughter of tender age. The house they occupied was situated on a lot isolated from the other houses of the barrio, the nearest of which was a small house at the other side of a salt-land, at a distance of 80 brazas so that a man standing in any of said houses could recognize another in the other house, or, in other words, screams made in one of the houses could be heard in the other. The house referred to is rather low; its floor, which is of sahog (bamboo), stands above the surface of the land about one meter and 20 centimeters, and from the sahog to the window ledge there is a height of 84 centimeters. There was a light in the house and its door and windows were closed when its occupants went to sleep. A short while after midnight of the 23d, or at daybreak of the 24th of May, 1909, Paula Guenca suddenly awoke because she had been stumbled upon by her husband Magtibay, who rose from his bed, making violent movements, such as are made by a person in the convulsions of agony; and on opening her eyes, she saw her husband fall dead, without being able to utter anything else than the words: 'Mother of mine! Mother of mine!' Thereupon Paula threw herself upon the corpse, picked it up, placed it, all stained with blood, on her lap, and began to weep, screaming for help. In response to the screams, there came residents of the place, the justice of the peace, the municipal president, the president of the board of health, and the municipal police. They found the woman weeping, with the corpse bathed in blood still on her lap; one of the windows of the house was found open and the ledge of this window had stains of blood, and in front of it, in the lot, there was a bamboo bench, and on the bench a stone and a piece of wood. Upon examination, the body was found to have three wounds, caused by a double-edged weapon like a dagger, one in the jugular region, another in the subclavian, and the third in the shoulder; all of them were necessarily

fatal and caused the instantaneous death of Magtibay. Later, the corpse was removed to his house in the town and thence to the cemetery and there buried. (Exhibits A and B).

"Before this Court of First Instance, Gregorio Buendia, a soldier of the Philippine Scouts, Gregorio de Guia, a prominent resident of Bacoor, and Hermogenes Asuncion, a civilian of the same neighborhood, were charged, as principals, with the murder of Magtibay. A Constabulary lieutenant named Eleuterio Kalaw, now deceased, and Luis j. Landas, then municipal president of Bacoor, one of the herein defendants, took an active part in the prosecution, assisting the provincial fiscal of Cavite and furnishing him with evidence. The trial and its incidents (for said defendants were tried separately) underwent various stages, as during its course there was a reopening and a second reopening of the case with retractions and counter-retractions of the witnesses who testified in the proceedings. The final result was a judgment of acquittal in favor of De Guia, Buendia, and Asuncion. Upon the reopening of the case, some of said witnesses made incriminatory statements against the now accused Noriel and Landas, and when the provincial fiscal made a closer investigation in this matter, he filed said criminal complaint, not only against Noriel and Landas, but also against their coaccused, Fausto Difioso, Roman Malabanan, and Macario Eusebio. This complaint gave rise to the case which is now the subject of this decision.

"The attorneys for the prosecution and those for the defense maintained a long discussion with respect to the manner and form of the commission of the crime that constitutes the subject of this prosecution, with respect to the persons who took part therein, with respect to the motives which Impelled its commission, and with respect to the character and antecedents of the defendants, and of the witnesses, both for the prosecution and for the defense. But after carefully considering the evidence of both parties, the court has reached the conclusions hereinbelow set forth:

"First. The murderers of Gregorio Magtibay are the defendants Mariano Noriel, Luis J. Landas, Roman Malabanan, Fausto Difioso, and Macario Eusebio, who committed the crime in the following manner: Noriel and Landas, in order to take revenge for the trouble which they respectively had with Magtibay, resolved to kill him, and for this purpose, sought the help of their codefendants who offered to lend it. One night they all met in the house of Macario Eusebio, and there conspired and planned the execution of the crime. At about midnight of the 23d of May, 1909, they left the said house and proceeded to Magtibay's; all of them were armed with revolvers, which Noriel furnished them, except Malabanan, who was armed with a dagger. "After their arrival in the neighborhood of Magtibay's house, Noriel ordered Malabanan to enter the building through the window, and, surprising Magtibay in his sleep, to assassinate him, while they, namely, Noriel, Landas, and one Zacarias Hernandez, should station themselves around the house in order to watch the roads and prevent help. Fausto Dinoso helped Malabanan to climb into the house through the window and, for this purpose, first seated himself, then placed Malabanan on his shoulders, and then stood up so that Malabanan might reach the window. Immediately afterwards, Dinoso left that place and, in turn, stationed himself in another place designated by Noriel, so that, like his companions, he too might watch the road along which people might come. A few moments afterwards, Malabanan came out of the house and, upon reaching the ground, he whistled. This signal, as the one previously agreed upon, brought his companions around him. Thereupon Noriel asked him whether he had already executed the crime, Malabanan answered that he had, and, to better convince Noriel, showed him his dagger, the blade of which was bathed with blood, and, explaining how he committed the deed, said that Goito was asleep, lying on his side on the floor, and that with said dagger he cut Goito's throat. Then Noriel and his band left the house, but had not yet gone from it when they heard Goito's wife sobbing and crying for help. Finally, Noriel's band dispersed and each of its members went to his respective house. That was not the first time that Noriel and his codefendants had gone to the house of Magtibay with the intent to murder him. On the preceding night, they met at the house of Macario Eusebio, whence Noriel sent two of his companions to watch his victim; but the crime was not committed that night, because, after looking through a crevice that they had made in the wall by thrusting into it the point of a dagger, they saw that their victim was absent from the house, and so they returned to the house of Macario Eusebio in order to explain this fact to Noriel and the others, all of whom then separated and agreed to meet

again, as in fact they did, on the following night in the same house of Macario Eusebio whence they departed and went to that of the deceased, as above stated. The five defendants and Zacarias Hernandez, when on their way to the house of Goito, were seen by a fisherman, Maximo Javier, who came from the beach and after fishing was on his way home. On their withdrawal from Goito's house after the crime had been committed, these same defendants with Hernandez were seen by another fisherman, Balbino Alameda, who at that time was also returning home after fishing in the sea. It is to be borne in mind that, although in the beginning Alfonso Cuenca was invited by Noriel to assault Goito's house and even accepted this invitation, and for that purpose met the others in Macario Eusebio's house, yet the facts are that on the night of the 23d, Cuenca remained in his house, and, on the pretext that he had stomach-ache, did not follow Noriel and his companions. However, he learned of the commission of the crime, because some days later Noriel went to his' house and told him not to trouble himself further about following him (Noriel), inasmuch as the deed for which he had been invited a few days before had already been accomplished. One week after the crime, the witness Maximo Javier also learned of it and its authors for, having gone to the house of Fausto Diiioso to engage his rooster in a fight with that of the latter, said Dinoso secretly related to him all that had occurred. It should also be noted that Noriel, when he first invited, and caused to be invited, Cuenca"and Zacarias Hernandez, made them understand that the purpose of the invitation was a grand feast in Macario Eusebio's house, and it was only at the last hour, after they had been informed of the intended crime, that he revealed to them that the real purpose of the gang was to assault and kill Magtibay. Finally, it should also be noted that the witness Bruno Ramirez was one of those whom Noriel and Landas had ordered Roman Malabanan to invite for the assault above referred to, but that Ramirez failed to follow them either through fear or through distrust that they would not be able to get money from Magtibay, or that, if they did, his companions would not give him any share of it. Notwithstanding this, he learned of the crime, because Malabanan himself, a few days after its commission, on seeing him at the cockpit, related to him all that had happened, and taunted him by telling him that he was a coward, because, after agreeing to the plan, he had not had the courage to follow them, and that, had he done so, he would have had enough money to bet on the cocks. "As will be seen, the evidence of the prosecution proved that the death of Magtibay, alias Goito, was the result of a conspiracy among the defendants who, under the inducements and orders of Noriel, committed the crime, accompanied by Noriel and Landas themselves. Such is the conclusion drawn from the positive and conclusive testimony of the eyewitness Zacarias Hernandez, corroborated by that of the above-mentioned Alfonso Guenca and Bruno Ramirez, all of which is sustained by the testimony of the fishermen who saw the defendants go to Goito's house before the crime and withdraw therefrom after its commission. And if all that proof is not enough, we have the evidence that the commission of the crime and the share therein of each and every one of the defendants was confessed first by Fausto Difioso to Maximo Javier, then by Roman Malabanan to Bruno Ramirez, and finally by Mariano Noriel himself to Alfonso Cuenca. Of course the confession and admission relative to the crime made by any of the defendants must be admitted as evidence, not against him alone, but also against his codefendants, because it was proved that the conspiracy was plotted by all of them.

"Second. This cause furnishes abundant indirect evidence that shows the defendants' participation in the crime now under consideration. The witness Agapito Bonzon positively stated that Noriel and Landas coached the widow of the deceased to testify that the man who jumped out of the window shouted, 'Odiong', and that another man below replied* 'This way, this way.' Bonzon also stated that Noriel and Landas instructed one Reyes, lieutenant of the barrio of Malicsi, one named Francisco, and the defendant Macario Eusebio not to testify on the occurrence, and cautioned and threatened the latter that if he did, he would be implicated in the criminal prosecution. This testimony of Bonzon is very reasonable and worthy of credence, because, as will be seen further on, the widow, in testifying in this cause, merely repeated Noriel and Landas' instructions, and for the further reason that, according to Exhibit B which is a report written by Lieutenant Kalaw, the witnesses in the cause against Buendia, De Guia, and Asuncion were sent to Kalaw in Cavite by Landas after the latter had coached them in Bacoor. The retractions made by these witnesses, Exhibits C, D, and E, disclose that they disavow their original testimony on account of its not being true and because they gave it under Lieutenant Kalaw's coercion and threats. On the other hand, Gornelio Tortona and Dionisio Banayad testified that Justo

Felix, Tomas Ugalde, Pedro Tovera, and others, who testified as witnesses in the above-mentioned cause, were sent for by Landas and coached by him and one Pedro Lipana in order that they might testify against the said Buendia, De Guia, and Asuncion. The record also shows that Noriel and Landas offered ₱150 to a certain man to induce him to shoot Captain Pyle of the Philippine Scouts, and the municipal treasurer of Bacoor surnamed Santos, the former because he aided the Government in this cause, and the latter because he belonged to a political party opposed to that to which said accused belonged. Furthermore, the evidence shows that, on repeated occasions during the months of March and April of this year, several meetings were held in Bacoor, both in Noriel's house and in that of Landas' as well as in that of some other resident or residents for the purpose of preparing Noriel's defense, in case he should be criminally prosecuted. At the time these meetings were held rumors were current in Bacoor that Noriel, Landas, and others would be prosecuted for the murder of Magtibay, and the record shows that the defense which Noriel and his followers planned and fabricated was an alibi consisting of the allegation that, on the night and at the hour of the crime, Noriel with others was playing malilia in the house of Sisenando Cuevas, in Bacoor. And, finally, the record also discloses that during the last days of the hearing of these accumulated causes, specifically, on Sunday, June 2d of this year, several days after Bonzon had come to this court to testify as a witness for the prosecution, he was the victim of an attempt or a personal assault in the cockpit at Bacoor, on the part of Criapulo Eusebio, a witness for the defense and a relative of one of the defendants. Prior to that Sunday, Sergeant Guevara, of the Constabulary, had heard the rumor that certain Government witnesses would be attacked or assaulted in the cockpit, and, in order to ascertain what truth there was in that rumor, he attended the cockpit that day, disguised in civilian attire. It then happened that Crispulo Eusebio, without any known motive whatever, assaulted Bonzon with a pocket knife, giving him two blows which, fortunately, Bonzon was able to ward off. When Sergeant Guevara arrested Bonzon's aggressor, the latter shouted and several men came up to help Eusebio, and it subsequently developed that all these men either have been or are witnesses for the defense. Any one of the acts just above mentioned is enough indirectly to lead us to the conclusion that Noriel and his codefendants actually took part in the murder of Goito. The acts which they performed and ordered performed are absolutely incompatible with the hypothesis of innocence. Only guilty persons, like Noriel and Landas, are capable of committing such acts. First, to shield themselves, they began to deceive Goito's widow by making her believe that her husband's slayers were Buendia and De Guia, and they coached her to make this charge before the authorities and before the courts of justice. Subsequently, in order to mislead justice and the agents of public order, but always with the firm purpose of evading all liability, Noriel and Landas, assisted by their sympathizers, coached witnesses to testify in the case against De Guia and Buendia. Afterwards, when Noriel and Landas saw the imminent and approaching danger of their being prosecuted, they held meetings and sought witnesses who would testify falsely in their defense. Finally not being able longer to evade the action of justice by their cunning and intrigue, and when these proceedings had already been instituted against them, they conceived the idea of annulling and destroying the evidence of the government, either by ordering the shooting of the agents of public order who were assisting the prosecution, or by the performance of violent acts of revenge against those persons who had the courage to be witnesses for the Government. This is not the first time that Landas, on his part, had put into practice this dastardly plan; later on we shall see that, in order to render his enemy Alfonso Cuenca harmless, he ordered that he be prosecuted, falsely charging him with robbery; and that under trivial charge of negligence, he suspended Dionisio Banayad from his position as police corporal. With respect to Noriel, aside from his desire to free himself, we find in the record another powerful reason which induced him falsely to charge De Guia, Buendia, and Asuncion with the murder of Goito. These three men were connected with the capture and tragic death of the famous bandit of the province, Comelio Felizardo, a first cousin of Noriel, to whom Noriel probably has owed the greater part of his prestige and moral influence in Cavite, since the dark days when brigandage flourished. No better occasion than that could have presented itself to Noriel; in order to avenge the death of his cousin Felizardo, he falsely accused the men who killed Felizardo of being the murderers of Gregorio Magtibay.

"Third. The motives of the crime, with respect to each of the defendants, are the following: One week before the crime, Mariano Noriel had serious trouble with Gregorio Magtibay alias Goito, an old friend and partner of

his in the cockpit business, by reason of the fact that in one of the cock fighting bouts bets were made between them and, as Magtibay was betting with cash, he demanded that Mariano Noriel should also show his money, and not bet with words alone, for, whenever Magtibay would bet with money, he would always have his adversary likewise show his, even though he were a general. Naturally this incident occurred in the presence of several people, and on that account, there was an exchange of strong words between Noriel and Magtibay who would have come to a hand-to-hand fight, had not some people intervened to pacify them. That grave offense was not forgotten by Noriel, and he harbored resentment against Magtibay, as he so told Alfonso Cuenca one day when he invited him to assault Magtibay's house, because the latter had put him to shame in the cockpit. Noriel was a general of the rebellion, was very powerful in the town of Bacoar, and none dared disobey his orders. With respect to the defendant Luis J. Landas, the evidence shows that he also was on very bad terms with Magtibay, because of the rivalry between them in a love affair with a woman named Apolonia Reyes. One day in April, 1909, or thereabouts, Landas met Magtibay, the latter being accompanied by Apolonia Reyes, at the foot of the Binondo Bridge, near Santo Cristo Street, in Manila. On that occasion Magtibay and Landas had a wordy altercation which resulted in Magtibay's being strongly pushed by Landas and being challenged to settle the matter at the Tondo slaughterhouse, as being the most appropriate place for the purpose. On another occasion, in February or March, 1909, near the house in the barrio of Malicsi, Bacoar, where Apolonia Reyes then lived, Luis Landas and Gregorio Magtibay had an angry dispute resulting in a hand-to-hand fight which ended only when one Buenaventura Reyes, with some other men, intervened to separate and pacify the contestants. Furthermore, Landas is Noriel's godson and they both belonged to the same local political faction interested in the municipal elections. As regards Roman Malabanan, it was proven that he was on very intimate and friendly terms with Noriel, either on account of his having been a soldier under his command during the rebellion, or because he was an agent of Noriel, or perhaps because he owed Noriel many favors, for he would sometimes go to the latter's house to ask for something to eat, and on one occasion Noriel recommended him to Agapito Bonzon in order that the latter might employ him as a collector of bets in the game of jueteng.

Moreover, Malabanan is Landas' compadre (one of them being the godfather of the other's son). As to the defendant Macario Eusebio, it was proven that, during the rebellion, he was a captain under Noriel's command and was appointed by him. He used to go to the house of Noriel whom he calls 'Uncle Nano.' The other defendant Fausto Dinoso was a soldier under Noriel, and at the present time is a driver in Pasay; he is an intimate and old-time friend of Bruno Ramirez. His connection with the crime was due to Noriel's inducements, to the invitation of Bruno Ramirez, or to his own desire for unlawful gain, for Ramirez made him understand that the intention was for them to go to assault Magtibay, who was wealthy or at least well-off.

"An examination of the antecedents of each of the defendants and of the dealings they had among themselves discloses that the motive of the crime, as regards Noriel and Landas, was the hatred they harbored against the deceased, and, with respect to Malabanan, Eusebio, and Dinoso, blind obedience to Noriel's orders. Perhaps it will be said that the trouble between Noriel and Magtibay was not so great as to engender the idea of a crime; however, it must be considered that the trouble constituted a grave offense against Noriel, either because it arose in public, or because it hurt his reputation and fame as an ex-general of the rebellion, or still because Goito, in the discussion he had with Noriel, took the liberty to say to the latter and his adherents: 'I'll trim your wings yet' words whose meaning reflected upon the power and prestige of Noriel; so that the latter, on being separated from his insulter, mumbled the following threat addressed to Magtibay: 'The day will come when you will have to pay me for this.' The seriousness of Landas' hatred may easily be understood if we take into account the fact that in their rivalry for the love of Apolonia Reyes, the latter gave preference to Magtibay. As to Malabanan and the other defendants, it should be said that they were blind agents of Noriel whom they dared in no way to disobey, and a single order of his was enough to induce them, especially Malabanan, to commit the most atrocious crimes. Colonel Crame, who is acquainted with the conditions of the people and with affairs in Bacoar, says, in reference to Noriel, that he is a person of influence and power and that nobody in Bacoar dares disobey his orders. Captain Pyle, also referring to Noriel, expressed himself in nearly the same terms as Colonel Crame; though he added these significant words: 'If I had to live in Bacoar, I myself would be afraid of Noriel.' Agapito Bonzon calls him the 'Emperor of Bacoar' giving it to be understood by these words,

that in Bacoor nothing is done without Noriel's consent, much less against his will. With special reference to Malabanan, the record furnishes positive evidence of crimes that Malabanan and others committed by Noriel's order, and contains proof of a criminal attempt against the person of Bonzon, and, if he did not commit the crime, it was because Noriel, whom they nicknamed 'the old man,' on being consulted in the matter, apparently dissuaded him from it. Finally, the record also shows that Malabanan depended, body and soul, on Noriel and on him anchored all his hope for salvation, as evidenced by the fact that, on his being arrested by the police and taken to the railroad station at Bacoor, in order from there to be sent to Manila, he at once remembered Noriel, and sent him a message imploring his protection. So then, Malabanan and his codefendants could not help but comply with Noriel's orders and all the more when such orders were supported by his codefendants Landas, who was the chief local authority of Bacoor. It may also be said that Malabanan could not be Magtibay's slayer, for the reason that he was a relative of the deceased and owed him favors. However, it should be borne in mind that such kinship was a very remote one, and that, though those favors might have stayed the hands of another who intended to commit a crime against Magtibay, nothing of the sort could be expected from Malabanan who, according to his conduct and antecedents, is a most perverted criminal, a resolute and violent man, ever ready to resort to the assassin's knife for the adjustment of his troubles.

"Fourth. The court finds no ground to accept the theory of the defense or hold that its evidence has negated that produced by the prosecution, although Exhibit 3, Apolonia's letter to Gregorio de Guia, and Exhibits 4 and 5, letters by De Guia to Apolonia, show certain rivalry between De Guia and the deceased, for both of them were making love to the said Apolonia, and might afford reason to believe that De Guia was interested in the death of Goito, yet such interest could not be positive or conclusive proof that De Guia was the slayer; it would merely be circumstantial evidence, and as such, it must be acknowledged very fallible, equivocal, insufficient, and open to errors. In the case against De Guia, the court took this circumstantial evidence into account, and yet, notwithstanding it, acquitted the defendant. Neither can Exhibit 9, Gregorio Buendia's letter to his wife, Mentang, serve as a proof; at most it is but very weak circumstantial evidence that Buendia might have had a hand in Magtibay's death. However, a careful examination of this letter discloses that the reason that Buendia wrote it was not because he even so much as implicitly admitted his commission of the crime. Indeed he said in his letter that he had some enemies and was persecuted by the Constabulary. Either through ignorance or a more or less well founded suspicion, Buendia probably feared that his enemies, in order to avenge themselves on him and prosecute him criminally, might take advantage of the murder of Goito, by falsely charging it against him. If he did fear so and deemed it advisable to caution his wife, Mentang, that, in case of an investigation, she should state that he was not in Bacoor on the night of the crime, all that would indicate merely the natural misgivings of one who fears or who believes himself to be unjustly persecuted, or of one who distrusts that his wife, either through ignorance or timidity peculiar to her sex, may make some improper statements which might compromise her husband. Moreover, that same letter says that the truth of the case is that, on the night of the crime, Buendia was in Manila, and that he really was, is proven by Exhibits CC wherein it is set forth that on the night in question, Buendia, who was a Scout soldier, was on duty as a member of the guard at Fort Santiago, Manila. Neither can any proof of the defendant's guilt be founded on the testimony of Paula Cuenca, widow of the deceased, to the effect that on the night of the commission of the crime she saw a man who looked like Buendia jump out of the window of the house; that he was clad in an undershirt with transversal stripes, and before leaving cried out: 'Odiong, Odiong,' referring to Gregorio de Guia, who was known by this name of 'Odiong' and that she heard another man answer from below with the words: 'This way, this way, as though he were indicating the way of retreat to his companion who was about to jump out of the window.

"The court is convinced that because of Paula Cuenca's confusion and surprise over the unexpected and lamentable misfortune that befell her husband, she did not take notice of all the details of the crime, and much less of the one relating to the words 'Odiong, Odiong' and to the reply thereto 'This way, this way.' This woman, like her husband, was sound asleep, and was awakened by his convulsions of agony; when she opened her eyes, she found him already on the verge of death, bathed in his own blood, and a little later she raised him up and place his head on her lap. During the first few moments she uttered these words, interrupted by her sobs:

'My husband, I do not regret so much that they murdered you, as I do that I did not recognize your slayer,' for it seems that she wished to avenge herself. Such words show how far from the mind of that woman was the idea or suspicion that Odiong or Gregorio de Guia was the slayer of Magtibay. When, in response to her shrieks, several neighbors went to her aid and found her sobbing with her husband's head on her lap, she asked them for help, because, as she thought, blood was flowing from his mouth; but one of the neighbors called her attention to the fact that she was mistaken as the blood was not coming from his mouth, but from his throat, which was pierced by a deep wound. This woman, who did not even know from what place her husband's blood was issuing, is the very one who now asserts that she recognized, by his appearance and his back, Gregorio Buendia as being the man who cried out from below, 'Odiong, Odiong.' Within the first few hours after the commission of the crime, the local authorities were gathered in the house where it had been committed, and the justice of the peace asked Paula Cuenca in regard to the crime and its probable authors; but notwithstanding that she was speaking with an officer in the performance of his official duties, who could help her in the prosecution and punishment of the criminals and at the same time was able to afford her every sort of protection in case they should make any attempt against her life, Paula Cuenca said nothing about the words 'Odiong, Odiong; this way, this way, which she now pretends to have heard. This same woman was also examined in regard to the crime and its perpetrators, by the Constabulary officials of the province, who likewise could give her every kind of help and protection, and yet she made no mention whatever of the alleged words 'Odiong, Odiong; this way, this way,' until some days afterwards when Captain Shutan was conferring with her. But that was not the strangest part of it all. If she had no confidence in the justice of the peace who was merely a local official, nor in the Constabulary, because its officials were Americans, to whom she could not express herself with the same freedom and frankness as to her Filipino countrymen, she could not have entertained such objections when she was called to Governor Osorio's office and there examined in reference to the matter in question. Neither did she say anything about the aforesaid words, notwithstanding that he was then the head official of the province, was like herself a Filipino, and that they both spoke the same dialect. In conclusion, with reference to the afore-quoted words, the court believes that they were not heard by Paula Cuenca on the night of the crime, but that now, because of the inducement and instructions of the accused Luis J. Landas, as shown by the evidence, she states that she heard them. Unfortunately for this woman, the evidence shows beyond a shadow of doubt that, since the death of her husband, she has been sustaining intimate love relations with Landas, which relations are illicit, inasmuch as Landas is married to another woman. He and she held several appointments in the rice store of Agapito Bonzon, in Bacoar, and there spoke secretly and in suspicious intimacy. More than once she and Landas alone went at night in a carromata from Bacoar to Manila and back again to Bacoar. On one occasion, while in the house of her mother-in-law, Paula and Landas were seen in such a situation as to leave no room to doubt the existence of illicit relations between them. Finally, about the end of November or the beginning of December, 1911, Landas and Paula were seen at night riding together in a street car and apparently were going to Santa Mesa; they were sitting beside each other, and Paula, with her own money, paid the fares of both. They tried to avoid being seen by Captain Small, who, however, had already seen them. So then, in view of these circumstances, it is not strange that Paula should now try to convince us that her husband's slayer was Odiong or Gregorio Buendia. Besides the above, the record contains another proof, Exhibit O, whereby it appears that the alleged murderer of Paula's husband attended the funeral in the house where the corpse was, and that although the fire of vengeance was burning in her breast, she did nothing to accuse him or to have him held or arrested. She pretends to explain this mystery by speaking of her father-in-law, who, she says, through fear of the vengeance of the guilty parties, advised her to keep silent until all the required information could be obtained. But this testimony was emphatically denied and controverted in the cross-examination by the prosecution, and yet her said father-in-law, Eugenio Torres, was not presented as a witness to corroborate Paula Cuenca's previous statements, notwithstanding that Torres was present in the court room, hearing his daughter-in-law testify. The fact that De Guia, Buendia, and Hermogenes Asuncion were prosecuted for the murder of Goito and acquitted does not, in the opinion of this court, constitute any evidence in favor of the defense. If the acquittal of these defendants proves anything at all, it is their innocence, and their innocence certainly does not favor the defense of the herein defendants Noriel et al. The fact is that the acquittal of the former defendants was principally due

to the retractions made by the witnesses for the prosecution, Pedro Tovera, Troadio Diaz, and Bernardino Carpio of their original testimony (Exhibits G, D and E). The defense insisted in presenting, as evidence of the innocence of Noriel and his coaccused, that part of the judgment acquitting Buendia wherein statements were made in favor of the present defendants; but the court, sustaining an objection by the prosecution, nejected the evidence, because that part of the judgment referred to is entirely irrelevant and incompetent inasmuch as it contained opinions regarding facts which were not brought before the cognizance of the court in those proceedings, and because all orders, opinions, or decisions rendered inopportunately are null and void and produce no effect either for or against the persons to whom they refer. The defense likewise attempted to present in evidence the retractions made by Bernardino Carpio and Troadio Diaz (Exhibits 16 and 18), but the court, sustaining an objection by the prosecution, rejected that evidence on the ground that those witnesses should have been brought in to testify, so that they might be crossexamined by the prosecution, and also because, in the record of the case, where these Exhibits 16 and 18 are found, there appears other later testimony by the said Carpio and Diaz, wherein they also retract their former retractions. So Carpio and Diaz are witnesses who thrice made different declarations under oath, and for this reason it is absolutely impossible to determine which of these declarations is true. So that, although ultimately these retractions had been admitted as evidence for the defense, they would have turned out to be entirely useless, inasmuch as they themselves were later retracted.

"The discovery, in front of the window of the house on the lot, of a bamboo bench, a stone, and a chunk of wood is a fact testified to both by witnesses for the prosecution and for the defense; but, in the opinion of the court, their testimony discloses no indication that might be adduced in favor of the defense. If the bench was there at the moment Malabanan climbed up to the window and notwithstanding this being so, Zacarias Hernandez, in his testimony, made no mention whatever of this detail, then Hernandez must have made a rather strange omission; but the widow Paula Cuenca, a witness for the defense, made a similar omission, for, during the course of her examination, she gave no testimony whatever in regard to that bench being on the lot, though she said it belonged to the house. Taking then into account that, as the bench belonged to the house, it could hardly have been the defendants who placed it there (under the window), it seems logical to me to conclude that, at the time Fausto Dinoso helped Malabanan by placing him on his (Dinoso's) shoulders, and Malabanan climbed up into the window, that bench was not on the lot, and if it was there, then we have some explanation as to why the witness for the prosecution, Zacarias Hernandez, neither saw it nor mentioned it in his testimony. If the evidence of the defense had shown that this bench was there at the precise moment that Malabanan climbed up into the window, we would say that Hernandez did not state the truth when he said that Malabanan climbed up into this window by standing on Dinoso's shoulders. But, as aforesaid, no mention is made in the evidence of either side as to the precise moment when that bench was placed there. The witnesses saw it only after the commission of the crime, at daybreak. and when the local authorities met in the house and inspected it and its environs.

"Fifth. The defendants' alibi does not prove their innocence. Their allegations are insufficient and, mostly, false.

Their accusations against the witnesses for the prosecution were shown to be untrue.

"Nortel's alibi consists of two points, viz: One comprises the period from the 5th to the 30th of April, 1909, and was intended to show that, as during that period he was in Sibul Springs, he could not have had any trouble with Magtibay at the cockpit in Bacoar; and the other point refers to the night of the crime, and was advanced in order that the conclusion might be drawn that he could not have had a hand in the commission of the crime, because at that time he was at home entertaining a guest or visitor who had come there to sell some small fish. The first point, supported as it is by the singular testimony of Gregorio Marquez, the accused's nephew, deserves no credit, and even less so if we bear in mind the rebuttal evidence that during the month of April, Noriel was in Bacoar and was seen once in his house and at another time at the cockpit. Noriel alleges that he enjoyed a good reputation and fame as a general of the rebellion; that he aided Lieutenant Crawford in the

persecution and suppression of Montalan's and Felizardo's gangs of bandits. He denies ever having been prosecuted for the crime of embezzlement, and that he never ordered the commission of any crime. But the rebuttal evidence establishes the following facts: His own witnesses, ex-generals Baldomero Aguinaldo and Mariano Trias testified that, after the rebellion, they heard of Noriel's prosecution for brigandage, and admit the possibility of his having committed even during the very time of the rebellion, abuses and outrages which may not have come to their notice. Exhibits S-1 to S-8 show that Noriel was sentenced by a court-martial in Batangas for two years' imprisonment for the reason that, while a prisoner there with an American, he aided the latter to escape and furnished him letters of recommendation to the gangs of bandits under the said Montalan and Felizardo. This exhibit also shows that Noriel was granted a parole on condition that he would assist in the persecution of brigandage, but that, for a violation of the terms of the pardon, he was returned to prison to serve out the rest of his original penalty. There is also another exhibit whereby it appears that Noriel while municipal president of Bacoar, was convicted of the crime of embezzlement. Agapito Bonzon and Hilarion de Guzman, the former an ex-colonel of Noriel and the latter an ex-captain of his staff and his private secretary, gave an account of the horrors and excesses committed by Noriel and the forces under his command, both during the past Spanish regime, while he was judge de ganado o sementera, and during the rebellion, up to the time immediately prior to the pacification of the country. Both witnesses, speaking of Noriel's time, relate a mournful and gloomy story and portray a horrible and desolate picture, stained with blood and tears and full of plunder and murder and robbery. The most inhuman and hardened being draws back in horror at such a sight and protests with indignation against the human monster who, as Hilarion de Guzman says, did nothing to prevent or lessen such lawlessness and acts of unprecedented vandalism, but who, on the contrary, tried to protect those who, in pillaging a house, did not hesitate ruthlessly to sacrifice the life of an innocent child.

"Noriel says that he was not an enemy of Magtibay; but the overwhelming evidence of the prosecution belies him on this point. It is possible that after the quarrel he had with Goito at the cockpit, he did, at the latter's request, give a number of gamblers something to eat, and that, that same afternoon the trouble arose, Goito accompanied him to his (Noriel's) house there to divide, as then they were good friends and partners, the profits obtained at the cockpit. But we must bear in mind Bonzon's statement that Noriel is a traitor, and that, under the mask of a friendly smile, there lurks his desire for the destruction of all who oppose him. It is impossible to deny the quarrel in the cockpit, for the reason that it arose in a place much frequented by the people of Bacoar. Elias Guinto himself, a candidate supported by, and a witness for Noriel, refers to this incident, although, in order to make the matter smooth, he states that it did not result in a quarrel. But the truth is that Noriel went away greatly disgusted and said so to Cuenca when, on inviting him to go to assault Magtibay, Noriel told him that he had been put to shame by Magtibay. In regard to the visitor he had in his house on the night of the crime, Noriel stated that he was not his friend and that he got acquainted with him only that night; however, the rebuttal evidence shows that the man was an old acquaintance and friend of Noriel, and was his partner in the game of jueteng run in Bacoar and San Pablo, Laguna. He alleges that he is a political enemy of his ex-colonel Bonzon, but it was proven that he was his best friend as shown by Noriel's letter, written just prior to his arrest, asking Bonzon for some money. He testified that he had no dealings of any sort with Roman Malabanan; but it was proven that Malabanan was a soldier under him, his agent at the cockpit, and his clerk, for he was wont to go to Noriel's house to ask for food, and was recommended by Noriel to Bonzon so that the latter might appoint him, as in fact he did, collector of bets in the game of jueteng. The defendant Noriel, testifying in his own behalf, did not specifically deny his participation in the commission of the crime, nor having invited others to commit it, nor having met the other defendants in a house, and in his own house, for the purpose of planning a conspiracy. Neither did he deny kinship or dealings with Cornelio Felizardo. He did not deny that the former defendants in this cause, Gregorio Buendia, Gregorio de Guia, and Hermogenes Asuncion had a hand in the killing of that bandit; nor did he dare to deny that he laid the false imputation of Magtibay's murder to Buendia, De Guia, and Asuncion in order to revenge the death of his cousin, Cornelio Felizardo; neither did he deny that he had knowledge of Felizardo's death, nor that it was caused by the said persons.

"Landas' alibi is supported by Mateo Daluz and Juan Pelagio who, substantially, claim to have gone on the

night of the crime to the house of Landas whom they found and with whom they talked, the former about the price of the brick or the stone which Landas, while municipal president, had used in the construction of a bridge, and the latter about Landas' reinstatement to his office and his promise, if he were reinstated, to make Pelagio a police corporal. It is clearly seen at a glance that this is an improbable and ridiculous alibi. Imagine three men engaged in a conversation about such trifles for many hours and at night, as if they could not do so better in the daytime. But this is not all. Landas, on testifying in his behalf, makes no reference to this alibi; from his testimony we could never know where he was when the crime was committed; it seems that he intrusted the alibi to two witnesses, while he himself abandoned it, saying absolutely nothing about it and did not attempt to support the testimony of his witnesses, as if he did not agree with them. Landas, like Noriel, did not specifically deny having participated in the crime, nor having induced others to commit it, nor having met the criminals in the house where they planned the conspiracy. The other allegations made by Landas, as well as those by Noriel, are either insufficient, false, or completely belied. Landas claims to be Bonzon's political enemy, but in fact he is his best friend, for, until a short time before his arrest, Bonzon had been furnishing him money and helped him with a loan of P10 out of his own pocket when Landas was under administrative investigation (Exhibit U). He claims to be an enemy of Banayad, Hernandez, and Cuenca, because the latter testified against him in said administrative investigation and also asserts that, in the said investigation, the provincial board passed a resolution declaring the existence of such an enmity between the witnesses and Landas (Exhibit 10). But an examination of this exhibit discloses that that resolution of the provincial board was not put into effect, on account of the governor's dissent, and that said witnesses, although produced to testify for the prosecution, did not take the witness stand, because the parties had previously agreed as to the facts which their counsel had expected to draw from the witnesses. So that, had they testified, it cannot be known now whether or not their testimony would have been in favor of Landas. The latter, referring to Buendia's letter (Exhibit 9), says that he found it stuck in the wall of the house of Buendia's mother-in-law; but it was established on rebuttal that that statement was absolutely false. He claims that the testimony of Dionisio Banayad, the corporal who was suspended by Landas, was partial; but it appears that Banayad is far more truthful than Landas, as he invariably gave the same testimony on the several occasions in which he testified in the administrative investigation, in the preliminary investigation, and in the trial of the joined cases, as well as in the separate proceedings against Malabanan. Finally, Landas denied having had illicit relations with Paula Cuenca, having been the instigator of the prosecution against Buendia and others, and having coached witnesses in that prosecution. However, the record shows that those relations were fully proven, and Lieutenant Kalaw's report reveals that Landas furnished him the witnesses after the latter had coached them.

"Macario Eusebio's alibi is likewise insufficient and untenable on account of its improbability and the evident partiality of the witnesses who seek to support it. This alibi consisted in the alleged sickness of Cornelio Rogacion's son, the attendance of Macario Eusebio as a *mediquillo* [quack doctor], and the mediation of Fausto Francisco [Dinoso] as the mandatary who went to look for medicinal plants. Nothing is easier than to fabricate an alibi of this kind, and nothing more feasible than to make the testimony of several witnesses coincide upon a given point. But, for the rejection of this defendant's alibi, it is sufficient to remember that Cornelio Rogacion, with one Marcelo Miranda, was one of the most assiduous attendants at the meetings held to prepare Noriel's original alibi that Marcelo Miranda is the same person who, while a councilor, advised Noriel and his companions, by letter, that the municipal president was about to make a raid on them while they were engaged in playing *jueteng*. Neither did Macario Eusebio specifically deny his participation in the commission of the crime under prosecution, nor the motives which may have impelled him to commit it. According to the evidence of the prosecution, Noriel and Landas instructed this Eusebio not to testify in regard to the crime, and threatened, if he did, to implicate him in it.

"With respect to Fausto Dinoso's alibi, it must be said that it is insufficient and is supported by testimony not at all impartial. His witnesses are the owner and rowers of the *banco*, of which Dinoso was also a rower, and none of them states the exact date on which Dinoso was engaged in conveying manure from Pasig to Pasay. The other allegations made by Dinoso are the strangest and most incredible ever heard of, and if they show anything at all, it is the dominant influence that Noriel, Landas, and their sympathizers had over him, in such

wise that Dinoso may be said to have belonged to them, heart and soul. He begins by telling a long story to show, in short, that the confessions made by him about the crime, his participation therein and its perpetrators, were the result of repeated instructions given him by the witnesses for the prosecution, Hernandez, Guenca, and Javier, due to Captain Pyle's influence. At first glance, there appears to be reason to believe in the lack of spontaneity in Dinoso's confessions, either because they were first made in Bacoar before Lieutenant Valeriano, who arrested him later in the Constabulary headquarters at Cavite, and afterwards in the General Headquarters of the Constabulary in Manila, or because in the beginning he would not make before the prosecuting attorneys, Zaragoza and Quintero, the confessions he made before them, unless Captain Pyle should be present and until the latter had advised to tell the whole truth, or also because, during his declaration or confession he did not cease to ask the prosecuting attorneys questions, as if he wished to get them to assure him of, or ratify, a promise they had made him, if it was true that they did make one, that after he had testified he would be excluded from the complaint. But, in spite of all this, the court believes that Difioso's confessions before the prosecuting attorneys was intelligent, free, and spontaneous, because the latter did not employ upon him any violence, force or intimidation, but, on the contrary, made him understand that he was not obliged to testify, and that his testimony might be used against him; because Captain Shutan was present at the time and, notwithstanding, Dinoso testified without there being need of this captain's saying a single word to him; and, principally, because Dinoso denies that he made any confession or statement whatever regarding the crime before these attorneys. If, at the time he was on the witness stand, he had believed himself restrained, pressed, coerced, or otherwise influenced in any undue manner, he would have declared so before this court, instead of denying that he made that confession. Under the circumstances in which the confession was made, the court is of the opinion that it was voluntary, because to believe otherwise would be going further than the defendant himself presumes, for, as aforesaid, instead of alleging extortion or coercion, he makes a flat denial. But, without perjuring himself, Difioso cannot deny his confession. He made it before the prosecuting attorneys, and one of them took down his declarations.

Had he not confessed, he would not, at the beginning, have been excluded from the information, nor would he have been produced as a witness for the Government in the case against Malabanan. On being cross-examined by the fiscal, he denies that he admitted having made the confession that he made in the office of the provincial fiscal; but the defendant Dinoso thereby again commits perjury, because, when he testified as a witness in the case against Malabanan, he in fact admitted having made statements before Fiscal Zaragoza. What is certain is that Dinoso voluntarily offered to testify as a witness for the Government for the purpose of declaring the truth, but that one Alipio Lokso, a sympathizer of the defendants, having succeeded in talking to him, finally dissuaded him, and, provided Dinoso might save Noriel and Landas, he did not hesitate to perjure himself by retracting his previous testimony and to testify in their favor. It is clear that hardened perjurers like Dinoso deserve no credit, either when they testify in support of their own alibi, or in favor of their codefendants. But even supposing for a moment without admitting that Dinoso's confession before the prosecuting attorneys was not spontaneous, still would it be against Dinoso, as it is proven by the confession he made of the crime, and of his participation therein, to his friend Javier, in the cockpit, and by the confession of that same crime made by one of his codefendants, as above stated.

"Sixth. The record contains no proven reason of sufficient weight to warrant the rejection of the testimony of the principal witnesses for the prosecution.

"It was contended that Alfonso Cuenca was an enemy of Landas, because the latter had accused him of robbery committed in Landas' house, and the record in the criminal case No. 2217 of this court was produced as an exhibit to prove the contention; but this exhibit is rather a proof against Landas. The complaint for robbery was filed on November 14, 1911, after Cuenca had already testified in the supplementary investigation made by the provincial fiscal upon the second reopening of the case, which ended with the acquittal of the defendants Buendia, De Guia, and Asuncion; but the complaint was dismissed by the justice of the peace, because, in his opinion, the alleged offended parties, Landas and his wife, contradicted each other in their testimony, and because the wardrobe which was alleged to have been forced, when examined by the court, showed no sign

whatever of having been forced open. Ultimately, on motion by the provincial fiscal, the complaint was dismissed for lack of evidence. It is natural that Landas should now suspect a desire for revenge on the part of Cuenca, after having accused him falsely, but I believe that the mere suspicion of Landas cannot destroy the value of Cuenca's testimony, supported, as it is, by other un rebuttable testimony.

"It is also claimed that Cuenca had trouble with Noriel regarding the return of a carabao; but, as Cuenca denied this allegation, I do not see why he should be believed less than Noriel. The latter affirms what the former denies.

I believe that it would be best not to believe either of them on this point:

"It is also argued that Cuenca gave different testimony on another occasion, and to prove that he did Exhibit 6, his declaration in the preliminary investigation, was introduced as evidence. But, upon an examination of this exhibit, we find a simple explanation for the hesitations of the witness regarding the true date of Goito's death, whether it was Monday or Tuesday, for Goito died after midnight of Monday and in one of the early morning hours of Tuesday. An ignorant witness like Cuenca would always be embarrassed to decide whether the crime took place on Monday or Tuesday. Besides, it must be borne in mind that the crime was committed in May, 1909, and Cuenca testified for the first time in regard to it in the preliminary investigation, that is, three years afterwards, or in April, 1912. Due to the lapse of time, any person is liable to fail to remember dates; but what cannot be forgotten, and what indeed Cuenca did not forget, are the facts, and these facts are: That he was invited by Noriel to go to assist in the commission of the murder and that he met Noriel and others in Macario Eusebio's house, and the other facts testified to by Cuenca, as above set forth.

"It is alleged against Zacarias Hernandez and Maximo Javier that they were enemies of Landas, for they testified against him in the administrative investigation brought for his suspension, and that, during that investigation, the provincial board declared that Landas was a victim of the revenge on the part of the witnesses for the prosecution, and, to prove this allegation, Exhibits 10, 11, 12, and 13 were produced. But elsewhere herein we have discussed this allegation and decided upon its merits.

"With respect to Zacarias Hernandez, it is also alleged that on the night of the crime he was sick in his house in Alima, and not in Malicsi; that in this latter place he had no house, but lived in Alima, in his mother-in-law's house; and that neither Noriel nor Landas went to his house on the night of the crime. This theory is supported by Hernandez' mother-in-law and by one Gabriel Tortona; but, aside from the fact that this woman, according to her own testimony, was wont to be absent from her house every week, we do not believe that either her testimony or that of Gabriel Tortona can prevail over that of Doroteo Ocampo, and Exhibits P, Q, and R of the prosecution. According to Ocampo and these exhibits, Hernandez had a house of his own in Malicsi and lived in it, from March, 1908, to the date of Goito's death, for his wife lived and died there and his son Gabriel was born and died in it shortly after his birth.

"One Alejandro Gervasio attempted to belie Maximo Javier by claiming that, during the whole night of the crime, he was playing billiards with Javier, from which testimony this witness evidently wished inferred the conclusion that it was impossible that Javier could have met the defendants as they were coming from Goito's house. But the evidence of the prosecution on rebuttal consisting of Exhibit Z and the testimony of several witnesses show the falsity of Alejandro Gervasio's testimony. At the time referred to by the latter, playing billiards later than 10 o'clock at night was prohibited in Las Pinas, and the owner of the billiard table likewise belies Alejandro Gervasio. "Balbino Alameda, the witness who saw the defendants on the night of the crime as they were going to the house of the deceased, alleges that in the beginning he stated to Deogracias Francisco that he (the witness) knew nothing about this case; but later he was taken to the office of Colonel Crame and subsequently made a declaration that he had seen the defendants. But this theory is also completely destroyed by the rebuttal evidence.

"Against the testimony of Bruno Ramirez, nothing specific was alleged to warrant its rejection, but on crossexamination by the defense, Ramirez stated that he was a very intimate or confidential friend of Roman

Malabanan, for the latter had been his companion in a number of assaults and robberies. This sincere confession of Ramirez cannot, I believe, invalidate his testimony; on the contrary, the intimate friendship of which he speaks makes his testimony more likely. Had Malabanan revealed his crime to an enemy, it would have been difficult to believe it; and had the revelation been made to an honest person, a public officer, or any other public official, the defense, naturally suspicious, would have (alleged that the revelation was drawn out by force, intimidation, or promise. If the testimony of Ramirez in regard to Malabanan's revelation, as well as in respect to the other crimes which both committed, were not true, nothing was easier for the defense than to produce Malabanan to rebut it; but the defense did not produce him nor attempt to do so.

"In order to weigh the true value of the testimony rendered in this cause, we should not lose sight of the peculiar conditions that prevailed in the municipality of Bacoar, where all the witnesses reside. There, everybody belongs to one or the other of the two political parties, and if one belongs to Noriel's party, another necessarily belongs to the opposing party. The truth should be accepted, whatever may be its source; if it comes from a friend of the accused, I believe it should be accepted without any discussion, and if from one of their enemies, it should also be accepted, if it is reasonable and probable and in accordance with the other facts of the case. Most of the crimes would go unpunished, if only the culprit's friends were admitted as witnesses.

"With reference to the other witnesses who testified upon collateral facts, the court does not likewise find any sufficient ground to reject their testimony. We have already said that Agapito Bonzon, whom Noriel and Landas claimed as their enemy owing to local party politics in Bacoar, is in fact their best friend. As regards Hilarion de Guzman, I do not believe that for the mere reason of his defeat at the polls by Landas, who was Noriel's candidate, he may be considered as an irreconcilable political enemy of both. Guzman was not found telling a lie, at least during the whole time he was on the witness stand, while Noriel and Landas did nothing else than to make false statements.

Guzman admitted that he had been convicted of rape; but, though this crime against chastity is a perpetual blemish on his character, I do not believe that it can be any argument against his veracity. He was undoubtedly an immoral man, but so long as he was not convicted of perjury, he may still be deemed to be truthful.

"The faults found in the other witnesses, such as Dionisio Ban ay ad and others, have been refuted by the prosecution, and it is therefore unnecessary to discuss them here in detail, as they are all set forth in the record.

"Seventh. Making now a summary and a comparison of the evidence adduced by both parties, we find: (1) That the commission of the crime and the defendants' guilt were proven by the prosecution by direct evidence, to wit: The testimony of the eyewitness Zacarias Hernandez, the corroborative testimony of Alfonso Cuenca, and Bruno Ramirez, both of whom were invited by the gang to assist them and cooperate with them in the commission of the crime, and the confessions or admissions of the defendants Dinoso, Malabanan, and Noriel, besides the confession made by the said Dinoso before the prosecuting attorneys Zaragoza and Quintero; (2) that the prosecution proved the above-mentioned facts by indirect evidence, to wit: The testimony of two persons who saw the accused go to Goito's house prior to the commission of the crime, and withdraw therefrom after the commission of the crime; the acts by certain of the defendants in coaching witnesses to testify against De Guia and others, falsely charging them with the crime; the dogged persecution of the Government witnesses in this case by attempts against their lives; and the holding of meetings to prepare false alibi. On the other hand, the defense was unable to rebut the evidence of the prosecution, for it has been seen that the defendants' denial was absolutely groundless, that all their allegations were belied, that their alibi were entirely false, or at least insufficient in themselves, and that their imputations or charges against the Government witnesses were disproved; (3) that the witnesses for the prosecution, in spite of the challenge made by the defense against their character and conduct, were found to be truthful and reliable, while the witnesses for the accused, when not either their relatives or dependents, have some of them shown their partiality, and others, their inordinate interest to favor the defendants, all of them told gross lies which need not be repeated; (4) that the theory proven by the prosecution is that, in the criminal prosecution against De Guia, Buendia, and Hermogenes Asuncion, a grave error has been committed, due to the machinations and wiles of

Luis J. Landas, his followers, and sympathizers, but that the true authors of the crime under prosecution are the accused Noriel, Landas, and their companions. Although the defense, on the other hand, insinuates that the witnesses for the Government might have been coached or paid by certain persons who, before the trial, made investigations in the matter concerned in this case, the fact is that it did not furnish any positive and specific proof, such as might and ought to be taken into account by this court. All those malicious and perverse insinuations were fortunately completely and utterly destroyed by the rebuttal evidence of the prosecution. Aside from the interest that Colonel Crame and Captains Small and Pyle had in cooperating with the Government in the prosecution of crimes and criminals—an interest inherent in the positions they hold as Government officials—what political, personal, or other motives of whatever kind might we attribute to them? They had no resentments against, or personal enmity toward, either Noriel or Landas, and, as regards the other defendants, I believe that they did not even know them before the investigation was made of the facts involved in this cause. No one of the aforementioned officials lives in Bacoar, nor even in this province of Cavite, so that there can be no reason to presume that they might be affected by the fluctuations of local politics in connection with elections for municipal offices in Bacoar. They need nothing from Noriel, Landas, and their followers, and expect nothing from them, nor can they be disturbed by either the defendants' power or influence. If the above-named officials had an interest in this cause for the reason that one of the former defendants, Gregorio Buendia, belonged to the Philippine Scouts, and because another of them, namely, Gregorio de Guia, rendered services as a Constabulary agent, the court is of the opinion that such interest must have ceased as soon as these two men were acquitted. Any other presumption would be contrary to the ordinary course of things and natural sentiments of honor and nobility. There is no evidence nor reasonable ground whereupon to base it; but, for one moment let us suppose it to be true, what motives might these gentlemen have had for harboring revenge, not only against Noriel and Landas, but also against all their codefendants, the revolutionary ex-Captain Macario Eusebio, the Pasay driver Fausto Diiioso, and the jueteng collector Roman Malabanan? These are questions which the defense never will be able to answer; (5) and, finally, we find that the prosecution in this cause did not forge or frame up any evidence, while the defendants, when testifying as witnesses in their behalf, showed themselves to be false, induced their codefendants Macario Eusebio and Fausto Dinoso, to be false, and in their defense, produced several witnesses who might testify to false alibi and to facts equally false. Sacred is the right of self-defense, but I know of no law that authorizes one to defend himself by falsehoods. Such defensive tactics is self-destructive, and produces only the positive effect of inclining the judge to a firmer conviction of the defendant's guilt. To close our consideration of this feature of the case, the court has the following to add: (1) Were it true that Paula Cuenca had been instructed by her father-in-law, Eugenio Torres, to say nothing about the identity of the real perpetrators of the crime until all evidence had been gathered, Torres would have been put on the witness stand to support his daughter-in-law's statement, specially since he was in the court room when she was testifying and besieged with crossquestions by the prosecution, such as to cast doubt upon her whole testimony; (2) were it not true that Alipio Lokso and Pedro Lipana, sympathizers of the defendants and forgers of false evidence, had been helping the latter in coaching false witnesses, they, Lokso and Lipana, would have also been brought here, if not to belie, at least to deny the unlawful intervention charged against them in this cause; (3) were it not true that Alipio Lokso dissuaded Fausto Dinoso from his intention to tell the truth as a witness for the Government, Lokso would have been brought here to prove that he did not; (4) if the assault against Bonzon were not the result of a conspiracy and a plan of revenge on the part of the defendants and their followers, against the witnesses for the Government and all those who favored the prosecution, they and many other eye-witnesses could have been brought to court to show that the prosecution was introducing false evidence, inasmuch as the assault was made in such a public place as a cockpit, and the prosecution gave the names of the persons who wanted to help Bonzon's aggressor; (5) and lastly, the court desires to state that counsel for the defense, in his oral argument, insisted that those who are really guilty of the crime under prosecution are the oft-mentioned Buendia and others, and stated that in the records of the cases against them there is convincing testimony of their guilt; but the court, sustaining an objection against the production of this testimony, because the prosecuting attorney desires to hear the witnesses so as to be able to cross-examine them, rejected said testimony as evidence and expected the defense to produce the witnesses, but the defense never did so, either

in presenting direct evidence or rebuttal evidence, and the record discloses no reason to justify such an omission. So that, in short, under all the points of view taken by the court in his consideration of the matter involved in the case, the court has reached the conviction that truth and justice are on the side of the prosecution.

"The defendant Noriel, ever proud of his power and influence in the town of Bacoar, and confident that he could escape punishment for the commission of his previous crimes, did not hesitate this time to commit another one and resolved to take the life of his enemy Goito. The other defendant Luis J. Landas, conceitedly proud of his official position, became bold by the aid and protection of his godfather and his political party, feeling sure, besides, that, with his wiles and intrigues, he could in any event save himself from all danger, by charging the crime to others, and, deceiving the authorities, cooperated with Noriel in the determination to eliminate Magtibay. The other defendants, by natural instinct and moral perversity shown several times in previous crimes, or by blind obedience to Noriel's orders, due to their former subordination to and dependence upon him, resolutely cooperated with him in the carrying out of his plans, or allowed themselves to be easily dragged into them by his persistent inducement. All of them committed the crime jointly confident that it would go unpunished; but, they could not always mock the law, nor always surprise justice to turn it to their advantage, as a vile instrument for the satisfaction of their mean ambitions or personal revenge. So often have they abused and trodden upon the law that at last they must answer before it for their criminal acts.

"Eight The acts proven to have been committed by the defendants do in fact constitute the crime of murder, as charged in the complaint. Magtibay's death was deliberately premeditated, inasmuch as, according to the evidence, it was the result of a prior conspiracy. That murder was attended by the aggravating circumstance of treachery, in this case generic, because the deceased was sound asleep at the time he was stabbed to death. The following generic, aggravating circumstances also concurred in the commission of the crime; nocturnity, both because the crime was committed at night, and because night was purposely sought for its commission; its commission in the very dwelling of the deceased; the scaling of a wall, because the criminal entered the house through the window, which is not a proper way of entrance; and, lastly, its commission by a band, because the defendants were more than three and all of them were armed. But it cannot be held that the crime was attended by the other aggravating circumstances specified in the complaint, to wit, the commission of the crime in an uninhabited place, by the use of prohibited weapons, and for a price, reward, or promise; not the first of these circumstances, because near Goito's house there was another one separated from it by a saltland; not the second, because the possession of prohibited weapons constitutes, under the statutes in force, a crime specially punishable and not an aggravating circumstance; nor the third, or that of price, reward, or promise, because the record does not show that Goito's slayer, Malabanan, received any money or was promised anything by Noriel. Be it as it may, the murder committed is modified by several aggravating circumstances, without any extenuating ones with respect to Noriel and Landas. The benefit of article 11 of the Penal Code should be accorded to the other defendants Macario Eusebio and Fausto Dinoso, on account of their scant education or entire lack of it, and a greater effect should be given to this circumstance in order to offset the aggravating circumstances above mentioned. All the defendants are liable for the crime as principals, as they assisted each other in its commission, by the performance of acts without which it would not have been committed; Noriel and Landas should, however, be considered as principals morally or by inducement. "For all the foregoing reasons, the court pronounces judgment by finding the defendants Mariano Noriel, Luis J. Landas, Fausto Dinoso, and Macario Eusebio guilty of the crime of murder as charged in the complaint, and sentences Mariano Noriel and Luis Landas to the death penalty which shall be executed in the manner and form provided by Act No. 1577; and with respect to the other defendants, Fausto Dinoso and Macario Eusebio, they are hereby sentenced to cadena perpetua, with the corresponding accessory penalties. AH the defendants are further sentenced jointly and severally to indemnify the family of the deceased in the sum of P2,000, and in equal shares to pay the costs of the proceedings. For the review of the death sentence, let the original record in this case with a transcript of all the testimony and other evidence taken be forwarded to the Honorable Supreme Court of the Philippine Islands, whether or not the defendants Noriel and Landas appeal from this judgment; in regard to Macario Eusebio and Fausto Dinoso. the record in the case shall be forwarded only

should they appeal. So ordered.

"Rendered in the Court of First Instance of Cavite, this 28th day of June, 1912.

"ISIDRO PAREDES,

"Judge of First Instance,

"Acting in the Sixth District.

From an examination of the proof adduced during the trials against Malabanan, as well as in the case against Mariano Noriel et al., we find that a number of witnesses whose affidavits and declarations were presented to Judge Jocson and upon which he granted a new trial to de Guia and Buendia, again testified for the prosecution and again inculpated said defendants in the commission of the crime of the murder of Gregorio Magtibay. Said witnesses were Segundo Francisco, Eusebio Orense, Dionisio Banayad, Cornelio Tortona, Alfonso Cuenca, Bruno Ramirez, Maximo Javier, Balbino Alameda, and Saturnino Marquez. Some of said witnesses were on the witness stand several different times during the trial against Malabanan and Noriel and his companions.

The witness whose retractions of his declarations against Malabanan, Noriel et al. are so strongly relied upon by the defendant in the present case (Alfonso Cuenca) gave his first declaration before the court in which he inculpated Malabanan et al. on the 28th of November, 1911. His next declaration, in which he points out with great clearness the culpability of Roman Malabanan was given in the Court of First Instance of the Province of Cavite on the 3d of April, 1912, during the preliminary examination in the criminal case of United States vs. Noriel, Malabanan et al. Here again he declares in detail concerning the manner, method, and motive in and by which Noriel and his companions murdered the said Gregorio Magtibay. His next declaration was given before the Court of First Instance of the Province of Cavite on the 10th of May, 1912. Here again he declares as to the manner and the method by which Noriel and his companions murdered the said Gregorio Magtibay. The said Alfonso Cuenca again took the witness stand in behalf of the prosecution on the 16th of May, 1912, and he again reenforces his former declaration against the defendants, Noriel et al. In this declaration he explains how Mariano Noriel tried to induce him to murder at least two other persons, for a reward. Said persons were Tesorero Ponciano Santos and Captain Pyle. He swore positively that Mariano Noriel had offered him P150 if he should kill or murder Captain Pyle. Alfonso Cuenca again appeared as a witness in the trial of the case against Noriel et al. on the 22d of May, 1912, and again declares fully and in detail concerning the method, manner and motive, by which Mariano Noriel and his companions murdered Gregorio Magtibay. He again reaffirms and restates, in substantially the same manner, his declarations theretofore given on the dates above mentioned. The said Alfonso Cuenca again appeared as a witness in the trial of the cause against Noriel et al. on the 18th of June, 1912, and again in detail affirmed his declarations given in open court theretofore.

It will be seen, from the above, that from the time of his first declaration in which he inculpated Mariano Noriel and his companions, given on the 28th of November, 1911, until the 13th of June, 1912, Alfonso Cuenca consistently insisted that Mariano Noriel and his companions were guilty of the crime charged in the complaint, which had been presented against them on the 27th of April, 1912. At no time during the six times that he declared in open court did he intimate or suggest, in the slightest degree, that any of the complainants in the present case had tried to, or in the slightest degree had intimated to him to declare in any manner except to tell the truth as he knew it. The testimony which Alfonso Cuenca gave at each of the six times he declared as a witness was substantially the same. In his declarations against Noriel and his companions Cuenca declares as follows:

"Alfonso Cuenca, being duly sworn, stated that he was 34 years of age, a trader, and a resident of Bacoar, Cavite.

"Direct examination by Prosecuting Attorney Zaragoza:

"Q. Do you know the defendants in this case?—A. Yes, sir.

"Q. Give their respective names (pointing to them).—A. Mariano Noriel, Luis Landas, Fausto Dinoso, and Macario Eusebio.

"Q. Did you know one Gregorio Magtibay alias Goito?— A. Yes, sir.

"Q. What became of him?—A. He was murdered.

"Q. How do you know that he was murdered?—A. I heard so.

"Q. Before Goito was murdered, what dealings did you have with these defendants or with any of them?—A. I was on good terms with the defendants; they were my intimate friends.

"Q. During the time that you were on good terms, did you do anything in company?—A. Yes, sir.

"Q. What?—A. On the 15th of April, 1909, while I was at home Mariano Noriel invited me, and took me along and told me that he had been offended by Gregorio Magtibay in the cockpit, and that he wanted to take me along because he wanted to talk to Gregorio Magtibay. A few minutes past 5 o'clock in the afternoon, Noriel invited me to his house, where he gave me a revolver and he took the other, and then told me that we would go to the municipality of Malicsi. When we arrived near the bridge that crosses the river, we sought shelter under a bamboo tree, where we stayed until about 7 o'clock in the evening, and there Macario Eusebio came, who said that nothing would happen, because Gregorio Magtibay had some companions with him, and Mariano Noriel told me that we could go home; on arriving at the incline of the bridge, he took the revolver from me and told me to go home. One Sunday, in the month of May, Mariano Noriel came to my house and told me that we would go to a grand feast; as it was about 8 o'clock in the evening, he invited me by calling me from the window of his house, whereupon I went to his house where I found Roman Malabanan and Luis Landas, and presently Noriel and Luis Landas talked in a low voice; and after talking in a low voice, Roman Malabanan and Luis Landas went downstairs; before long, Noriel entered his room, he took two revolvers, gave me one, and placed the other in his belt; Noriel and I then went downstairs, and passing along the railroad track, on approaching the bridge across the Malicsi river, we met Luis Landas and Roman Malabanan, and on each side of the track, Mariano Noriel and Luis Landas were talking in a low voice. We then proceeded to the house of Macario Eusebio "where we met Fausto Dinoso, Zacarias Hernandez, and Macario Eusebio himself; on arriving there, I asked where the supper was, for, on opening all the pots, I saw nothing in them. Mariano Noriel said to me: 'Wait a moment and they will bring me the supper;' thereupon I lay down and slept; when the night was getting late, perhaps at about 10 o'clock, I asked again where the supper was; I was feeling hungry, and there being no supper I intended to go home, but Mariano Noriel told me to wait a moment, for the supper would soon be served, and then bread and sweets were brought and handed to me by Macario Eusebio. I ate and after eating said to him: 'So this is the only feast we have come for" we lay down while Mariano Noriel and Macario Eusebio were talking to each other; before long, Mariano Noriel awoke us and said that it was already midnight; he said to Roman and me: 'Go now, Roman, Alfonso,' and we left, for he said he would follow us. We then went down to the road and walked to the sitio of Talaba; on reaching the gate of a lot, we entered that gate and walked along the dikes of the fishpond, and after walking a long distance, we came to a bridge which we crossed, and arrived at a place near Goito's house; on arriving there Roman Malabanan thrust his dagger into the wooden wall of Gregorio Magtibay's house and through the crack made with the dagger we looked inside to see the inmates, and only saw Paula Cuenca, a sister, and a little girl, and Gregorio Magtibay was not there; as Gregorio Magtibay was not there, Roman Malabanan said to me that we might return home and tell Mariano Noriel that Goito was not there; we had not gone far from that house when we met Mariano Noriel, Luis Landas, Fausto Dinoso, and Zacarias Hernandez who were going toward the place whence we had just come; Roman Malabanan told Mariano Noriel that Gregorio Magtibay was not there; they talked and afterwards Mariano Noriel told me and Fausto Dinoso that we could go home. After Fausto Dinoso and I had come a considerable distance we met Macario Eusebio at the doorway of the house by the road; Macario Eusebio asked us where we were going, and we answered that we were already going home because Mariano

Noriel had ordered us so to do; afterwards Dinoso and I went away; he, to his house, and I, back to the town.

"Q. At that time, did you or not already know Zacarias Hernandez?—A. No, sir. I knew him for the first time when I arrived at Macario Eusebio's house, lying with his face downwards; I only knew him by sight that night, and did not know his name. I knew Fausto Dinoso, too, only by sight.

"Q. So that only afterwards you learned the names of Zacarias Hernandez and Fausto Dinoso?—A. Yes, sir; and I knew those names only because, when I asked Noriel who those persons were, he told me that they were Fausto Dinoso and Zacarias Hernandez.

"Q. You said that it was on a Sunday?—A. Yes, sir.

"Q. Continue.—A. On Monday night, after we had taken supper—I do not know at what hour, that Monday was the one following the Sunday to which I refer—Mariano Noriel came to my house and called me, and I asked my wife to tell him that I could not go, because I had stomachache, and so he went away. At about 5 o'clock the next morning, that is on Tuesday, a neighbor of mine said to me: 'Alfonso, they say that Goito has been murdered.' I replied, 'Why did they kill him; what is said about it?'

My neighbor answered, 'They say that he was robbed,' and for this, I suspected that our going there that Sunday was for that purpose.

* * * * *

"Three days afterwards, Mariano Noriel came to my house very early in the morning and said to me: 'Keep still, because the purpose for which we went there has already been accomplished,' and so I did as he bid me, for we were friends.

"Q. You say that you know the defendants, can you state what relations exist between Mariano Noriel and Luis Landas?—A. Yes, sir, Luis Landas is a godson of Mariano Noriel.

"Q. Do you know Roman Malabanan ?—A. Yes, sir.

"Q. What relations existed between Mariano Noriel and Roman Malabanan at that time?—A. they were on good terms, for Roman Malabanan used to get his food from the house of Mariano Noriel.

"Q. Do you know what relations, if any, existed between Roman Malabanan and Luis Landas?—A. Roman Malabanan and Luis Landas are compadres (one being the godfather of the other's child).

"Q. Do you know what relations existed at that time between Macario Eusebio and Mariano Noriel?—A. Yes, sir. Macario Eusebio respected Mariano Noriel, because the latter, when a general of the Revolution, appointed Macario Eusebio captain although he was ignorant.

"Q. Do you know whether there is any relation between Luis Landas and Macario Eusebio?—A. Yes, sir. I do not know the relations between Luis Landas and Macario Eusebio.

"Q. Do you know whether there existed any relation between Fausto Dinoso and Mariano Noriel?—A. I do not know, sir. I only saw him that night. Noriel told me only that night that Fausto Dinoso was a good fellow.

* * * * *

"Q. Can you tell what sort of relations existed between Goito and Noriel prior to Goito's death?—A. I have already said that Noriel told me that he was slighted by Gregorio Magtibay in the cockpit.

"Q. Do you know what relations existed between Luis Landas and Goito?—A. I do not, sir.

"Q. Luis Landas?—A. Yes, sir; I know the relations between Luis Landas and Goito. They were enemies since long, because when they were single and Paula Cuenca, the wife of Gregorio Magtibay, was single, Luis

Landas courted Paula, and when Magtibay and Landas were single they had a fight in the sitio of Digman and I witnessed that fight, for it was I who separated them.

"Q. And who married Paula Cuenca?—A. Gregorio Magtibay.

"Q. Were Gregorio Magtibay and Luis Landas rivals in any other occasion aside from that one?—A. I have also heard that in Malicsi they were rivals in courting a woman.

"Q. What woman?—A. Apolonia Reyes, so it is said."

Cross-examination by Mr. AGONCILLO:

"Q. Is it not true that Mariano Noriel had come from the cockpit that same afternoon that he went to see you in your house on the 15th of April, 1909, and there told you of the trouble that he had with Gregorio Magtibay in the cockpit?—A. He told me that he had come from the cockpit.

"Q. Are you sure that when he came to see you in your house that afternoon, what he told you was that he had come from the cockpit.—A. Yes, sir.

* * * * *

"Q. Was there cockfighting on the day that Mariano Noriel went to your house?—A. Yes, sir.

"Q. Why was there cockfighting on that day, April 15, 1909?—A. I can not positively state whether it was the 15th but it was Sunday, and I only guess that it was about the middle of the month.

"Q. Do you not remember that you have just testified before this court that it was on the 15th that, for the first time, he visited you in your house and told you of the trouble he had with Gregorio Magtibay?—A. I can not remember exactly.

"Q. Answer 'yes' or 'no.'—A. I only heard about it that day, but I do not remember what date it was.

"Q. Answer categorically whether Mariano Noriel went to see you for the first time on the 15th of April, 1909. Answer 'yes' or 'no.'—A. I do not remember whether it was the 15th, and I only guess it was about the middle of April.

"Q. Did you not testify before, that Mariano Noriel saw you on the 15th of April and that he told you that he had a trouble with Gregorio Magtibay in the cockpit?—A. I do not remember, sir.

"Q. Have you not just testified that on that day when Mariano Noriel went to see you, there was cockfighting?—A. Yes, sir, it was Sunday and I guess it was the 15th, or certainly about the middle of April.

* * * * *

"Q. When you went to Mariano Noriel's house on the Sunday to which you refer, when he handed to you a revolver, did you know the reason he delivered that revolver to you?—A. No, sir.

"Q. Nor did you know why you went with Mariano Noriel to the barrio of Malicsi with a revolver, and Noriel with another revolver?—A. I only remember that he told me that we were going to a pig spread.

"Q. Is it not true that on the 15th of April, 1909, you were also in Noriel's house?—A. I do not remember whether I was there on the 15th of April, because I often went there, as he also was wont to come to my house. I used to go to Noriel's house almost every day.

"Q. When was it that Noriel went to see you and told you that he had trouble with Gregorio Magtibay in the cockpit?—A. It was one Sunday.

"Q. And on that afternoon, did you go to Noriel's house?—A. Yes, sir.

"Q. Why did you go to Noriel's house on the afternoon of that Sunday to which you refer?—A. Because as a friend of Noriel, I used to go to his house, and he to mine.

"Q. So that, on that Sunday to which you refer, you and Mariano Noriel simply visited each other?—A. During my whole life, and while our relations lasted I used to go to Nortel's house, and he also, to mine.

* * * * *

"Q. And you only went to visit Noriel, did you not?— A. Because he called me and told me to go to his house as he had something to tell me; so I went there, and when I arrived he gave me a revolver. When I got there, they were about to take luncheon, but before sitting down to lunch, Noriel gave me a revolver, and after taking lunch with his wife, and after they had taken their lunch, Noriel invited me and we two, he and I, went away.

"Q. Where did you go?—A. We went to Malicsi, near the bridge.

"Q. And why did you go to Malicsi, near the bridge?— A. I do not know, sir. He did not tell me what we would do there, and I only knew it at about 7 o'clock in the evening when Macario Eusebio arrived there and told Noriel that nothing could be done because Goito had some companions with him.

"Q. So that you received that revolver without knowing why?—A. Why should I not now know the reason when he told me that he had a quarrel with Goito in the cockpit; but he merely told me that he wished to have a talk with him and this he told me only when we were walking along.

"Q. You do not remeber the facts which you relate in this case, do you?—A. Yes, sir, because it is the truth.

"Q. Judging from your testimony, you do not remember the facts which occurred in the year 1909, regarding this case, do you?—A. Yes, sir.

"Q. Is it not true that you do not remember the facts about which you testified before the justice of the peace of Cavite, regarding this same case, it being of more recent date than that of the year 1909?—A. I asked the justice of the peace to excuse me, because when I testified I was sick, and I also told him that should my sickness attack me, I would not be able to remember the facts well.

"Q. Is it not true that you have just stated that when you arrived at Mariano Noriel's house on Sunday afternoon, Mariano Noriel and his wife were about to sit down to take their luncheon?—A Yes, sir.

* * * * *

"Q. Can you tell the court what was the make of the revolver that Mariano Noriel handed to you on the afternoon of that Sunday to which you refer in your testimony?— A. It was a Colt, which could be loaded and unloaded, for, by making certain movements, the cartridge chamber would come out.

* * * * *

"Q. And you did receive the revolver from Mariano Noriel without knowing why he delivered it to you?—A. I did, because we used to take that revolver with us wherever we went.

"Q. When you carried that revolver, for what and why did you carry it?—A. I would do what Noriel ordered me to do.

"Q. So that you were subject to, or an automatic machine that obeyed the orders of Noriel on that Sunday to which you refer?—A. Yes, sir because he was a general, and, besides, he was my friend, and on account of that friendship I would follow him wherever he should go.

"Q. And does Mariano Noriel now still inspire in you the same obedience which you professed toward him?—A. No longer, sir.

"Q. Why?—A. Because I want to tell the court the whole truth. I no longer wish to do what we did before. I now want to tell the whole truth to the court.

"Q. So that you are now an enemy of Mariano Noriel?— A. He may perhaps be angry with me because I am here testifying to the whole truth.

"Q. Is it not true that you have stated that when you and Mariano Noriel were proceeding to Macario Eusebio's house, you met Luis Landas and Roman Malabanan?—A. Yes, sir; we met them on the railroad track and we went along together to Macario Eusebio's house.

"Q. When you arrived at Macario Eusebio's house, what persons did you meet?—A. We only met Macario Eusebio, Fausto Dinoso, and Zacarias.

"Q. At what time did you meet Fausto Dinoso and Zacarias Hernandez at Macario Eusebio's house?—A. I do not know the hour, because I was not carrying a watch then.

"Q. But, approximately?—A. It was at night.

"Q. Was it at midnight ?—A. Before midnight, it was still rather early.

"Q. Did you find Fausto Dinoso and Zacarias Hernandez awake in Macario Eusebio's house on that night to which you refer?—A. Zacarias Hernandez was sleeping, and Fausto Dinoso had his face turned toward me.

"Q. Did you find Fausto Dinoso in Macario Eusebio's house when you arrived there?—A. Yes, sir.

"Q. In what position did you find Fausto Dinoso in Macario Eusebio's house when you arrived with Noriel, Luis Landas, and Roman Malabanan in Macario Eusebio's house, on the night to which you refer?—A. He was seated, and when we arrived, he was facing toward me; I only asked who he was and he told me he was Fausto Dinoso.

* * * * *

"Q. When you went with Roman Malabanan to Gregorio Magtibay's house, where were Mariano Noriel, Luis Landas, Macario Eusebio, Fausto Dinoso, and Zacarias Hernandez ?— A. I have already said that after Roman Malabanan had, with his dagger, made a slit in the wall of Gregorio Magtibay's house, and after we had seen that Gregorio Magtibay was not there, and were returning to the place where we had left Noriel and his party, we met them in a place already near Goito's house, whence we had come and whither they also were going.

"Q. When you and Roman Malabanan went to Gregorio Magtibay's house, what direction did you take to go there?— A. We went in an easterly direction.

"Q. In what place is Macario Eusebio's house located?— A. In Malicsi.

* * * * *

"Q. Where is Gregorio Magtibay's house located?—A. In a plantation of mango trees, or r, salt land, near the shore.

"Q. In what sitio or barrio is that house located?—A. Within the jurisdiction of the barrio of Talaba.

"Q. So you, with Roman Malabanan, started from the house of Macario Eusebio, and went along the road, that is, the main highway, toward Gregorio Magtibay's house, did you not?—A. Yes, sir.

"Q. And does this road lead to Gregorio Magtibay's house?—A. First, one has to enter a lot and pass along fishery enclosures before reaching Gregorio Magtibay's house.

* * * * *

"Q. When you, with Roman Malabanan, were going to Gregorio Magtibay's house, did you not see a bridge opposite the road?—A. Yes, sir, in fact one must pass over that bridge.

"Q. And is it not true that to reach Gregorio Magtibay's house, one must necessarily pass over that small bridge?— A. Formerly there was a small bridge near the house, at a distance of some 40 or 50 brazas from it, and that bridge was near the culvert, and I do not know whether or not they have now closed it.

"Q. And is it not true that to get to Gregorio Magtibay's house, one passes over that small bridge?—A. Yes, sir.

"Q. Must one necessarily pass over that bridge to get to Gregorio Magtibay's house?—A. But that small bridge built over the fishery enclosure at the place where the road is located, was broken. We passed over that bridge crossing the large one that was located on the road and over which we also passed.

"Q. Have you not just stated that you passed through a lot in order to reach Gregorio Magtibay's house?—A. Yes, sir; near the road there is a lot, through the gate of which we entered to reach the enclosure along which we passed.

"Q. Is it true that there is a house on this lot?—A. Yes, sir.

"Q. And how could you pass through that fence, as there was a house there?—A. Yes, sir, there was a house and besides a sort of a street and the people in the house were asleep because it was already midnight.

* * * * *

"Q. But did you not say that you came from the house of Macario Eusebio, located in the barrio of Malicsi?—A. Yes, sir.

* * * * *

"Q. The Malicsi river is very far from Gregorio Magtibay's house, is it not?—A. It is not very far away.

* * * * *

"Q. And that was the first time you had gone to Malicsi, was it not?—A. I had gone there twice.

"Q. You have stated that, on the other side of the Malicsi bridge, while coming from Gregorio Magtibay's house with Roman Malabanan, you met Mariano Noriel, Luis Landas, Fausto Dinoso, and Zacarias Hernandez, is it not true?— A. To what bridge do you refer? There are several bridges in Malicsi.

"Q. I mean the Malicsi bridge.—A. We did not pass over the Malicsi bridge, but over a bridge near Goito's house and within the district of the barrio of Talaba.

"Q. And was it on the side of that bridge that you met the defendants Mariano Noriel, Luis Landas, Macario Eusebio, Zacarias Hernandez, and Fausto Dinoso?—A. Yes, sir.

* * * * *

"Q. And are you sure that the person whom you knew by sight is the same one you recognized before this trial, that is, Zacarias Hernandez?—A. Yes, sir.

"Q. Do you say that you went with Roman Malabanan to Goito's house that Sunday night to which you refer in your testimony?—A. Yes, sir.

"Q. How do you know that only Gregorio Magtibay's wife, her sister, and a little girl were in Gregorio Magtibay's house that night?—A. Because we went precisely to look and see.

"Q. Can you state in what place Gregorio Magtibay's wife, her sister, and the little girl were that night when you were spying?—A. They were lying on the bamboo floor of the house.

"Q. In what part of the house—in the center or outside?—A. Toward the interior of the house, for the house had but one room.

"Q. Was the place where Gregorio Magtibay's wife, her sister, and the little girl were, far from where you were?—A. No, sir, for the house is small; they were near the center of the house.

"Q. I ask you what was the distance between you and the place where Paula Cuenca, her sister, and the little girl were?—A. I cannot state the exact distance, because I have not measured it, I only saw her lying in the center of the house.

"Q. So then, you cannot say what the distance was?—A. I can say that she was lying in the center of the house when we were spying.

"Q. State the approximate distance between the place where Paula Cuenca, her sister, and the little girl were and the place where you were that night.—A. It was as far as it is from us here to the place where the interpreter is. (Record was entered that the distance indicated by the witness was 2 meters.)

"Q. How could you know that Paula Cuenca, her sister, and the little girl were in that place?—A. Because there was a light, and besides, they were not covered with a sheet, for it was summer time.

"Q. Is it not true that Paula Cuenca, her daughter, and sister were sleeping inside a bed-canopy that night?—A. No, sir; only the little girl was inside the canopy, but Paula Cuenca and her sister were outside of it.

"Q. And are you sure that you saw the little girl inside the bed canopy?—A. Yes, sir, because I saw her hair. "Q. Can you state what time it was when you and Roman Malabanan were in front of Gregorio Magtibay's house?—A. No, sir, because I had no watch with me. "Q. But, was it more or less about midnight?—A. No, sir.

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"Q. When you went with Roman Malabanan to Gregorio Magtibay's house, you did not even know the reason why you had gone there, did you?—A. Yes, because Roman Malabanan told me why, and also said that none of us should forsake his companions, because Goito was brave and might resist.

"Q. And at that moment you knew the reason for your going to Gregorio Magtibay's house, did you not?—A. Yes, sir.

"Q. And at that moment you were willing to cooperate with Roman Malabanan for the commission of the crime, were you not?—A. Yes, sir, because I had then a great esteem for Noriel.

"Q. So that your esteem for Noriel was sufficient to induce you to commit any crime, was it not?—A. Yes, sir, on account of the then friendly relations between us.

* * * * *

"Q. Have you ever been a detective of the Government?—A. No, sir.

"Q. Have you any interest in this case?—A. No, sir.

"Q. Do you not remember having testified in the trial against Roman Malabanan for murder, that you are an enemy of Noriel?—A. Due to the several testimonies I have given, I can no longer remember what I have stated in that testimony.

* * * * *

"Q. Is it not true that in this cause, when you were questioned by the fiscal as to who gave you authority to act as detective in Bacoar, you replied that it was Colonel Crame and General Bandholtz.—A. I can not answer that

question, because up to this time I have no authority; at this moment I am not authorized to answer that question.

* * * * *

"Q. Do you know Captain Pyle of the Scouts and Municipal Treasurer Santos of Bacoar?—A. Yes, sir.

"Q. Noriel has endeavored to prove here his good character, reputation, and conduct. State to the court whether the defendant Mariano Noriel requested you to do anything: to Treasurer Santos and Captain Pyle.—A. Yes, sir.

"Q. What was it that he told you?—A. He offered me P150 to shoot Captain Pyle.

"Q. And with regard to Santos?—A. In consideration of our friendship, he also requested me to kill Treasurer Santos.

"Q. Did Noriel offer you anything to kill Treasurer Santos?—A. No, sir; he just gave me a revolver and ordered us, Roman Malabanan and myself, to fire shots at Treasurer Santos.

"Q. And who is that Roman ?—A. Malabanan. "Q. Is that the man who was tried here a few days ago?—A. Yes, sir.

"Q. Do you know Hilarion Eusebio?—A. I do not.

"Q. Hilarion Eusebio testified here that you asked him to tell Macario Eusebio that Noriel and Landas would be arrested; is it true that you said that to Hilarion Eusebio, or to any other person?—A. No, sir, I did not say that to him, nor do I know him.

"Q. Did you request any other person to say so to Macario Eusebio?—A. No, sir.

"Q. Do you know Paula Cuenca?—A. Yes, sir.

"Q. How is she related to you?—A. Cousin.

"Q. Paula Cuenca testified here that she has no illicit relations with the accused Luis Landas; state whether or not this is true.—A. So she merely said.

"Q. Did you see anything?—A. Yes, sir; I and Captain Pyle were by the gate of our lot when Luis Landas passed by and as he continued on his way, we watched where he was going and saw that he entered the lot of Capitana Monica Cuenca; not long after, we also stepped inside the lot and then continued our way until we were under the house; there we saw Luis Landas seated on a bamboo bed, and Paula Cuenca was picking lice out of Monica Cuenca's hair; Luis Landas kissed the hand of Capitana Monica Cuenca, who made no reply; shortly afterwards Paula Cuenca went outside and Captain Pyle and I, from under the house, listened to their (Paula and Landas) conversation and we heard them talking of love; after a little while Luis Landas put out the light, and the house trembled although the wind was not blowing.

"Q. Did you observe anything else on any other occasion?—A. No, sir, only on that occasion when I was with Captain Pyle.

"Q. Do you know one Pedro Noriel and one Doroteo Ocampo, the present president of Bacoar?—A. Yes, sir, Pedro Noriel is my brother-in-law.

"Q. Pedro Noriel testified that at one time, while he was in the municipal building of Bacoar, you arrived there and that Doroteo Ocampo spoke to you thus: 'Lucky man you whom Captain Pyle has given P5 in order to testify in the case against Noriel,' and you replied, 'That is the way good parrots are paid.' Is that true or not?—A. No, sir, that is a lie.

"Q. Fausto Dinoso has testified here that on various occasions you have endeavored to induce him to be a witness in this case against Noriel, and, particularly, to get him to testify falsely. Is that true, or not?—A. No, sir, that is not true.

"Q. That same man Fausto Dinoso testified here that on a certain occasion when you insisted that he should testify against Noriel, you said to him: 'Do not be afraid to testify, for nothing will happen to you; don't you see that nothing has happened to Zacarias Hernandez, though he confessed having been with the defendant.' Is it true that you said that to Fausto Dinoso?—A. Why should I tell him not to be afraid? Am I perchance a judge? I did not see him nor did I speak to him.

"Q. What do you mean by saying that you did not see him nor speak to him?—A. I did not speak to him about that matter.

"Q. So that it is not true that you said what he alleged you have said?—A. No, sir.

"Q. Did you testify in favor of De Guia and Buendia, in the case against them?—A. Yes, sir.

"Q. Luis Landas testified here that he accused you of committing robbery in his house. When did he accuse you of robbery, before or after you had testified in the case of De Guia and Buendia and in their favor?—A. After I testified in the case of De Guia and Buendia, and for this reason he accused me.

"Q. Noriel testified here that you were angry at him, on account of a carabao that was in the possession of your brother, Pastor Cuenca; that you requested Noriel not to take the carabao away from your brother, and that, as Noriel did nothing in the matter, you got angry at him. Is it true that you got angry at him?—A. No, sir.

"Q. I understand that you presented an affidavit in the cause against Gregorio De Guia, and that you also testified in that cause. State whether the accusation of Landas against you was made before or after that affidavit.—A. Landas' accusation against me was made after the affidavit, and it was on account of the affidavit that Landas accused me. Cross-examination by Mr. Agoncillo:

"Q. You have just testified that Mariano Noriel offered you P150 to kill Captain Pyle. Did you receive that sum from Noriel?—A. The deed was not accomplished, so I did not receive the money.

* * * * *

"Q. Where and when did Mariano Noriel make you that proposal?—A. In his house. I do not remember the date.

* * * * *

"Q. Who were present when Mariano Noriel made you that proposal?—A. He and Luis Landas.

"Q. Was it in the morning or in the afternoon that he made you that proposal?—A. It was in the evening.

* * * * *

"Q. So that, were it not for that circumstance of the friendship that existed between you and Treasurer Santos, you would have carried out Noriel's proposal.—A. Yes, sir, because he ordered me.

"Q. Was the proposal which Mariano Noriel made to you to kill Captain Pyle suggested to you on the same date that he made a like proposal to kill Treasurer Santos?— A. Some time had elapsed between the two proposals.

"Q. Within the same year?—A. Yes, sir.

* * * * *

"Q. Mariano Noriel proposed to you that you kill Captain Pyle. Upon that proposal being made, did you not

have in mind the friendship you then had with Mariano Noriel?— A. Why should I have in mind my friendship with Noriel, when Captain Pyle was also my friend.

"Q. So that, were Captain Pyle not your friend, you would have also killed him at Noriel's request?—A. Yes, sir, because it was Noriel's order.

"Q. In short you were willing to commit any crime by order of Mariano Noriel?—A. Yes, sir.

* * * * *

"Q. Is it not true that on the night you went to Paula Cuenca's house there were dogs around the place?—A. Yes, sir, but I took some meat which I threw to the dogs and they ate it.

* * * * *

"Q. And you went under the house with Captain Pyle?—A. Yes, sir.

"Q. And you and Captain Pyle were standing when you noticed the movement which you mention in your testimony, is it not?—A. We were seated, we were under the house.

"Q. Is it not true that the door of the enclosure around the lower part of Monica Cuenca's house was shut the night you went there?—A. No, sir, it was open. I do not know whether they have now locked it up.

"Q. Do you know Macario Eusebio?—A. I do. There he is (pointing to the defendant of this name).

"Q. Since when have you known him?—A. For a long time.

Alfonso Cuenca is not the only witness whose testimony induced Judge Jocson to acquit De Guia and Buendia, and who also induced, by their declarations, Judge Paredes to condemn Noriel and his companions.

From an examination of the record we find that Dionisio Banayad, a policeman of the municipality of Bacoar at the time Gregorio Magtibay was murdered, presented an affidavit on the 16th of February, 1911, in the Court of First Instance of the Province of Cavite, which evidently influenced the opinion of Judge Jocson in granting to Gregorio Buendia a new trial. He also testified to substantially the same facts during the trial of the causes against Malabanan and Noriel and his companions.

Another witness, Cornelio Tortona, who presented an affidavit in the Court of First Instance of the Province of Cavite, which evidently influenced Judge Jocson to grant to Gregorio Buendia a new trial, in which affidavit he strongly inculpated Malabanan and Noriel and his companions, again testified for the prosecution in the trial of the causes against Malabanan and Noriel and his companions, and again inculpated them.

Another witness whose declaration was presented for the purpose of obtaining a new trial in the case of United States vs. Buendia was Bruno Ramirez. He also presented a declaration during the new trial conceded to Gregorio Buendia, in which declaration he strongly intimated that Roman Malabanan was guilty of the assassination of Gregorio Magtibay. He also appeared as a witness in the cases against Malabanan and Noriel and his companions and gave very damaging testimony against said defendants.

Maximo Javier was another witness whose declaration during the new trial granted to Buendia must have greatly influenced the mind of Judge Jocson in acquitting Buendia. In his declaration he gave very damaging testimony against the defendants Malabanan and Noriel and his companions.

He repeated the same declaration more in extenso as a witness for the prosecution during the trial of the causes against Malabanan and Noriel and his companions.

Balbino Alameda, another witness who declared before Judge Jocson in the new trial granted to Buendia, who very strongly inculpated Malabanan and Noriel and his companions, and whose declaration must have greatly influenced Judge Jocson, again appeared as a witness in the trial of Malabanan and Noriel and his companions

and again gave testimony which pointed strongly to the guilt of Malabanan and Noriel and his companions.

Saturnino Marquez, another witness who declared as a witness in the new trial against Gregorio Buendia, who gave testimony tending to show that Roman Malabanan was guilty of the murder of Gregorio Magtibay, and whose testimony evidently influenced the mind of Judge Jocson, again testified in the trial against Noriel and his companions and again gave testimony which tended to show that Roman Malabanan and his companions were guilty of the murder of Gregorio Magtibay and that De Guia and Buendia were not guilty of said crime.

During the trial of the cause of United States vs. Roman Malabanan and Noriel and his companions, Messrs. Agoncillo, Bernabe, and Ferrer represented the defendants. There is not a word or a line, nor the slightest intimation that these attorneys believed that any of the principal witnesses who declared for the prosecution, had been induced, purchased, or intimidated, to testify to anything other than the truth. We reach this conclusion from an examination of the record and also for the reason that none of said lawyers, in any way, called the attention of the court to that fact. They did not even move for a new trial in the lower court. They appealed to the Supreme Court almost immediately after the pronouncement of the sentence.

The record in the case of Noriel and his companions was received in the Supreme Court on the 11th of October, 1912. Felipe Agoncillo, attorney for the appellants, was notified that the record had been received in the Supreme Court, on the 21st of October, 1912. On the 2d of November, 1912, Felipe Agoncillo presented a petition in the Supreme Court renouncing his right to represent the appellants. On the 1st of November, 1912, Singson, Ledesma & Lim, attorneys-at-law, appeared for the appellants.

The record in the appeal of the case of United States vs. Malabanan was received in the Supreme Court on the 17th of October, 1912. On the 18th of October, 1912, notice was sent to Felipe Agoncillo, the attorney of record in the lower court and supposedly the attorney for the appellant, notifying him that the record had been received in the Supreme Court. On the 1st of November, 1912, Felipe Agoncillo retired as attorney for the appellant, and on the 15th of November, 1912, the attorneys Singson, Ledesma & Lim, appeared as attorneys for the appellant.

Even up till the time that Felipe Agoncillo retired as attorney for the appellants, he certainly did not have the slightest suspicion that his clients had been condemned by the testimony of suborned or intimidated witnesses. Certainly, if he had had the slightest suspicion or intimation, in any way, that the witnesses upon whose testimony his clients had been condemned had been intimidated or suborned, he would at least have presented a motion for a rehearing before he retired as their attorney. The fact then is that nothing had been called to the attention of Judge Paredes, from the beginning of the trial until the record was received in the Supreme Court, which in the slightest degree called his attention to the alleged fact that the witnesses upon whose testimony he had sentenced Malabanan, and Noriel and his companions, had been influenced or intimidated in any way.

While the records in the appeals of Malabanan and Noriel and his companions were received in the Supreme Court in October, 1912, their attorneys did not present their briefs until the 27th of August, 1913, and not even then until after the Attorney-General for the Philippines had made at least two motions to have the appeals dismissed for a failure to present the briefs. From an examination of the brief presented by Singson, Ledesma & Lim, we find nothing which caused them to believe that any person connected with the trial in the court below was guilty of any act or acts which justified the alleged libel published by the defendant herein.

The decision of the Supreme Court was promulgated on the 23d of March', 1914,[1] and the parties were duly notified of said decision. On the 3d of April, 1914, the attorneys for the appellants presented a carefully prepared motion for a rehearing. While the attorneys point out what they believed to be certain conflicts and inconsistencies in the declarations of the witnesses, they nowhere call the attention of the court to the fact, nor indicate in any way, that the witnesses upon whose testimony Judge Paredes relied in convicting the defendants had in any way been tampered with or intimidated. Said motion for a rehearing was denied by the Supreme Court on the 11th of September, 1914,[2] and the record was duly returned to the Court of First Instance of the Province of Cavite on the 25th of September, 1914. Later by an order duly made by the Judge

of the Court of First Instance of the Province of Cavite, January 12th, 1915, was the day fixed for the execution of the sentence of the Supreme Court. Later, on the 11th of January, 1915, by an order of the same judge, the execution of the sentence of the Supreme Court was suspended from the 12th of January, 1915, until the 27th day thereof.

Thus it will be seen, in relation with the alleged libel, that from the 12th of August, 1909, until after the 11th of January, 1915, no suspicion had been expressed that any of the witnesses who appeared and declared for the prosecution during the trial of Malabanan, Noriel and his companions had been unduly influenced or had been intimidated, in any manner, by any of the complainants in the present action for libel. Even Alfonso Cuenca did not discover that he had committed an awful crime until the night of 26th of January, 1915, one day before the date fixed for the execution of Malabanan, Noriel and Landas.

After a careful examination of the record up until the time it was received in the Supreme Court, we find nothing which in any way justifies the publication in the alleged libel that: "There is only one judge in the Philippine Islands before whom they could have consummated this deed; that he (Judge Paredes) has even now about as much judicial ability as a tom-cat; that Malabanan was tried first, then Noriel, and I do not believe, and will submit them to any board of lawyers, Americans or Filipinos, in the Assembly or in the Congress of the United States, that any two criminal records any where disclose such prejudice, such meanness, such illegal acts, and such plain connivance of a judge with prosecutionary or murderous prosecution; his acts will be exposed in Volumes II and III; they have no parallel in criminal jurisprudence and they are done want- only and maliciously, with full knowledge of the innocence of the men whom he convicts and sentences to death; that before such an individual as a judge, quite naturally Noriel, Landas, and Malabanan were convicted; that what was needed in that court, with those officers in command, was a red-blooded man with a club or a double barreled shot gun; that if the judge had acted in good faith the men would have been acquitted; that the decision of conviction was written in such long, convincing language, facts twisted and turned, artfully worded and written in such a manner, that to the laymen who read it, no idea but that of guilt would be thought of; that Isidro Paredes, corrupt or crazy, whichever you desire, issued this long abusive decision; that Paredes had but one of two objects in view, to write a decision so strong and convincing, knowing the carelessness of the Supreme Court, that they would take it for granted and confirm it; or make it so vile and contrary to the record, that they would be bound to see it and would reverse it; that this record is not a circumstance to the errors and illegal acts perpetrated by Paredes in the trials of Noriel, Malabanan, et al., but no attention was paid to them by the Supreme Court; that there was one who could do this; Judge Paredes, and the way he did it in the face of the testimony, is as perverse a changing of testimony to help murder innocent people as I have ever seen, and I don't believe that its equal exists in any record of criminal jurisprudence; that when Isidro Paredes penned those words, he did it with full knowledge that he was strangling justice and describing with apparent perfect accuracy a statement that by no conceivable conception of truth or justice, logic or reason, law or rule of evidence, is aught but fraud, rascality, and judicial connivance with criminal persecutors; that usually he begins by brow-beating counsel and litigants; unchecked, he then makes slight false legal deductions; encouraged by this he then puts false statements into the mouths of witnesses and quotes these; he watches the appeals and is the first to note the carelessness or the indolence of the higher court; then when the day arrives in which for pure meanness, criminal tyranny, or a desire to please higher authority or friends, he takes the judicial bit in his mouth; overrides every procedure of criminal evidence, of criminal law, and tramples down every safeguard placed in the statutes for the protection of the citizen, be he guilty or innocent, and then closes the whole with a decision so long, powerful, strong, and slanderous against the condemned, that the judges of the Supreme Court, if indolent and careless, are completely taken off their feet and take his decision as a matter of fact; even counsel for the accused is staggered; relatives and friends are dumb-founded and fear to assist; the public and press, that can never know all the details, publish and imbibe this judicial chastisement, and all believe and tremble before the words; that is exactly what has occurred in this case, and in my opinion, Isidro Paredes knew this and planned his acts accordingly in this case, as he probably has done in others, or he deliberately made the mass of errors and wrote the long, unfounded, slanderous decision with the desire to please someone, believing that the Supreme Court would note both and reverse it and no permanent harm would result; but in

either event his acts were criminal; that in the Noriel and Malabanan cases you will see the sad result of trying to administer justice by paying no attention to law, criminal procedure, or rules of evidence; giving heed to outside opinion, and convicting upon general principles."

We have read the record from the beginning of the action in the Court of First Instance of the Province of Cavite until the decision of the Supreme Court was rendered, denying the motion for a rehearing, for the purpose of ascertaining whether or not there was anything in the record which would cause Judge Paredes, or any other honest, fair-minded man, to believe or to suspect that the witnesses who declared before him were not telling the truth. After such examination, we find nothing in the record which shows, or even tends to show, in the slightest degree, that Judge Paredes believed, or had any reason to suspect, that the declarations which were presented before him were not genuine and had not been made in entire good faith, by the witnesses believing that they were true.

After such a thorough examination of the record, we find nothing therein which even remotely tends to impeach the legal ability, the honesty, virtue and good reputation of Judge Paredes. All of the witnesses, who now claim that they were instructed and intimidated to declare as they did, were on the witness stand, some of them two or three times. The attorneys for the defendants had a full and complete opportunity to ascertain, by cross-examination or otherwise, the state of the mind of said witnesses. There is absolutely nothing in the record which tends to show, in the slightest degree, that they were intimidated and were not testifying to the truth.

Our conclusions, therefore, with reference to the alleged libel against the Honorable Isidro Paredes, judge, must be that the said publication is a willful and malicious defamation, which was intended to and which does impeach the honesty, virtue, and good reputation of the Honorable Isidro Paredes, judge, and that there is nothing in the record which justifies the publication of said libelous, defamatory matter. The defendant is therefore guilty of the crime charged in the complaint, with reference to Isidro Paredes, judge.

We now come to the alleged libel against the other complainants herein, Salvador Zaragoza, an assistant attorney in the Office of the Attorney-General; Felicisimo R. FERIA, an assistant attorney in the Office of the Attorney-General; Rafael Crame, a colonel in the Philippine Constabulary; E. I. Small, a captain in the Philippine Scouts of the United States Army; Frank L. Pyle, a captain in the Philippine Scouts of the United States Army; Jose M. Quintero, prosecuting attorney of the Province of Laguna, and Eusebio Orense, a member of the bar of the Philippine Islands and an active practicing attorney in the city of Manila. The principal part of the alleged libel against said complainants is found heretofore stated in this decision, commencing on page 424 and ending on page 466. The alleged libel consists in the general charge that said complainants did willfully, maliciously, and carelessly induce, intimidate and suborn witnesses to testify falsely and did, by such means, attempt to and did deceive the courts and cause the courts to condemn and sentence to death and life imprisonment certain innocent persons, as well as to acquit and absolve from liability under the law, certain persons who were guilty of the crime.

It will be remembered that from the beginning of the action against Gregorio de Guia and Gregorio Buendia, on the 12th of August, 1909, until after the decision of the Supreme Court affirming the decision of the lower court, in the cases of Malabanan, Noriel and his companions, no reliable proof appears of record which casts any reflection whatever upon the conduct of said persons. It was not until after the record had been returned to the Court of First Instance of the Province of Cavite for the execution of the sentence against Malabanan, Noriel and his companions, that some of the witnesses who had testified against Malabanan and Noriel began to indicate that they had testified falsely. Alfonso Cuenca, a witness who had testified six different times during the trial of the different causes, each time making his declarations stronger against Malabanan and Noriel and his companions, did, on the night of 26th of January, 1915, the day immediately preceding the day on which Malabanan, Noriel, and Landas were executed, present an affidavit, in which he stated that all of the facts, to which he had theretofore declared, were false. (See Exhibit A A, page 144.)

The next time that Alfonso Cuenca declared before the authorities was on the 21st of February, 1916, in the office of the prosecuting attorney of the city of Manila, when he again states, iterating and reiterating that which he had testified to in the case of United States vs. Noriel et al. in the case of United States vs. Malabanan, and in the case of United States vs. Buendia, in the Court of First Instance of the Province of Cavite, was true; that he had retracted said testimony given in the said cases by the inducement of the attorney, Mr. Kelly; that said inducement took place in the law office of Mariano Lim; that at the time he was induced to retract said declarations in the office of Mariano Lim, there were present Mr. Kelly and an American employed in the Bureau of Agriculture; that the retraction which he made and which appeared in his affidavit was not made in accordance with his wishes; that he was in his house in Bacoor on the morning of the 26th (of January), and Mrs. Noriel came to his house in an automobile and begged him to go to Manila with her; that Mrs. Noriel was weeping and on her knees begged him to retract his former testimony; that he then told Mrs. Noriel that he was afraid to do that because he did not want anything to be done to him and she told him not to worry about that, that nothing would happen; that she wanted to save her husband from the gallows, and he said that he would accompany her to Manila; that when Mrs. Noriel came to his house she was accompanied by Hilario de Guzman and a chauffeur; that when Mrs. Noriel arrived at his house, she met his cousin, Marcelo Cuenca, who also begged him to retract his former statements to save his nephew, Luis J. Landas; that his cousin, Marcelo Cuenca, and Mrs. Noriel asked him to retract, and that he replied that he could not do so, because he was afraid of being prosecuted; that the two persons told him not to be afraid, because nothing would happen to him, and that in case he went to jail the Veterans of the Revolution would support his family; that on their way to Manila they met Maximo Javier and Francisco Gascona at the Zapote Bridge and the said two persons got into the vehicle with them and came to Manila; that when he left Bacoor to go to Manila at the request of Mrs. Noriel and Marcelo Cuenca, he had not made up his mind to make a retraction; that he continued to think that when he got to Manila he could find some method of getting out of it; that as soon as they got to Manila they went to the Ayuntamiento and saw Mr. Palma; that Mr. Palma asked him if he had been instructed by the Americans to testify against Noriel and he said no; that Mr. Palma then asked him if he had been instructed by Captain Pyle and he said no; that Mr. Palma asked him if Colonel Crame had instructed him and he said no; that what he had testified to was the truth; that nevertheless when Mr. Palma asked him who had told him what to testify to in the courts, he followed the suggestion of Mrs. Noriel and said that it was Bartolome Cuenca; that he then left the Ayuntamiento and went with Mrs. Noriel to the office of Mariano Lim; that he was taken to the office of Mariano Lim by Mrs. Noriel and Marcelo Cuenca; that when he arrived at the office of Mariano Lim he found there Maximo Javier and Francisco Gascona and Mariano de Guzman; that when he arrived at the office of Mariano Lim, Mrs. Noriel told him that Maximo Javier had already signed his retraction and asked him to be kind enough to do the same; that during all of this time Mrs. Noriel was weeping; that when he testified as a witness in the case of United States vs. Noriel, he told the truth; that it was not true that Colonel Crame or Captain Small or Pyle, or any other officer of the Scout organization, or prosecuting attorney Quintero, Zaragoza, or others had intimidated him, or promised him anything, or brought any pressure to bear upon him to induce him to testify as he did; that nobody induced him to testify; that he testified to the truth; that his affidavit of retraction was prepared in the office of Mariano Lim; that when he arrived at the office of Mariano Lim, said affidavit was already written out and was read to him in the presence of Mariano Lim, Mrs. Noriel, Attorney Kelly, and some other persons; that there was an enmity between him and Luis J. Landas after he had testified against him; that Bartolome Cuenca had not begged him to retract his testimony, in order that Luis J. Landas might escape the penalty; that the affidavit of retraction was already made out when they made him sign it; that he did not know exactly what was in the retraction, because he could not read or write; that they told him nothing would happen to him and he signed it; that Mrs. Noriel was nearly dead from weeping and begged him to sign it; that he never made another affidavit after the one in which he made the retraction; that as soon as he learned the effect of that kind of retraction, he was very sorry, because he saw that he might get into trouble; that when he was leaving the house of Mr. Arellano, the house of the Chief Justice of the Supreme Court, about eight p. m. on the 26th of January, 1915, the attorney Amzi B. Kelly handed him P170 saying that was for him; that after leaving the house of Mr. Arellano, Mr. Kelly took him to the headquarters of the Veterans of the Revolution and left him there in a quiet place, when he (Kelly)

went to talk to others; that he went to the house of the Chief Justice with Mr. Kelly and Mr. Aguinaldo; that Mr. Aguinaldo and Mr. Kelly went into the house of Chief Justice Arellano, and afterwards Mr. Kelly came out and it was then that he gave him the money; that when Mr. Kelly delivered him the P170 he was alone; that after Mr. Kelly gave him the P170, he went back into Cayetano Arellano's house and afterwards he and Emilio Aguinaldo came out together; that he returned to Bacoor on the day following the execution of Noriel; that he returned to Bacoor with Hilario de Guzman and Zacarias Hernandez; that Maximo Javier and himself and Alameda had retracted their testimony.

During the trial of the present case Alfonso Cuenca admitted that he had made the foregoing declarations to Mr. Diaz, but that they were false.

Troadio Diaz was another witness presented by the defendant in the present case, for the purpose of showing that Orense and others had intimidated witnesses. It will be remembered that he was one of the witnesses who presented his retraction in the case of United States vs. Gregorio De Guia, for the purpose of obtaining a new trial. Said affidavit was made on the 21st of June, 1910. In that affidavit he said that he had testified against Gregorio De Guia and Gregorio Buendia because he had been intimidated by Teniente Kalaw. He now, after the lapse of nearly six years, attempts to make it appear that he had been unduly influenced or intimidated by Mr. Orense, Captain Pyle, and Colonel Crame.

Dionisio Banayad was another witness presented by the defendant in the present case, to justify his charges that some of the complainants illegally induced and intimidated witnesses to declare falsely. Dionisio Banayad was another one of the witnesses who presented an affidavit in the Court of First Instance, made on the 16th of February, 1911, for the purpose of inducing Judge Jocson to grant a new trial to De Guia and Buendia. At the time of the murder of Gregorio Magtibay, Dionisio Banayad was a corporal of police of the municipality of Bacoor. In said affidavit he strongly inculpated Malabanan and Noriel in the commission of the crime of the murder of Magtibay. During his examination in the present case, he admitted that he signed Exhibits 36 and 37, but stated that before he signed the first document he did not read it and found out its contents after it was signed and then objected and stated that if these people were guilty, they should suffer the penalty of the law. Exhibits 36 and 37 were not admitted in evidence.

Cornelio Tortona was another witness presented by the defendant in the present case, for the purpose of supporting or justifying his alleged libel. His testimony, however, is of no value, as clearly appears from his declaration. He denied positively that he ever signed Exhibits 36 and 37, which had been presented to the Governor-General. He also presented an affidavit which was made on the 16th of February, 1911 in the Court of First Instance, for the purpose of inducing Judge Jocson to grant Gregorio Buendia a new trial. In that affidavit he admitted that his former declaration was false and stated that he had been induced by Teniente Kalaw to make his former declaration. Balbino Alameda was another witness presented by the defendant in the present case, for the purpose of showing that some of the complainants had intimidated him or had induced him to testify falsely; it will be remembered that he was one of the witnesses who declared during the trial of Buendia, as well as that of De Guia, and upon whose testimony, among others, Judge Jocson granted said defendants a new trial. He now denies the truth of his declarations then, and claims that he had been induced by some of the complainants herein to state falsely.

We have gone through the record and have made a careful examination of the testimony of every witness presented by the defendant in the present case, for the purpose of showing that Zaragoza, Feria, Quintero, Small, Pyle, Crame, and Orense had illegally induced and intimidated witnesses to testify falsely, and we have found that nearly every one of them have contradicted their statements in their former declarations or affidavits.

An examination of the clear, direct, positive, and uncontradicted testimony of Zaragoza, Quintero, Pyle, Crame, and Orense is much more convincing to our mind, than the declarations of the self-constituted perjurers, who appeared as witnesses against them. Judge Campbell, who tried the present case and who saw

and heard the witnesses for the defense, says:

"In the case of Mr. Feria, the defendant did not even attempt to prove his charges^ and in the case of the other complainants, when he did attempt to, it resulted in disastrous failure."

With that conclusion of Judge Campbell, we, after a careful examination of the entire record, fully agree. With reference to the alleged libel against Mr. Orense and Colonel Crame, while the defendant was on the stand, he was asked the following:

"Q. On page 175 of your book (Exhibit AA) you make this statement: 'Slick work on the part of Crame, Small, Orense et al. The reader's attention is called to the scheme of the 'gang* shrewdly worked before your eyes, yet perhaps by you unnoticed. Orense, Crame et al. prepared all these affidavits, all these witnesses, bribed them, intimidated them, instructed them, and forced them to appear. Both being Filipinos they thought, in fact they knew, that neither one nor the other could perpetrate this stunt on Judge Jocson, but they were confident that Judge Jocson would not offend or interfere with Captain E. I. Small, of the United States Army; no matter what he did or tried to do; legal or illegal; right or wrong. Small knew this as well as they did.' Did you have any information or evidence of any kind, when you wrote and published this book, with reference to the bribing of witnesses by Crame and the persons referred to here?—A. Well, not directly, no; but we had the constant work of Crame in connection with the other persons, in the four cases of De Guia, Buendia, Noriel, and Malabanan.

"Q. Now, the only information that existed on that subject of bribery at the time you published this book was this affidavit by Troadio Diaz before the justice of the peace of Cavite?—A. So far as sworn statements are concerned; I had learned from conversations with other people that Constabulary secret service money and military secret service money had been used like water.

"Q. Had you made any efforts to find out whether these statements were true before you charged them?—A. I had no reason to doubt their veracity, in view of the general misconduct of the parties throughout the four cases.

"Q. Did any of the persona who talked with you on the subject of this alleged bribery of witnesses specifically mention Colonel Crame with having bribed any one?—A. No sir.

"Q. Did they claim to have first-hand knowledge as to the bribery f—A. No; not direct [Re-cross-examinations by Mr.

"Q. So, as a matter of fact, before publishing the book and charging the persons mentioned in the complaint with the crimes charged against any of them, you did not approach them, any one of them, to give them an opportunity to give any explanation?—A. I consider that if I had done that it would have resulted fatally in the object which I had in view to carry out.

"Q. As a matter of fact, you did not?—A. No.

"Q. You simply assumed in your own mind that they were guilty and then proceeded to publish these statements against them without further inquiry?—A. After an exceedingly careful investigation of the four records and discussing the matter with Mrs. Noriel and her son and other people that I could call in, I could not come to any other conclusion but that Buendia and De Guia were guilty and that Noriel and his companions were innocent. The most of those charged in the book in the libel complaint, being lawyers or secret service men, I could not assume that they would be less informed upon the records in the two cases, being there in active service and knowing the people, than I would be sitting in my office with the cold records before me. From my point of view, theirs is a criminal responsibility.

"Q. So you just tried them, convicted them, and proceeded to execute them in the forum of your own mind?—A. That is generally the way that criminals are brought to the bar of justice.. A man investigates before they are tried, believes they are guilty and then files a complaint in court against them, and then the judge decides

whether he has made a mistake as to whether they are guilty or innocent. I do not presume to say that they are. That is a matter for the courts, and if you notice that I have submitted, at the time of the publication of the book, criminal complaints against all of the persons named in there as being criminally responsible. I have submitted it to the courts for the courts to decide. It is not for me to decide but for them."

In the declaration of the defendant just quoted he admits that he had made no sufficient investigation to satisfy himself, before he published the alleged malicious, libelous defamation of and concerning the complainants herein, that it was true; that he simply made said publication with the idea that the courts would investigate, the facts and ascertain whether they were true or not; that he did not presume, even at the trial, to say that said facts were true. The defendant thus expressly admits that he published said libelous defamatory matter of and concerning the complainants herein, without knowing whether or not it was true, and with the idea that the courts would investigate his charges and ascertain whether they were true or not.

Is it not exceedingly strange that the eminent lawyers, Felipe Agonciilo, Felix Ferrer, Singsong, Ledesma & Lam, some of whom had assisted in the trial of the cases of United States vs. Noriel and his companions from the beginning, and others in the preparation of the case for the Supreme Court and who must have examined the record, the evidence, and the exhibits, did not discover that the horrible crime with which the complainants herein are charged by the defendant, had been, in fact, committed? A thorough examination of the record from the beginning until the end discloses no suggestion even, by any of them, that any of the complainants herein had acted in any manner except as honorable men and officials. Said lawyers were not even called by the defendant during his trial, for the purpose of ascertaining, even then, whether or not they suspected that the complainants herein were guilty of the crime with which they stand charged by the defendant. The record contains no proof whatever sufficient to satisfy the mind of any court or any fair-minded, honest man that the complainants herein did more than the law permits and justifies on the part of prosecuting officers of the Government. The evidence presented to them, after a careful investigation before the trial of Malabanan and Noriel et al, clearly indicated that said defendants were guilty of the horrible murder of Gregorio Magtibay. What they did would have been done by any honest official of the Government in order to bring the culprits to justice. After a careful reading of the record, it clearly appears that the defendant did maliciously, willfully, and without investigation, publish the said defamatory matter of and concerning the said complainants and did thereby, intentionally, willfully and maliciously attempt to deprive the complainants herein of the respect and esteem which they had theretofore gained by an honorable and upright life among their fellows and among the people of the Philippine Islands.

After we have carefully examined the record, we entirely agree with the conclusions of Judge Campbell, who saw and heard the witnesses and who had an opportunity to weigh their testimony. Judge Campbell said: "To conclude, therefore, the defendant has been called upon to substantiate in open court the truth of the charges that he has made against the complainants and has failed. On the evidence adduced, the charges are baseless, false, and without foundation, and we so find. Had the defendant proved the truth of the charges there is no degradation or disgrace, or punishment which would have been proportionate to the crime. To deliberately conspire to take the lives of others is a great offense against the laws of God and man, but what shall we say of men who have been entrusted with high public duties, having to do with the administration of justice itself, who shall prove false to that trust and in the spirit of fiends, rather than of human beings, shall have used their authority and power for the gratification of private spite and blood lust, and thus brought about by fraud, corruption, and perjury, the murder of innocent fellow creatures? This is what the defendant has charged and this is what he has failed to prove. Failing to prove it he has continued to assert that the charges are true and has reiterated them again, as we have seen, with even a greater degree of violence, in his written argument."

We now proceed to examine the assignments of error made by the defendant and appellant, for the purpose of ascertaining whether or not they were sufficient to justify a modification or a reversal of the decision of the lower court.

With reference to the first assignment of error, to wit, that "the court erred in refusing to permit the defendant

to read his plea, therefore forcing him to make a plea as directed by the court," it may be said, that in criminal cases it is the duty of the defendant in addition to the other pleas authorized by law to plead whether he is guilty or not of the crime charged. In that way and in that way only can an issue be created upon which the trial shall proceed. The defendant refused to plead either guilty or not guilty, but insisted upon making a long and extended explanation concerning the publication of the alleged libel. Said explanation, if it had any reference whatever to the complaint, was in effect, a reiteration of the alleged libelous, defamatory matter described in the complaint. Whatever the fact or facts which were contained in said explanation and which were competent or material to the issue, the defendant had a perfect right to present during the trial of the cause. The lower court committed no error in refusing the defendant the right to present said explanation at that time.

With reference to the second assignment of error, to wit, that "the court erred in not sustaining his plea of jeopardy," it may be said from an examination of his defense of double jeopardy, it appears that he claims that he had been punished for contempt by the Supreme Court, for the same libel with which he stood charged. In reply to that contention, it may be said, even granting that the Supreme Court had punished him for the crime of libel, that it is no defense in an action for libeling A that the defendant had theretofore been found guilty of libeling B. And, moreover, as the attorney for the prosecution says: "It is so elemental that the same act may be at once contempt and a violation of the general penal law, and that a conviction for contempt is not a bar to a prosecution for a felony, that we shall not take up the time of the court in a discussion of that matter." (State vs. Woodfin, 42 Am. Dec., 161; State vs. Yancy, 6 Am. Dec., 553; In re Chapman, 166 U. S., 661; State vs. Gardner, 72 N. C., 379.)

With reference to the third assignment of error, to wit, that "the court erred in excluding defendant's testimony on the ground that said testimony was manifestly against and an outrage on the rights of the complainants," it may be said that said assignment is so general that it scarcely merits a discussion. No specific ruling of the court is complained of; but, notwithstanding the generality of said assignment of error, we have examined the entire record and find that the trial court made no such ruling as has been attributed to him in said assignment. We find that the court repeatedly announced to the defendant that all competent and relative evidence which tended to show the truth of the charges made against the complainants would be admitted. It is true, however, that the lower court refused to permit the defendant to retry the criminal action theretofore tried and concluded against the defendant Gregorio De Guia and Gregorio Buendia, Roman Malabanan, Mariano Noriel, Luis J. Landas et al.

With reference to the fourth assignment of error, to wit, that "the court erred in ruling that the innocence of Noriel and his companions was irrelevant and immaterial, and therefore all the evidence excluded by virtue of this ruling was erroneous and prevented defendant from making a defense of the material allegations in his book and prevented him from sustaining the very object of its publication/" it may be said substantially what has heretofore been said, that the question presented to the court was not whether De Guia, Buendia, Malabanan, Noriel, Landas and others were guilty of the crime charged against them in the complaints theretofore presented, but whether or not the charges made by the defendant against the complainants in the present case were true. Therefore the lower court did not commit the error assigned.

With reference to the fifth assignment of error, to wit, that "the court erred by interfering, in the absence of the defendant, with his principal witness, Gregorio Buendia, and instructing said witness that he need not communicate with the defendant if he did not wish to," it may be said that during the trial of the present cause the defendant was unable to be present on one of the days, on account of sickness and that the trial was suspended for that day on that account. The record shows that on that day Gregorio Buendia appeared in court and asked the court whether or not he was under any obligation to go to the office of the defendant. The facts as they appear from the record are as follows: Mr. Fisher speaking to the court, said: "I would like to state that Buendia has approached me several times and asked me whether there is any legal obligation for him to go to Mr. Kelly's office. He said that Kelly has approached him on several instances and endeavored to get him to make statements other than those he states to be the truth. I would like to have the court instruct him that he is

under no legal obligation to go to Kelly's office and submit to any further interrogation."

Gregorio Buendia was called before the court and the court said to him: "You have made representations to Mr. Fisher to the effect, or rather you have asked Mr. Fisher whether or not you are under any legal obligation to go to Mr. Kelly's office and be interrogated by him?" To which question Mr. Buendia answered "Yes." The court then said to him: "You are under no obligation whatever to go to Mr. Kelly's office, except as you wish or desire, nor to answer any questions he directs to you, unless you so desire. If you are called as a witness, under oath, then you have to answer any question put to you, unless your counsel directs you not to answer. But you have been acquitted of the charge of killing Gregorio Magtibay and you are now entirely free as to that. You can not again be prosecuted for that, even though guilty of it. So you are an entirely free agent to do as you please."

We fail to see anything in the instruction given by the court which would in any way justify a modification of his sentence.

With reference to the sixth assignment of error, from a comparison of the language of the trial which is found quoted therein, with his original decision, it will be found that the quotation is not a correct statement of what the judge said. An examination of the record made in the trial will show that the defendant was constantly insisting that the complainants were guilty of the acts of which he complained in the alleged libel Exhibit AA. For instance, on page 30 of the translation of the stenographic notes, we find the defendant making this statement: "I expect to prove the rascality of the prosecutory functionaries that I have referred to, Captain Small, Orense, and the others that took part in the trial. It is offered to prove the contentions in the book." (Reference to Exhibit 4.) When the defendant made that statement, the court asked him: "Who are these rascals that you speak of?" To which question the defendant answered: "Captain Crame, Captain Small, Eusebio Orense, Vicente Jocson, Felicisimo Feria, and Jose M. Quintero."

The foregoing quotation is only a sample of the many statements made by the defendant during the trial of the present cause, against the complainant. He now claims that he had a right to make such statements, on the theory that he was the attorney for the defendant during the trial of the cause and supports his contention by presenting some cases. (Brief of appellant, pages 28 and 29.) We will not attempt, at this time, to decide whether the privileges of a barrister are the same when he is defending himself as they are when he is representing others. It is sufficient for the present to say that, in view of the fact that the defendant failed to present proof sufficient to prove the truth of his libel, the law presumes the publication to have been made with malice.

With reference to the seventh assignment of error, to wit, that "the court erred in excluding the testimony of ex-Judge Amos [Amasa] S. Crossfield, Chief of Police Seaver, Chief of the Secret-Service John W. Green, and ex-Chief Harding," it may be said that during the trial of the cause, some proof was adduced relating to a custom of the Filipino people, and that said witnesses whose testimony was not included, was given for the purpose of showing that no such custom existed. Said assignment of error was not considered of sufficient importance for the attorney for the prosecution to even answer it. The question was not whether a particular custom among the Filipino people existed, but whether or not the alleged libelous, defamatory matter, published of and concerning the complainants, was true. In our opinion, the alleged error does not justify a modification of the sentence of the lower court.

With reference to the eighth assignment of error, it may be said, that whatever the judge said with reference to the method adopted by the defendant for the conduct of his defense, is of no importance, unless and until it is shown that the method influenced the mind of the judge against the defendant. We find nothing in the record which indicates that the opinion of the trial judge was in any way influenced by the methods adopted by the defendant during the trial of the cause.

With reference to the ninth assignment of error, to wit, that "the court erred in finding that the defendant had alleged that the 'ocular inspection' was suppressed for the reason that the said document and the De Guia and

Buendia records would have been immaterial and irrelevant as evidence, it may be said that said 'ocular inspection' was the result of an examination made of the house in which Gregorio Magtibay was killed, on the following morning." The defendant alleges that said "ocular inspection" was presented as evidence during the preliminary examination in the case of United States vs. De Guia et al. The defendant attempts to show that said "ocular inspection" was later kept out of the record during the trial of De Guia, Buendia, Malabanan, Noriel et al., in order to prejudice or to favor, whichever view you desire to take of his allegations, the said defendant. It appears that¹ the prosecuting attorney of the Province of Cavite who first intervened in the presentation of the complaint against De Guia and Buendia was not the same prosecuting attorney who intervened for the prosecution later in the trial of said causes. It also appears that the attention of the second prosecuting attorney was not called to the fact that said "ocular inspection" existed. And, moreover, it may be said that the justice of the peace who prepared said "ocular inspection" was on the witness stand on several different occasions during the trial of the several defendants, and he, as a witness, was not asked to produce the same. Evidently the said "ocular inspection" was not believed to be of so great importance by the eminent counsel participating in the original trial of the cause against the defendants. The mere fact that it was presented during the preliminary examination did not, of itself, make said "ocular inspection" a part of the record of the trial of said cause. The preliminary examination only becomes a part of the record of the trial of criminal cases, when the same is properly presented as evidence. There is no proof in the record that the complainants, or any of them, attempted to suppress said "ocular inspection," and there is therefore no reason for modifying the sentence of the lower court by reason of the ninth assignment of error.

The tenth assignment of error relates to the ruling of the trial court upon the question of the admissibility of evidence which was presented by the defendant for the purpose of showing that the defendants whom Judge Jocson had acquitted were guilty, and that the defendants whom he had condemned were innocent. The defendant repeatedly offered evidence having no bearing whatever on the question of the guilt or innocence of the complaining witnesses herein, or either of them, of the charges of perjury or corruption brought against them by the defendant, but which had for its avowed purpose the establishment of the innocence of Noriel and his coaccused. The lower court refused to admit such evidence, upon the ground that it was irrelevant. The lower court, in sustaining the objection of the prosecution to the admission of that kind of evidence, held that, inasmuch as the defendant accused Judge Paredes of willfully and corruptly convicting Noriel of murder, when the record did not contain evidence to justify any such conclusion, the only possible demonstration of the truth of this charge would be the record of the Noriel trial which Judge Paredes had before him. On one or two occasions the defendant produced witnesses to testify to that which he deemed pertinent to the question of the guilt or innocence of Noriel et al., who had never been produced at the trial of the Noriel case, and Judge Campbell remarked, in excluding the evidence on the ground of its irrelevancy, that in no event could the defendant demonstrate that Judge Paredes willfully convicted Noriel on insufficient evidence, by producing witnesses whose testimony Judge Paredes had never heard. Judge Campbell was correct in his conclusion in not admitting evidence which did not go to prove the truthfulness of the alleged libel against the complainants herein. What we have said with reference to the tenth assignment of error, in our judgment sufficiently answers the eleventh. We have repeatedly held that, under the Libel Law in force here, to constitute a defense to the publication of a libel, not only must the truth of the defamatory matter be shown, but also that it was published with good motives and for justifiable ends. (U. S. vs. Bustos, 13 Phil. Rep., 690; U. S. vs. Ocampo, 18 Phil. Rep., 1; U. S. vs. Contreras, 23 Phil. Rep., 513; U. S. vs. Dick, 30 Phil. Rep., 76.)

With reference to the twelfth assignment of error, to wit, that "the court erred in finding the defendant guilty of libeling Judge Jocson and Attorney Feria," it may be said that that assignment of error has already been disposed of above in the arguments produced upon an examination of the evidence.

The same may be said with reference to the thirteenth assignment of error.

With reference to the fourteenth assignment of error, to wit, that "the court erred in finding: 'But this attitude of the defendant is entirely comprehensible when we take into account his testimony in open court to the effect

that he had made no investigation or inquiry whatever with respect to the charges imputed in his book to the complainants, before the book was published,' " it may be said that a reference to the declaration of the defendant himself (pages 389, 390 of the stenographic notes) is a sufficient refutation of the fourteenth assignment of error.

With reference to the fifteenth assignment of error, to Wit, "that the court erred in finding the testimony of Eusebio Orense, De Guia and Buendia's attorney was more worthy of belief than Troadio Diaz, an ignorant witness," it may be said that Troadio Diaz, as will be remembered, was one of the witnesses who declared for the prosecution against Gregorio De Guia and Hermogenes Asuncion, in the trial of the cause against said defendants, on the 8th of October, 1909, and gave testimony which strongly indicated that said defendants were guilty of the murder of Gregorio Magtibay. It will be remembered that Troadio Diaz, on the 23d of June, 1910, nearly a year after his first declaration, presented an affidavit in the Court of First Instance in which he retracted the statement which he had made on the 8th of October, 1909. He also ratified said affidavit (of the 23d of June, 1910), before the clerk of the Court of First Instance of the Province of Cavite, on the 27th of June, 1910. (See Exhibits E and F, pages 266 and 268 of record in Case No. 1666.) Not only did the said Troadio Diaz retract his former statement by means of said affidavit, but he appeared in open court on the 30th of June, 1910, and again ratified his retraction and again gave his reasons therefor. Said retraction and declarations were presented to Judge Campbell. Is it surprising that Judge Campbell gave more credit to the testimony of Eusebio Orense than he did to that of the self-admitted perjurer, Troadio Diaz? And, moreover, Troadio Diaz and Eusebio Orense appeared as witnesses before Judge Campbell, and he had a perfect right to judge from their attitude and demeanor while on the stand, for the purpose of determining whether more credit should be given to one than to the other.

With reference to the sixteenth assignment of error, it may be said that we find nothing in the proof adduced during the trial of the cause which justifies a reversal or a modification of the sentence of the lower court on the grounds stated in said assignment of error. A reading of the proof adduced on the question presented in said assignment of error fully shows that no error was committed by the lower court with reference to the facts alleged therein.

With reference to the seventeenth assignment of error, to wit, that "the court erred in permitting Mr. Fred. C. Fisher, a private and special attorney, in no way connected with the Government, to take part in the conduct and prosecution of the defendant," it may be said, and the fact is not denied, that at the session of the court held on the 15th of March, 1916, Mr. Fred. C. Fisher, a member of the bar of the Philippine Islands, appeared and requested that his appearance be noted of record as assisting the prosecution in the case. Mr. Kelly requested that it be made to appear of record for whom Mr. Fisher appeared and it was thereupon stated that he appeared generally on behalf of the Government. No objection was made by Mr. Kelly then or at any other time to the presence of Mr. Fisher or to his participation in the trial of the cause. Upon the question of the right of private counsel to appear in the prosecution of criminal cases it may be said that we have heretofore held that private counsel have a right to appear in the prosecution of criminal cases, under the libel law. (U. S. vs. Montalvo, 29 Phil. Rep., 595, 605.) And, moreover, the defendant not having presented an objection in the court below, it is too late for him to present it now. (U. S. vs. Diaz, 15 Phil. Rep., 123; 223 U. S., 442; U. S. vs. Gow Chiong, 23 Phil. Rep., 138; U. S. vs. Mabanag, 1 Phil. Rep., 441; U. S. vs. Cajayon, 2 Phil. Rep., 570; U. S. vs. Mack, 4 Phil. Rep., 291; U. S. vs. Sarabia, 4 Phil. Rep., 566; Mortiga vs. Serra and Obleno, 5 Phil. Rep., 34; U. S. vs. Paraiso, 5 Phil. Rep., 149; 207 U. S., 368; U. S. vs. Palacio, 16 Phil. Rep., 660.) And, moreover, the record shows that the complaint or information on which the action was commenced was filed by Anacleto Diaz, one of the assistant prosecuting attorneys of the City of Manila, and that Mr. Diaz was present and took part in the trial for the prosecution. We find nothing in this assignment of error which justifies a modification of the sentence of the lower court. At this time, after a careful examination of the entire record, including the numerous exhibits, those which were admitted, as well as those which were not, in relation with the observations which have been made above, we cannot refrain from adding the very carefully prepared resume' of the proof adduced during the trial of the cause, made by the Honorable Ramon Avancena, Attorney-General

of the Philippine Islands. Mr. Avancefia, before his appointment as Attorney-General, had had several years of experience as a judge of the Court of First Instance and while acting as judge he had an exceptional opportunity to analyze and weigh testimony. Mr. Avancena said, in his brief:

"The trial of this case commenced on the 22d day of March, 1916. The Government completed its case in chief on that day. The case was then continued to the following day when, at the request of the defendant, he was allowed until April 10 to prepare his defense—this in addition to the time he had had between the 10th day of March, when the information was filed, and the 22d of March when the case was called for trial. The defense commenced on April 10 and continued until May 12 with frequent interruptions to enable the defendant to interview witnesses and issue subpoenas. He made full use of the compulsory process of the court and called for a host of witnesses, some of them brought from the most distant parts of the Archipelago. The net result has been—nothing! After all this din and outcry, vociferation and gesticulation, the mountain has labored, but not even a mouse has resulted from the ensuing commotion. At the end of the trial we stood precisely where we did before, with nothing before us but Mr. Kelly's 'inferences' from premises created in his own mind, plus the testimony of those two self-confessed perjurers, Troadio Diaz and Alfonso Cuenca. If it were not tragic it would be comic, to think of so much declamatory froth and fury by way of promise, and such utter failure by way of accomplishment. But the tragic element is far too grave to be overlooked. In utter wantonness, without making a single inquiry to ascertain whether his 'inferences' were warranted by the facts or not, the defendant has not, hesitated to scatter to the four winds this abominable libel, wherein, without compunction, he has done everything in his power to destroy the reputations of a dozen men who are guilty of nothing but having performed to the best of their ability an exceedingly disagreeable duty. He has accused them of murder, of bribery and intimidation of witnesses, of the vilest forms of corruption—more than this, he has declared them guilty of all these offenses and has proceeded to carry into execution his sentence of conviction, so far as it has been possible for him to do so. To determine whether Mr. Kelly shall or shall not be found guilty of the crime of libel, the trial court sat patiently during the better part of two months, ready to listen to any pertinent evidence he might see fit to introduce, and to hear him in his defense, before passing upon the question of his guilt or innocence. But the defendant did not give Mr. Orense or Colonel Crame, or any of the other men whom he had traduced, any opportunity to be heard. Because Troadio Diaz, with whom defendant says he never talked prior to the publication of his book, had made an ex parte affidavit in which he stated that he had been bribed by Mr. Orense, defendant accepts this statement as gospel truth and without the slightest compunction, proceeds to do his best to destroy Mr. Orense's reputation forever by publishing this atrocious libel. With regard to Colonel Crame, it appears from his own admissions on the stand, that the defendant had never even heard the accusation made in the course of this trial by Cuenca, until a day or two before he put that witness on the stand. He had positively nothing on which to base his charge against Colonel Crame—nothing on earth but his 'inferences.' Nevertheless, on the strength of those 'inferences' he calls Colonel Crame an 'unmitigated liar' (Exhibit AA, pp. 8 and 9); a suborner of perjury (Exhibit AA, p. 175); and a 'cutthroat' (Exhibit AA, 189). He falsely accuses Judge Paredes of 'twisting the evidence' but he does not display a very high degree of care in his own statements. For instance, he says (on page 105 of his book, Exhibit AA) that one Vicenta Enriquez testified that she saw Buendia on the night of the murder in his mother-in-law's house, and argues that the inaccuracy of the woman's statement concerning the distance between her house and Buendia's is of no importance, because she could have seen Buendia whether the distance was 10 yards or more. But if we turn now to the testimony of this woman—and ridiculously improbable it is—it will be found that she did not say she saw Buendia at all, she only said that she heard his voice. On cross-examination she expressly said, in answer to a question as to whether she saw Buendia on the morning of May 25, that she did not see him (Exhibit AA, p. 89). Now, it is very likely that there was no deliberate intention on Mr. Kelly's part to 'garble' this testimony—only a little haste and eagerness to make the thing look as bad as possible for Buendia; but when he finds that Judge Paredes incorrectly says Landas pushed Magtibay (Exhibit AA; p. 207), whereas the witness—whose testimony had not been transcribed when the judgment was written—in fact says that Magtibay pushed Landas, of course he could think of no explanation for this trifling and inconsequential inaccuracy except to say that the judge had deliberately made a false finding! Again, Mr. Kelly, on page 215 of his book

(Exhibit AA) states positively that Malabanan was confined in Bilibid upon his conviction for vagrancy, and upon this statement rests a whole series of imputation of civil conduct attributed to the complainants. The evidence shows beyond dispute that Mr. Kelly is wholly in error on that point—that Malabanan was never in Bilibid on that charge. He 'assumed' and 'inferred' that Malabanan was in Bilibid because the warden of the provincial jail of Cavite happened to have made use of a printed form originally intended for Bilibid Prison. Of course, a telephone call to the office of Bilibid Prison would have elicited the information that there had never been a warden of Bilibid by the name of Lapda, but Mr. Kelly is not in the habit of wasting time upon anything so commonplace as the verification of facts. He much prefers the 'inference' system—it is so much less likely to upset preconceived theories.

"Again (Exhibit AA, p. 8), Mr. Kelly in his book makes the charge that Major Shutan was removed from Cavite because he believed in the guilt of De Guia and Buendia and his presence therefore would have been an obstacle to the officials who were working to bring about the acquittal of these men. This, of course, was only 'inference' and had Mr. Kelly made inquiry of Major Shutan he would have found that he was consulted regarding his willingness to be transferred to another district (stenographic notes, p. 493) and that he regarded it as a promotion. He would also have found that Major Shutan, while he had, of course, believed in the guilt of De Guia and Buendia when he had filed the charges against them, became convinced as the trial proceeded that he had been deceived; but Mr. Kelly did not take the trouble to make any such inquiry; in fact, it is quite likely that even had he done so or had the information been brought home to him in any manner, he would prefer to cleave to his 'inference' The court will remember that the only time Mr. Kelly departed from his rule of relying upon 'inferences' rather than inquiry, was when he wrote to Lieutenant Barber and asked him whether Buendia was with that officer on the map-making expedition at Susung Dalaga. Lieutenant Barber replied in the affirmative and his letter was received by Mr. Kelly (stenographic notes, p. 385) before the book was given out, but he does not say a word about Lieutenant Barber's letter in that book; he 'inferred' no doubt, that Lieutenant Barber was either one of the conspirators or else that he was a victim of deception as to the identity of Buendia. If Mr. Kelly had been fair in this matter, he would have given Lieutenant Barber's statement the same publicity as he gave the charges against Gapt. Small. If the book had already been printed it would have been easy to print an additional slip and paste it in, but that, of course, would have led many people to doubt the correctness of the results of the 'inference' system of reasoning from incomplete premises. American Army officers, as a class, enjoy an enviable reputation for being men of honor and integrity, and people would have been loath to believe that Lieutenant Barber would have been guilty of a deliberate misstatement for no other purpose than to aid Captain Small in shielding a Scout soldier from punishment

"When the case commenced it was the belief of the prosecution that the defendant, while guilty of libel, had not committed this crime for the gratification of any personal ill-will against the men traduced. It was believed that he had been led into the commission of this offense in a spirit of quixotic eagerness to right what he truly believed to be a great wrong, that his indignation at what he believed to be a miscarriage of justice had so swept him off his feet that his judgment had been distorted, leading him into the commission of a wrong which he would bitterly regret once its existence was made manifest to him. We were in daily expectation, as the case progressed, and the charges so lightly brought by the defendant were disproved, one after the other, that he would justify our faith in the honesty of his mistaken belief by a frank admission of his error and a manly expression of regret for the harm that he has done. Of course, such an expression of regret would not undo that harm and would not relieve the defendant of the consequences of his rash bravado, but it would have shown a sense of responsibility and of justice which the court might well have taken into account in fixing the penalty. Greatly to our regret, however, the defendant up to the present time has shown not the slightest evidence of any feeling of contrition. After an utter failure to make good his plea of justification, he still maintains his attitude of defiant disregard for the feelings of the men he has so cruelly slandered. Rather than a feeling of shame for the havoc brought about by his ill-advised and unwarranted assumption of the role of public censor, he seems to enjoy the notoriety which his conduct has drawn down upon him, to such an extent that one is led to wonder whether the love of notoriety, rather than generous indignation at a supposed injustice, was the impelling motive which led him into a course of conduct productive of results as disastrous to himself and harmful to

others.

"Freedom of speech is one of the most important rights which our system of Government secures to all persons, whether citizens or aliens, living under it. No power reserved to the people is more potent for good than is the power to subject the officers of the Government, from the highest to the lowest, to public criticism. The knowledge that everything they may do is lawfully subject to such public discussion must in the nature of things have the effect of causing those officers to exercise a degree of care in the performance of their duties which they might not display were they immune to the corrective action of public opinion. The courts, no less than the executive and legislative branches of the Government, are benefited by the consciousness that their conduct in the discharge of their important functions is subject to the lawful criticism of the people, by word of mouth and through the medium of the press. While the law, for reasons of public policy, will not permit criticism of pending cases of a character likely to exercise an influence upon the decision, when the decision has been rendered the wisdom of the judgment or its conformity to the law or to the facts, are proper matters for public discussion.

" 'The administration of the law, the verdicts of juries, the conduct of suitors and their witnesses, are all matters of lawful comment as soon as the trial is over' (Newell on Slander and Libel, 3d. ed., p. 707.)

"But freedom of speech does not mean unbridled license. Like every other right it carries with it a correlative duty. The right of every citizen, whether a public servant or not, to the enjoyment of his good name is just as worthy of the protection of the law as is the right of a citizen to criticize his Government, or in the performance of a public or private duty, to state facts which may have the incidental effect of injuring another's reputation. The freedom of speech which our system of Government guarantees to the citizen is the privilege of uttering or publishing anything he may see fit to utter or publish without the previous permission of any Government official; but the right is exercised by the citizen at his peril. He is permitted to publish the truth with good motives and for justifiable ends, but he may not wantonly or recklessly blast the reputation of another without suffering the consequences of his violation of the rights of the person slandered. To expose wrongdoing of a venal official is to perform a public duty, but falsely to impute venality is a crime.

"Judge Cooley in his well-known work on Constitutional Limitations (7th ed., 604) says:

" 'The constitutional liberty of speech and of the press, as we understand it, implies a right to freely utter and publish whatever the citizen may please and to be protected against any responsibility for so-doing, except so far as such publications from their blasphemy, obscenity or scandalous character may be a public offense, or as by their falsehood and malice they may injuriously affect the standing, reputation, or pecuniary interests of individuals'

"In his written plea to the information for libel filed by defendant herein under date of March 13, 1916, he asserts that an examination of his book (Exhibit A A) 'will disclose that there is not a particle of malice or ill-will contained in said book against any individual mentioned therein.' Defendant seems to be under the strange delusion that there can be no conviction for the publication of defamatory matter without proof of actual hatred and ill-will on the part of the accused against the person defamed. He seems to entertain the belief that malice in law is the equivalent of spite or personal animosity. If that were correct then it would be impossible to convict for homicide a man who in sheer wantonness might fire a gun at random into a crowded street and thereby kill someone whom he had never heard of before. But the law punishes crimes committed in wanton disregard of the rights of others, just as it does those which are the result of hatred of the victim. Libel is punished as a crime because it is a violation of the right of the citizen to be secured in the enjoyment of his reputation. That right is absolute when the reputation is rightfully enjoyed. The injury to one's reputation resulting from the publication of defamatory matter is not diminished by the fact that the perjurer is a stranger to the victim of his false imputations.

"Another ground of defense outlined in the defendant's written plea is that the publication of these libels was incidental to the performance of a professional duty as attorney for Dinoso and Eusebio. Apart from the fact

that no proof has been introduced at this trial to show that the relation of attorney and client in fact ever existed between Mr. Kelly and these men, it is evident that nothing which he could lawfully do for them required the publication and sale of his book. He says that he incorporated it into his petition for a writ of habeas corpus on behalf of these men, and it so appears from the record (Exhibit CC). But the privilege of counsel is limited to the averment of matters which are pertinent to the issue. Habeas corpus is not an appropriate proceeding by which to obtain a review of final decisions of courts of competent jurisdiction. The petition filed by Mr. Kelly on behalf of Dinoso and Eusebio shows on its face that its real purpose was to afford him an opportunity to indulge in unbridled license in the expression of his unwarranted charges against the complainants and the judges of the Supreme Court. Assuming, for the sake of the argument, that a conviction obtained by perjured testimony is a nullity, and that its validity might be inquired into by habeas corpus proceedings, it is obvious that the issue and facts upon which such conviction might be based are capable of expression in decorous language and are not strengthened by vituperation, abuse, or invective. The same observation is true of the absurd complaint for murder which defendant has filed against some 50 or 60 persons whom he charges with the 'murder' of Noriel, Landas, and Malabanan. No sane man with any knowledge of the law could by any remote possibility entertain a belief that those charges would or could be seriously considered. But even assuming that defendant did in fact seriously expect that his charges would be acted upon and that the persons named in his complaint would be arrested and brought to trial, he, as a lawyer, must have known that a complaint or information need only recite the ultimate facts which constitute the offense. The complaint as presented, however, is on its face nothing but a repetition of the horrible libels against these complainants. If the newspapers, under the mistaken belief that the filing of these libels in court make their publication privileged, had seen fit to print them, this would have tended, no doubt to stimulate the sale of Mr. Kelly's book. "The unnecessary and irrelevant repetition of the libels against complainants in a grossly exaggerated form in the so-called habeas corpus petition and in the murder complaint is proof of actual malice on the part of defendant. "In the case of *United States vs. Contreras* (23 Phil. Rep., 518), this court has clearly denned the extent and limits of the right of citizens to criticise the conduct of others, and particularly public officials, as follows: " 'Men have the right to attack, rightly or wrongly, the policy of a public official with every argument which ability can find or ingenuity invent. * * * But the law does not permit men falsely to impeach the motives, attack the honesty, blacken the virtue, or injure the reputaion of that official. * * * They may falsely charge that his policies are bad but they may not falsely allege that he is bad. * * * Men may argue, but they may not traduce. Men may differ but they may not, for that reason, falsely charge dishonesty.'

"The limitations upon the right of freedom of speech so succinctly and accurately stated in the opinion last cited are essential to the very existence of the right. If the acceptance of public office were to expose the incumbent to the attacks of any slanderer who might see fit to vent his spleen in this way, no self-respecting man would accept public office at the price of his self-respect. The principles of freedom of speech as opposed to the system of previous censorship can only exist if abuses of the privilege conferred by the law are sternly repressed. Unless the law against slander and libel is strictly enforced, men of spirit, regardless of consequences, will resort to the remedy of taking the law into their own hands and punish their traducers, with the ensuing disrespect for law and order which such a condition is bound to engender.

"In this case, not only the defendant but the complainants have been on trial. The prosecution against Mr. Kelly under a system of law which permits, and properly permits, the truth of the charges to be proved in support of a plea of justification, puts in issue the character of the complainants just as much as though they were defendants at the bar of the court, charged with the offenses imputed to them by the present defendant. His acquittal would carry with it of necessity the conviction of the complainants, so far as their reputations are concerned, and would of necessity require their immediate removal from public office, and fheir prosecution. The complainants have fearlessly met the issue with full knowledge of the consequences to which they would have been exposed had they in fact been guilty as charged. That being the case, we feel that if, as we have no doubt will be the case, this court agrees with the prosecution that the defendant's plea of justification has been an utter failure, fairness and justice to the complainants require the court, so far as may be possible, to vindicate their innocence by a full and vigorous statement of bis disbelief of the charges imputed to them.

Nothing that the defendant or this court might do now could wholly repair the damage which the unwarranted publication of this unjustifiable libel has done, but a solemn, judicial finding by this court concerning the falsity of the charges brought against complainants will no doubt go far to restore to them the merited esteem of such of their fellow-citizens as may have been impressed by the vigor and boldness of defendant's imputations.

"The importance of this case, both to the Government and to the complainants, the highly injurious nature of the charges made by the defendant against the complainants, and the utter failure on the part of the defendant to substantiate any of the charges, impose upon the prosecution the unpleasant duty of asking that the judgment of the trial court be amended and that the severest penalty authorized by the statute be imposed upon the appellant. If there ever was a case, or could be a case, in which the extreme rigor of the law should be invoked, it is this one, not so much because of the necessity of infliction of punishment on the defendant, as in order that it may serve as a deterrent to other men who may be inclined to abuse the opportunities afforded by the liberal system of Government here prevailing, to cruelly traduce and mar the reputations of others. That there is such a tendency is shown by the frequency with which the courts are called upon to consider civil and criminal actions growing out of the publication of libels. The courts up to the present time have been extremely lenient in the imposition of penalties. Sufficient time has elapsed, however, to bring home to all concerned knowledge of the fact that the enjoyment of free speech presupposes the possession on the part of those who enjoy it of sufficient self-control to refrain from abusing the privilege.

"Furthermore, in this particular case the utter failure of the plea of justification, the success of which the defendant had no reason to expect, constitutes a circumstance of aggravation to be taken into consideration in fixing the penalty. (U. S. vs. Ocampo, 18 Phil. Rep., 1, 2, syllabus, par. 8.)

"It is therefore respectfully submitted that the defendant is guilty of libel as charged, under circumstances of extreme aggravation, and that the maximum penalty of the law both as to fine and imprisonment should be visited upon him."

"RAMON AVANCEÑA,

"Attorney-General."

The defendant admitted that said libel was printed and published under his direction; that copies had been sent to the governors of all of the States, members of Congress, to newspapers and to other people. He admitted that he had sent copies of it to the Washington papers "The Star" and "The Post," to "The Saturday Evening Post," "Literary Digest," the "Commercial Appeal" of Memphis, to the "San Francisco Examiner," and the "Chronicle," and to practically all of the leading papers in the United States, that the copies of the alleged libel were sent to the people above mentioned in the United States some time before it was given out in Manila. The publication of the alleged libel was freely and openly admitted by the defendant. The defendant admitted that the large number of copies which had been sent to the United States, as above indicated, had been sent free of charge and it was proved that the copies which were sold in the city of Manila were sold for P2.50. The record shows that a large number had been sold in the Philippine Islands.

It would be difficult to find a case of alleged libel where the writer and publisher of the same had attempted to give a wider publication and circulation of the same than the defendant has done in the present case. The defendant does not attempt to explain, even upon his own theory that the publication was for the purpose of correcting what he regarded as an evil existing in the Philippine Islands, why he sent so many copies to people who could give him no assistance in any way, in correcting the alleged evil practices of which he complained. His studied effort to give the alleged libel the widest possible circulation, taken in relation with his failure to prove his libelous and defamatory charges, certainly may be accepted as proof of the malice with which he published the same. That fact, taken in relation with his own admissions while he was a witness upon the stand that he had made

no adequate investigation of the truthfulness of the charges which he made, and his absolute failure to prove any of the serious charges, are positive proof of a deep laid plan to maliciously blacken the memory, and to impeach the honesty, virtue, and reputation of the complainants in the present action.

After a very careful examination of the entire record brought to this court, we are forced to the following conclusions :

First That the proof shows that the said publication described in the complaint and upon which the complaint is based, constitutes a willful, malicious libel against the complainants, and was intended to and did impeach the honesty, virtue, and reputation of said complainants.

Second. That said libelous publication was made by the defendant without having known and without even having made a sufficient investigation to ascertain whether the facts charged against the complainants were true or not.

Third. That there is no reliable proof in the record which shows, or even tends to show, in the slightest degree, that the Honorable Isidro Paredes, judge, the Honorable Vicente Jocson, judge, the Honorable Salvador Zaragoza, assistant attorney to the Attorney-General, the Honorable Felicisimo R. Feria, assistant attorney to the Attorney-General, Colonel Rafael Crame, colonel of the Philippine Constabulary and connected with the Bureau of Information thereof, Captain E. I. Small, a captain of the Philippine Scouts of the U. S. Army, Captain Frank L. Pyle, a captain of the Philippine Scouts of the U. S. Army, Jose M. Quintero, prosecuting attorney of the Province of Laguna, and Eusebio Orense, a practicing attorney of the city of Manila, are guilty of the horrible offense with which they are charged in said publication.

Fourth. That there is no reliable proof in the record which, from any standpoint, justified the printing and publishing of the said malicious, libelous, and defamatory charges against the said complainants.

Therefore, basing our opinion upon all of the facts of the record, we are of the opinion that the sentence of the lower court should be and is hereby affirmed, with cost. So ordered.

Torres, Mar eland, Trent, and Araullo, JJ., concur.

[1] U. S. vs. Noriel, Nos. 8361 and 8352, not published.

[2] Not published.

DE S E N T I N G

CARSON, J;

I reserve my vote as to the action which should be taken on this appeal.

If I were satisfied that the defendant was mentally responsible for the commission of the acts charged in the information and proven at the trial, I should readily agree with my brethren that there can be no doubt that the judgment entered in the court below should be affirmed.

In this case, as in the proceedings against this accused for contempt which have been heretofore considered by this court, the accused undertook to act as his own counsel both in the court below and in this court on appeal. In the contempt proceedings I was forced to conclude that the accused was not mentally responsible for the acts with which he was charged, and I said that:

"An examination of the record in these proceedings raises in my mind a question whether the emotional strain and

harassing anxiety, incident to respondent's activities in this connection, may not have resulted in an obsession—a mental attitude—toward all persons and things connected with the Noriel case which renders him wholly unfit to speak or act or think rationally on that subject."

In the present case, also, I cannot rid my mind of a doubt as to his mental, and therefore as to his criminal responsibility for the commission of the acts with which he is charged in the information. It is true that no plea based on this ground was entered in the court below, but there is no statutory provision in this jurisdiction which requires the entry of a formal plea of insanity to sustain a judgment based on evidence of record disclosing a lack of mental and therefore of criminal responsibility in the accused. Had the accused been represented by counsel in the course of these proceedings, I should have some hesitation in pressing my views in this regard upon the court: but the accused not having been represented by counsel, and an examination of the whole record having raised in my mind a doubt as to his mental responsibility, I cannot give my assent to the affirmance of the judgment of conviction entered in the court below. (Confer *Davis vs. U. S.*, 160 U. S. Rep., 489.)

In his brief on this appeal, the Attorney-General, answering the contentions of the appellant, makes frequent use of expressions such as these:

"No sane man with any knowledge of the law could by any remote possibility entertain a belief that these charges could or would be seriously considered;"

"Defendant seems to be under the strange delusion that there can be no conviction, etc."

"When the case commenced it was the belief of the prosecution that the defendant, while guilty of libel, had not committed this crime for the gratification of any personal ill-will against the men traduced. It was believed that he had been led into the commission of this offense in a spirit of quixotic eagerness to right what he truly believed to be a great wrong, that his indignation at what he believed to be a miscarriage of justice had so swept him off his feet that his judgment had been distorted, leading him into the commission of a wrong which he would bitterly regret once its existence was made manifest to him. We were in daily expectation as the case progressed, and the charges so lightly brought by the defendant were disproved one after the other, that he would justify our faith in the honesty of his mistaken belief by a frank admission of his error and a manly expression of regret for the harm that he has done. Of course, such an expression of regret would not undo that harm and would not relieve the defendant of the consequences of his rash bravado, but it would have shown a sense of responsibility and of justice which the court might well have taken into account in fixing the penalty. Greatly to our regret, however, the defendant up to the present time has shown not the slightest evidence of any feeling of contrition. After an utter failure to make good his plea of justification, he still maintains his attitude of defiant disregard for the feelings of the men he has so cruelly slandered. Rather than a feeling of shame for the havoc brought about by his ill-advised and unwarranted assumption of the role of public censor, he seems to enjoy the notoriety which his conduct has drawn down upon him, to such an extent that one is led to wonder whether the love of notoriety, rather than generous indignation at a supposed injustice, was the impelling motive which has led him into a course of conduct productive of results as disastrous to himself as harmful to others."

The Attorney-General concludes that the unreasonable and ill-advised conduct of the accused in committing the acts charged in the information, and in maintaining his defense when brought to trial therefor, discloses a reckless and wilfully malicious spirit actuating the accused throughout. For myself, however, the conduct of the accused throughout these proceedings tends rather to raise a doubt as to his mental, and therefore, of his criminal responsibility.

As a matter of convenience, and to avoid repetition I treat my dissenting opinion filed in the contempt proceedings above referred to as a part of this opinion, most of the reasons upon which I based that opinion being

equally applicable in the present case. (In re contempt proceedings vs. Amzi B. Kelly, filed February 17, 1916.)
Judgment affirmed.

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