

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MIKE BEECHAM, DEFENDANT AND APPELLANT.

G.R. No. 5161. February 21, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

On June 1, 1908, there was filed in the Court of First Instance of the Province of Pampanga an information charging the appellant, Mike Beecham, with the crime of murder, committed as follows:

"That between 12 and 1 o'clock p. m. of the 11th day of May, 1908, at Camp Stotsenberg, municipality of Mabalacat, Pampanga Province, Philippine Islands, the accused did maliciously, intentionally, criminally, and with premeditation and treachery, discharge a rifle or firearm at the person of Sergeant William Hoey, Privates Thomas F. Woodward, George Wilson, and Edward T. Clark, all of said cavalry troop (Troop F), producing a wound in the head of Sergeant William Hoey, in the left shoulder of George Wilson, in the hips of Thomas F. Woodward, and one wound in the head and another in the abdomen of Edward T. Clark, by reason of which said wounds so received said above-named individuals, and each of them, died—the first instantly, the second at 1.15 p. m. of the same day, the third at 2 p. m., and the fourth on the 14th day of said month of May. In addition, said shots occasioned wounds in the right loin and right forearm, respectively, of soldiers Damper and Whipple."

On July 10, 1908, upon being arraigned on the foregoing information, the defendant entered a plea of not guilty, and the case was set for trial. On July 16, 1908, when the case was called for trial, the prosecution asked and was granted leave to sever the charge and file a separate complaint for the shooting of each of the persons named in the above information. There being no objection on the part of the defendant to this procedure, the motion was granted, and separate complaints were filed, to each of which the defendant then and there pleaded not guilty and the trial proceeded. During the trial the following stipulation was made between the Government and the counsel for the defendant.

"It is stipulated by the parties that the evidence presented by each side in this case, No. 589 (R. G. No. 5161), United States vs. Mike Beecham, be applicable in all respects to each and all of the other cases with the same title, being Nos. 609, 610, and 611. This stipulation is made with the consent of the court."

As a result of the trial then and there had before the Hon. Julio Llorente, the court, on the 29th day of October, 1908, found the defendant guilty of the crime charged and sentenced him to the penalty of cadena perpetua, with the proper accessory penalties, the same sentence being recorded in each of the four cases, each sentence providing that all four sentences should be served simultaneously, but that the maximum time of imprisonment should not exceed forty years. From the judgment of conviction and the thus imposed sentence this appeal is taken.

There does not seem to be serious dispute as to the main facts in this case. They are:

On May 11, 1908, the date of the shooting, the defendant, an American, 28 years of age, was serving his third

enlistment as a soldier in the United States Army, being then a member of Troop F, First United States Cavalry, stationed at Camp Stotsenberg, Province of Pampanga, Philippine Islands.

The plan of the barracks occupied by Troop F at the date of the occurrence is shown by the plan hereto attached.[1] It will be observed from said plan that the barracks consist of two main apartments, the squad room and the dining room, connected by a covered passageway about 12 feet in length by 7 in width. The length of the dining room is 60 feet. In its southeast corner, directly in line with the passageway, is a barber shop. In the southwest corner is a kitchen.

About half-past 12 of the day in question, after the men had finished their noon mess, the deceased Clark and Woodward were seated in the window of the mess room, marked "1" in the plan, facing the interior and engaged in conversation with the deceased, Hoey, and a witness named Merritt. These two were standing at the side of the window, side by side. Both had their backs toward the hallway from which the defendant entered. No witness was able to locate the precise position of deceased Wilson at the time he was shot, but from the evidence in the case it appears well established that he was located in the east end of the dining room, near the barber shop.

Besides Merritt, the following witnesses testified as to the shooting:

Furze, who was seated on his cot in the squad room, marked "6" in the plan.

Damper and Whipple, who were in the barber shop, the latter seated in the chair while his hair was being cut by the former.

Queenth, who was getting a drink at a water tank which was located in the passageway referred to, marked "3" in the plan.

Garrett and Swartz, who at the time were engaged in a game of billiards in the dining room, marked "2" in the plan.

Plessner, who was in the kitchen.

The first person to observe anything extraordinary was Merritt. Merritt testified that his attention was attracted by heavy steps behind him, causing him to turn his face toward the passageway from which the sound came. There he saw defendant approaching through the passageway with a gun. He saw him raise the gun and, as Hoey turned his face to see who was approaching, discharge it directly into his face. He saw Hoey fall to the floor, where he remained motionless, and then saw defendant quickly extract the discharged cartridge and fire a second shot. Upon the firing of the first shot Merritt saw Clark and Woodward spring from the window sill upon which they were seated and run toward the door of the barber shop. Upon their leaving the window sill, witness himself leaned his body over it, and while in that position heard defendant exclaim, "Get away from in front of me; let me get that * * *." He also heard something fall, the defendant's exclamation, the second shot and the sound of the falling body being quickly followed by a third shot. Upon hearing this third shot the witness raised up and looking toward the barber shop saw there the defendant standing with his gun pointed downward. Thereupon the defendant turned and walked rapidly toward the squad room. After the defendant had gone the witness found Woodward stretched at full length on the floor, face downward, with his body halfway through the door of the barber shop. Clark was lying in the barber shop with his feet in the doorway, apparently dead.

Witness Furze, who was seated at his bunk in the squad room, heard one gunshot followed by two others, whereupon he proceeded toward the mess room and to the point where Hoey's body lay, and from this position saw defendant standing in the doorway of the barber shop with his gun pointed downward at a person prostrate on the floor. The witness then ran away in fright.

Witness Queenth, who was at the water tank in the passageway, noticed the defendant pass by him with his gun, and, when two or three steps beyond him toward the dining room, raise his gun to a firing position and discharge it. Witness did not know at the time whether he aimed at any particular person or not. While the witness was still at the tank the defendant discharged his gun a second time, whereupon witness saw two men fall in the doorway of the barber shop. Witness, being frightened, then ran away.

Witness Damper, who was cutting Whipple's hair in the barber shop, upon hearing a shot stepped toward the door but, upon being struck on the right thumb by a second shot, turned and leaped through the barber shop window.

Witness Whipple, who was seated in the barber chair, heard shots from the direction of the mess room, and, finding himself hit in the right arm by either the first or second shot, leaped out of the barber shop window, following Damper.

Witness Garrett, at the billiard table, marked "2" in the plan, was standing with his back toward the window, marked "1" in the plan. Upon the discharge of the first shot he turned and saw the defendant in the passageway, marked "3" in the plan. After firing the first shot the witness saw the defendant walk into the dining room to the point where Hoey was lying on the floor and there fire a second shot. Witness then escaped through the kitchen.

Witness Swartz, who was playing billiards with Garrett, also heard the first shot and saw the defendant come into the dining room with his gun raised in a firing position. Seeing Hoey fall, the witness started toward the door of the kitchen and as he turned toward the kitchen door he noticed Wilson and heard another shot.

Witness Plesser was in the kitchen, where he heard two shots, whereupon Wilson came running into the kitchen exclaiming, "I am wounded."

The last two witnesses are the only persons who testify to having seen Wilson at all.

The defendant, upon being asked on cross-examination to point out on the plan hereto adjoined where Wilson stood at the time when he claimed to have fired at him, answered: "It is not necessary for me to see the plan, because I can not point out where he was when I fired at him."

One witness spoke with the defendant, just before he began shooting, and another immediately after the shooting was concluded. The former, witness Steward, saw the defendant in the water-closet in the rear of the dining room. Steward testified that while defendant was in the closet he asked defendant for some toilet paper, and that defendant on handing him the paper said, "Take it quickly, for I am going to attend to a matter." Witness Quiry met defendant in the squad room immediately after the shooting, and the defendant called out to him, saying, "At last I have got two."

Respecting the character of the wounds that resulted from defendant's shots, the post doctor, Allen Macy Smith, testified that Hoey's death was instantaneous and was caused by a gunshot wound, the ball entering at the point of the nose, completely tearing away the right side of the face. He testified that Clark received two shots, one in the fleshy part of the abdomen, the other entering the left jaw and passing out through the right jaw, traversing the tongue and completely destroying the right side of the face. The wound indicated that the weapon was discharged very near the face. Clark died within three days. The doctor testified that Woodward was shot completely through the hips or loins, dying within an hour and a half. Wilson received a wound in the back, the ball entering the left shoulder and producing death within an hour and a half.

For some weeks prior to May 11th the relations between the defendant and the deceased William Hoey were strained, and upon the part of defendant, at least, very bitter, owing to offensive conduct on the part of the defendant toward the deceased Edward T. Clark, on account of which the defendant incurred repeated reprimands

from Sergeant Hoey. As to the nature of the offensive conduct which occasioned the trouble between himself and Hoey, the evidence introduced by the prosecution tended to show that the defendant made indecent proposals to the deceased Clark, who was a youth of only 17 years, which broke off the previous friendly relations existing between the defendant and Clark. Thereafter the defendant persisted in annoying Clark, with the result that Clark protested to Sergeant Hoey and appealed to him for protection. Responsive to Clark's appeals, Hoey threatened the defendant at various times with punishment, and on one occasion told him that he would place him under arrest if he continued to annoy Clark. On another occasion he told the defendant that he would report the matter to the captain in charge of the troop if he did not cease his offensive conduct toward Clark.

In testifying as a witness on his own behalf, the defendant claimed that one of his grievances against Sergeant Hoey was that for some weeks prior to the shooting the sergeant frequently reprimanded him while on drill and assigned him to the worst kind of work there was to be done. He also claimed that one of the series of persecutions which induced him to shoot the sergeant was an occurrence that took place at target practice on the morning of May 11th, the day of the shooting. On that morning, according to the defendant, at between 8 and 9 o'clock, a dispute arose between him and the sergeant while the troop was on duty, and the defendant then and there challenged the sergeant to a fight with fists, which the sergeant declined. The defendant also claims that after they had returned from target practice and had taken their midday meal, and just prior to the shooting, defendant passed the window of the mess room, marked "1" on the plan, on his way toward the water-closet in the rear of the mess room; that on his way to the closet he saw Hoey standing near the window talking with other soldiers; that as he returned from the closet to the squad room, where his gun and ammunition were, he claims on passing the window to have heard the sergeant make a vile remark with reference to him, but which remark did not induce in him any particular feeling of resentment. On arriving at the squad room he claims to have gone to the point marked "8" in the plan, testifying that on that day he had his cot there, although witness Barner testifies that the usual place for his cot was at point "7." While at point "8," he claims that he saw Hoey, while standing at the said window, turn in the direction of the squad room and make up a face at him. It was at this instant, he claims, that he decided to kill Hoey and Wilson, and proceeded forthwith to carry out his resolution. The shooting followed as soon as he could get his gun and load it.

Respecting the alleged provocation which brought him to the resolution to kill not only Hoey but Wilson, witness Merritt, who is the only survivor of the three men who were in conversation with Hoey at the time of the vile remark and insulting gesture testified to by the defendant, swore on rebuttal that he neither heard the remark attributed by the defendant to Hoey nor saw Hoey make up a face, as alleged by the defendant.

As to his motive for shooting Wilson, the defendant claims that he did not receive any provocation from Wilson on the day of the shooting, and also admits that Wilson had been his friend prior to the trouble that resulted with Clark, but claims that since that time Wilson had turned against him and had repeatedly charged him with making improper proposals to youths.

Respecting the shooting of Clark and Woodward, the defendant claims that this was an accident; that he had no motive for desiring the death of either of these two men and did not intend to harm them and was not aware that he had done so until some days after the shooting.

It is conceded that the defendant is guilty of murder. The only question for our consideration is the penalty that should be imposed under the law. There is no extenuating circumstance disclosed. In order to impose the maximum penalty there must be present at least one aggravating circumstance. The crime being clearly qualified by *alevosia*, it is necessary to determine whether or not there is present the aggravating circumstance of premeditation, there concededly being present no other aggravating circumstance. For that purpose it is necessary, first, to decide whether or not there was a present provocation inducing of itself the killing—in other words,

whether the defendant killed in the heat of passion. We look first at his own testimony.

The defendant testified in part as follows:

"For six months I had friendly relations with Sergeant Hoey. After that those relations gradually changed. I noticed it first when he began to reprimand me during the instruction and whenever he could. He had not done this before. I also noticed that he began to assign me to the worst kind of work which he had to do. For a month this is all I noticed. After that he began to make remarks about me, saying that I was accustomed to make improper proposals to young boys. He made these remarks in particular to Clark and Wilson and to me myself when nobody else was present. He also made up faces at me and showed me his teeth in order to irritate me. He also threatened to send me to prison for ten years. For a long time I had friendly relations with Wilson. Two or three months before the 11th of May those relations began to change. He also then began to make personal remarks about me. He began by making them to me personally. These personal remarks consisted in his saying that I was accustomed to make improper proposals to young boys. Up to that time I had had no difficulty with him. I was having a discussion with Sergeant Hoey at the target practice on the occasion on which he made the personal remarks that I have just referred to, to which I replied that if he would come to where I was, or behind the trench, we would arrange our difficulty. He answered me that that was not necessary and that he was able to arrange matters with me in some other way. This conversation took place during the morning of the 11th of May. My relations with Clark had always been those which one brother has for another. He was about 17 years of age and we had always been the very best of friends. About three weeks before the 11th of May those relations began to change. Hoey and Wilson were the ones who caused it.

"On the 11th of May, in the forenoon, we had target practice at about 7 o'clock in the morning. At the time I went to the place where the target practice occurred I had no ammunition. There I received a receptacle containing sixty loaded cartridges. We returned from the target practice at about 11 o'clock."

After relating how he occupied himself just prior to the shooting, defendant testified further as follows:

"I then went to the water-closet from the barber shop. In passing from the barber shop to the closet I went through the east part of the dining room and passed out by the stairway which is situated at the side where the word 'steps' is marked on the plan. I then turned to the right, returned to the front part of the dining room and went directly to the water-closet. In passing from the barber shop to the water-closet I saw Sergeant Hoey standing in the dining room in front of a window, marked '1' in the plan. I had no conversation with him, and he said nothing to me at that time. I do not remember who else was standing there but there were various soldiers and I am quite sure that Wilson was one of them. In the water-closet I met Steward and I remember sitting upon one of the seats beside him. In a few minutes I arose, but before arising Steward asked me for some paper and then I returned to the squad room. In passing to the squad room I passed near to the window marked '1' in the plan. I saw there Sergeant Hoey, who was standing in front of the window. On seeing me pass he said 'alli va uno que acostumbra a mamarla,' referring to me. I saw several there with Hoey, but do not remember at this moment their names. I then entered the squad room, went to where my gun was and got it. I then went to the place where my bed was for the purpose of cleaning my gun. In looking for some things to clean the gun I looked toward where I saw Hoey standing at the side of the door of the dining room. I was at the place marked '8' on the plan. From that place I was able to see the door where Hoey stood. On turning toward me Hoey made up a face at me, the same as he usually did. I then seized my cartridge belt and took out five cartridges. At that time I had my gun in my hands. I loaded my rifle with the cartridges and went to the door of the dining room. My intention then was to kill Hoey and Wilson. The intention to kill them arose at the time when Hoey made the face at me. I then lost my reason. Prior to that time I had no intention whatever to cause such injury to Wilson or Hoey. The first time I thought of killing Wilson and Hoey was at the time that Hoey turned and made a face at me. I went slowly to the door which led to the dining room and discharged the first shot at Sergeant Hoey. The second shot I discharged at Wilson. From that moment I do not remember what I did. I remember meeting Captain Babcock after the shooting. He ordered me to drop my gun and I did so. I do not remember how many shots I fired. I do not remember having recognized any other persons at the

time except Hoey and Wilson. I do not remember clearly what happened until I found myself in the guardroom one and one-half hours after the event. It was eight or nine days after the event before I was informed of what had occurred."

On cross-examination the defendant testified:

"I do not remember having entered the barber shop and I only remember discharging two shots. I did not go there to kill Clark because my relations with Clark were those of an older brother to a younger. It was on the 11th of May at the place of the target practice that I offered to fight with Sergeant Hoey. This was about 8 or 9 o'clock in the morning. It was about half past 2 when I shot him. At 9 o'clock I had no intention to kill him. I had no resentment against Hoey by reason of his reprimanding me nor by reason of his threatening me on account of my actions toward Clark. After a little while the charge that I was having improper relations with Clark caused me indignation. Natural indignation has its limits and when I saw Hoey make up a face at me natural indignation reached its limits. My indignation and resentment were gradually increased until they arrived at the extreme limit when he made up the face at me. Wilson had not made up a face at me but I concluded to kill him at the same time that I did Hoey. Although Wilson had not made a face at me, still he had done other things which would have justified my action not only on the part of myself but on the part of others who have more moderate tempers than I have. Wilson accused me at various times of having made immoral propositions to young boys. He had also accused me of a crime which in my judgment could not be pardoned by God or man. For those reasons I decided to kill him. I shot first at Hoey. My second shot was at Wilson. Before the shooting I saw Wilson once in the dining room, so that when I went there I knew he was there. I was not able to see him from the squad room. It is not necessary to show me the plan because I am unable to show where Wilson was when I shot him, but I am able to say that he was in the dining room. I saw Quiery after the shooting and it is probable that I said to him that I had got two at last, but I do not recall at this moment whether I said it to him or not. I did not shoot the other soldiers. It was a very extraordinary circumstance that I should have done what I did. It is very probable that I said to Quiery that I had got two of them. I do not remember having been in the barber shop and having seen Clark lying on the floor, nor do I remember having discharged a shot at Clark while he was lying on the floor."

From the inherent nature of defendant's own evidence, it is apparent that there was no present provocation such as would in any way permit him to offer the excuse that he killed in the heat of passion. The provocation which he urges, even if real, was absurdly inadequate of itself to produce the result he contends for. Moreover, it is perfectly apparent from such testimony that the cause of the killing was not the one alleged, but consisted of a series of different occurrences affecting the relations between the defendant and his victims, leading to and producing in him the bitterest and most malignant feelings toward his alleged persecutors. This subject will be more fully discussed when we deal with premeditation.

In determining the question of present provocation, we look, second, at the other evidence of the case and the attendant circumstances.

It is seen from the testimony of the defendant himself, that he claims to have formed the purpose of killing Hoey and Wilson just before the shooting, the formation of said resolution having been caused solely by Hoey making a face at him. From his own testimony and from all the circumstances of this case, it is impossible to accept this claim, because the testimony which the defendant gives in assigning the cause for his resolution to kill is contradicted by substantially all of the other testimony of the case and by all of the circumstances connected therewith:

- The claim on the part of the defendant that Hoey made up a face at him is undoubtedly false. The statement of the defendant that Hoey made the insulting remark above mentioned has been clearly proved to be untrue. Merritt, who stood at Hoey's side at the time the alleged remark was made by him to the defendant, and who was much nearer to Hoey than the defendant himself was, testified directly that he heard no such remark. It is undoubted that

if such remark had been made Merritt would have heard it. That statement having been shown to be wholly untrue, we would, even if there was no other evidence, have every reason for discrediting his statement about the gesture which he claims Hoey made. But we have testimony on that subject. Merritt testified that he did not see Hoey make up a face at the defendant. This gesture would probably have been seen by Merritt if it had really been made. If Hoey had deliberately turned around and made up a face at defendant, it is more than probable that Merritt would have noted the act. In addition, it is extremely doubtful, even if the face had been made, that the defendant would have been able to see it from the point at which he claims he was at the time of the alleged occurrence. It will be observed from the plan that the distance between Hoey and the defendant at the time of the alleged grimace was at least 40 feet. In order to see the gesture complained of it was necessary for the defendant to look completely across the squad room, through two doorways and through a hall 12 feet long and about 7 feet wide. In that hallway was at the time a water barrel or tank and at that tank was standing a soldier, directly in the line of vision between the defendant and the place where he claims Hoey was standing. Moreover, the east end of the dining room, it will be observed from the plan, extends beyond the hallway a distance of 3 or 4 feet. Woodward and Clark were sitting in the window at the east end of the dining room. At the side of the window and near them were standing Hoey and Merritt, conversing with them. They were not standing out into the body of the room directly in front of the window. They were standing at the side of the window. That being the case, Hoey, at the time it is claimed that he made the wry face, could not have been standing any distance west of the east line of the hallway, even if he had been standing directly in front of Clark and Woodward. From the evidence, however, it appears, as we have said, that Merritt was standing at the side of the window and Hoey was beside him. That Merritt was at the side of the window is further indicated by the fact that immediately after the first shot he leaned out of the same window. It is not at all probable that defendant could at the time in question have seen Hoey at all, much less his face.

- The defendant admits that no particular indignation was raised in his mind when he heard the vile remark which he says Hoey flung at him. He claims that he went about his usual and ordinary duties after that time and was on the point of cleaning his rifle when he saw Hoey make up the face referred to. It is very improbable that if the remark referred to, which was a remark as vile and insulting as any that could possibly be flung at a man, failed to stir up the ire of the defendant, the simple act of making up a face would have been sufficient to do it.

- Prior to the time when the alleged remark was made and the alleged act of Hoey performed, the defendant made a remark to witness Steward in the water-closet which, taken in connection with the subsequent acts of the defendant, throws a flood of light not only upon the state of mind of the defendant at that time but also upon the question whether there was a present provocation or not on the part of Hoey. Witness Steward being in the water-closet with defendant just prior to the time when the gesture is alleged to have been made, he asked defendant for some toilet paper and he, in giving him the paper, said, "Hurry up and take it, because I have a matter to attend to." He immediately went from there to the squad room, got his gun, and shot all of his enemies and more.

- Even if there had been a present provocation on the part of Hoey, there was admittedly none on the part of Wilson or Clark. It is entirely clear to our minds that the same cause which impelled the defendant to kill Hoey animated him to kill Clark. That cause was not the bad face which it is alleged Hoey made up at the defendant.

- The alleged provocation was wholly inadequate to incite the defendant to the frightful slaughter which he thereafter executed. Such cause being entirely inadequate to produce the result which the defendant claims it did produce, we must presume and hold, in the absence of trustworthy evidence to the contrary, that it could not and did not affect that result.

It conclusively appearing from defendant's own testimony, and from the other evidence and the attendant

circumstances, that there was no present provocation for the deed which the defendant committed, his murderous act must be referred to some other cause. The question of the real cause of the murder is so closely allied to the question of premeditation that we shall discuss them together.

The last trouble which occurred between Hoey and the defendant took place between 8 and 9 o'clock in the morning, as the shooting occurred at about 1 o'clock in the afternoon. Nothing whatever transpired during those intervening hours between the defendant and any of his victims. He had no more reason to shoot Hoey or his other victims at 1 o'clock than he had at 9. It is undoubted also that the trouble which occurred in the morning was not of itself and alone the provoking cause of the shooting. It seems to us that it is the unavoidable inference and inevitable conclusion from defendant's own testimony that the trouble of the morning was not the immediate cause of his act, but was rather one of a series of occurrences beginning many weeks before which had created in defendant a hatred of Hoey and his other victims deep seated and malignant. The defendant was a passionate man, violent in temper and strong in his prejudices. According to his own admission, for many weeks he had been laboring under the fixed belief that the men whom he subsequently killed had been guilty of conduct toward him that was wholly unpardonable by God or man. He says that he had come to a point in his relations with them when his nature had reached its limits. He had brooded over his wrongs and nurtured them with his wrath until they were mountain high. It is impossible to mistake or doubt the motive or cause of the defendant's terrible act. His own testimony certifies to it too clearly for error. Did he desire justice for the wrongs that had been done him and protection from further persecutions in the future? If so, he did not seek it as reasonable and honest men seek it. He was admittedly a soldier of several years' experience. He knew that he could obtain an impartial hearing at the hands of his superior officers if he had really been wronged. He unquestionably knew the procedure by which that could be done. He knew that thereby he could protect himself from the persecutions of Hoey and the rest. He knew that he had an easy and adequate remedy at hand which would not only insure him against further molestations but would also secure the punishment of his persecutors for what they had already done. Yet, knowing all this, he made no complaint and lodged no charges with the proper authorities. The fact necessarily is that he was not seeking justice or protection for himself or the proper and adequate punishment of his defamers. He wanted more. He wanted to take the law into his own hands. He wanted vengeance. He wanted to wreak upon his enemies a punishment so frightful as would glut to the full that consuming desire. It is undoubted from his own evidence and from his own acts that the motive which dominated the whole man was revenge pure and simple. No other cause or motive existed. The whole case discloses no other. On the contrary, every proved fact leads to that conclusion. No other result could possibly be reached. So frightfully out of proportion to wrongs done him was the redress which he took, and so recklessly brutal was the method of its accomplishment, as to demonstrate with perfect clearness, apart from any other fact or circumstance, the violent passion which ruled him at the time.

Having arrived at the conclusion that vengeance was the motive or cause impelling the defendant to his fatal act, premeditation, as defined by law, becomes under the circumstances of this case a necessary ingredient of the crime. It needs no argument to establish the proposition that when one believes that he has received an injury at the hands of others so terrible in its character as to be unpardonable and to tax the limits of human nature to endure it, and that state of mind and feeling have continued for weeks, there must be deliberation, meditation, and reflection; and, if that state of mind is followed by an act against the authors of that injury provoked by no new cause, that act must, of necessity, be the result of such deliberation, meditation, and reflection. It is impossible to believe that the defendant, driven by such a motive, arrived at the resolution to kill without having fully and thoroughly considered from every point of view the course which his vengeance should take. It is a mental impossibility to arrive at the point of killing a human being, reached by reason of injuries inflicted during a period of several months, inducing a malignant spirit of revenge, without having, so far as the human mind is capable of

so doing, thoroughly and repeatedly considered the question whether or not the crime should be committed. The limits of human endurance can not be reached to the extent of causing a violent, unnatural, and criminal act except by previous deliberation, meditation, and reflection in the absence of some present exciting cause. Every voluntary act which is not produced by a present exciting cause is necessarily a part of some anterior state of mind and is a legitimate product thereof. It is admitted by the defendant in this case that he had been so much affected mentally by the persecutions of his victims that he had arrived at the limit of his nature's endurance, and that that limit was reached and passed by the provocation (the made-up face) which he received from Hoey just prior to the killing. The question presents itself, What does he mean by limit? We can judge only by what he said, what he did, and what he testified to. By limit he evidently means a point at which and beyond which he was unable to restrain himself from killing. Before he reached that point he was able to prevent himself from killing his persecutors. After he had reached or passed that point he was not able to prevent himself from killing them. In other words, the question of limit was to him a question of killing. This is necessarily so because when he did reach the limit he killed. To him the limit meant death to his enemies. This means nothing more nor less than that the concept of killing was presented to his mind over and over again in determining whether or not his enemies up to a given point had done enough to deserve death at his hands. Although he was a passionate and headstrong man, still he was calculating to a degree. He did not act hastily. He proceeded slowly. At each new insult he passed upon the question of what should be the punishment of his persecutors—he determined whether he could longer endure their persecutions. Now, defendant claims that the limit was reached, that his resolution to kill was made, just prior to the killing; and he assigns as a reason and the sole reason why the limit was suddenly reached at that time, the provocation which he claims to have received from Hoey, namely, the face which Hoey made at him. But, inasmuch as we have already found, after a careful consideration of the evidence, that there was no such provocation, then it necessarily follows that the defendant assigned a false reason for the killing. It shows, moreover, that he not only did that but that he also assigned a false time as to when his resolution to kill was formed. Instead of the resolution to kill being formed at the very time of the killing, it must, rather, have been formed some considerable time prior thereto. If the defendant was able to keep from resolving to kill up to and including the last injury, which occurred between 8 and 9 o'clock in the morning, then absolutely nothing occurred to tax his endurance further up to the time of the killing: in other words, nothing further occurred to induce him to come to a resolution to kill. The same causes inducing him to kill operated on his mind at 9 o'clock as operated on his mind at 1 o'clock. If, then, he did not kill at 9 o'clock, it was not because he did not have at that time a cause to kill which to him was entirely sufficient, but for some other reason—such, for example, as the lack of opportunity to kill both of his enemies before his hand could be stayed. All that he had at 1 o'clock that he did not have at 9 o'clock was the opportunity to kill both of his enemies instead of one of them. This opportunity presented itself to him with striking force when he passed the window of the dining room and saw his alleged persecutors, Hoey and Clark, talking together, with so few other soldiers present as to make it highly probable that he would be able to conduct the long-contemplated slaughter to its frightful conclusion unmolested. The only conclusion permitted by the proofs is that the defendant at 9 o'clock lacked, not the resolution, but the opportunity.

Besides the evidence inherent in the situation we have before us other proofs showing that, even before the provocation which the defendant alleges he received from Hoey just prior to the killing, he had resolved to kill as he did kill. After passing Hoey in the dining room and receiving, as he alleges, the grossly insulting remark which Hoey directed toward him, the defendant, still, as he claims, without the resolution to kill, entered the water-closet and took a seat near another soldier named Steward. The latter asked the defendant to hand him some toilet paper. This the defendant did, saying with apparent excitement as he did so, "Hurry up and take it as I have a matter to attend to." He immediately left the closet, went straightway and got his gun and murdered those whom he had already marked as his victims. Can there be doubt as to what that "matter" was? Moreover, and as another

circumstance showing his forethought, when he had finished his slaughter and was returning to the squad room with his gun he met the witness Quiery, to whom he said, "At last I have got two." The words "at last" are of the very deepest significance. They indicate the satisfaction which one feels on having achieved a purpose long had in view and for the consummation of which he had long been waiting. What more indicative of long waiting, of delayed hope, of impatient longing, of anxious thought and meditation, than those two words? They are in themselves, in view of all the circumstances of this case, as demonstrative of premeditation, deliberation and reflection as words could well be. They were involuntarily spoken at a time when no defense was thought of and when the whole soul of the man abandoned itself to an expression of the most utter satisfaction at the consummation of a thing so long and so devoutly wished. Moreover, the sentence used includes the idea of a plan as well as a purpose. He did not want one; he wanted two. The opportunity to get one had presented itself many times before—in fact, many times that very day. He had laid his plans for two. If his ingenuity could prevent it he was not going to be hanged for killing one man and thus leave his vengeance half appeased, when by judiciously and carefully biding his time he could satiate to the full his consuming passion by murdering two and still suffer no greater penalty. His was the game of a calculating as well as a desperate and vengeful man—to lose his own life in order that two other men lose theirs. But it must be two, not one. His revenge could not be satisfied with half its demands.

From the words "I have got two" can not be drawn the inference that they were used to indicate that he expected to get more. Not at all. At the moment of uttering those words he knew that he would never get anybody else. They indicate rather the successful termination of a long waiting during which he often had the opportunity to get one but not two. They indicate clearly that he was biding his time until he should find the two together so as to permit the destruction of both in so short a time as would forestall interference. That time and opportunity came when he saw his victims together, unarmed and defenseless, so nearly alone as to assure him that at last his vengeance could exact its own. This was what he had been waiting for, to get the two together. This was the situation to which those words referred.

The fact is that the defendant, by his own evidence, as well as by his acts and words, has laid open before us his mental attitude and processes for the whole time during which these alleged grievances were taking root, as well as down to the time of the killing. Premeditation is nothing more or less than a mental process—a series of mental attitudes. As already stated, we have those mental attitudes and those mental processes clearly spread before us. Under such circumstances, whether there is premeditation or not hardly reaches the dignity of a conclusion.

Touching finally the question of premeditation.

We said a moment ago that the words of the defendant indicated a plan of action as well as deliberation and premeditation over a contemplated criminal act. That plan of action, and, therefore, premeditation and deliberation as well, are also disclosed by his acts, words, and testimony. It is evident from the record in this case that when the defendant came to think over the defense he should make upon his trial, he began immediately to consider how he could smooth over the rough places in his case. An attempt to cover up nothing is foolish. It does not concur with the common sense or the common activities of mankind. When an attempt is made to cover up the evidence showing the existence of a thing, the necessary presumption follows that such a thing exists or existed. If it clearly appears in this case that the defendant sought and endeavored to obliterate the traces of design and premeditation, then we may confidently assume that there was design and premeditation. The effort to obliterate traces of a plan and to destroy evidence of premeditation and deliberation is proof as strong as direct evidence in favor of their existence. There appears in this case abundant evidence of attempts upon the part of the defendant to avoid the inference of premeditation:

- He falsely substitutes Wilson in the place of Clark as one of the two men whom he admitted after the killing he

intended to kill.

The witness Merritt was looking directly at the defendant when he fired his first shot. He saw defendant extract the empty cartridge and again raise his gun to fire. At that moment Merritt leaned out of the window from which Woodward and Clark had fled. His testimony, therefore, is not clear as to whether or not he first heard the exclamation of the defendant to get out of the way or the sound of the falling bodies of Woodward and Clark. The second shot and the exclamation and the sound of the falling bodies were doubtless so near together that the witness is uncertain as to the order in which they occurred; but he is sure that the exclamation, the second shot, and the sound of the falling bodies were followed by a third shot and that when he looked up immediately thereafter he saw defendant standing in the barber shop with his gun pointed downward. Witness Furze, who was at his cot in the squad room, heard one shot, followed by two others. Proceeding to investigate the cause of the shooting, he reached the place in the mess room where Hoey's body lay and saw defendant in the barber shop standing over the prostrate body of Clark with his gun pointed downward. Merritt and Furze thus corroborate one another as to there having been three shots fired and as to the fact that after the firing of the third shot the defendant stood with his gun pointed downward toward Clark, who was lying on the floor of the barber shop. The fact that Woodward and Clark fell upon the discharge of the second shot is further corroborated by witness Queenth, who stood by the water tank and heard the second shot fired, and, before he turned and ran away and before he distinguished the third shot, saw the two men fall in the door of the barber shop. Clark, it will be remembered, had a wound in the abdomen and another in his face. From their location the two wounds must necessarily have been made by different shots. Since Clark fell upon the firing of the second shot, and since after the firing of the third shot the defendant was seen standing over Clark with his gun pointed downward, the inference is unavoidable that the wound through Clark's head was made by the third shot. It will be remembered also that the witness Doctor Smith stated that this wound was of such a character that it must have been made when the gun was close to the face. The shot that killed Hoey was not the one that caused Clark and Woodward to fall, because after the first shot was fired they leaped from the window sill and ran toward the barber shop. It must, therefore, have been the second shot that went through the body of Woodward and grazed the abdomen of Clark, causing the two men to fall. The two men who were in the barber shop heard the first shot before they were wounded and escaped out of the window before they saw anyone in the barber shop or heard the third shot. The shot that passed through Woodward's loins and grazed Clark's abdomen must then have been the shot which also lightly wounded these two men, one in the hand and the other in the arm. The locality of these wounds conforms to the theory that they were made by a shot fired upon a plane that passed through the hips of Woodward and the abdomen of Clark. Thus, the testimony of the three witnesses, Merritt, Furze, and Queenth, the location and number of the wounds, and the testimony of Damper and Whipple, are corroborative of the theory that the second shot fired by the defendant resulted in the killing of Woodward and the wounding of Clark in the abdomen.

As to the first shot, the only certain data disclosed by the evidence is that Wilson received a fatal wound in the back of the left shoulder and that he succeeded in reaching the kitchen, where Plessner was, before the third shot was fired. The location of the wound in the shoulder demonstrates that it could not have been made by the shot that passed through Woodward's hips and grazed Clark's abdomen. Neither could it have been made by the third shot, that being the one that killed Clark. It must, therefore, have been made by the shot that was aimed at Hoey and that passed out through the side of his face. This shot, according to the evidence, was directed toward the barber shop, whither Wilson may have been going at the time. The defendant admits that he does not know where Wilson was when he claimed he aimed his gun at him. This, of course, would be true if the shot that he aimed at Hoey's face was the one that struck Wilson in the back, causing him to turn and run toward the kitchen while the defendant was trying to get at Clark with his second and third shots. It should also be noted carefully that defendant claims that the shot he aimed at Wilson was his second shot, but, as we have before observed, witnesses

Merritt, Furze, and Queenth all testified positively and clearly that it was the second shot that caused Woodward and Clark to fall. Furthermore, when defendant left the place of shooting and, upon reaching the squad room, told witness Quiry that he had got two, defendant must have referred, not to Hoey and Wilson, as he now claims, but to Hoey and Clark, because, upon receiving the shot in his shoulder, Wilson instantly ran into the kitchen, so that defendant at that time could not have known positively that he had shot Wilson at all, much less that he had shot him fatally.

The defendant admits that he began shooting with the intention of killing Hoey, but claims that he did not intend to injure Clark, his sentiments toward the latter being those of an older brother. It must be noted, however, that, if the witnesses Merritt, Furze, and Queenth are to be believed (as the testimony is analyzed above), the defendant aimed his second shot at Clark and Woodward as these two men were running toward the barber shop. Since he aimed at the two and yet, as he himself says, did not want to shoot Woodward, the man whom he did want to shoot must have been Clark. Moreover, Merritt testifies that simultaneously with the firing of the second shot the defendant called out to some one, "Get away from in front of me; let me get that * * *." Since without intending to shoot Woodward he did so, Woodward must have been the man in front of him whom he wanted to get out of the way, leaving the man referred to by the epithet either Clark or Wilson. But as the bullet which passed through Woodward's hips did not strike Wilson, the inference is unavoidable that Woodward did not stand in the way of shooting Wilson but did stand in the way of shooting Clark, the man who fell simultaneously with Woodward. After the third shot was fired Merritt and Furze saw the defendant standing in the barber shop with his gun pointed downward. Since at that time Clark had a hole through his head made, according to Doctor Smith, by the discharge of a gun placed very close to his head, this situation also indicates that Clark was not only the man whom defendant wanted to get but the man whom he knew he did get. Finally, since, right after leaving the bodies of Hoey and Clark apparently lifeless, defendant boasted to Quiry that he had succeeded in getting two, and since he could not have known that he had shot Wilson because the latter fled to the kitchen where he informed Plesser that he was shot, the conclusion seems unavoidable that the two men over whose death defendant was glorying were Hoey and Clark. It thus appears clearly that the man whom defendant refers to as a brother is the man whom he, when engaged in his campaign of murder, was so anxious to "get" that he recklessly slew his friend Woodward.

- He assigns a fictitious provocation for the killing and a false time when he arrived at the determination to kill, thereby attempting to show that he committed said act in the heat of passion and therefore his conscience had no opportunity to overcome his will. We have already discussed this subject fully and come to the conclusion that the defendant gave a false cause as the origin of his murderous act and assigned a false time as to when he came to the definite resolution to kill.

From all the facts and circumstances of this case, we have no hesitancy in arriving at the conclusion that the crime of murder was accompanied with the aggravating circumstance of premeditation and that, therefore, the maximum penalty should have been imposed.

We do not deem it necessary to consider those assignments of error of counsel for the defendant in which he raises the question of the right of the accused to be presented by a grand jury and to a trial by jury. That question has been determined adversely to the defendant by the Supreme Court of the United States in the case of *Dorr vs. United States* (195 U. S., 138). As to those assignments of error in which counsel for the defendant asserts, in effect, that there are no courts in these Islands for the reason that they have not been legally constituted, we believe that we may justly say, if a court may properly discuss at all the question of its own existence, that this question also has been determined adversely to the defendant's contention by the Supreme Court of the United States. That court has taken cognizance of appeals from decisions of the Supreme Court of the Philippine Islands,

in which were passed upon judgments of the Courts of First Instance, and has affirmed, reversed, or modified them as occasion required. This is, in effect, a holding on the part of the Supreme Court of the United States that the Courts of First Instance and the Supreme Court of these Islands have a legal existence and are legally constituted. Otherwise the Supreme Court of the United States would have had no authority or power to take cognizance of appeals from said court or to deal with any of the decisions thereof. If the courts here are not legally constituted and have no real existence, then their orders and decisions have no more force or effect than would the orders and decisions of one man or seven men, entirely irresponsible, gathered together on a street corner. It is no adequate reply to say that the question of the legal existence of the courts in these Islands was not raised in those cases before the Supreme Court of the United States. It does not need to be raised. It is not a question of jurisdiction but of existence. It is not a question of whether the act of this court is legal and within its jurisdiction or powers but whether there is a court. We are of the opinion that the Supreme Court of the United States by taking cognizance of the decisions of the courts of these Islands has necessarily declared their legal existence.

Moreover, that the government here in these Islands, including, of course, the courts as an essential and integral accompaniment of government, has been legally and properly constituted by Congress, we do not doubt. That Congress had power to found and institute the government which is here established is not an open question. (*Santiago vs. Noguerras*, 214 U. S., 260; *Downes vs. Bidwell*, 182 U. S., 244; *Mormon Church vs. U. S.*, 136 U. S., 1, 43; *Sere vs. Pitot*, 6 Cranch, 332, 336, 337; *U. S. vs. Gratiot*, 14 Peters, 526, 537; *Gibson vs. Chouteau*, 13 Wall., 92, 99; *Snow vs. U. S.*, 18 Wall., 317, 320; *Benner vs. Porter*, 9 How., 235, 242; *Murphy vs. Ramsey*, 114 U. S., 15, 44; *National Bank vs. Yankton*, 101 U. S., 129, 133; *The Chinese Exclusion Cases*, 130 U. S., 581, 604; *Lane County vs. Oregon*, 7 Wall., 71-76; *Legal Tender Cases*, 12 Wall., 457, 554; *McCulloch vs. State of Maryland*, 4 Wheat., 315; *Chouteau vs. Eckhart*, 2 How., 344, 373; *Permoli vs. Municipality*, 3 How., 589, 609; *Clinton vs. Englebrecht*, 13 Wall., 434-442; *Thompson vs. Utah*, 170 U. S., 343, 345, 349; *Brown vs. U. S.*, 8 Cranch, 109, 110; *Young vs. U. S.*, 97 U. S., 39, 60.)

Lastly, the orders and directions of the President of the United States acting under his war powers issued during the war with Spain and while the insurrection was in progress as well as after the treaty of Paris and up to the time of the establishment of civil government by Congress, relating to government of the Islands; the orders of the Commanding Generals and Military Governors, acting under the said authority of the President, in which they preserved substantially unchanged the courts as they existed under Spanish sovereignty or created and established new ones whenever and wherever, in their judgment, the administration of justice by that means was feasible; the treaty of Paris, containing the following provisions:[1]

"Judicial proceedings pending at the time of the exchange of ratifications of this treaty in the territories over which Spain relinquishes or cedes her sovereignty shall be determined according to the following rules:

"1. Judgments rendered either in civil suits between private individuals, or in criminal matters, before the date mentioned, and with respect to which there is no recourse or right of review under the Spanish law, shall be deemed to be final, and shall be executed in due form by competent authority in the territory within which such judgments should be carried out.

"2. Civil suits between private individuals which may on the date mentioned be undetermined shall be prosecuted to judgment before the court in which they may then be pending or in the court that may be substituted therefor.

"3. Criminal actions pending on the date mentioned before the supreme court of Spain against citizens of the territory which by this treaty ceases to be Spanish shall continue under its jurisdiction until final judgment; but, such judgment having been rendered, the execution thereof shall be committed to the competent authority of the place in which the case arose,"

which provisions indicate clearly the contractual duty of the United States Government to preserve or provide courts, and which said treaty was subsequently ratified by the Government of the United States; the instructions of the President to the Philippine Commission in relation to the exercise of legislative authority by the Commission, in which said instructions said Commission is given full power and authority for the "organization and establishment of courts," and which said instructions also contain the following:

"The Commission will also have power, during the same period, to appoint to office such officers under the judicial, educational, and civil-service systems, and in the municipal and departmental governments, as shall be provided for," which said instructions also contain the following:

"The main body of the laws which regulate the rights and obligations of the people should be maintained with as little interference as possible. Changes made should be mainly in procedure and in the criminal laws to secure speedy and impartial trials, and at the same time effective administration and respect for individual rights;"

the ratification of said instructions by the Congress by Act of July 1, 1902; the Act of the Philippine Commission (No. 136) organizing the courts of the Islands, as they now are, under said instructions; the assent of Congress to this legislation, evidenced by its not having disapproved the same; the Act of the Philippine Commission (No. 222) organizing the Departments of the Interior, of Commerce and Police, and of Finance and Justice, specifically approved by the Act of Congress of July 1, 1902; the adjudication by said courts of the rights of the Philippine people for a decade by common consent, which adjudications in many instances have been recognized as adjudications by the Supreme Court of the United States; all carry the full and clear conviction that the challenge to the legal existence of the courts of the Philippine Islands is idle.

We do not deem it necessary to discuss the further claim of defendant's counsel that the members of the courts of the Islands ought, under the law, to be citizens of the United States. We are unable to discover any merit in that contention, and, accordingly, find adversely thereto.

The judgment of the court below is hereby reversed, the defendant is found guilty of the crime of murder, qualified by treachery and attended with the aggravating circumstance of premeditation, and he is hereby condemned to death, to indemnify the heirs of William Hoey in the sum of P1,000, to the accessories provided in article 53 of the Penal Code and to pay the costs of this appeal. So ordered.

(See diagram 15 Phil. Rep., p. 302)

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Elliott, JJ., concur.

[1] Page 302, post.

[1] Art. XII.

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