3 Phil. 472

[G.R. No. 1582. March 28, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. DALMACIO LAGNASON, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The defendant was charged under section 1 of Act No. 292 with the crime of treason, was convicted and sentenced to death. The following facts appeared from the evidence. From the time of the occupation of the Province of Occidental Negros by the American troops, there had existed therein a band of men in arms against the Government of the United States, which band was led by the defendant and which in October was campaigning through the northern part of the province. In the southern part was another similar band led by Dionisio Papa. These two parties, though in communication with each other, had formerly operated independently, but in the month of September, 1902, the defendant had placed himself and his forces under the orders of said Dionisio Papa. His band was constantly armed and kept together, and its object was to establish an independent government.

On October 29, 1902, the defendant with this band made an attack upon the pueblo of Murcia in said province, but was driven off by the force of Constabulary there stationed. During that night two inspectors of the Constabulary arrived with additional fortes and early in the morning they left the pueblo in search of the defendant. He was encountered with his party about three kilometers from the pueblo and was attacked by the Constabulary. The fight lasted an hour and a half. The defendant was captured in the battle and about twenty of his men were killed. On the side of the Constabulary were killed two policemen

of the vicinity who were acting as guides. The defendant's band consisted of between seventy and eighty men. They had for arms five or ten rifles, bolos, daggers, and one small cannon. The defendant when captured was armed with a rifle, a revolver, and a bolo. Most of his men wore black shirts, white pantaloons, and black caps. They carried no banners, but did carry two large wooden crosses which were captured, together with the cannon.

Article 3, section 3, of the Constitution of the United States provides as follows :

> "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court."

The act of Congress of April 30, 1790 (1 Stat L., 112), contained the following provision:

> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*,
> That if any person or persons, owing allegiance to the United States of America, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort within the United States or elsewhere, and shall be thereof convicted, on confession in open court, or on the testimony of two witnesses to the same overt act of the treason whereof he or they shall stand indicted, such person or persons shall be adjudged guilty of treason against the United States, and shall suffer death."

The statute law of the United States stood in that form, so far as we are informed, until the act of July 17, 1862 (12 Stat. L., 589), was passed. The first and second sections of that act were as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That every person who shall hereafter commit the crime of treason against the United States, and shall be adjudged guilty thereof, shall suffer death, and all his slaves, if any, shall be declared and made free; or, at the discretion of the court, he shall be imprisoned for not less than five years and fined not less than ten thousand dollars, and all his slaves, if any, shall be declared and made free; said fine shall be levied and collected on any or all of the property, real and personal, excluding slaves, of which the said person so convicted was the owner at the time of committing the said crime, any sale or conveyance to the contrary notwithstanding.

> "Sec. 2. *And be it further enacted,* That if any person shall hereafter incite, set on foot, assist, or engage in any rebellion or insurrection against the authority of the United States, or the laws thereof, or shall give aid or comfort thereto, or shall engage in, or give aid and comfort to, any such existing rebellion or insurrection, and be convicted thereof, such person shall be punished by imprisonment for a period not exceeding ten years, or by a fine not exceeding ten thousand dollars, and by the liberation of all his slaves, if any he have; or by both of said punishments, at the discretion of the court."

In the Revised Statutes of the United States these provisions appear in sections 5331, 5332, and 5334, which are as follows:

> "Sec. 5331. Every person owing allegiance to the United States, who levies war against them, or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason.
>
> "Sec. 5332. Every person guilty of treason shall suffer death; or, at the discretion of the court, shall be imprisoned at hard labor for not less than five years and fined not less than ten thousand dollars, to be levied on and collected out of any or all of his property, real and

personal, of which he was the owner at the time of committing such treason, any sale or conveyance to the contrary notwithstanding; and every person so convicted of treason shall, moreover, be incapable of holding any office under the United States.

"Sec. 5334. Every person who incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States, or the laws thereof, or gives aid or comfort thereto, shall, be punished by imprisonment for not more than ten years, or by a fine of not more than ten thousand dollars, or by both of such punishments; and shall, moreover, be incapable of holding any office under the United States."

Sections 1 and 3 of Act No. 292 of the Philippine Commission are as follows :

"Section 1. Every person, resident in. the Philippine Islands, owing allegiance to the United States, or the Government of the Philippine Islands, who levies war against them or adheres to their enemies, giving them aid and comfort within the Philippine Islands or elsewhere, is guilty of treason, and, upon conviction, shall suffer death or, at the discretion of the court, shall be imprisoned at hard labor for not less than five years and fined not less than ten thousand dollars."

"Sec. 3. Every person who incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States, or of the Government of the Philippine Islands, or the laws thereof, or who gives aid or comfort to anyone so engaging in such rebellion or insurrection, shall, upon conviction, be imprisoned for not more than ten years and be fined not more than ten thousand dollars."

The Spanish Penal Code defines and punishes the crimes of treason, rebellion, and sedition. Article 236 of that code, relating to

sedition, appears as section 5 of Act No. 292, but that act, as to treason and rebellion, is practically a reproduction of the sections quoted from the Revised Statutes.

Prior to the act of July 17, 1862, and in the early history of the country, the question as to what constituted a "levying of war" within the constitutional definition of treason had been before the Federal courts on several different occasions.

In *ex parte* Bollman (4 Cranch., 75) the Supreme Court of the United States quoted the definitions of the phrase "levying war" which had been given by different judges of the United States, and declared through the Chief Justice what the latter afterwards said in Burr's case (25 Fed. Cases, 13), to wit:

> "That part of his deposition which bears upon this charge is the plan disclosed by the prisoner for seizing upon New Orleans and revolutionizing the Western States. That this plan if consummated by overt acts would amount to treason no man will controvert."

Whatever differences there may have been among the early judges as to whether an armed resistance to the enforcement of a public law (see Act No. 292, sec. 5,1) constituted a levying of war or not, and was or was not treason, yet they were all unanimous in holding that acts of violence committed by an armed body of men with the purpose of overthrowing the Government was "levying war against the United States," and was therefore treason, whether it was done by ten men or ten thousand. (See United States *vs*. Hanway, 2 Wall., jr., 139; 26 Fed. Cases, 105.)

No distinction was anywhere made between a foreign enemy and a rebel or insurgent so far as the act of "levying war" is concerned. All of the cases tried before the United States courts have grown out of insurrection. The case of Mitchell grew out of the "whisky rebellion" in western Pennsylvania; the case of Fries, out of the North-ampton Rebellion; the case of Bollman out of Burr's attempts; the case of

Hanway out of resistance to the fugitive slave law; and the case of Greathouse out of the civil war. Such a distinction has, however, been made under the second clause of the Constitutional provision, namely, giving aid or comfort to an enemy. It has been said that the word "enemy" means there a foreign enemy and does not include a rebel.

If it were not for the provisions of the second section of the act of July 17, 1862, now section 5334 of the Revised Statutes, and section 3 of Act No. 292 of the Commission, the case at bar would present no difficulty. The defendant would be clearly guilty of treason and punishable under the first section of Act No. 292. He was engaged in an attempt to overthrow the Government and was captured after an armed contest. It matters not how vain and futile his attempt was and how impossible of accomplishment. The acts performed by him constituted a levying of war.

Revised Statutes, section 5332, declares that treason shall be punished by death, or imprisonment for not less than five years. Section 5334 declares that one engaging in a rebellion or insurrection against the United States shall be punished by imprisonment for not more than ten years. As the act of engaging in a rebellion is levying war, and therefore treason, the same act seems to be punished by both sections and in different ways.

This apparent inconsistency was pointed out in the case of United States vs. Greathouse (4 Sawy., 457 S. C; 26 Fed. Cases, 18) by Mr. Justice Field while sitting in the circuit court The defendants in that case were indicted under the second section of the act of July 17, 1862 (now Revised Statutes, sec. 5334 and Act No. 292, sec. 3), for fitting out in the harbor of San Francisco a privateer to aid the then existing rebellion. Justice Field there said, in charging the jury:

> "But we are unable to conceive of any act designated in the second section which would not constitute treason, except perhaps as suggested by my associate, that of inciting to a rebellion. If we lay aside the discussion in the Senate, and read the several

> sections of the act together, the apparent inconsistency disappears. Looking at the act alone, we conclude that Congress intended (1) to preserve the act of 1790, which prescribes the penalty of death, in force for the prosecution and punishment of offenses committed previous to July 17,1862, unless the parties accused are convicted under the act of the latter date for subsequent offenses; (2) to punish treason thereafter committed with death, or fine "and imprisonment, in the discretion of the court, unless the treason consist in engaging in or assisting a rebellion or insurrection against the authority of the United States, or the laws thereof, in which event the death penalty is to be abandoned and a less penalty inflicted. By this construction the apparent inconsistency in the provisions of the different sections is avoided and-effect given to each clause of the act. The defendants are, therefore, in fact, on trial for treason, and they have had all the protection and privileges allowed to parties accused of treason, without being liable, in case of conviction, to the penalty which all other civilized nations have awarded to this, the highest of crimes known to the law."

Judge Hoffman, who sat with Justice Field, also said:

> "If, then, every species of aid and comfort given to the present rebellion constitutes a levying of war, it follows that in the two sections of the act referred to, Congress has denounced the same crime; and that a party amenable to the second section for having 'engaged in the rebellion and given it aid and comfort,' must also be guilty of treason by levying war against the United States.
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> "As, then, the offenses described are substantially the same, though a different penalty is attached to their commission by the sections referred to, it was held by the court, under the first indictment, which was in terms for treason, that the smaller penalty could alone be inflicted, that the prisoners could not be capitally punished, and could therefore be admitted to bail. On the same grounds it was

> considered that under the present indictment, which pursues the language of the second section, the offense charged was treason; that both the offense as described and the overt acts charged amounted to that crime, and that the accused were entitled to all the privileges secured by the Constitution or allowed by law to parties on trial for treason; and, this notwithstanding, that in consequence of the legislation referred to, the penalty for treason could not be inflicted. In determining, therefore, whether the defendants can be convicted under this indictment, it will be proper to consider whether their acts constitute in law 'a levying of war,' for 'an engaging in a rebellion and giving it aid and comfort' amounts to a levying of war; while at the same time we may also inquire whether their acts are such as would, if done with regard to a public enemy, constitute an adherence to him, ' giving him aid and comfort.' "

As said by Justice Grier, in Hanway's case, " treason against the United States is defined by the Constitution itself. Congress has no power to enlarge, restrain, construe, or define the offense. Its construction is entrusted to the court alone."

Notwithstanding the fact that Congress does have the power to fix the penalty for this crime and the construction placed upon the act of July 17, 1862, in the case of Greathouse was that under both sections the offense was treason, but when the treason consisted of engaging in an insurrection or rebellion, it could be punished only by imprisonment for not more than ten years, in other cases it could be punished under section 1 by death, or imprisonment for not less than five years.

That the Commission when it used the phrase " levies war," in the first section of Act No. 292, intended to give to it the meaning which it then had in the United States, can not be doubted.

In Burr's case, Chief Justice Marshall used the following language in speaking of the phrase " levying war:".

> "But the term is not for the first time applied to

> treason by the Constitution of the United States. It is a technical term. It is used in a very old statute of that country whose language is our language, and whose laws form the substratum of our laws. It is scarcely conceivable that the term was not employed by the framers of our Constitution in the sense which had been affixed to it by those from whom we borrowed it."

In United States *vs.* Greathouse, Justice Field, speaking of the same phrase, said:

> "At the time the Constitution was framed, the language incorporated into it from the English statute had received judicial construction and acquired a definite meaning, and that meaning has been generally adopted by the courts of the United States."

No one can believe that the Commission intended to abandon the well-recognized meaning which the phrase then had and give to it a meaning entirely different. If that had been their intension they would certainly have used other language, so that their intent not to adopt the recognized meaning would have been manifest.

That the acts committed by the defendant constituted a "levying of war" as that phrase was understood at the time the act of the Commission was passed, can not be doubted. Neither can it be doubted that these same acts constituted a "rebellion or insurrection" within the meaning of the third section of Act No. 292. The two sections can only be reconciled in the manner employed in the case against Greathouse, and that decision should be followed.

However, in respect to the penalty, it makes no difference whether the offense called rebellion in section 3 of Act No. 292 is considered an offense different from that of treason denned in section 1, or whether the decision in the case of Greathouse be followed and the acts punished by section 3 considered as of the same character as those punished by section 1. In either case the punishment cannot exceed ten years' imprisonment and a fine.

There would be a difference in respect to evidence to prove the two crimes. If rebellion and insurrection are treason, a defendant can not be convicted under section 3 except on the testimony of two witnesses to the same overt act or by confession in open court. (Act of Congress, March 8, 1902, sec. 9.) If they are not treason he could be convicted upon the testimony required in ordinary case's. In United States vs. Greathouse the court held that the constitutional provision as to two witnesses applied to prosecutions under the second section of the act of 1862 (our sec. 3). It is not necessary, however, to decide that question in this case, as the overt act of the defendant was proved by two witnesses; neither is it necessary to decide whether the omission in section 3 of the phrase " owing allegiance to the United States," which is found in section 1 taken in connection with section 17 of the act, makes a difference between the two sections in respect to the persons who may be covered by them. In the case at bar the defendant was a native of Cebu and is therefore covered both by section 1 and section 3.

This court has decided two cases in which treason was charged. In the case of United States *vs.* Antonio de los Reyes, February 23, 1904,[1] the defendant was acquitted because no overt act of treason was proved. In the case of United States *vs.* Magtibay (1 Off. Gaz., 932[1]) the defendant was acquitted because there were not two witnesses to the same overt act.

The judgment is affirmed with a change of the penalty, however, from death to ten years and a fine of $10,000, money of the United States, with the costs of this instance against the defendant.

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[1] Page 349, *supra.*

[1] 2 Phil.. Rep., 703.

ARELLANO, *C. J.,* with whom concurs **MAPA,** *J.*:

I concur in the result of this opinion in accordance with section 3 of Act No. 292, covering the crime of rebellion.

McDonough, *J.:*

I am of opinion that the crime committed is that of insurrection and not that of treason, and that the conviction should be had under section 3 of Act No. 292 for insurrection.

The case of the United States *vs.* Greathouse et al. (26 Fed. Cases, 18) does not seem to be in point. The defendants there were charged with taking part in a rebellion against the Government of the United States. There was no doubt at all that that rebellion did not fall short of actual war and of a state of war, and so Mr. Justice Field said: "It is not necessary that I should go into any close definition of the words ' levying war,' for it is not sought to apply them to a doubtful case * * *. War of gigantic proportions is now waged against the United States * * * and all who aid in its prosecution are guilty of treason."

In the case before us, however, it does not seem necessary to closely define the words " levying war," for they have been applied in a case that is more than doubtful.

In the Greathouse case the learned judge met with a difficulty when he undertook to so construe the section of the act of 1862, relating to the punishment for treason, and the section following, defining the crime of rebellion or insurrection and prescribing the penalty for this latter offense different from that prescribed for treason; and to justify his conclusions he held that all that Congress intended by the act of 1862 was to preserve the punishment for treason committed prior to 1862 as it was prescribed in the act of 1790—" unless," as he stated, " the parties are convicted under the act of 1862 for subsequent offenses "— and to punish treason thereafter committed with death.

It must be confessed that the language used is not clear, and the conclusion reached as to the construction of these two sections seems to have been strained to fit the case then before the court.

Long after the civil war Congress caused the United States Statutes

to be revised, and the sections of the act of 1862 were changed by omitting that part thereof relating to the liberation of the slaves of those found guilty of treason, rebellion, or insurrection. That revision is found in sections 5331 and 5332, defining and providing for the punishment of treason, and in section 5334, which defines and provides for the punishment of rebellion or insurrection. No reference whatever is made in the revision to the act of 1790, nor can these sections be reasonably construed to mean that treason committed before this revision, or before 1862, is punishable differently from treason committed after the revision of the statutes. In case of doubt regarding the proper construction of statutes the courts frequently refer to the debates of the law-making body when the measure was under discussion. Judge Field in his opinion made reference to the discussion in the United States Senate when the act of 1862 was being considered.

> "It appears," said the learned judge, "from the debates in the Senate of the United States when the second section was under consideration—that relating to rebellion or insurrection—that it was the opinion of several Senators that the commission of the acts which it designates might, under some circumstances, constitute an offense less than treason." The court, however, gave no consideration and no weight to this discussion, apparently for the reason that there was no doubt that the rebellion, in which the defendant was charged with participating, was " a gigantic war."

Since there seems to be now no reason, and since there was no reason at the time Congress revised the statutes in 1873 and incorporated therein the provisions of the act of 1862 as sections 5331, 5332, 5333, and 5334, for preserving the penalty for treason committed prior to 1862 and fixing another penalty for a like crime committed thereafter, it may be reasonably held that there is no such distinction now. To hold that the acts described in section 1 of Act No. 292 of these Islands constitute treason, and the acts described in section 3 of that act also constitute treason, is to hold that the law provides contradictory punishments for the same offense; thus the punishment for

treason under the first section may be death or imprisonment for not less than five years and a fine of not less than f 10,000, whereas the punishment under the third section can not be death, and may be imprisonment for any period less than ten years and for a fine in any sum less than $10,000.

It can not be that the law-making body intended such a contradiction and such an interpretation of this law. It is much more reasonable to hold what the plain language of the sections indicate as the debate in the Senate shows that it was the intention of the law-making body to create a crime of a less degree and of less magnitude than that of levying war against the Government, which new crime was designated as rebellion or insurrection.

It is easy to conceive that an insurrection may exist which does not amount to war. The three tailors of Tooly Street who resolved that they were the people of England might be emulated here by three natives who might assemble in public, proclaim the independence of the Islands, carry a cross or a banner, fire their revolvers, or throw their bolos at the Constabulary, and then take to their heels; but this would scarcely be held as a levying of war against the United States or against the Philippine Islands. It may, however, be held, that a movement of that kind is an insurrectionary movement. In other words, there may be a state of insurrection without being a state of war—an insurrection of a less degree than war; although the insurrection may eventually attain such proportions and such magnitude as to ripen into war.

In the Prize cases (67 U.S., Sup. Ct. Rep., 635)
the learned counsel for the prosecution and the Supreme Court gave clear definitions as to what constituted Avar and a state of war.

Mr. Wm. M. Evarts, the distinguished counsel for the Government in those cases, stated:

> "War is emphatically a question of actualities.
> Whenever the situation of opposing hostilities has assumed the proportions and pursues the methods of war peace is driven out, the

> ordinary authority and administration of the law are superseded, and war in fact and by necessity *is the status of the nation,* until peace is restored and the laws
> resume their dominion."

In the same cases Mr. Justice Grier stated:

> "A civil war is never solemnly declared; it becomes such by its accidents—the number, power, and organization of the persons who originate and carry it on. When the party in rebellion occupy and hold in a hostile manner a certain portion of the territory, have declared independence, have cast off their allegiance, have organized armies, have commenced hostilities against their former sovereign, the world acknowledges them as belligerents and the contest is war."

The proof in the case at bar does not show such conditions or such a state of affairs as constitute war within these definitions; nor do the acts of the defendants show that they were levying war. The executive branch of the Government did not call upon the regular army for help to put down the rising; martial law was not proclaimed; the privileges of the writ of *habeas corpus* were not
suspended ; the civil power remained supreme; the civil courts were open; and the resistance to law was not such as to render the civil authorities powerless to cope with it; in fact, the insurgents were easily put to flight by the Constabulary.

In 1902 the President of the United States proclaimed a state of peace in these Islands, except in the Moro country. Nothing has since happened of sufficient importance or magnitude to cause this court to acknowledge or to hold in *this case* that a state of war now exists. A few roving bands of brigands, organized primarily for plunder, but pretending to be patriots and shouting for Philippine independence in order the more readily to obtain help, immunity, and protection from sympathizers are not to be considered as organized

armies occupying territory and levying Avar, especially when the civil authorities are able, without great difficulty, to pursue, capture, and punish the robbers or insurgents.

If it be desired to have no division line between treason and insurrection, the Commission may readily repeal section 3 of Act No. 292. While that section remains as a part of the law, it should be given consideration in a proper case.

I am of opinion, therefore, that section 3 of Act No. 292 was intended to cover the crime of insurrection as distinguished from treason, and that the defendant should be punished pursuant to the provisions of section 3 of Act No. 292 for the crime of insurrection.

DISSENTING

JOHNSON, *J.*

The defendant was charged with the crime of treasons under section 1 of Act No. 292 of the United States Philippine Commission. He was tried in the city of Bacolod on the 14th of January, 1903, by the judge of the Court of First Instance of the Province of Occidental Negros, with several others, and was found guilty and sentenced to the penalty of death. He appealed to this court. The following is the statement of facts disclosed by the evidence in this cause:

In the month of October of the year 1902, the municipal president of the town of Murcia, of the Province of Occidental Negros, in the Philippine Islands, received a letter signed by Dalmacio Lagnason and others who entitled themselves ” generals ” of a celebrated band. This band was called ” Babaylanes.’7 This band had existed from time immemorial, and had lived in the mountains in the southern part of the said province. The band was armed and during the days of the Spanish Government had frequently attacked the then existing authorities. It had frequently attacked the provincial government, and on the 29th and 30th of October, 1902, made an attack against the United States

Government, as constituted in the said pueblo of Murcia.

This letter was forwarded by the municipal president of Murcia to the senior inspector of the Philippines Constabulary, Mr. John li. White, and at the same time information concerning the same was given to a corporal, Bernardo Abasola, of said Constabulary, commanding the detachment of said Constabulary in the said pueblo, who, on the said 29th day of October, having information that there was a band of Babaylanes in the suburbs of said town, numbering from eighty to one hundred and twenty men, went out to find them and finally located them in a place called "Iglauaan," near the town of Murcia. Upon being satisfied of the existence of said band, he returned to the town of Murcia and informed the senior inspector, Mr. White. The band, taking note of the fact that the members of the Constabulary had withdrawn, advanced up to the suburbs of the town of Murcia, deciding to enter the same, and for this reason the forces of the Constabulary detachment were obliged to attack them, and did then and there have a skirmish with the said band, until it retired to the place called Iglauaan, where they were first discovered.

The band was armed with Springfield rifles, a small cannon, bolos, and lances, and was commanded by the defendant, Dalmacio Lagnason, the negro. At 7 o'clock in the evening of the said 29th day of October, the inspector, Mr. White, arrived at the town of Murcia with more soldiers, and at 2 o'clock of the following morning Inspector Smith arrived with more forces. These being combined, with Mr. White in command, at daybreak on the 30th of October, they went out in pursuit of said band, following the tracks left by them the previous afternoon.

At 6.30 a. m. of the 30th of October, and in the same place where the party was located the previous day, it was discovered by the said Constabulary forces. The band retreated until it crossed the Caliban River, when it opened fire upon the Constabulary and a fight ensued at close range, which enabled all the members of the band to' be seen. The fight lasted approximately an hour and a half. Two guides of the Constabulary called Tranquilino Toscano and Lazaro Guibon died in consequence of wounds received from shots from Springfield rifles.

Among the members of the band Esteban de los Reyes, Rufino Rayo, and twenty other members were killed. The band then took flight and was pursued by the Constabulary forces, which succeeded in capturing the general, Dalmacio Lagnason, who, during the action was discharging a Springfield rifle at the inspector, Mr. White, and later, during the same fight, attempted to discharge a revolver at Mr. White, which arms were found upon his person at the time of his capture. There were also found where the fight took place a small cannon, various *talibones,* lances, and two large wooden crosses and various papers. A few days after the fight Simon Perje and Isidro Oyco were captured in a small shack in the mountains near the place where the fight took place. One of these was wounded in the thigh and the other in the knee. They confessed that they were members of the party of Babaylanes under the order of Gen. Dalmacio Lagnason; that they took a direct part in the action with the Constabulary forces on the 30th of October, in which action they were wounded. Bernardo Talondata, Vidal Artegosa, Valeriano Talaman, and Luis and Vicente Diinit testified before the president that a few days previous to the fight between the said band of Babaylanes and the Constabulary they were in a certain house when several armed men presented themselves and compelled each of them to join the said band of Babaylanes under the command of Gen. Dalmacio Lagnason and others; that they had complied with said request against their will under fear of being maltreated or murdered. They were subsequently conducted to various points, and finally to the country surrounding the mountains of Murcia, where, on the 30th day of October, an action took place between the said band and the Government forces, from which band, during the said fight, they escaped.

The testimony of the senior inspector of the Constabulary, Mr. White, given in open court in the trial of the cause against the defendant, is as follows:

> "Q. Do you know any band in arms against the Government of the United States in this province?
>
> "A.

Yes, sir; I know the band of Dionisio Papa, camped in the southern part of this province, and that of Dalmacio Lagnason, the negro, who is camped in the northern part.

“Q. Do you know if any one of these bands, within the last few months, has attempted to attack any town of this province?

“A.
About the end of the month of October last the band of Dalmacio Lagnason, composed of some eighty men, armed, attempted to attack the town of Murcia and the Constabulary detachment of the same place.

“Q. Have the Constabulary forces had a fight with this band; and if so, did they offer any resistance?

“A. Yes.

” The COURT. Can you state the place of the fight?

“A.
Two fights were had near the barrio of Iglauaan, on the Caliban River, some three kilometers from Murcia, the first on the afternoon of the 29th of October, and the second at the same place at 7 o’clock on the morning of the 30th of said month.

“Q. What was the result of these engagements?

“A.
The result was that in the first fight one of the band that attacked the town died, and in the second twenty-one Babaylanes died, and Dalmacio Lagnason was captured, with three Springfield rifles, a revolver, several talibones, lances, and other effects, among which a small cannon also was found where the fight took place.

“Q. When Dalmacio was captured did he have any arms?

“A. Dalmacio had a Springfield rifle, a revolver, and a talibon.

“Q. Can you state the names of the men killed among the loyal troops during the

fight to which you have referred?

“A.
They were Tranquilino Toscano and Lazaro Quiachon. Were Dalmacio and his people uniformed, or did they have any special distinction?

“A. The greater part of Dalmacio’s men had black shirts and white pants, and some had black-peak caps.

“Q.
Did Dalmacio and his men resist the troops of the Government for some time, or, on the contrary, did they scatter when the firing commenced ?

“A. The fight lasted an hour and a half.

“Q. Among the bodies found in the enemy’s camp, were any recognized?

“A.
The bodies of Esteban de los Keyes and Rufino Kayo were seen at the same place where the fight took place, among the dead of the band.

“Q. Did the guides of the loyal troops die by reason of gunshot wounds, or from bolos?

“A. They died as the result of wounds caused by shots from Springfield rifles.

“Q. How did you know of th6 existence of that armed band which attempted to attack the town of Murcia?

“A.
One of the ways by which I knew was by a letter which Dalmacio and other generals of the band addressed to the president of Murcia, which was forwarded to me.

” The COURT. Did you have any knowledge
through other channels besides the letter presented that the armed band under the command of Dalmacio Lagnason received orders from Dionisio Papa, or operated independently?

“A. I

know that since the occupation of this province by the American troops, Dalmacio Lagnason operated independently in the north, although in connection with Papa, according to information I received from the military guarding this town. These facts are proven by various documents captured on various expeditions made to the mountains against said bands.

" The COURT. Did Dalmacio Lagnason's band carry any flags during said fight?

"A.
They did not carry a flag, but two large, wooden crosses, which were captured in the second fight and which were also distinguished in the first fight by the loyal troops.

" The COURT. Could the Constabulary forces distinguish from their position during the fight those who formed the enemy's band?

"A.
At the distance at which they were they could only distinguish the group, although, as I was advancing with my forces, I could distinguish and recognize Dalmacio, who discharged his gun at me, and tried also his revolver, although the latter did not work. Dalmacio later drew his *talibon,* which he flourished against me. The other members of the band, who numbered seventy or eighty men, acted in a hostile manner, sometimes advancing and other times retreating, but always maintaining resistance until the moment of their flight.

" The COURT. When you saw Dalmacio Lagnason, who shot at you, did you already know that it was the same Dalmacio ?

"A.
As I had information that Dalmacio was black, I suspected immediately that the one who pointed his gun at me was the same Dalmacio, because he was black, which suspicion was confirmed, inasmuch as the party whom I supposed was Dalmacio, being near me, surrendered himself, falling on his knees and confessing to be Dalmacio. This fact was also confirmed by the other prisoners captured on the following day."

The testimony of Walter Smith, given at the trial, is as follows:

> "Q. As an inspector of Constabulary were you present at the fight which took place at the pueblo of Murcia on the 30th of October last, and what was the nature of the enemy who opposed you?
>
> "A. I was present at the said fight with a band of those called Babaylanes, under the command of Dalmacio.
>
> "Q. Do you know if Dalmacio and his band were constantly organized and where they located themselves?
>
> "A. According to official data, it is a band located between the towns of Calatrava and Cadiz Nuevo, which was constantly armed, and assembled with the object of establishing an independent government, contrary to that established in this province, and to occasionally devote itself to robbery.
>
> Q. Are you acquainted with any of those who formed part of this band of the enemy which fought the Constabulary on the said date?
>
> "A. I am acquainted with Dalmacio Lagnason, who is now present.
>
> "Q. Of how many was the band composed, and with what arms were those who formed the same provided?
>
> "A. Approximately it was composed of some seventy or eighty men, armed with five or ten guns, bolos, lances, Springfield rifles with ammunition, a revolver, and a small cannon.
>
> "Q. Were those who formed Dalmacio's band armed?
>
> "A. I can not state that all were, but I am sure the greater part were.
>
> "Q. Did Dalmacio's band offer resistance to the forces of the Government?

"A. Yes; they offered resistance for an hour and a quarter or an hour and a half.

"Q. What was the result of the fight on both sides?

"A.
On the enemy's side I saw five dead, but aftenvards official information stated twenty or twenty-five. On our side there were two killed who acted as guides, and whose names I do not now remember.

"Q. What was the reason of this fight?

"A.
Having received information that said band intended to enter the town of Murcia, and continue to this capital, in view of which, to preserve order, it was decided to go out and meet them, and they were found at a place called Iglauaan.

"Q. During the fight, or afterwards, were some of the enemy's band made prisoners?

"A.
Immediately after the fight Dalmacio was captured, and I returned to the town of Murcia, having ordered that some soldiers go out to recover the bodies, and on their return they brought some prisoners who were captured in the cogon grass near the place where the fight took place and who were presented to the officer in charge, Mr. White.

Q.
In connection with the fight and the advance of Dalmacio's men upon the town of Murcia, do you know if any injuries were caused to private individuals?

"A. I am not aware of any injury to private individuals. I can say that according to information, several private persons were invited to join the band of Dalmacio."

The testimony of Rosalio Teflora is as follows:

"Q. Were you present in any fight during the last days of the, month of October last?

"A.
Yes, sir; on the 30th of October, at the place called Iglauaan, of the town of Murcia, against the band of Babaylanes commanded by Dalmacio, who desired to enter the said town. I was under the orders of Senior Inspector White.

"Q. What was the result of said fight?

"A.
We lost two guides, whom I saw fall at my side, wounded by a shot; and a little while after, one of the enemy's shots smashed the butt of my gun. I do not know the enemy's losses, because I returned to Murcia in compliance with the orders of my chief, to look after wagons. Three guns, a revolver, and many bolos and lances were captured from the Babaylanes, and the chief of the band, Dalmacio, was captured personally by Inspector White.

"Q. Besides Dalmacio, were others of said band captured?

"A. Two others were captured in the brush near the place where the fight took place.

"Q. Do you know the object of Dalmacio's plans?

"A. All that I know is said band intended to attack and take the town of Murcia."

The foregoing facts, in my judgment, are sufficient to indicate that the said defendant, with his associates, intended to overthrow the Government of the United States, as constituted in the said town of Murcia, in the Province of Occidental Negros, in the Philippine Islands. The defendant was a resident in the Philippine Islands, and owed allegiance to the United States Government in the Philippine Islands. His acts, as disclosed by the proof in this case, show clearly that it was not his intention to oppose the constituted authority in these Islands in the administration of the Government, but to

absolutely overthrow the Government.

Any organized attempt, by force of arms, on the part of persons joined together in a band, who owe allegiance to the Government, to overthrow and destroy the constituted Government is the levying of war against that Government. The evidence in this case of the United States vs. Lagnason clearly shows that the defendant and his band intended to destroy the constituted Government of the United States in the pueblo of Mureia in these Islands, and is therefore guilty of the crime of treason. No formal declaration of war is necessary in order that parties shall be guilty of levying war against the Government. War may exist without a proclamation to that effect. Actual hostilities may determine the date of the commencement of war, though no proclamation may have been issued, no declaration made, and no action of the executive or legislative branches of the Government had. This is recognized by the proclamation of President William Kinley, issued on the 26th day of April, 1898, which is as follows:

> "Whereas by an Act of Congress approved April 25, 1898, it is declared that war exists and that war has existed since the 21st of April, 1898, including said day, between the United States of America and the Kingdom of Spain; and whereas it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practices, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the Declaration of Paris." (Buenaventura et al., 87 Fed. Rep., 927.)

Neither is it necessary for the Government to wait until those who are attempting to overthrow the Government should make a showing of apparent power necessary to destroy the Government or any part of the same before it may declare that those who are guilty of such an attempt are guilty of levying war, and therefore guilty of treason. Neither is it necessary for the authorities of the Government to call upon the military arm of the Government before such a condition may be

recognized on the part of the Government.

I can not give my consent to the doctrine enunciated in the opinion of Mr. Justice Willard, filed in this case. I can not subscribe to the doctrine that the crimes described and defined in sections 1 and 3 of Act No. 292 of the United States Philippine Commission are the same, and that the only punishment which can be imposed under either is that provided for in section 3. , Mr. Justice Willard evidently reaches this conclusion upon the theory that treason and rebellion or insurrection are the same crimes, and that you can not have two punishments for the same offense, and that if the statute does provide for two punishments for the same offense, then the lesser penalty only, under the statute, can be inflicted. This latter doctrine may or may not be true, but in my judgment the premises assumed here by which this conclusion is reached is not justifiable. The legislative body in these Islands clearly created, by Act No. 292, two distinct crimes or two distinct degrees of the same crime, with separate and distinct punishments.

Neither can I subscribe to the doctrine that this court should make no distinction between the crime of treason, defined in section 1, and that of rebellion or insurrection, described in section 3 of said Act No. 292. The Commission intended to create separate and distinct crimes by said sections.

No one will contest the statement that rebellion or insurrection is of the nature of the crime of treason. Neither will the statement be contested that manslaughter is of the nature of the crime of murder, but yet no lawyer will contend that the punishment should be the same nor that the punishment provided for manslaughter is the otfly punishment which can be inflicted for murder, and that those who commit manslaughter should be stigmatized with the allegation that they have committed murder. At times the courts have great difficulty in distinguishing murder from manslaughter, but when the distinction is once made, by evidence, then the courts have no trouble in administering the penalties created by the law for the respective crimes of murder and manslaughter. So I am also persuaded that it is a most difficult task, at times, and in particular cases, to make a clear

distinction between treason and insurrection. The crimes are of the same general class, and only differ in their magnitude and gravity. What may be in its incipiency a mere insurrection, may come to be, in the final proportions which it assumes and the extent of its purposes and possible results, high treason. Treason is the highest crime which a man may commit against his government. This has always been so regarded. There are many instances of record where men charged with high treason were tried and convicted, after their death, even, and whose bodies were quartered by means of horses in the public square. A man who has been found guilty of treason is never able to outlive the stigma that he has thus brought upon himself.

Neither can I secure the consent of my mind to agree with the finding of fact contained in the opinion of Mr. Justice McDonough, that the accused in this case, under the facts proven, is guilty of the crime of rebellion or insurrection and not that of treason.

Treason may be defined as an organized effort, on the part of those who owe allegiance to a government, to overthrow their government, and either to establish another in its place, or to establish a state of lawlessness and rapine, while insurrection may be defined as a resistance, by unlawful means, to the operation of some particular law, or to the constituted authorities. This resistance may grow out of a misunderstanding of the purposes of the Government op the part of individuals, or in the purposes, or the methods employed in the enforcement of a particular law. It may be that those who are opposed to the purpose and operation of a particular law and the wisdom of its enactment are as loyal, generally, to the existing government as any of the citizens of the commonwealth, and may be perfectly willing to join with the loyal troops against the enemies of the government and those who desired to totally destroy it. The Congress of the United States appreciated these facts when it amended the law of 1790 by the act of 1862, and later by the act of 1875. Congress appreciated the fact that many loyal citizens might, from their own standpoint, oppose, as has been done by unlawful means, the operation of a single law, and that the stigma cast upon them by charging them with treason was entirely too severe. Congress, therefore, provided for a lesser crime in the act

of 1802, and called it rebellion or insurrection. Many obnoxious laws have been repealed and better ones enacted in their stead, and the condition of the whole people improved thereby by a determined opposition to them. As a result of the interpretation by the courts of the law of 1790, as was given in the case of Mitchell in the whisky rebellion, as well as that in the case of Frills, Shay & Brown, Congress saw and appreciated that the odium cast upon such persons and the punishment provided for in said act of 1790 was entirely too severe, and therefore amended such act as indicated above.

The Commission, in enacting the present law defining treason as rebellion or insurrection, have not lost sight of these1 considerations. The fact that the Commission intended to create two crimes instead of one by sections 1 and 3 of Act No. 292 is further verified by the provisions of section 17 of said' act, which provisions are as follows:

> "A foreigner, residing in the Philippine Islands, who shall commit any of the crimes specified in the preceding sections of this act, except those specified in sections 1 and 2, shall be punished in the same way and with the same penalty as that prescribed for the particular crime therein."

This court has on more than one occasion found persons guilty of the crime of rebellion or insurrection by that name, and the decisions in said cases were signed by all the judges. I see no occasion now for concluding that those crimes should have been classified as treason.

We have also tried men and sentenced them to life imprisonment and death for robbery under Act No. 518 of the Civil Commission. Is it possible that any person, in view of the provisions of section 1 of Act No. 292, can conclude, that the punishment of imprisonment for ten years only can be inflicted upon those who take up arms against the Government and by force and violence attempt utterly to destroy it? We are not of the opinion that the Legislature of these Islands intended to provide by law that those who are guilty of robbery or brigandage

could not be punished with imprisonment for less than twenty years, while those who are found guilty of treason could not be punished with imprisonment for more than ten years. Such a conclusion is unjustifiable.

The decision of the court below was justified by both the evidence adduced in the trial and by the law, and therefore should be affirmed with costs in both instances.

DISSENTING

COOPER, *J.*

The defendant was charged, under section 1 of Act No. 292, with the crime of treason and was convicted and sentenced to the penalty of death.

The section under which the conviction was made reads as follows:

> ” Every person, resident in the Philippine Islands, owing allegiance to the United States or the Government of the Philippine Islands, who levies war against them, or adheres to their enemies, giving them aid and comfort within the Philippine Islands or elsewhere, is guilty of treason, and, upon conviction, shall suffer death or, at the discretion of the court, shall be imprisoned at hard labor for not less than five years and fined not less than ten thousand dollars.”

In the decision reached in the case by a majority of the court, distinct views were entertained, the view held in common being that the defendant is guilty and should be punished with imprisonment for the term of ten years and a fine of ten thousand dollars.

It is said in the majority opinion, delivered by Justice Willard, that the offense as denned in section 1 of Act No. 292 denominated treason, and the offense as defined in section 3 of said act

denominated as insurrection or rebellion, are of the same character and that each offense is treason; but that in fixing the penalty, though the indictment is under section 1 of said act, and the offense of treason as defined therein is punishable by death at the discretion of the court, yet the penalty prescribed under the third section for the offense of rebellion and insurrection must be applied, which is imprisonment for not more than ten years and a fine of not more than $10,000.

It is said in the concurring opinion by Justice McDonough that there are separate and distinct offenses defined and punishable in section 1 and section 3 of Act No. 292, the offense defined in section 1 being that of treason and that defined in section 3 being that of rebellion or insurrection ; that the acts committed by the defendant constitute the offense of rebellion or insurrection and not that of treason; and that the penalty to be applied must be that which is prescribed in section 3 for rebellion or insurrection.

The conclusion reached in the majority opinion seems to result from an adherence to the case of the United States *vs.*
Greathouse (4 Sawyer, 457; 26 Fed. Cases, 18), decided by Mr. Justice Field in a trial in the circuit court in which he presided.

In that case the defendant was on trial charged with the offense of rebellion or insurrection under section 2 of the act of Congress of July 17, 1862, and not for treason under section 1 of said act.

Prior to the act of Congress of July 17, 1862, several cases had arisen involving a construction of the provision contained in section 3, article 3, Constitution of the United States, and the act of 1790 made under this provision of the Constitution.

There had been much discussion in the early cases as to what would constitute a levying of war within the meaning of the term as used in the constitutional provisions. This discussion involved both the question as to the acts which amount to a levying of war and as to the motive or purpose of those engaged in the same.

At the time of the decision in the Greathouse case these questions had been well settled and the result of the decisions was stated by Justice Field in the following language :

> ” To constitute a levying of war there must be an assemblage of persons in force, to overthrow the Government, or to coerce its conduct. The words embrace not only ‘those acts by which war is brought into existence, but also those acts by which war is prosecuted * * *. The offense is complete, whether the force be directed to the entire overthrow of the Government throughout the country, or to defeat the execution and compel the repeal of one of its public laws.”

Under the provision of the Constitution defining treason, the offense was complete whether the force was directed to the entire overthrow of the Government or whether it was a rebellion or insurrection against the authority of the United States or the laws thereof; but a distinction was thought to exist, at the time of the enactment of the law of July 17, 1862, between the offenses defined in the same. As stated by Justice Field, it was the opinion of several Senators that the commission of the acts which Congress designated in the law might, under some circumstances, constitute an offense less than treason.

But the judges were of the opinion in the decision of the Greathouse case that Congress had not created separate and distinct offenses by the enactment of the first and second sections of the act of July 17, 1862; that by the first section of the act (sees. 5331 and 5332, U. S. Rev. Stat.), in which treason is defined and made punishable by death, and by the second section of said act (sec. 5334,U. S. Rev. Stat.) in which the offense of rebellion or insurrection is defined and made punishable by imprisonment for not more than ten years, Congress has not done more than created the offense of treason.

It must be borne in mind in applying the Greathouse case here, as said by Justice Field in that case, that treason against the United

States is defined by the Constitution itself and Congress has no power to enlarge, restrain, construe, or define the offense, its power over the subject being limited to prescribing the punishment for the offense.

The Philippine Commission was not restricted in this respect and had the power to divide the offense of treason, such as is defined in the Constitution of the United States and as it had been construed by the United States courts, into as many offenses as it saw fit and to affix such punishment as was deemed proper to each class of cases.

Such considerations as evidently influenced the court in the Greathouse case with reference to the power of Congress to enlarge, restrain, construe, or define the offense of treason should have no weight in the determination of the question here.

It is hard to conceive that in enacting Act No. 292, the Commission had in view the decision in the Greathouse case, for, as stated, the Philippine Commission was unrestricted in its action to define treason.

It is also difficult to understand that the Commission intended to punish the offense of treason by imprisonment for not more than ten years and a fine of not more than ten thousand dollars when the punishment for treason has in the first section, in express language, been fixed at death, or imprisonment for not less than five years and a fine of not less than $10,000.

Such a confusion of ideas and terms can not be attributed to the Commission.

If we leave out of consideration the Greathouse case, the question seems hardly susceptible of argument or discussion.

Nor can I agree in the views expressed in the concurring majority opinion.

The difference between the ” levying of war,” which constitutes the crime of treason under section 1, and that of insurrection and rebellion as provided for in section 3, does not depend upon the magnitude of the movement, but rather upon the intention and purposes of the persons engaged in it.

If the intention is to utterly overthrow the Government and establish another independent government in its place, and the person engaged in the act owes allegiance to the United States or the Government of the Philippine Islands, the offense is treason and is punishable under section 1; while if the intention and purpose was simply to obstruct and resist ” the authority of the United States or the Government of the Philippine Islands, or the laws thereof,” the offense is rebellion or insurrection.

To resist the authority of the Government of the United States or the Philippine Islands, or the laws thereof, by rebellion or insurrection, was regarded by the Commission as much less culpable and of a less dangerous character to the Government than where the intention was to entirely overthrow the Government and substitute an independent government in its stead. This idea is fairly illustrated by a case recently decided bv this court, in which the Government through its officers was resisted in taking the census of the people in a certain pueblo, on account of the belief of the people there that the biking of the census was intended to furnish means to enable the Government to exercise its taxing power on the property in that particular section of the country. Another illustration was the opposition made to the sanitary laws during the late cholera epidemic among certain ignorant people, who believed that the sanitary inspectors were engaged in poisoning the wells in the country, and opposed them in the performance of their duties.

While persons engaged in such resistance to the laws and authority of the Government may be guilty of rebellion or insurrection, they are not guilty of treason as defined in the first section of Act No. 292.

What constitutes a ” levying of war ” has been given a definite meaning by the decision of the Supreme Court of tha United States in the case Ex Parte Bollman (4 Cr., 75), and in the elaborate opinion delivered by Chief Justice Marshall on a motion to introduce certain evidence on the trial of Aaron Burr for treason (found in Note B, appendix, 4 Cr.). These decisions have set at rest the question; they have been referred to in the majority opinion and heed not be further

considered.

To constitute a levying of war it is not necessary that a state of war-should exist in the sense that armies must be organized and placed in the field; or that the executive branch of the Government should have called upon the Regular Army for support; or that martial law should have been proclaimed; or that the courts of the country should be closed and the privileges of the writ of *habeas corpus* suspended; or that the civil power should have been rendered powerless to cope with the uprising; or that hostilities should assume such proportions that the world acknowledges those engaged in it as belligerents and the contest as that of war, for if the movement has assumed such proportions as entitle those engaged in it to the rights of belligerency, in modern times those engaged in it are not generally punished for treason; to punish them all would be equivalent to extermination.

I am not inclined to treat with contempt what are termed roving bands of brigands. In a number of cases this court has had before it proof of the nature and character of the Katipunan organization and its allied branches, under its various names in the Philippine Islands. The subject has also been treated of in the reports of the Chief of Constabulary. The character and extent of its operations is a matter of public notoriety. From all of which it may be well inferred that it is of a much more serious character than is indicated in the concurring majority opinion. It is not for the courts to treat such questions in any other way than from a legal standpoint It is our duty to enforce the laws which have been enacted, rather than to express our individual views upon political questions that belong solely to the legislative power.

The offense of treason is not only the highest offense known to the law, but is the one most dangerous to the existence of government.

The laws enacted by the Philippine Commission against treason are the only means of protection to the Government. The legislative power has seen fit to inflict severe punishment upon those engaged in these

dangerous undertakings. A sufficient discretion is given the courts in fixing the penalties. The discretion which has been left to the court in inflicting the penalties for the infringement of the law is the only discretion which we can rightfully exercise.

The defendant and his followers *constituted not only "a warlike assemblage, carrying the appearance of force,*
in a situation to practice hostilities," but hostilities actually resulted. The paraphernalia of war, even cannon, were in evidence. The slain and wounded gave further evidence of the character of the undertaking.

There was a levying of war within the meaning of section 1, Act No. 292, and all of the elements of the crime of treason exist in the case. The punishment under this section should be inflicted.

DISSENTING

TORRES, *J.*

In Act No. 292, passed November 4, 1901, the crimes of treason and rebellion or insurrection are not defined with proper separation, as they appear in the Penal Code, as offenses of a different character, each with a separate classification under the penal law.

However, as the only law applicable to the offense with which Dalmacia Lagnason is charged is Act No. 292, it is necessary to disregard the doctrines of the Penal Code and limit this decision to determining the proper interpretation to be given to sections 1 and 3 of that act.

If according to section 1 it is treason to levy war upon the Government of the United States or upon the Government of these Islands, or adhere to their enemies, giving them aid and comfort within the Philippine Islands or elsewhere, then acts constituting rebellion or insurrection are also acts of treason, for to rebel against the sovereignty of the United States or the Government of the Philippine

Islands is to levy war upon them.

Every act of public uprising or of open hostility against the sovereign power and the government of the country or its agents by a band of rebels, is an act of war, and therefore, although treason and rebellion are not synonyms in the language of the act in question, it is to be inferred from th,e text of sections 1 and 3 that within the crime of treason that of rebellion or insurrection is included as species is within genus, and that this crime is also of the nature of treason. The fact that the death penalty is prescribed in the two sections in question is not an obstacle to this view of the law, owing to the different degree of guilt presumed in each one of the two sections of the act.

Upon the supposition that the offense committed by Dalmacio Lagnason is comprised within section 1 of Act No. 21)2, and that he was the leader of the armed uprising and the one who put himself at the head of the band which levied war upon the agents of the Government, he is the oik* principally responsible for that overt act of opposition to the sovereignty of the United States, which, although in accordance with the legal technology it should be classified as rebellion, is, nevertheless, treason under the provisions of the act in question, and consequently the proper penalty, in our opinion, is life imprisonment.

In the application of penalties, the principle which controls is that of proportion between the offense and corresponding penalty prescribed by the law. It is not permissible to disregard the rules derived from this principle, for such an error would be contrary to the dictates of reason.

According to these principles, it is not just that the leader of the band should suffer only the same penalty as that imposed upon his subordinates, who merely acted under him in the rebellion and carried out his orders. There is unquestionably a higher degree of criminality on the part of the leader, and consequently his criminal responsibility is heavier than that of his subordinates, who merely carry out his felonious designs. In this case Isidro Oyco and Simeon Perje,

subordinates of Lagnason, were condemned to ten years' imprisonment and to the payment of a fine of ten thousand dollars by a judgment which, not having been appealed, has become final with respect to these two accused. This circumstance corroborates our view as to the propriety of condemning the principal leader of a rebellion in accordance with section 1 of Act No. 292, his guilt having been proven by the testimony of more than two credible witnesses.

Apart from the reasons above expressed, the circumstance that section 3 of the act in question leaves it to the discretion of the court to impose upon a defendant a penalty of imprisonment of from one day to ten years and a fine of from fl,000 to |10,000, is worthy of serious consideration.

In section 1 the penalty is death or, at the discretion of the court, that of imprisonment at hard labor from five years to life and a fine of not less than $10,000. Consequently, if the death penalty is not imposed an accused might be sentenced under section 1 of this act to a period of imprisonment of less duration than that which might be imposed in accordance with section 3 thereof, according to the view taken as to the gravity of the crime and of the greater or lesser degree of the guilt of the defendant. Furthermore, in support of this opinion, the result of a long and careful study of the article of the Constitution in point, of the provisions of law, and some of the decisions of the Supreme Court of the United States, cited in the majority opinion, we must state that section 3 of Act No. 292—taking it for granted that within the definition of the crime of treason is included the offense of rebellion—fixes the responsibility of those who incite, promote, abet, or take a secondary part in an insurrection, or give the insurgents aid and comfort, and fixes as to them a lesser penalty than that prescribed for rebels falling within the provisions of section 1 of the act.

Consequently, the act of levying war upon the Government of the United States or that of these Islands is punished in the two sections in question. The chiefs and the leaders of the rebellion and the principal rebels should be punished according to section 1 of the law,

but their subordinates and those who only take a secondary part in the acts of war or rebellion should be punished in accordance with section 3 of the same act.

In our humble opinion, this is the way the act in question should be applied in cases of treason or rebellion or in other cases arising under section 3.

In case the eighty men led by Dalmacio Lagnason had been surrounded and forty of them taken alive as the result of a fight with the Constabulary, could all have been condemned to death or to life imprisonment in accordance with section 1 of the act, because each and every one of them was levying war upon and making armed resistance to the authorities of the Insular Government? It might have been possible, but reason and good sense would have protested against the unjust severity of the penalty as compared with the respective guilt of each one of the rebels. For the same reason, inversely considered, we are of the opinion that the penalty prescribed by section 3 is inadequate for the offense committed by the defendant Lagnason, the principal leader of the band. For that reason the court below, while condemning his two subordinates to suffer the penalty of ten years' imprisonment and a fine of $10,000, condemned this defendant to death.

For the reasons stated in our opinion, the decision of the court below should be reversed and the defendant sentenced to the penalty of life imprisonment, the payment of a fine of $10,000, and to the payment of the costs of both instances.

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