

OREGON SUPREME COURT DECISIONS

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State v. Hassing, Multnomah County.
Decided October 17, 1911.
State of Oregon, respondent, v. J. M. W. Hassing, appellant. Appeal from the circuit court for Multnomah county. The Hon. J. P. Kavanaugh, judge. Argued and submitted Oct. 10, 1911. John A. Jeffrey and (Chas. E. Lenon, on briefs for appellant. Jos. Page, deputy district attorney, and (Geo. J. Cameron, district attorney, and J. J. Fitzgerald, deputy, on briefs for respondent. McBride, J. Affirmed.
Defendant was convicted of the crime of murder in the first degree, committed upon the person of Edith Hassing, his wife. The defense, so far as disclosed by this appeal, was insanity.

The defense offered in evidence a communication from the chief alienist of the public insane hospital near Aarhus, Denmark, which appears to be a reply to an official letter of inquiry from the ministry of foreign affairs of Denmark. This communication states that it is disclosed, from the records of the asylums and from the journals of the Hassing family, who had been placed there, supplemented with details from certain relatives of defendant, both in the direct and collateral line, had been insane and confined in the asylum. The names and family history of these persons, compiled from the above sources, are given in the communication. It is indorsed upon it the words: "Legalized. The Ministry of Foreign Affairs, Copenhagen, January 27, 1911. For the Minister, H. A. Bernhoff." The seal of state attached. Accompanying this document is a certificate of the Danish minister to the United States, which is as follows:

"It is hereby certified that in Denmark registers of birth, marriage and death are kept by pastors of the Danish Lutheran church, who are state officers; that transcripts of parish registers serve as certificates of birth, marriage and death; that the insane asylum near the city of Aarhus is a state institution, and that the chief alienist is keeper of asylum records. It is finally certified that legalization made by the Danish ministry of foreign affairs covers the genuineness of the document legalized and prove that such document originates from the proper Danish authority.

"C. MOLTKE, Minister of Denmark to the United States.
Washington, D. C., March 8, 1911."
Also a certificate of P. C. Knox, secretary of state, as to the official character of the Danish minister. The state objected to the introduction of these documents and they were excluded. This ruling is assigned as error.

To rebut certain evidence offered by defendant as to his insanity, the state called Fred Nicholson, who testified that he became acquainted with defendant about two weeks before the shooting; that he was with him about three times a week for two weeks and talked with him on all kinds of subjects; that, at his suggestion, he came twice with him to the court house to listen to murder trials where the defense was insanity; that in his judgment he was sane. The state also called J. C. Tally, jailer, who had been in charge of the prisoner for nearly four months. He testified that defendant did not act differently from other prisoners and expressed the opinion that he was sane. The admission of this testimony is also assigned as error.

The court was requested by defendant's counsel to give the following instructions, both of which were refused:

"You are instructed that before you can find the accused guilty you must find from the evidence and beyond a reasonable doubt, that he had sufficient mental capacity to distinguish between right and wrong as applied to the act he was about to commit, if he did commit it, and sufficient capacity to be conscious that the said act was wrong and at the same time sufficient will power and self-control to restrain himself from the commission of such act, and unless you so find beyond a reasonable doubt in this case, you must find the defendant not guilty."

"You are instructed that in order to convict a person of a crime, he must have a memory and intelligence enough to know that the act he is about to commit is wrong, to remember and understand and to know if he commits the acts he will be subject to punishment and reason and will be sufficient to enable to compare and choose between the supposed advantage and gratification so obtained, by the criminal act and the immunity from punishment which he will secure by refraining from it and having so contemplated the act, the will and controlling power to restrain himself from committing it, and unless you find that all these elements concur in the commission of the act alleged by the defendant, if he did commit it, you must not find him guilty."

The refusal to give these instructions is assigned as error.

McBride, J. There was no error in the ruling of the court, rejecting the communication of the chief alienist of the insane asylum to the Danish ministry of foreign affairs. Section 766 L. O. L. requires that as foreign docu-


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the individual from understanding the consequences of his act, and the existence of a delusion in regard to a matter of fact which, if true, would justify his act."
In People v. Holm, 62 Calif. 120, the court, quoting from Baron Bramwell, said: "But if an influence be so powerful as to be irresistible, so much the more reason is there why we should not withdraw any of the safeguards tending to counteract it. There are three powerful restraints existing, all tending to the assistance of the person who is suffering under such an influence—the restraint of religion, the restraint of conscience, the restraint of law. But if the influence itself be held to be a legal excuse, rendering the crime dispensable, you at once withdraw a most powerful restraint—that forbidding and punishing its perpetration."
We must, therefore, return to the simple question you have to determine—did the prisoner know the nature of the act he was doing; and did he know he was doing 'what was wrong.' In conclusion the court says: "Whatever may be the abstract truth, the law has never recognized an impulse as uncontrollable which yet leaves the reasoning powers—including the capacity to appreciate the nature and quality of the particular act affected by mental disease. No different rule has been adopted by American courts."

The power to discriminate between right and wrong, as a test of criminal responsibility, has been adopted by a large majority of the courts of the United States, including Oregon; State v. Murray, 11 Or. 413; People v. Holm, supra; Mackin v. State, 59 N. J. L. 495; State v. Miller, 111 Mo. 642; Ford v. State, 73 Miss. 734; State v. McIntosh, 39 S. C. 97; Wilcox v. State, 94 Tenn. 106; Flanagan v. People, supra; State v. Mowry, 37 Kan. 369; State v. Knight, supra; Davis v. State, 44 Fla. 32.

The foregoing list does not by any means exhaust the authorities holding to the theory that a knowledge of right and wrong as to the particular act charged is the proper test of legal responsibility. On the other hand a few courts have admitted with some reservation the theory that an uncontrollable impulse, superinduced by mental disease, even though accompanied by capacity to distinguish between right and wrong, is a defense to crime. Dr. Maudsley, an eloquent champion of this theory, remarks:

"There is a destiny made for a man by his ancestors and no one can elude, were he able to attempt it, the tyranny of his organization. It is submitted that these writers and the judges who have adopted their opinions, have dealt with man's moral responsibility as between his creator and himself, rather than his legal responsibility as a member of organized society. It ought to be plain that if every case tried should involve an investigation of the defendant's ancestry and environment with a view to determine to what extent these influenced the free and untrammelled action of his will, and how far, in view of these facts, he was morally responsible for his acts, the investigation would be interminable. While one of the fundamental objects of the law is to reform offenders, where they are reformable, its principal object is to protect society and the only practicable working theory upon which it can proceed is to assume that every man who knows right from wrong can observe the right and avoid the wrong."

The last assignment to be considered was the admission of the testimony of the witnesses Nicholson and Tally, the first of whom had seen him very frequently for the time being, two weeks before the crime and talked with him on a great variety of subjects, and on two occasions, at his request, had accompanied him to the court house to listen to criminal trials, while the latter had been his jailer for about four months. Subdivision 10 or Sec. 727 L. O. L. permits an "intimate acquaintance" to give his opinion respecting the mental sanity of a person, the reasons for such opinion being given. As there are degrees of intimacy the term "intimate" is indefinite, but it should certainly extend far enough to enable the witness to know something of the habits, temperament and general mental characteristics of the party whose sanity is in question. Being an indefinite term, the admission of such testimony is largely in the discretion of the trial court, and we are of the opinion that the testimony admitted is within the rule announced in State v. Murray, 11 Or. 413; and State v. Hansen, 25 Or. 395.

In addition to this, defendant had called a witness having less intimate acquaintance with him than either of the witnesses called by the state, and when his testimony was objected to, the district attorney said: "I don't think he has shown a sufficiently intimate acquaintance to permit him to testify, but I have no objection if this state can introduce the same character of evidence." The court said: "Very well, then let it be admitted." The district attorney remarked: "It is understood that testimony on the same line may be offered by the state," to which counsel for defendant answered: "Certainly, we could not help it." This practically amounted to a stipulation, that testimony of the character then being discussed could be admitted, and the testimony of the two witnesses above mentioned was of the same character, their qualifications being as great or greater. Counsel cannot induce the court to adopt an erroneous rule of evidence when it operates in his favor and be heard to object to the application of the same rule when it militates against him. If he makes it the law of the case, he must abide the consequences: Trickey v. Clark, 59 Or. 516.

Counsel for defendant has adverted to the sad consequences and injustice of executing a man in defendant's mental condition, but the jury has found that he knew right from wrong, and understood the nature and quality of the act, and we must assume, in the absence of error by the court, that they found correctly. The duty of condemning any human being to suffer the extreme penalty of the law is one which every court approaches with regret. But if the prayers of his innocent and helpless wife were not sufficient to prevent the defendant from sending a bullet through her brain, as she lay fallen and defenseless before him, no mere considerations of sympathy or pity ought to induce the ministers of justice to bend the law to spare him.
The judgment of the circuit court is affirmed.

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Notice of Intention to Construct a Sewer to Be Known as "Lateral Sewer District No. 4."

Notice is hereby given that the common council of the city of Salem, Oregon, deems and considers it necessary and expedient, and proposes to construct a sewer to be known as "Lateral Sewer District No. 4," and that there will be laid 8-inch vitrified or concrete sewer pipe along Twenty-first street, from Asylum avenue to Chemoketa street, as shown and designated and according to the maps, plans and specifications adopted for the same, and on file at the office of the city recorder, which said plans and specifications are hereby referred to for a more detailed description of said sewer, and hereby made a part of this notice, and that the entire cost of the same will be assessed upon the property directly benefited by the construction of said sewer.
This notice is published for ten (10) days by order of the common council of the city of Salem, Oregon, and the date of the first publication thereof is the 24th day of October, 1911.
CHAS. F. ELGIN, City Recorder,
10-24-11

Notice of Intention to Construct a Sewer to Be Known as "Lateral Sewer District No. 2."

Notice is hereby given that the common council of the city of Salem, Oregon, deems and considers it necessary and expedient and proposes to construct a sewer to be known as "Lateral Sewer District No. 2," and that there shall be laid 8-inch vitrified or concrete sewer pipe along the street between blocks 2, 3 and 4 and block 1 and certain acreage property in the Pleasant Home Addition to the city of Salem, Oregon; also along the street between blocks 4 and 5, 3 and 4 and 4 and 5; thence in a northerly westerly direction to High street; also a connecting line between blocks 2 and 3 of said Pleasant Home Addition; said sewer shall be constructed at the expense of the property directly benefited and according to the maps, plans and specifications adopted for the same and on file at the office of the city recorder, which said plans and specifications are hereby referred to for a more detailed description of said sewer.
This notice is published for ten (10) days by order of the common council of the city of Salem, Oregon, and the date of the first publication thereof is the 25th day of October, 1911.
CHAS. F. ELGIN, City Recorder,
10-25-11

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The November Wide World Magazine.

The Wide World magazine for November contains a number of interesting articles and stories dealing with different parts of the world. There is a fully illustrated paper on "The Troglodytes of Dieppe," another on "Wild Boar Hunting in New Zealand" and a third dealing with "The Romance of Oplum-Smuggling." Captain G. D. Haigh, late of the Mataneand Relief Force, relates a gruesome story of a friend of his who was "Buried Alive by a Lion." E. D. Burrows describes his experiences while "On the Trail of the Shovel-Nosed Shark" and Dr. Maximus Neumayer continues the account of his life "Among the Indians of Bolivia." "The Trials of a Tenderfoot" is amusing and "The Story of the Carved Peach-Stone," by Commander J. Macnab, full of mystery and thrills. Altogether the contents of the November Wide World are fully up to the mark and continue to bear witness to the undoubted fact that "Truth is Stranger than Fiction."

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