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COMMENT

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The recent trial of Bram for the murder of Captain Nash in July, 1896, was one of the most remarkable criminal trials in our history, involving questions that no court ever had to deal with before. The reversal by the Supreme Court (18 Sup. Ct. Rep. 183) of his conviction below was perhaps not unexpected by many members of the bar who followed the course of the trial. But it was generally thought that the reversal would be on other grounds. The ground was that a certain confession obtained from Bram at Halifax was not voluntary and hence not admissible. Power, a police officer at Halifax, had Bram brought into his private office and then examined him alone, having first stripped him of his clothing, but making no threats nor offering any inducements to him. Power said to him, "Bram, we are trying to unravel this horrible mystery. Your position is rather an awkward one. I have had Brown in this office and he made a statement that he saw you do the murder." Bram said, "He could not have seen me. Where was he?" "He states he was at the wheel." "Well, he could not see me from there." "Now, look here, Bram. I am satisfied that you killed the captain, from all I have heard from Mr. Brown. But some of us here think you could not have done all that crime alone. If you had an accomplice, you should say so, and not have the blame of this horrible crime on your own shoulders." "Well, I think, and many others on board the ship think, that Brown is the murderer; but I don't know anything about it."

This conversation was offered only as a confession and hence, in determining its admissibility, it is not necessary to consider the measure of proof resulting from it. The protection against the admission of voluntary confessions is contained in the Fifth Amendment, that no person "shall be compelled in any criminal case to be a witness against himself." But what amount of proof is necessary to show an involuntary state of mind from the operation of hope or fear must depend in each case on its peculiar circumstances. Analogy and similarity are of little help here. "The rule is not that, in order to render a statement admissible, the proof must be adequate to establish that the particular communications contained in a statement were voluntarily made, but it must be sufficient to establish that the making of the statement was voluntary—that is to say, that, from causes which the law treats as legally sufficient to engender in the mind of the accused hope or fear in respect to the crime charged, the accused was not involuntarily impelled to make a statement when but for the improper influences he would have remained silent." All the leading

cases, English and American, on what words are sufficient to constitute an inducement and thus render the confession involuntary, are reviewed. The majority of the court then held that "the situation of the accused, and the nature of the communication made to him by the detective, necessarily overthrow any possible implication that his reply to the detective could have been the result of a purely voluntary mental action; that the result was to produce upon his mind the fear that, if he remained silent, it would be considered an admission of guilt, and therefore render certain his being committed for trial as the guilty person; and it cannot be conceived that the converse impression would not also have naturally arisen that, by denying, there was hope of removing the suspicion from himself. * * * To communicate to a person suspected of the commission of crime the fact that his co-suspect has stated that he has seen him commit the offense, to make this statement to him under circumstances which call imperatively for an admission or denial, and to accompany the communication with conduct which necessarily perturbs the mind and engenders confusion of thought, and then to use the denial made by the person so situated as a confession, because of the form in which the denial is made, is not only to compel the reply, but to produce the confusion of words supposed to be found in it, and then use statements thus brought into being for the conviction of the accused."

The brief dissenting opinion of Mr. Justice Brewer in which Mr. Justice Brown and the Chief-Justice concur, is very strong and forcible and will carry conviction to many minds. But as the question is so largely one of fact and the decision must rest on the peculiar circumstances of the case, it illustrates only how differently the same circumstances will be interpreted by different persons.

Since international expositions are not events of common occurrence, rarely taking place with greater frequency than once in a generation, any case involving the rules and care necessary in the management of such affairs must be of interest. On account of the near proximity of the Paris Exposition in 1900 the case of the *French Republic et al.* v. *World's Columbian Exposition*, 83 Fed. Rep. 109, is worthy of notice. The facts were very simple—the French exhibits injured being in the Manufactures Building, which had a wooden sidewalk upon its roof. This walk rendered the roof much more inflammable; it was offset, however, by water in a standpipe, kept under pressure by means of pumps. After the close of the Fair, and before the exhibitors had had time to remove their goods, they were injured by sparks and brands from the burning sidewalk on the roof, such burning being due to the lack of water under pressure in the standpipe. The director general had issued notices that the management would take all due precautions, but would be in no way responsible for loss, from whatever cause occurring. While the characteristics of bailment apply in some

respect to the relations of exhibitors and those managing the exposition, still the exact relationship between them has never been hitherto judicially defined. The exhibits were of such a nature as to render it impossible to replace many of them in case of their destruction. Therefore, the management was in no way excused from continuing its protection for such time after the close of the exposition as to give the exhibitors a reasonable period in which to remove their goods. The degree of care requisite was well set forth in Judge Grosscup's opinion: "The management of the Exposition was under legal obligations to safeguard, by the highest intelligence and protection compatible with the ephemeral character of the buildings, the exhibits of the plaintiffs, and such obligation is not escaped by the exempting clauses contained in the regulations promulgated by the director general."