the evidence of the threats which had been already given.

"2. They were admissible to show the state of feeling of the deceased towards the prisoner and the *quo animo* with which he had pursued his enemy to the house.

"3. In ascertaining whether the prisoner had acted in self-defence, a most material question was, Who introduced the rock into the conflict, and for what purpose? * * * To corroborate this view, and fix the ownership of the rock, the prisoner offered evidence both of the violent character and deadly threats of the deceased. In this aspect of the case *the threats were equally admissible, whether communicated or uncommunicated*, and, in connection with the other facts indicating a felonious assault upon the prisoner, would constitute a case of murder, manslaughter, or justifiable homicide, as the jury, under proper instructions, might determine upon all the facts."

Prior to these cases, but not cited in either of them, we have Wiggins *v.* The People, 3 Otto, 465. In this case we have the following from Judge Miller:

"Although there is some conflict of authority as to the admission of threats of the deceased against the prisoner in a case of homicide, where the threats had not been communicated to him, there is a modification of the doctrine in more recent times, established by decisions of courts of high authority, which is very well stated by Wharton, in his work on Criminal Law, section 1027. 'Where the question is as to what was deceased's attitude at the time of the fatal encounter, recent threats may become relevant to show that this attitude was one hostile to the defendant, even though such threats were not communicated to the defendant. The evidence is not relevant to show the *quo animo* of the defendant, but it may be relevant to show that at the time of the meeting the deceased was seeking defendant's life.' Stokes *v.* The People of New York, 53 N. Y. 174; Keener *v.* The State, 18 Ga. 194; Campbell *v.* The People, 16 Ill. 18; Holler *v.* The State, 37 Ind. 57; The People *v.* Arnold, 15 Cal. 476; The People *v.* Scroggins, 37 Cal. 676."

"Certainly," as I argued in discussing more fully this question in my work on Homicide, "if such evidence is offered to prove that the defendant had a right to kill deceased, then it is irrelevant." But "it is difficult to understand the reason why an acquaintance by the defendant with the deceased's threats should strengthen the admissibility of such threats. If the defendant knew beforehand that his life was threatened, he should have applied to the law for redress; if he did not know, and was attacked without warning by the deceased, then proof of the deceased's hostile temper, whether such proof consist of preparations or declarations, is pertinent to show that the attack was made by the deceased. * * * For the purpose, therefore, in cases of doubt of showing that the deceased made the attack, and, if so, with what motive, his prior declarations uncommunicated to the defendant are clearly evidence."

It may be objected that such evidence is hearsay. To this it may be answered:

1. It is primary; and hearsay, when primary, is admissible when relevant. The question at issue is, Did the deceased attack the defendant? self-defence being set up by the defendant in confession and avoidance. To prove an attack by the deceased—to show, in other words, that his object in meeting the defendant was to attack him — the deceased's intention is material. How is this intention to be discovered? If the deceased were alive, we would call him and ask him as to the facts. He is not alive, and the best evidence we can have of an intended attack on his part is his own expressions, whether in word or in deed. If we reject these expressions, then we have no other way of proving a material fact.

2. Whenever the condition of a party's mind is at issue, then expressions of the party are admissible, when tending to throw light upon such condition. See Hadley *v.* Carter, 8 N. H. 40; The Commonwealth *v.* O'Connor, 11 Gray, 94; Howe *v.* Howe, 99 Mass. 88. This is eminently the case when the party whose declarations are to be proved is dead, and when his state of mind, when material, can be proved in no other way than by his declarations. In R. *v.* Johnson, 2 Car. & Kir. 354, where the prisoner was charged with murdering her husband, and when the deceased's state of health prior to the day of his death became material, a witness was called to prove declarations on this topic by the deceased a day or two