VICTOR LOGAN, Appellant, *v.* **REPUBLIC OF LIBERIA,** Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT, CRIMINAL ASSIZES, MONTSERRADO COUNTY.

Heard October 30, 1985. Decided December 18, 1985.

1. The prosecuting attorney may by leave of court file a dismissal of an indictment or complaint or of a count contained therein as to either or some of the defendants, and thereby terminate the prosecution to the extent indicated in the dismissal. Civil Procedure Law, Rev. Code 2: 18.1
2. The dismissal of an indictment or complaint under section 18.1 or 18.2 may be done anytime before the jury is empaneled and shown, or, if the case is to be tried by the court without a jury, before the court has begun to hear evidence, and such dismissal shall not constitute a bar to a subsequent prosecution. Civil Procedure Law, Rev. Code 2: 18.3.
3. While the doctrine of double jeopardy is applicable in all criminal prosecutions, it attaches only when a person has been placed on trial before a court of competent jurisdiction under a valid indictment or complaint upon which he has been arraigned and to which he has pleaded, and a proper jury has been empaneled and sworn to try the issues raised by the plea or, if the case is properly being tried by a court without a jury, after the court has begun to hear evidence thereon. Termination of the trial thereafter by the court because of manifest necessity, however, shall not bar another prosecution for the offenses set forth in the indictment or complaint. Civil Procedure Law, Rev. Code 2: 3.1. Thus in such circumstances, a plea of double jeopardy cannot be sustained.
4. Under certain circumstances, one can be reindicted for the same offense after a dismissal of the first prosecution, and in such situations a motion to quash the indictment cannot be sustained.
5. The quashing of an indictment is not equivalent to an acquittal, and the same defendant may be reindicted and retried for the offense charged in the quashed indictment.
6. While the entry of a *nolle prosequi* is not an acquittal, it constitutes a termination of the particular prosecution. It is however not a final disposition of the case, but only a stay, and as such will not bar another prosecution for the same offense, unless it is entered

after the accused has been put to his trial on a valid indictment before a jury duly sworn and empaneled.

7. Bias or prejudice, in the sense of hostility, is generally not a ground for the disqualification of a judge, especially when the recusal is sought on that ground prior to the trial of the defendant.
8. A judge's interest in or other questionable relationship with the case or the parties thereto imposes a duty upon him to recuse himself on his own motion, or on the motion of a party objecting to his sitting on the matter.
9. At the time of instructing the jury, the judge may sum up the evidence and instruct the jury that they are to determine the weight of the evidence and the credit to be given to the witnesses.
10. The duty of a trial judge on charging the jury is limited to an explanation of the points of law in the matter for the jury's deliberation, and this can be made orally or in writing, either on the judge's own motion or on the application of either or both parties to the conflict before the court.
11. The trial judge is not bound to frame his charge in the particular manner dictated by counsel.
12. Flight weighs heavily against a defendant in support of his guilt; it is indicative of criminal guilt.
13. When the instruments with which a crime has been committed have been clearly identified by the testimony of the witnesses as to leave no doubt that they were used for the purpose of committing the crime, they should be admitted into evidence.
14. Malice aforethought, as an element of mens rea in the crime of murder, includes an intention to kill a person or the intention to do an act likely to kill, and it is immaterial whether there was no particular person in mind or that there was in mind a different person from the one killed.
15. "Legal malice" does not necessarily mean a malicious or malevolent purpose or personal hatred or hostility toward another; it is a state of mind which shows a heart unmindful of social duty and fatally bent on mischief, or which prompts a person to do an injurious act wilfully to the injury of another.
16. Malice aforethought is the intentional doing of a wrongful act towards another without legal justification or excuse; it is a wilful violation of a known right.
17. In proving malice as an element of the crime of murder, it is sufficient to show that the

act was committed without just cause or excuse, and the State need not necessarily prove previous ill will or misunderstanding between the defendant and the decedent.

18. At the prosecution for a murder, proof of unjustified homicide by the defendant raises a presumption of malice.
19. The trial court may correct an illegal sentence at any time. Hence, a trial judge is authorized to modify a sentence during term time, or before he loses jurisdiction over the matter.
20. Where by inadvertence a judge imposes a sentence not commensurate with the crime for which it was imposed, the judge is authorized to correct that sentence during term time, and to bring it in line with the correct sentence which ought to have been imposed.
21. Where one commits murder, but by some inadvertence the trial judge imposes a sentence less than death, the said judge may, upon reconsideration, legally modify the sentence and substitute in its place the death sentence before he loses jurisdiction over the matter.

Appellant appealed from a conviction of murder and a sentence of death thereon rendered in the Circuit Court for the First Judicial Circuit, Criminal Assizes, Montserrado County. Appellant, a police detective was indicted for the fatal shooting of a Criminal Investigation Division Captain, Winston Deshield, to prevent the latter from exposing the former's dealing in anti-breeze United States currency notes. A *nolle prosequi* having been entered by the prosecution with reservation to re-indict appellant, a second indictment was subsequently brought against the appellant, and upon which he was tried, convicted and sentenced. The trial judge had first sentenced the appellant to life imprisonment, but changed the sentence a day after to death by hanging.

In his bill of exceptions, the appellant set forth the following as errors which he said warranted reversal of the trial court's judgment: (a) that he had been subjected to double jeopardy when the prosecution entered a *nolle prosequi* and subsequently had him re-indicted for the same crime of murder; (b) that the trial judge had erred when he refused to recuse himself on the ground that he had served as county attorney when the appellant was investigated by the Ministry of Justice for the crime, the trial over which the judge was slated to preside; (c) that the judge's charge to the jury on the question of reasonable doubt was unsatisfactory; (d) that the gun and bullets alleged to have been used in the fatal shooting were not sufficiently identified to warrant the court affirming the verdict of the jury; and (e)

that the trial judge erred when he subsequently changed his final judgment from a sentence of life imprisonment to that of death by hanging.

The Supreme Court rejected all of the contentions of the appellant, holding that as to each contention the trial court acted properly. On the first contention of the appellant that he had been subjected to double jeopardy, the Court said that the statute vests in the State the right to withdraw or dismiss an indictment against a defendant prior to the empaneling and swearing in of a jury or, where the case is to be tried by a court without a jury, prior to the hearing of evidence. The Court opined that once these elements are met, double jeopardy does not attach. It concluded that under such circumstances, the quashing of the indictment was not equivalent to an acquittal and that the defendant was therefore properly re-indicted and tried for the offence which had been stated in the quashed indictment.

With regard to the contention that the trial judge should have recused himself for reason that he had served as county attorney for Montserrado County at the time the appellant was investiga-ted for the crime of murder, the Court held that while a trial judge's interest or other questionable relationship with the case before the court or to the parties imposes a duty upon him to recuse himself, on his own motion or on the motion of an objecting party, the mere perceived bias or prejudice was insufficient to disqualify a judge presiding over a case. The Court noted that in the instant case, not only did the appellant not show interest by the trial judge in the case, but the records revealed that at the time the appellant was investigated and indicted, a different individual was county attorney for Montserrado County. The mere fact that the trial judge was an employee of the Ministry of Justice at the time was insufficient to warrant the judge's recusal of himself from presiding over the case, the Court said.

On the question of the judge's charge to the jury, the Supreme Court observed that there was nothing in the records indicating that the trial judge had not charged the jury on the points requested by the appellant. The duty of the judge, the Court said, was limited to an explanation on the points of law in the matter for their deliberations. This the trial court had done. There was no obligation, it said, for the trial judge to frame his charged in the manner dictated by counsel for appellant, as to do so would have subjected the proceedings to the control of the parties rather than the court.

Regarding the appellant's contention that the evidence presented by the prosecution was insufficient to warrant a conviction of murder, the Court held that the prosecution had shown the existence of malice aforethought. The Court observed that in proving malice aforethought as an element of murder, it was sufficient to show that the act was committed

without just cause or excuse, and that it was not necessary to prove ill will or misunderstanding between the decedent and the accused. The unjustified homicide, it said, raised a presumption of malice. In any case, the Court noted, the evidence showed that the appellant did harbor grudge against the decedent for cheating him, and also that appellant sought to prevent the decedent and others exposing his criminal activity in dealing in anti-breeze American currency notes. These, the Court opined, sufficiently exhibited malice aforethought and showed hatred by the appellant, bent on committing evil and acting contrary to law.

The Court also rejected the appellant's contention that the gun and bullets had not been sufficiently identified, noting that several persons had given testimony relating to the gun and the bullets, both of which had been marked and confirmed by the trial court.

Lastly, regarding the trial judge's changing of the sentence from life imprisonment to death by hanging twenty-four hours after pronouncement of the first sentence, the Court opined that the trial judge had the authority to correct, modify or change the sentence imposed on the appellant to bring it in line with the correct sentence which ought to have been imposed in the first instance as long as the change was done during term time. The Court observed that in the instant case, where murder had been committed and the trial judge had by inadvertence imposed a sentence less than death, the trial judge could, upon a reconsideration of the matter, legally modify the sentence to the death penalty. The change having been made before the trial judge lost jurisdiction, his action could not be deemed as illegal, improper or a violation of any law.

On the basis of the foregoing, the Court *affirmed* the verdict of guilty of murder and judgment of the trial court sentencing the appellant to death.

Peter Amos George and *Joseph A. Dennis* of the P. Amos George Law Firm, appeared for the appellant. The Solicitor-General, *MacDonald J. Krakue* and the Senior Legal Counsel, *S. Momolu Kiawu*, appeared for the appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

This appeal hails from the First Judicial Circuit, Criminal Assizes, Montserrado County, where defendant/appellant was convicted of the crime of murder in 1981, and thereafter sentenced to death by hanging on the first legal day of August, 1981.

The records reveal that in the early hours of January 26, 1980, defendant, a police

detective who was assigned to the James Spriggs Payne Airfield in Sinkor, proceeded to the Criminal Investigation Division (CID) headquarters at Mamba Point in Monrovia, where he intimated to decedent, a CID detective captain called Winston Deshield, that he had a case involving some anti-breeze American currency notes. Incidentally, another CID detective, called Ezra Keller, was brought into the deal to go along with decedent and defendant, while another fellow called Lee George later joined them. While they were still in the precincts at the CID headquarters, defendant, decedent and Ezra Keller were seen by sundry other CID personnel, including agent William Boakai, who saw the three board a taxi cab, license plate No. 196 and left the Headquarters premises.

On their way to Barnard's Beach, they picked up Mr. Lee George whom defendant sent to his house to pick up the anti-breeze currency notes from his wife, and to later meet them at Barnard's Beach where they were to wash or process said notes. Lee George subsequently found them at Barnard's Beach with packs of said notes together with chemicals they usually use to accomplish their aims. The defendant handed same over to decedent, Captain Winston Deshield.

Decedent questioned defendant about the source of the anti-breeze notes, which query the latter took to mean that decedent was bent on apprehending him for illegal possession of said notes and to hand him over to the authorities. Arguments suddenly ensued, which later went out of control. The defendant, being afraid that he would be arrested and punished if the matter came to light, shot and killed Winston Deshield, and shot and wounded agent Ezra Keller, both with a 38 caliber police special pistol. At the start of the shooting, a surprised Lee George took to his heels to save his own life. As fate would have it, one Abraham Hack and one Sylvester Hne happened to be in the vicinity digging for baits. Their curiosity led them to the scene after the shootings had died down. There they found the decedent in a pool of blood and a wounded Ezra Keller. The defendant had gone from the scene.

Messrs Hack and Hne then conveyed decedent to the John F. Kennedy Morgue. The seriously wounded Keller was taken to the Saint Joseph's Catholic Hospital for emergency treatment.

On information furnished by Ezra Keller who was recuperating at the hospital, defendant, along with Lee George, were arrested by the police. On March 31, 1981, an indictment was brought in the First Judicial Circuit, Montserrado County, against the defendant for murdering decedent Winston Deshield. At the call of the case on May 18, 1981, the prosecution entered a *nolle prosequi*, with reservations to subsequently reindict the

defendant. In keeping with the notice given when the *nolle prosequi* was entered, the defendant was reindicted for the same crime of murder. At the trial on the second indictment, counsel for the defendant raised objections and prayed for the quashing of the second indictment on the ground that since the state had earlier entered a *nolle prosequi* which was not restricted to a particular portion of the indictment, the *nolle prosequi* put a seal to the matter. Therefore, he said, the defendant should not have been indicted for the second time on the same charge of murder. The motion was denied and the trial had. Whereupon, the jury returned a verdict of guilty. Thereafter, the defense took except-ions to the verdict and moved for a new trial. The motion was heard and denied. On July 7, 1981, the trial judge rendered final judgment and sentenced the defendant to life imprisonment. However, on July 8, 1981, the same judge changed the sentence from life imprisonment to death by hanging.

It is from the foregoing final judgment of the court that the defendant has appealed to this Court of last resort.

Counsel for appellant contended in his bill of exceptions and brief that the case should be remanded, contending that it was error to reindict appellant for the same offense, after a *nolle prosequi* had been entered earlier by the prosecution; that the trial judge erred when he refused to recuse himself, since he had served as county attorney for Montserrado County when the matter was investigated by the police, which is a part of the Ministry of Justice; that the said judge's explanations to the jury on the point of reasonable doubt was not satisfactory; that the fatal gun and bullets had not been scientifically established; that it was not shown that the appellant had shot and killed decedent with malice aforethought, and that therefore the verdict ought not to have been affirmed by the trial court, as it was against the weight of the evidence; and finally, that the trial judge committed a reversible error when he subsequently changed his final judgment of life imprisonment to death by hanging.

In a counter argument, the prosecution contended that the subsequent indictment and trial of appellant was proper under our laws where a *nolle prosequi* is entered before a jury is empaneled and sworn, or, if the case is to be tried by the court, before it has begun to hear evidence; that there was no evidence tending to show that the trial judge, Octavius Obey, had person-ally investigated the case as county attorney for Montserrado County, since both the quashed and subsequent indictments were under the signature of Abraham B. Kromah, who then served as county attorney, and that said judge bore no relationship to appellant as would have required his recusal; and that while the trial judge had explained several legal points of law to the jury, he was in no way bound to explain the points of law as fancied by

appellant. The prosecution further contended that there was no need to scientifically establish the gun and bullets used to commit the murder since there was only a single gun involved, which was testified to and identified as the instrument used to commit the crime. Finally, they contented that by maintaining that the trial, being regular and the evidence cogent and un-impeachable, the judgment rendered should not be disturbed.

From the records transmitted to this Court and from the arguments of counsels, the salient issues for our consideration are the following:

1. Whether or not the dismissal of an indictment by the prosecution constitutes a bar to all subsequent prosecu-tions for the same crime.
2. Whether the trial judge had such an interest in this case or had such relationship with the parties as should have warranted his recusal.
3. Whether a trial judge has an obligation to use the language of either party in explaining a point of law to the jury.
4. Whether or not the verdict was manifestly against the weight of the evidence adduced at the trial.
5. Whether a trial judge can legally modify his judgment within term time.

Starting with the first issue, we will determine whether or not prosecution's dismissal of an indictment is a bar to all subsequent prosecutions for the same offense. As stated earlier, the defense maintains that it imposes a bar on subsequent prosecutions of the same offender for the same offense, while the prosecution holds otherwise, especially after reserving the right to reindict the defendant. The question then is what is the effect of a *nolle prosequi* under our law, during the course of a criminal prosecu-tion? Our statute declares:

> "The prosecuting attorney may by leave of court file a dismissal of an indictment or complaint or of a count contained therein as to either or some of the defendants. The prosecution shall thereupon terminate to the extent indicated in the dismissal". Civil Procedure Law, Rev. Code 2: 18.1.

Further to that, it also maintains that:

> "Dismissal of an indictment or complaint under section 18.1 or 18.2 at any time before the jury is impaneled and sworn or, if the case is to be tried by the court, before the court has begun to hear evidence, shall not constitute a bar under the provisions of section 3.1 to a subsequent prosecution. Civil Procedure Law, Rev. Code 2:18.3.

The two citations above stipulate under what circumstances there can be a dismissal of an indictment by the prosecution without constituting "a bar under the provisions of section 3.1 to a subsequent prosecution". Section 3.1 states:

"The doctrine of double jeopardy shall be applicable to all criminal prosecutions. Jeopardy attaches when a person has been placed on trial before a court of competent jurisdiction under a valid indictment or complaint upon which he has been arraigned and to which he has pleaded, and a proper jury has been impaneled and sworn to try the issue raised by the plea or, if the case is properly being tried by a court without a jury, after the court has begun to hear evidence thereon. Termination of the trial thereafter by the court because of manifest necessity, however, shall not bar another prosecution for the offenses set forth in the indictment or complaint". Civil Procedure Law, Rev. Code 2:3.1.

From the foregoing, it becomes manifest that under certain circumstances one can be reindicted for the same offense after a dismissal of the first by the prosecution, and thereby a motion to quash the indictment, as in the present case, cannot be sustained. A plea of double jeopardy, in other words, cannot be sustained where the indictment or complaint is dismissed at any time before the jury is impaneled and sworn or, if the case is to be tried by the court, before the court has begun to hear evidence. It has been held that the quashing of an indictment is not equivalent to an acquittal, and the same defendant may be re-indicted and retried for the offense charged in the quashed indictment. *Williams v. Republic of Liberia*, 14 LLR 452 (1961). In that case, appellant was indicted, tried and convicted of malicious mischief. The trial court granted a motion for a new trial. On retrial, the court granted a motion to quash the indict-ment. Appellant was reindicted and reconvicted of malicious mischief. On appeal from the second conviction, appellant contended that he had been put in double jeopardy, but the Supreme Court affirmed the judgment of conviction.

Under the common law, a *nolle prosequi* is an entry of record that the prosecution will proceed no further, and while it is not an acquittal, it constitutes a termination of the particular prosecu-tion. 22 A.C. J. *Criminal Law*, § 456. The same text states further that while the entry of a *nolle prosequi* is not a final disposition of the case, but a stay of proceedings, and will not bar another prosecution for the same offense unless it is entered after the accused has been put to his trial on a valid indictment before a jury duly sworn and impaneled, it is nevertheless a discharge and necessarily is a termination of the particular prosecution. Under such a statute, a dismissal or *nolle prosequi* of the action constitutes a bar to any further prosecution of the same misdemeanor, but it is not a bar to a further prosecution of the same felony. (*Id.*)

There is nothing in the record indicating that the trial had reached the limit beyond which a dismissal would be impossible for the prosecution, without succumbing to charges of double jeopardy, upon any subsequent indictment for the same offenses. In fact, the prosecution had dismissed the first indictment with an expressed reservation to reindict, obviously in a bid to effectuate the object of title 2, section 18.1 of our Criminal Procedure Law that ". . . the prosecution shall thereupon terminate to the extent indicated in the dismissal", until a new indictment could be brought against him, without any taints of double

jeopardy being attached to said subsequent indictment.

The second issue for our determination is whether or not the trial judge had such an interest in said matter or had such relationship with appellant as would have required said judge to recuse himself. The appellant argues that trial Judge Obey served as county attorney for Montserrado County at the time he (appellant) was arrested, that the said judge participated in the investigations by which he was indicted, and that he was there-fore required to recuse himself from the trial.

Several opinions of this Court have indicated that bias or prejudice in the sense of hostility is, in general, not a ground for disqualification of a judge prior to the trial of the defendant, and that an application for recusal of a judge is premature when based upon such bias and hostility, especially when brought prior to the trial. *Bestman v. Dunbar,* 21 LLR 227 (1972). In that case, an appeal was taken from the ruling of the Justice in Chambers denying issuance of a writ of prohibition against the respondent judge. The petitioner alleged as the basis for the application that he could not receive a fair trial of the crime with which he was charged, for the reason that the judge was person-ally hostile to him as a result of an incident occurring between them in years past. He further alleged, as a basis for his petition, that after his arrest in the case over which the judge was to preside, the said judge went to the prison compound to express his scorn and contempt for the defendant, among other things. Before the case was called for trial, the defendant applied to the court, asking that the judge disqualifies himself. Upon denial of this application for recusation, a petition for a writ of prohibition was sought from the Justice in Chambers. Upon denial, an appeal was taken to the full Bench which affirmed the ruling of the Chambers Justice. The Court pointed out that:

> "It would be unreasonable to hold that the presiding judge in this case is prejudiced as to be unfit to sit in the trial of the case in the court below when there is no evidence whatsoever tending to show that he will be prejudiced at the trial, or that he will not be impartial in the adjudication of the case. No proof has been offered that he will be violating legislation prohibiting his service, thus trans-gressing public policy intended for the interests of justice, the preservation and impartiality of the courts, and the respect and confidence of the people for their decisions. The application must also show prior participation or connection with the case." *Id.*

The three cases, *Ware v. Republic*, 5 LLR 50 (1935), *Republic v. Harmon,* 5 LLR 300 (1936), and *Howard and Ketter v. Dennis,* 5 LLR 375 (1937), cited and relied upon by appellant, are all in agreement that a judge's interest, or other questionable relationship with the case before a court or the parties thereto imposes a duty upon him to recuse himself on his own motion, or on the motion of a party wishing to object to his sitting on the matter.

In the case of *Ware v. Liberia*, the presiding judge had admittedly participated as a member of an investigative council of the Bureau of Internal Revenue of the Republic of Liberia, and had served further on the Council of Superintendent of Grand Cape Mount County, both of

which were responsible for recom-mending the dismissal of appellant Ware as district commis-sioner of Tewor District in Grand Cape Mount County, and for his subsequent prosecution and conviction on a charge of embezzlement under the gavel of said presiding judge.

In the case of *Republic v. Harmon*, prohibition was granted by this Court, affirming the ruling of the Chambers Justice when it was established that the trial judge, Nete-Sie Brownell, was the brother-in-law of Harmon who was on a charge of smuggling diamonds.

Also, in the case of *Howard and Ketter v. Dennis*, it was properly brought to the notice of this Court that His Honour Nete-Sie Brownell, who tried the case, had served appellee Dennis and his wife as their retained legal counsel before his eventual elevation to the judgeship; but had refused to recuse himself when the matter reached him as a judge.

But none of the conditions elaborated above have come out to this Court's satisfaction in the present case. The appellant's counsel merely argued that Judge Obey should have recused himself from sitting on this case as he had served as county attorney for Montserrado County when appellant was investiga-ted by the police, and that he had actually participated in said investigations which formed the basis of this matter. The prosecution maintained that the allegations were false since in fact both the first indictment, which was subsequently dismissed and the later one on which the defendant was convicted, were prepared and signed by Abraham B. Kromah as county attorney for Montserrado County. This point of the prosecution is supported by the records before us. There is no showing that the trial judge in fact assisted the police in investigating the case. The mere fact that at the time of said investigation, the trial judge was then an employee of the Ministry of Justice is by no means convincing evidence to warrant his recusal.

We consider next whether in charging a jury, a trial judge has an obligation to explain a point of law to it according to the wording desired by either party. This issue is predicated upon appellant's contention in his brief that the trial judge's explana-tions of rebutting witnesses, variance and reasonable doubt left much to be desired, and was therefore prejudicial to the interest of appellant.

Our statute provides that at the time of instructing the jury, the judge may sum up the evidence and instruct the jury that they are to determine the weight of the evidence and the credit to be given to the witnesses. Civil Procedure Law, Rev. Code 2:20.7.

There is nothing in the record to show that the trial judge had not heeded the application of appellant in charging the jury on the various points requested, and to have said charge reduced to writing as is required by law. *Porte v. Porte,* 9 LLR 279 (1947); *Coleman v. Schweitzer et. al.*, 16 LLR 319 (undated); and *George v. Republic of Liberia*, 14 LLR 339 (1961). All those cases maintained that the duty of a trial judge on charging the jury is limited to an explanation of the points of law in the matter for their deliberations, and this can be made orally or in writing, either on his own motion or on the application of either or both parties to the conflict before the court.

In the case before us, a perusal of the records reveals that the trial judge had summarized the law to the jury, including those matters of law that the defense had asked him to explain. In the face of those revelations, it appears that the defense is dissatisfied merely by the manner of the judge's explanations of "rebutting witnesses", "variance" and "reasonable doubt". But we find nothing in the records to show that the judge did not explain those issues. On the contrary, we find several pertinent explanations, both on those points desired by appellant and on other points relevant to the case, for the understanding of reasonable laymen who were to decide the facts of the case, and not for the special understanding of the dons of a law school.

This Court held in *Mason v. Republic of Liberia* that the trial judge is not bound to frame his charge in the manner the counsel would dictate. 4 LLR 81 (1934). The rationale is that if that were possible, many an inroad will be made into the cool neutrality of the court, and instead of the judge controlling the proceedings, the parties will indeed be in complete control of the proceedings.

We then proceed to our fourth issue, that is, to consider whether or not the verdict returned by the jury in this case was manifestly against the weight of the evidence adduced at the trial, as contended by the appellant. In that light, let us take a glance at the evidence in the case. The records reveal that defendant was a member of the Liberian National Police Force at the time of the murder. One would therefore reasonably have expected him to know his rights under the law when charged with a crime. It is shown that he had made a voluntary confession to committing the crime of murder of another police officer, decedent Winston Deshield. Two witnesses produced by the prosecution stated that appellant had indeed shot and killed decedent on Barnard's Beach in their presence, in the persons of CID agents Ezra Keller and Mr. Lee George, the former himself being shot at and seriously wounded by appellant. And there were other witnesses who saw the decedent, defendant, and Ezra Keller at the CID headquarters on the morning of the fatal incident. Apart from those facts, the records show that appellant absconded from the scene of the murder on Barnard's Beach, that he took flight into hiding at his house, and that he stayed away from his place of assignment at the airfield on the day following the murder of Captain Deshield. On that day, police agents arrested him at his home in Bassa Community when they could not locate him at his place of work. The fact of flight weighs heavily against appellant in support of his guilt. This Court has held that flight is indicative of criminal guilt. *Glay v. Republic of Liberia*, 15 LLR 181 (1963); *Jarkpa-wolo v. Republic of Liberia,* 14 LLR 359 (1961).

Next we proceed to the identity of the fatal instruments, the gun and the bullets. It should be noted here that only one gun was involved which was a police special pistol, a .38 caliber pistol. The prosecution witness, a police officer named Henry K. Dixon, identified said gun to be pistol Number 22881/R, assigned to appellant by the national police authority. Other witnesses, including the doctor who performed the autopsy on the decedent and those present at the surgical operation, all identified the .38 caliber bullets

removed from his corpse. Above all, appellant's own expert witness, a ballistics expert, one Mr. John Gray, testified that the gun and the extracted bullets matched enough to allow one to conclude reasonably that said fatal bullets were discharged from the gun in issue, the .38 caliber pistol assigned to the appellant. This Court has held that when the instruments with which a crime has been committed have been clearly identified by the testimony of witnesses as to leave no doubt but that they were used for the purpose of committing said crime, they should be admitted into evidence. *Mason v. Republic,* 4 LLR 18 (1934). We hold that in this case the instrument of the murder had been satisfactorily identified at the trial.

On the question of malice aforethought, again the appellant contends in his bill of exceptions and brief that this had not been established to warrant a conviction of murder. Osborn's Concise Law Dictionary defines malice aforethought as:

> "The element of *mens rea* in the crime of murder. It includes an intention to kill a person, and it is immaterial whether there was in mind either no particular person or a different person from the one killed. It also includes an intention to do an act likely to kill from which death results. OSBORN'S CONCISE LAW DICTIONARY, by John Burke, 6th Ed., 1976, 221.

Another authority maintains that "legal malice" does not necessarily mean a malicious or malevolent purpose or personal hatred or hostility toward another; it is a state of mind which shows a heart unmindful of social duty and fatally bent on mis-chief, or which prompts a person to do an injurious act willfully to the injury of another. 22 C. J. S., *Criminal Law*, § 31 (2).

Our own case law defines malice aforethought as the intentional doing of a wrongful act towards another without lega1 justification or excuse, or in other words, the willful violation of a known right. *Kelleng v. Republic of Liberia*, 4 LLR 33 (1934).

How then is this malice aforethought to be established as an element of the murder committed by appellant? This Court has held that in proving malice as an element of the crime of murder, it is sufficient to show that the act was committed without just cause or excuse, and the state need not necessarily prove previous ill will or misunderstanding between the defendant and the decedent. And at the prosecution, proof of unjustified homicide by the defendant raises a presumption of malice. *Glay v. Republic of Liberia,* 15 LLR 181 (1963).

From the foregoing citations, and from a comparison of the records before us, we hold that there was evidence to show that defendant harbored a grudge against decedent for allegedly cheating him of the bulk of the proceeds of previous deals they had participated in. It was also shown that appellant was bent on preventing his name from being connected with the anti-breeze American currency notes, and that he had apprehended fear that decedent Deshield would have exposed him to the authorities for being found in possession of the illegal currency. He therefore took out his pistol and vowed that none of them would depart the scene alive. He then shot and killed Deshield and shot and wounded Keller.

Appellant himself took the stand and confessed to his earlier deals with decedent in which he had been cheated. Witnesses Keller and Lee George confirmed that they had heard his threats to kill everyone rather than be exposed. These are certainly cases exhibitive of malice aforethought, and in fact shows the existence of hate and a bent on committing evil or acting contrary to law. These are cases of actual malice.

From the foregoing, we hold the view that malice afore-thought was sufficiently established at the trial and that the verdict was commensurate with the weight of the evidence adduced at the trial.

This finally brings us to our last issue in the case, to determine whether a trial judge can lawfully modify a judgment he rendered in term time. According to Civil Procedure Law, Rev. Code 2: 23.5, the court may correct an illegal sentence at any time. This provision authorizes a judge to modify a sentence during term time, or be-fore he loses jurisdiction over the matter. That means that where by inadvertence a judge imposes a sentence not commensurate with the crime for which it was imposed, the said judge is authorized to correct that sentence during term time, and to bring it in line with the correct sentence which ought to have been imposed. As in the present case, if one commits murder which is proven at the trial, but by some inadvertence the judge awards a sentence less than death, upon another consideration, said judge can legally have said sentence modified and substituted for the death penalty at any time before he loses jurisdiction over the matter by the expiration of his term. This act cannot be said to be illegal, or improper, for reason that the sentence finally imposed was not imposed without jurisdiction, nor in violation of any law.

In view of the surrounding circumstances, coupled with the facts narrated and the laws cited, it is our holding that the judgment of the lower court be, and the same is hereby affirmed and confirmed. And it is so ordered.

Judgment affirmed.