JOHN H. GREENWOOD, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued January 25-27, 31, February 1, 17, 21-24, 28, 1944. Decided May 4, 1944.

1. Where a defendant who is indicted and after trial is convicted of a crime or of a misdemeanor and, either by appeal or writ of error, procures the reversal of the judgment, he cannot successfully raise the plea of *autrefois convict at* a new trial.

2. Where the evidence is clear the verdict and judgment of the trial court will not be disturbed.

Defendant was convicted of murder. On appeal, the judgment was reversed and the case remanded for a new trial. *Greenwood v. Republic, 7* L.L.R. 150 (1941). Defendant was convicted of murder after the second trial. On appeal from conviction of murder, *judgment affirmed.*

H. Lafayette Harmon for appellant. *Charles T. O. King,* by special assignment, for appellee.

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

At its May term, 1939 of the Circuit Court of the First Judicial Circuit, Montserrado County, John H. Greenwood, appellant, was indicted by the grand jury for the murder of his wife, Salome Greenwood.

On November 13, within the November term of said court, the case was called for trial, defendant entered a plea of not guilty, and a jury was empanelled to try the cause. After a hearing that lasted until November 18, the said jury returned a verdict of guilty of murder which was followed by a sentence of death rendered by the trial judge on November 24, 1939.

From this verdict and judgment, as well as from the decision of the court below denying the motion filed by appellant for a new trial, appellant prosecuted an appeal to this Court. Said appeal was heard by this Court at its November term, 194o. *Greenwood v. Republic,* 7 L.L.R. 150. The appellant at the time had complained of error committed in the trial of his case in a bill of exceptions containing four counts which,

when argued before this Court, resolved themselves into two main submissions, viz.: (1) That the defendant, in killing his wife, had acted wholly and solely in self-defense, and hence was entitled to be discharged on the ground that it was excusable homicide, and (2) That defendant had acted under great provocation and killed his wife in the heat of unpremeditated passion while smarting from bodily injury, namely a violent seizure of his testicles.

When the case had been argued and submitted, this Bench was unanimous in its opinion on one point only, and that was:

"[T]hat, so far as the record certified to us went, the question of self-defense raised by appellant did not arise and the Attorney General should, therefore, confine his argument to the only two possible issues, namely murder and manslaughter." *Id.* at 173.

On the other hand, on the issue of whether the evidence on record was sufficient to support a verdict of murder, or only one of manslaughter, the Bench was hopelessly divided. One section of the Bench held firmly to the view that the record disclosed a clear case of wilful murder; another view was that there were so many extenuating circumstances disclosed as to have warranted the reduction of the offense from murder to manslaughter. There was yet another view which maintained with equal tenacity that, because of numerous lacunae in the narration of the witnesses on the question of intent, they did not feel justified in signing a judgment condemning the appellant to death; but, because of a certain amount of brutality and of callousness shown during the tragedy, said section of the Bench refused to sign a judgment for manslaughter and insisted upon a remand of the case for a new trial in order that the doubtful phases of the evidence be clarified. Out of this divergence of views there for a while resulted an impasse, for neither section could muster a majority, and hence for some time it appeared as though no judgment could be given. At last a compromise was reached to the effect that all three views should be divulged to the public in two opinions, but that judgment should be a mere reversal of that rendered by the trial court and a remand of the cause for a new trial.

The learned counsel for appellant, in the brief he filed here at the last November term, maintains that the opinion and judgment then rendered amounted to a with-drawal from the purview of the trial court of the charge of murder and an instruction to try appellant for manslaughter. But that contention of his is neither legally nor factually correct, for neither categorically nor inferentially was the murder charge excluded from the consideration of the court below. Had that been the

intention of this Court, to what end would have been the suggestions contained in the majority opinion that: (1) The testimony of Quelleh and Momolu, two of the first adults who appeared on the scene after the tragedy and talked with the accused but had never been called to testify at the trial, should be obtained; (2) Witness Cyril Henry, a prominent and respectable citizen within the neighborhood of Greenwood's home who was sent for by the said Greenwood himself immediately after the homicide and who remained there for two hours talking with him, be interrogated as to what were the provocative acts which he testified Greenwood had told him had led to the homicide, and be interrogated about what he might have discovered was the real intent with which Greenwood had inflicted the wounds which caused the death of his wife; and (3) The two children who witnessed the tragedy, and testified that Greenwood exclaimed, "Come and see what this woman is doing to me," be asked what that thing was, if anything at all, which decedent was doing to appellant. Last but not least, what would have been the point in this Court's ordering a remand with instructions to the trial judge to carefully expound to the jury the difference between murder and manslaughter if the charge of murder had been definitely withdrawn from their consideration? *Id.* at 176, 179, 18o, 181.

When said case as remanded was called for the new trial ordered by this Court, counsel for the appellant offered a motion to discharge on the grounds that: (1) Appellant had been previously convicted and to put him on trial a second time would be in violation of our Constitutional provision against a second trial for the same offense, and (2) The Supreme Court had dismissed the murder charge, and therefore the defendant could now only be tried for manslaughter. During the argument the trial judge posed the following question: "Were the court to accept your interpretation of the Court's opinion and put defendant on trial for manslaughter, what would be your plea?" Appellant's counsel refused to commit himself on that question.

We have just disposed of the second count in said motion, showing how far afield appellant's counsel had misconceived the intention of said opinion; and it is gratifying to us to see how correctly his honor the trial judge interpreted the meaning of said opinion of ours in the opinion he gave when the question was presented for his consideration in the court below.

Let us consider the first count in defendant's motion in which he maintains that he should not be put on trial a second time on the ground that such trial would violate the constitutional provision against second jeopardy. This Court has given the most careful attention to the contention, to the argument adduced, and to such legal

precedents as have been within our reach. First of all we must premise that, inasmuch as not until the year 1907 was a statute passed allowing an appeal from a judgment of conviction in a British court, it would appear to us that it is futile to cite as authority any British reports on the subject, especially any of those prior to 1907, as appellant did when arguing the case before this Court. We will confine ourselves to the American precedents since, in that country as in ours, appeals in criminal causes are coeval with the adoption of a Constitution by each of the two aforenamed countries, namely, Liberia and the United States.

Indeed we may so far digress as to observe that it does not appear that the Supreme Court of the United States, the prototype of our own Supreme Court, was patterned exactly after any British model, especially with regard to having appellate jurisdiction in criminal causes, but was patterned more closely after the *Cour de Cassation,* that is, the Court of reversal or of annulment in France. The functions of said Court seem to have been essentially appellate and limited to the power of reversing, modifying, or affirming decisions given by any of the subordinate courts. This function seems to have extended to criminal as well as to civil cases, in courts martial as well as in all other cases.

One of the most important cases to be reviewed by said *Cour de Cassation* which we are citing as illustrating our proposition and which was followed with intense interest both in France and internationally, in which nearly the entire European press became very vocal, was that of one Alfred Dreyfus. A synopsis of the said case now follows :

In October, 1894 Captain Alfred Dreyfus, a Jewish officer of artillery, was arrested upon a charge of supplying a government of the Triple Alliance with French military secrets. He was tried in *camera* by a court martial, and on December 22, 1894 he was sentenced to military degradation and detention for life in a fortified area.

In March, 1895 he was interned on Ile du Diable off the coast of French Guiana.

In 1896 the question of the guilt of Dreyfus was raised by one Colonel Picquart, but it would serve no useful purpose to go into all the agitation which followed this singular announcement. Confining ourselves to those high points in the case relevant to the power and the usefulness of a court of review, we find that eventually, in 1899, the matter was brought before the *Cour de Cassation.* Said Court, the highest judicial tribunal in the land, annulled the sentence of 1894, and ordered Dreyfus retried by a military tribunal at Rennes. In August, 1899 he was brought back to France and, in accordance with the decision of the *Cour de Cassation,* was put on trial for the second

time. The court-martial, by a five to two vote, found Dreyfus guilty with extenuating circumstances and condemned him to imprisonment for ten years. Those extenuating circumstances declared to have been found by the court-martial were construed by Dreyfus, by his friends, and by the press, domestic and foreign, as a compromise to save the face of his accusers who were by that time suspected of having trumped up a charge, and Dreyfus' supporters persistently averred the innocence of the accused. The Government pardoned Dreyfus and set him at liberty, hoping thereby to allay the public agitation. But public opinion was not thereby satisfied, as the result showed. Dreyfus and his supporters insisted that it was justice and not mercy that they wanted. To accept without complaint liberty based upon a pardon, said they, still left a cloud upon Dreyfus' character which, they insisted, could be removed only by a judgment of the Court upon the facts, and not by an act of grace bestowed by the pardoning power. As a result of the furor that was then created, the cause was sent for the second time to the *Cour de Cassation* for another review of the cause. After an exhaustive inquiry, on July 12, 1906 said Court unanimously declared that the whole accusation against Dreyfus had been disproved, and it quashed the judgment of the court martial held at Rennes *sans renvoi.* Thus Dreyfus marched out not only a free man but also a man with all clouds removed from his character. The Government gave the fullest effect to this judgment, not only by restoring him to the active list of the army, but also by promoting him to the rank of major of artillery. 2 Encyc. Brit. 77, 7 *Id.,* 661, 9 *Id.* 654 (1941).

This was a great fillip to the usefulness and importance of a court of review in matters criminal as well as civil, the members of such a court being free from party affiliation and from government dictation and left calmly to deliberate at leisure "far from the madding crowd's ignoble strife." Nor should one be accused of too great a flight of imagination should he suggest and maintain that one of the results of this case was the institution in England of a Court of Criminal Appeals. It is of record that between 1844 and 1906 almost thirty bills were introduced into the British Parliament for the institution of criminal courts of appeal but, although it was pointed out that England was practically the only civilized nation in which an appeal on the facts in criminal cases was not allowed, it was not until Lord Loreburn, then Lord Chancellor, began sponsoring a bill with that object in view that it passed the House of Lords in 1906 and after some more delays ultimately became law in 1907. 2 *Id.* 129, 6 *Id.* 709.

In the United States of America appeals in criminal cases were coeval with the existence of the Republic. The Constitution of the United States makes the following provision :

"In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make." U.S. Const. art. III, § 2.

Undoubtedly there is a similarity between that Constitution and ours, at least on that point, for ours prescribes that :

"In all other cases the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Legislature shall from time to time make." Const. Lib. art. IV, § 2.

In Liberia the right of a defendant to appeal in a criminal case was challenged by the Attorney General of the Republic at the January term of this Court in 1892 in the case of *Warner v. Republic, 1* L.L.R. 525, on the grounds *inter alia* that "there is a provision made by the laws of said Republic for criminal cases to be brought to this honorable court by appeal." Said Attorney General, now of blessed memory, was born, bred, and for the most part educated in the British West Indies and viewed the question from the background of his training and from the contacts he had had in the British Dominion. But this Court at said term definitely settled the question against the contention of the Attorney General by holding:

"[T]he right of appeal in civil and criminal cases is one of the fundamental perogatives upon which the liberty of the people stands. To do away with this idea would be to set aside the dearest provision of the fathers, made in the bulwark of our national fabric, which serves as a preventive against oppression and a security to the enjoyment of civil liberty. . . . "And it is also very clear that the fathers, in making the Statute of Appeals, intended it as the proper step by which both civil and criminal cases of appeal should find their way to the Supreme Court. . . . It is therefore the opinion of this court that appeals in criminal cases lie to the Supreme Court upon bills of exceptions, and a denial of the right would be gross injustice." *Id.* at 526.

Nevertheless, whether or not a defendant, having been convicted of a felony and having moved to set aside the verdict and judgment and having come to this Court on appeal, could again be tried if the judgment were reversed was not raised until the case of *Lawrence v. Republic,* 2 L.L.R. 65, 72, 3 Lib. Ann. Ser. (1912) . This was the first time in the history of our courts that a judgment in the trial court convicting a defendant of murder was reversed by this Court and a *new* trial awarded. What a sensation it caused! Members of this bar, of the conservative school, declared it a

heresy brought in by Justice T. McCants-Stewart, one of the most able jurists that ever graced this Bench, who has gone down in history as one of the greatest reformers of legal procedure of his time. The learned Justice's tendency to iconoclasm had, however, irritated and antagonized a certain proportion of our legal men, but as to the soundness of the decision on the point there seems to be no question.

At the new trial in the court below, the question of former jeopardy was raised, but the trial judge overruled the plea on the ground that in his opinion the decision of the Supreme Court was mandatory and he felt he had no option but to follow same and allow defendant to save by exceptions his demurrer, on the ground of former jeopardy, for decision in this Court. But inasmuch as on the facts during the second trial defendant was acquitted by the verdict of the jury, the case could not come before this Court a second time.

The issue, therefore, remained a moot question for many years, when it was at length settled in the case *Ledlow v. Republic,* 2 L.L.R. 569, decided by this Court at our April term, 1926.

Before discussing *Ledlow v. Republic, supra,* we should first review what is recognized as the leading case on this subject, viz.: *Ball v. U.S., 14o U.S*. 118, 35 L. Ed. 377 (1891), 163 U.S. 662, 41 L. Ed. 300 (1896) .

The history of the two cases of *Ball v. U.S*. now follows in brief :

In October, 1889 M. F. Ball, J. C. Ball, and R. E. Boutwell were jointly indicted by a federal grand jury sitting to inquire for the Eastern District of Texas, U.S.A. into the murder of one William T. Box. On November 3 of said year the jury empanelled to try said cause brought in a verdict of acquittal in favor of M. Filmore Ball and a verdict of conviction against J. C. Ball and R. E. Boutwell. M. F. Ball was thereupon promptly discharged without day. J. C. Ball and R. E. Boutwell were remanded to await judgment and sentence, and were ultimately sentenced to death.

From said judgment the two convicted defendants prosecuted an appeal to the Supreme Court of the United States upon an assignment of errors containing twelve counts. Said Supreme Court on April 27, 1891 reversed the judgment on the ground that the indictment was insufficient as an indictment for murder and remanded the cause "with a direction to quash the indictment, and for such further proceedings in relation to the defendants as to justice may appertain." *Id.* 140 U.S. 118, 136. (All

italicized in original.)

At the April term, 1891 of the said Circuit Court for the Eastern District of Texas the grand jury returned a new indictment, held sufficient in *Ball v. U.S.,* 163 U.S. 662 (1896), against the same three defendants, viz.: the two who had been previously convicted as well as the one acquitted, charging them again with the murder of the aforesaid William T. Box. Defendant Millard F. Ball filed a plea of former jeopardy and former acquittal, and defendants John C. Ball and Robert E. Boutwell filed a plea of former jeopardy on the grounds of their trial and conviction upon the former indictment and of the dismissal of said indictment. Both pleas were overruled by the trial court, the defendants pleaded not guilty, the trial proceeded, and *all* three were convicted of murder and sentenced to death.

The three defendants appealed a second time to the Supreme Court of the United States, Millard F. Ball relying upon his plea of former acquittal and J. C. Ball and R. E. Boutwell upon their plea of former conviction.

After nearly two months' consideration the Supreme Court, in an exhaustive opinion delivered by Mr. Justice Gray, decided that :

"As to the defendant who had been acquitted by the verdict duly returned and received, the court could take no other action than to order his discharge. The verdict of acquittal was final, and could not be reviewed, on error or otherwise, without putting him twice in jeopardy, and thereby violating the Constitution. . . . [I]n this country a verdict of acquittal, although not followed by any judgment, is a bar to subsequent prosecution for the same offence.

"For these reasons, the verdict of acquittal was conclusive in favor of Millard F. Ball ; and as to him the judgment must be reversed, and judgment rendered for him upon his plea of former acquittal." *Id.* at 671.

As to the two defendants who had been convicted, viz.: J. C. Ball and R. E. Boutwell, the Court held that:

"Their plea of former conviction cannot be sustained, because upon a writ of error sued out by themselves the judgment and sentence against them were reversed, and the indictment ordered to be dismissed. How far, if they had taken no steps to set aside the proceedings in the former case, the verdict and sentence therein could have been held to bar a new indictment against them need not be considered, because it is

quite clear that a defendant, who procures a judgment against him upon an indictment to be set aside, may be tried anew upon the same indictment, or upon another indictment, for the same offence of which he had been convicted. *Hopt v. Utah,* 104 U.S. 631 [26 L. Ed. 873]; 110 U.S. 574 [28 L. Ed. 262] ; "4 U.S. 488 [29 L. Ed. 183] ; 120 U.S. 430 [3o L. Ed. 708]. . . . The court therefore rightly overruled their plea of former jeopardy; and cannot have prejudiced them by afterwards permitting them to put in evidence the former conviction, and instructing the jury that the plea was bad." *Id.* at 671-72.

The Supreme Court accordingly reversed the judgment of the trial court as to Millard F. Ball, but affirmed said judgment as to the other two defendants.

One can scarcely read with any degree of care the decisions of the Supreme Court of Liberia in *Ledlow v. Republic, supra,* and in the case *Ledlow v. Republic,* 2 L.L.R. 529 (1925), without being struck by the similarity both as to law and to facts between the two *Ledlow* cases and the two *Ball* cases, *supra.*

A brief epitome of the facts in the two *Ledlow* cases now follows :

In 1924 Matthew C. H. Ledlow, Abraham B. Maloney, Garkpah, and Boe-Me-Boe were charged with the murder of one Susan Ledlow. Said case was tried in the Circuit Court for the Second Judicial Circuit, Grand Bassa County, and ended in a verdict of acquittal for BoeMe-Boe and a verdict of conviction against the other three defendants.

From said verdict and from the sentence of death which followed, said case was appealed to this Court and heard at our April term, 1925. *Id.,* 2 L.L.R. 529. There were four principal errors complained of by defendants, which errors were alleged to have been committed in the trial court, for which reasons this Court was asked to reverse the judgment, viz.: (1) Undue restriction of the appellants' right of examination on the question of appellants' alibi ; (2) Refusal of the trial court to allow a witness for the defense to testify; (3) Continuation of the trial and conclusion of the case at midnight on Saturday or on Sunday morning instead of the following week as defendants prayed, although the reasons assigned by defendants were that one of the attorneys for defendants was ill and exhausted and that all of defendants' witnesses had not testified ; (4) Failure to call upon defendants to show cause why sentence of death should not be passed upon them. *Id.* at 531. His Honor Chief Justice Johnson, speaking for this Court, in a strongly worded opinion upheld defendants' submissions, reversed the judgment of the court below, and awarded

defendants a new trial.

At the May term of the Circuit Court of the Second Judicial Circuit the new trial awarded by this Court took place. Defendants Ledlow and Maloney were convicted but Garkpah was acquitted, whereupon the two defendants who had been convicted prosecuted a second appeal to this Court. One of the issues most strenuously and exhaustively argued before this Court during the second review of the cause was appellants' plea of double jeopardy which was based upon their former conviction.

His Honor Chief Justice Johnson, again speaking for this Court, handed down an opinion reviewing in *extenso* the second case of *Ball v. U.S.,* as we have done in this opinion *supra,* and overruled appellants' plea. He then added :

"The principle settled in this case, that where a defendant who is indicted and on trial convicted of a crime or misdemeanor, and, either by appeal or writ of error procures a reversal of the judgment, cannot raise the plea of *autrefois convict* has been established in a large number of cases in the U. S. Supreme Court. We are therefore of the opinion that the contention of counsel for appellants cannot be sustained." *Id.* 2 L.L.R. 569, 572-73 (1926).

It will thus be seen that whenever a defendant charged with a felony or a misdemeanor is acquitted by a jury on the facts, whether the indictment be correct or faulty, the verdict of the jury puts a definite end to the case and the defendant so acquitted cannot be tried again without violating the constitutional provision against being placed a second time in jeopardy. But if the defendant is convicted and the verdict and judgment are set aside upon defendant's request, the case is not finally settled and the second trial of defendant for the same offense does not violate the constitutional provision against double jeopardy.

Having now disposed of the first point most energetically argued before us by counsel for appellant we are now to consider his second submission, argued with as much or even greater emphasis, that the evidence did not warrant a conviction for murder but, at the most, a conviction for manslaughter only.

The facts in the present case up to the end of the former trial were fully stated in the majority and minority opinions filed at our November term, 1940, and we need only recapitulate in the briefest manner possible, and then review the additional facts brought out in the second trial.

That appellant killed his wife by inflicting several wounds upon her body was at the first trial not only satisfactorily proven, but also actually admitted by appellant himself and conceded by his counsel. According to the records filed at the first trial it was clear that three children were present at the time of the tragedy, and that the three persons of adult age who first reached the scene thereof and talked with Greenwood, appellant, almost immediately thereafter were Momolu, Quelleh, and Cyril Henry, head teacher of the principal high school in that vicinity. Said record also revealed that neither Momolu nor Quelleh was ever called as a witness, and that Cyril Henry, who testified at the trial, was never asked any question that would lead our minds to a conclusion that would enable us with absolute certainty to decide with what *intent* the homicide was committed. 7 L.L.R. 179, 180.

In the subsequent trial, now on review before us, the sheriff returned that he had been unable to locate Quelleh; but said sheriff produced Momolu.

Following closely the testimony of Momolu, he and Quelleh were the first persons to arrive on the scene after the homicide, and to them Greenwood seems to have made a bare announcement of the death of his wife without any details of the tragedy save that he had killed his cow; and to have told Momolu, as testified to by Louise Words-worth, that the next day he must go to Careysburg and "tell this cow's people I have killed her, and they must come to carry her."

Momolu and Quelleh had been laborers in his employ and he wanted them to do two things, viz.: (1) Take his cane juice next morning to the waterside to meet the launch taking cargo to Monrovia; and (2) Thereafter come back, take over, and mind his house as he had to go to Monrovia for two months. Quelleh unconditionally refused to have anything to do with caring for the home but Momolu, seeming inclined to accede to his request if somebody were with him, was sent to find one Jallah, also a former employee of appellant, and ascertain whether or not said Jallah would serve as an assistant watchman.

It was while Momolu was gone upon said mission that Cyril Henry arrived and, as it appears that the information of value about the homicide to which Momolu testified was obtained from listening to the conversation between Greenwood and witness Cyril Henry, we shall proceed first to review the testimony of witness Cyril Henry, particularly that part not elicited from him during the former trial. The suddenness and urgency of the request from Greenwood to repair to Greenwood's home immediately, and a certain shroud of mystery assumed by Greenwood's messenger, Joseph Carter, who was, incidentally, an eyewitness to the tragedy, when asked what

the reason was for such an unusual summons, seemed to have raised apprehensions in witness Henry's mind. Therefore he insisted on going home first and preparing himself, in a way not expressed but implied, by obtaining some weapon of defense, and, as he testified, by obtaining one of his own trusted servants to attend him in answer to the call. Witness Henry stated that he noticed nothing unusual as he approached the door of Greenwood's home ; that Greenwood met him "quite calmly," "courteously greeted him," and that his first words after greeting him were, "My wife has deceived me. Come in." "To my horror," said the witness, "I saw stretching at full length upon the floor not three yards away in the hall, the body of Salome in a welter of blood." Thinking that there might be some life still, he approached the prostrate form hoping to hear some sound or to see some sign of breathing. He then asked, "Is there no hope?" Greenwood answered, "No." "I said, 'Is she gone?' and he said, 'Yes, she is finished.' " The witness, continuing, said that Greenwood said, "Sit down, Mr. Henry," but Mr. Henry's feelings being better imagined that described and he feeling that that was not a place to sit down, suggested that they go outside. Greenwood accordingly offered him a chair on the porch so fixed that Greenwood sat with his back to the body with the witness facing same. There for at least two and a half hours he recounted the circumstances which led to the homicide but, recalled in rebuttal after Greenwood had testified, witness Henry denied that Greenwood ever said that the decedent had seized and violently had held his testicles, causing him great pain and agony, as Greenwood had testified in excuse, and Mr. Henry also denied that Greenwood had said he had sent for the witness to give him some medicine to stop the bleeding of his wife, and that he intended taking her to the Muhlenburg Hospital for treatment.

It was during the conversation between Greenwood and Henry that Momolu returned from calling Jallah, and Momolu listened to the remainder of the conversation. He testified that after a long conversation between Greenwood and Mr. Henry, Greenwood took out a short letter and gave it to Mr. Henry. Momolu stated that Mr. Henry read the letter and "what I heard Greenwood says was that that letter brought the palaver between him and his wife." Mr. Henry returned the letter to Greenwood and then witness Henry arose to go. Greenwood took up a lamp near him, pushed the door open, and when "the three of us were standing outdoors, he said his wife became frisky and he had killed her. Mr. Henry said, `Ah And Mr. Henry took the little girl away, saying she would not sleep there." On cross examination Momolu was asked the following question : "Did defendant tell you, or rather Mr. Henry in your presence, that it was the letter found which ultimately caused the death?" Momolu answered, "Yes, that is what he said."

The little girl referred to was Louise Wordsworth, a niece of decedent, who had in this trial as in the previous one testified to the tragedy, as she had witnessed it from under the house after appellant had threatened her with a revolver, declaring that if she attempted to go and call her cousin as Salome Greenwood, the decedent, had asked her to do when Salome became alarmed at the nature of the attack upon herself, he would kill her.

The next morning Greenwood, the appellant, came to Monrovia, sold his cane and, having attended to other business, proceeded to the home of Dr. J. F. Lawrence whom he located at the home of a neighbor called Hurley.

Witness Lawrence testified that while at Hurley's home Greenwood arrived and said to him that he wanted to see him, but Lawrence demurred, saying he was going to the waterside. Greenwood pointed out that it was urgent, whereupon Lawrence retraced his steps and the two of them went to Lawrence's home. After Greenwood had put down the portmanteau he had carried in his hand and after Lawrence had given him a seat, he said, "Doctor, I come to tell you that I have killed my wife, and sent to her people to come and get her, and have come to deliver myself up to the Government." Witness Lawrence testified that he replied, "Greenwood, I am sorry," and they had no further conversation on said subject, at least at the time. After this, continued witness Lawrence, Greenwood went somewhere, came back, shaved himself, and then handed Lawrence a razor, a revolver, a pair of scissors, and a knife, saying, "Doctor, take these, for I have no further use for them."

Testimony aliunde shows that when Greenwood went out he called upon Counsellor Dukuly to make his last will and testament, and that as Counsellor Dukuly was finishing the lead pencil draft thereof witness Lawrence came in and informed Counsellor Dukuly of the killing of Mrs. Greenwood by her husband.

After the return of Greenwood from Counsellor Dukuly's, Lawrence, Greenwood, and W. O. Corbin, a witness who was not called at the former trial, sat down to "breakfast." Witness Corbin opened the conversation by saying to Greenwood, "I learned that you have taken drastic action." He said, "Yes, I have had to take drastic action; I have killed my wife." Corbin says he replied, "That was too bad, really unfortunate." Asked the reason, Corbin testified that Greenwood told about some incriminating letters of decedent's during her absence from home, and that Greenwood said that when she came back and he confronted her with them she shouted in a loud voice, "My body is mine, and I can do what I damn please with it." "Then," stated witness Corbin, "Greenwood said he grabbed her and in the tussle she

kicked at his testicles. Then he drew his knife and stabbed her in several parts of her body. Later on in the course of the conversation 'Greenwood said he had the notion to go to Muhlenburg Mission Hospital and kill a Dr. Guilk from whom one of the letters to his wife was supposed to have come, but that he refrained from so doing lest it bring about international complications as the doctor was a foreigner." Said testimony of his desire to kill Dr. Guilk was testified to by several witnesses in corroboration, none of which was even men-tioned in the former trial, particularly testimony by witnesses Dukuly, Corbin, and Charles Brisbane.

The testimony of one Agnes Toles is terse but rather interesting on this point. She lived in a house adjoining Hurley's and abutting Dr. Lawrence's (back to back). As Greenwood passed on his way to Hurley's she congratulated him on his marriage, not knowing what had happened. Note that the record discloses that from the day of the marriage to that of the homicide was only thirty-three days. She thereafter saw people rushing into Dr. Lawrence's house whither Greenwood had gone, so she too went through the two back yards unto the back door, and saw that he was one of those in the dining room eating. All she heard Greenwood say was, "I have killed my wife, my beautiful wife, my noble looking wife; she is lying in her blood, and I don't feel I have done anything as yet." After hearing these words from appellant witness Agnes Toles testified, "I came down Dr. Lawrence's back doorsteps backward."

In the opinion of this Court if, after having killed his wife, appellant had a desire to go to Harrisburg to the Lutheran Mission and kill Dr. Guilk, as witnesses Dukuly, Corbin, and Charles Brisbane have testified, but was restrained only by fear of international complications, that admission is not compatible with his other statement that the killing was done in hot blood while they were tussling and she held his testicles "violently," causing him great pain and agony. But there is still more conclusive evidence on the point of malice aforethought. This was brought out during the second trial but not at the first, and was testified to by more than one witness, but principally by Joseph Carter, who testified that Greenwood at first drew his revolver to shoot her, then put it down saying, "If he shoot her she would die quick, and he put his hand in his hip pocket, hauled out his knife and with the knife killed her."

Witness Louise Wordsworth corroborating the above statement added that, "Greenwood, after he caught his wife, said the reason why he did not shoot her she was going to die too quick, but he took the knife to stab her with it so she can suffer very long so the Court can know that he meant it." This statement was made after the death of decedent. Asked why she had not mentioned it at the former trial, the

witness said it had been so long she could not remember whether she had mentioned it or not.

This testimony so given by Joseph Carter and by Louise Wordsworth, who were on the scene at the time, removes the doubts, which the absence of said testimony created during the first trial, as to the intent with which the plurality of stabs was inflicted. In our review of the first trial we felt that repeated stabs with an intent to kill would add to the enormity of the crime and to the malignancy of the heart of the slayer, but if the killing had been done in the heat of passion in a mutual combat, a plurality of stabs would not necessarily show malignity of heart or alone prove an evil intent, as the prosecution contended. But, as if more emphatically to negate appellant's contention of killing in hot blood and more strongly to corroborate the testimony of Louise Wordsworth and Joseph Carter that appellant said that he refrained from using his revolver and preferred to use his knife in order to torture the decedent, we have this additional testimony of . . . [name missing] that as Greenwood was stabbing her to death she begged his pardon, entreating him in the following appealing language : "[T]hat she was pregnant for him, and would bring a fine baby for him. Hence, said, 'Kiss me and let us fix the palaver. You are my husband, and I am your wife. Eh, Dad, will you do me so? You are killing me.' " The witness testified that appellant replied, "You just know that I am your husband? This is damn murdering time." We have examined this record carefully to find, if we could, one single word of regret, one expression of remorse ; but we have been unable to do so.

On the other hand, when we consider all the facts coupled with the expressions which accompanied appellant's actions, our doubts cannot but be removed, for his conduct at the end seems to us to reveal him as a man whose heart was devoid "of social duty, and fatally bent on mischief." 21 Cyc. of Law & Proc. *Homicide* 704 (1906).

In view of the foregoing we find ourselves forced to the conclusion that the verdict of guilty of murder was fully supported by the evidence adduced, and that the sentence of death predicated upon said verdict should be affirmed ; and it is hereby so ordered.

Affirmed.