W. S. DUNN, **TOM COFFEE**, **JOHNSON & MOSES**, Appellants, vs.
REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1903.]

Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.

Criminal law-Expert testimony-Burden of proof-Dying declaration.

To qualify a person to give expert medical testimony, he must show that he holds a diploma or certificate from a medical college that he is a physician.

In criminal cases, the prosecution must prove guilt beyond a rational doubt.

A declaration made ten days before death, during which interval a person appears to be in usual health, does not constitute a dying declaration.

This case is brought before this court upon an appeal from the Court of Quarter Sessions and Common Pleas of Grand Bassa County. The appellants (defendants in the court below) were indicted by the Grand Jurors of the aforesaid County, and tried at the March term of the said court, 1902, for the atrocious crime of murder. Upon arraignment the appellants plead "not guilty" to the charge. A jury was empanelled to try the issue raised by said plea, who, after hearing the evidence, returned a verdict finding the appellants guilty of "murder in the second degree." The appellants objected to the verdict, and on the 4th day of April during the said session of said court, moved the court below for a new trial. The court overruled said motion and proceeded to pronounce sentence against said appellants, whereby each and all of them were condemned to twenty years' imprisonment. To this judgment, as well as to the other rulings of the court below in the premises, the appellants excepted and have brought the case before this court upon a bill of exceptions, for review.

Having thus briefly stated the case we shall now proceed to consider the several points laid in appellants' bill of exceptions. The first exception laid is founded

upon a query put to witness C. C. Brown, for the prosecution, touching a conversation had between witness and deceased; the appellants taking as their ground that the question related to matters which were "hear say." By referring to the record we find that that part of the testimony of witness Brown, objected to by appellants' attorney, related to a conversation held with the deceased some time before the commission of the crime for which the appellants are charged. Applying this conversation to the res gestte or subject matter of the charge, we find no chain of connection between them. This court holds that that part of the evidence of witness Brown was irrelevant to the issue and there fore was not proper evidence to be submitted to the jury. The court below erred in overruling appellants' objection on this point and admitting that portion of witness' testimony as evidence.

The second exception is to the admission of the testimony of witness A. L. Moore. From inspection of the record this court further finds that the evidence of witness Moore was disconnected with the charge alleged against appellants and did not tend in any way to substantiate any of the allegations set forth in the indictment. This evidence being irrelevant, was also illegal and ought not to have been submitted to the jury, to substantiate allegations to which it did not profess to refer. This court is of the opinion that the court .below erred in admitting said testimony.

The third exception raises a question of considerable importance. We have endeavored to carefully examine the facts and to apply the law bearing thereon. The exception is taken as follows, to wit: "Because when on the second day of April, 1902, State's attorney introduced upon the stand one T. I. Tate, to testify in this case as a medical expert, prisoners objected to the witness on the ground that said witness was not a legally qualified physician, your honor overruled said objection," etc.

The record shows that some time after the death and burial of the deceased, the body was exhumed and a post mortem examination made by witness Tate, in the capacity of a physician. The record also shows that the investigation made by witness upon the dead body, together with his conclusions drawn from said investigation, were afterwards submitted to the jury as evidence against the accused.

The questions which present themselves to the mind of the court in considering this evidence are: First, Was the witness such a person as the law would presume to be possessed of sufficient knowledge of the science of medicine to enable him to make a correct and scientific examination of the deceased, and to arrive at a just conclusion as to the cause of death? Second, Was proof of his qualification made out at the trial? Third, Could his evidence be received as that of a medical expert in the absence of such proof? We would observe that while, owing to the peculiar conditions of the country, persons inspired with a desire to alleviate the physical sufferings of our communities may take upon themselves the duties of a physician, and from a long and perhaps successful practice, may acquire the appellation of medical men, yet when it comes to giving evidence as a medical expert before a court of justice, evidence which may involve the life or liberty of a man, the law is careful that none shall be allowed to exercise this right who has not acquired his knowledge of medicine and the right to practice as a physician in a proper and legal manner. It would be extremely dangerous did the law admit of a reverse rule. Persons possessing no adequate knowledge of the science of medicine, and perhaps devoid of moral restraint, might come into court and give evidence as experts, upon which the jury might arrive at conclusions that would involve life or liberty.

Mr. Bouvier defines medical evidence to be, testimony given by physicians or surgeons in thclir professional capacity as experts, or derived from the statements of writers of medical or surgical works. (II Bouv. Law Diet. p. 171: "Medical Evidence.")

It was insisted by the attorney for the prosecution in the court below, that the witness having for a long time practiced medicine and having also served the State in a military expedition, as physician, this was

evidence of his general character as a medical man. We cannot agree with this contention. The fact that witness had practiced as a medical man for a considerable time does not, in the opinion of this court, establish the fact of his qualification as a physician, to enable him to depose to matters of medical science. It is not prima facie evidence of his qualification as such. There is no evidence in the record to show that witness proved he held a diploma or certificate from any medical college or institution to this effect. The record, rather, shows the contrary. It is therefore the opinion of this court that witness Tate was not such a person as the law regards as competent to give evidence as a medical expert in a trial for murder. The court below therefore erred in admitting said witness as a medical expert.

Passing over the fourth point in the bill of exceptions, which we do not deem essential to our conclusions in the case, we now proceed to consider the fifth and sixth points in said bill.

From further inspection of the record we find that the jury having returned a verdict of guilt against the prisoners, their counsel tendered a motion, praying the judge of the court below to award prisoners a new trial, on the ground that said verdict was contrary to the law and evidence in the case; which motion the court below overruled, and subsequently, that is to say, on the 4th day of April, 1902, pronounced sentence against the prisoners.. We feel no hesitancy in saying that there was a palpable misapplication of the law on evidence by the court below. We have examined with considerable diligence the evidence produced at the trial by the prosecution, but have failed to discover such legal evidence as could warrant the jury in arriving at the conclusion of guilt. It is a well settled principle in criminal law, that "every one is presumed to be innocent until the contrary is proven." It is also an established rule, that the onus probandi, or burden of proof, rests upon him who maintains the affirmative, and although there are instances where the burden of proof shifts, as where the prisoner attempts to justify, the case under consideration does not fall within the exception to the general rule. And, says Mr. Archbold, where the plea of the defendant is "not guilty," the prosecution must prove defendant guilty of the charge before the latter can be called upon for his

defence. (I Arch. Crim. Pleadings, p. 359) And the prosecution must prove it beyond a rational doubt. In civil cases the jury may decide according to the preponderance of evidence, but in criminal cases-cases affecting life or liberty-the evidence must be so conclusive as to exclude every rational doubt of prisoner's guilt; for if, after hearing all the evidence, the mind of the jury is in such condition that it cannot say it feels a moral certainty of the truth of the charge, then there arises a doubt, which must operate in favor of the accused.

In the case under consideration we find that the cause of death was not made out by the prosecution, at the trial, with that degree of certainty that the law requires, and this, we would observe, was material to lay a foundation of guilt. There is no evidence to prove that from the pressure made upon the deceased, by one of the prisoners, she, within a reasonable time thereafter, became sick and, languishing, died. There is no evidence to prove that prisoners actually inflicted the injuries upon the deceased, that constitute the body of the crime, as laid in the indictment. On the contrary, it was given in evidence that the deceased was in unusual health thereafter; that she went about performing physical labor, such as one could not perform who had received an injury sufficient to cause abortion; and that about eighteen days elapsed from the time the affray occurred, to the death of the deceased. It was also stated that subsequent to said affray, deceased committed acts that could have produced abortion, and that one of these acts, namely, sewing on the machine, was done the day before the abortion occurred, which led to her death. It was also not clearly established whether the deceased actually came to her death from the mere fact of the abortion, or whether it was not due to the malpractice of the mid-wife, who, according to her own statement, failed to deliver or extract the placenta and to do such other acts the neglect of which might produce death.

It was strenuously argued by the learned counsel for the prosecution, that the declarations made by deceased to witness Mrs. Hall and others concerning the cause of her death, should be taken as the dying declaration of the deceased. Let us see if this is well founded. The general principle on which this species of evidence is admitted – observes Mr. Archbold – is that they are declarations in extremity, when the party

is at the point of death, and every hope of this world is gone; when every motive to falsehood is silenced and the mind is induced by the most powerful considerations to speak the truth. (I Arch. Crim. Prac. and Pleadings, p. 428, note.) It does not appear to the satisfaction of this court that the declaration of the deceased was made at such time, and under such circumstances, as to constitute in law a dying declaration. Witness Mrs. Ware stated that the deceased made the declaration to her on the evening after the affray between prisoners and the deceased occurred. Witness Mrs. Crummada stated that there was a lapse of about ten days between the death of the deceased and the day she made the declaration to her. During these intervals, it was given in evidence, the deceased appeared to be in usual health and attended to her duties and even attended a church conference. Witness Mrs. Hall stated that deceased continued to make this declaration to persons who came to see her up to the time of her death, but it will be noticed that this testimony of witness Hall is unsupported by the evidence of the other witnesses.

Having well sifted the evidence and carefully considered the law bearing on this case, the court holds that the court below erred in not setting the verdict aside and awarding prisoners a new trial. And this court further holds that the judgment rendered in the court below is illegal in that it is founded upon a verdict unsupported by the evidence in the case. For the foregoing reasons this court reverses said judgment of the court below, and the clerk of this court is hereby authorized to issue a mandate informing the judge of the court below of this decision.