KPEH-YOU, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Argued February 13, 14, 1952. Decided March 7, 1952.

1. Homicide is not justified on the ground of self-defense, or defense of another, unless the one defending himself, or the one being defended, was in imminent danger and with no means of escape.
2. One who intends to kill another and, in his effort to do so, kills a third party, is guilty of murder.
3. Actual malice toward an unintentional victim is not a necessary element of the crime of murder; for legal malice does not require ill will.
4. If an injury caused by the accused contributed to decedent's death, the accused is responsible even though other causes also contributed thereto.
5. To support a conviction of homicide, it must be established that the act of accused was the proximate cause of death.
6. An injury is the proximate cause of death where it directly and materially contributed to the occurrence of the death.

On appeal from conviction of murder, *judgment affirmed.*

Momolu S. Cooper and *Nete Sie Brownell* for appellant. *The Solicitor General,* assisted by *The County Attorney of Grand Basa County,* for appellee.

MR. JUSTICE DAVIS delivered the opinion of the Court.

"And Jimmy's sun went down while it was yet day."

The facts culled from the record certified to us from the court of origin are as follows:

In the Number Three Chiefdom of the County of Grand Bassa, there lived a man whose name the record in this case gives simply as Jimmy; and appellant is charged with the murder of this Jimmy.

On a certain day, the same night of which Jimmy met his death, he was passing through Gbarfar's town on his

way to Lower Buchanan, when Kpeh-You, appellant, stopped Jimmy and persuaded him to spend the night there and accompany appellant's daughter, Nellie, to Lower Buchanan on the following day. After yielding to appellant's persuasion, Jimmy since he was a bit familiar with some of the people in the town, soon found his way to the home of one Jimmy You-Way, son-in-law of appellant, and husband of Nellie. It never dawned upon Jimmy that trouble had been fermenting in that little town. Had unfortunate Jimmy foreseen what danger lurked there, he certainly would have continued on his journey, and not have yielded to appellant's persuasive request to spend the night.

The trouble in Gbarfar's town had arisen from a small business transaction between Jimmy You-Way and Nellie, one of his wives. Nellie, who was pregnant, had asked Jimmy You-Way for a dollar she claimed he owed her. He had replied that the only money to her credit from a joint market they had been making was fifty cents. After applying unsuccessfully several times that day to her husband for the dollar, Nellie referred the dispute to her father. Appellant thereupon accompanied his daughter to her husband's home to take up the matter. When they arrived, however, they found Jimmy You-Way asleep, and had to return to appellant's place. When Jimmy You-Way awoke later in the night, and heard that his wife and father-in-law had been to see him on the question of that negligible sum of money, one dollar, he went to his father-in-law's home and again offered his wife fifty cents. In the ensuing exchange of bitter words, appellant took the side of his daughter Nellie. Seeing this, Jimmy You-Way decided to take his wife to his own home, remarking that each time she visited her father some misunderstanding took place. Jimmy You-Way took hold of both of his wife's hands and a tug of war ensued. He determined to take her to his home, and she resisted with equal determination. Eventually he succeeded in getting her out

of her father's home and near his own house. At this juncture, his guest, Jimmy, was awakened by the noise. He ran out and made an effort to free Nellie's hands from her husband's grip, appealing, meanwhile, to Jimmy You-Way not to beat his wife. Like a flash of lightning out of a clear blue sky, appellant, armed with a cutlass, jumped out of his window, arrived on the scene, and, without any investigation whatsoever, dealt Jimmy, the guest, a gash on his right arm. Despite his explanation that he was not Jimmy You-Way, but the Jimmy whom appellant had asked to stay overnight in order to accompany his daughter, Nellie, to Lower Buchanan, and that he was simply trying to keep Jimmy You-Way from beating Nellie, appellant struck another blow with the cutlass, this time severely gashing decedent's right hand. In an effort to defend himself, Jimmy tried to pick up a club. But, since he was already weakened by profuse bleeding from the wounds inflicted by appellant, Jimmy fell to the ground, unable to move. Appellant then threatened his son-in-law, who, since he was swifter than appellant, succeeded in getting out of reach. Thereupon appellant fled into the bush. Jimmy was immediately taken to Lower Buchanan and hospitalized. He languished there a while and died about ten days later.

Appellant was captured, imprisoned, and later indicted by a Grand Bassa County grand jury for the crime of murder. During the August, 1950, term of the Circuit Court for the Second Judicial Circuit, Grand Bassa County, appellant was brought to trial. A petit jury brought in a verdict of guilty. From this verdict, and the final judgment of the court based thereon, together with rulings of the trial court, appellant has appealed, praying a reversal. We shall now, therefore, pass upon such facts in the record as are essential to adjudication of the appeal herein, and review the points submitted to this Court by appellant.

Appellant gave the following testimony as a witness on his own behalf in the court below:

"Jimmy You-Way credited sixty cents from Nellie and defaulted in payment. Nellie then complained to me about her money and I went to Jimmy You-Way for the money. When we got to his quarters and called him we were told that he was asleep. I then told her to tell Mlah and Bodar, the townmaster, to make Jimmy You-Way pay her money, but as her father and his father-in-law, I did not come to intervene in the matter. After telling her that, I went to my quarters. Nellie then went to her husband Jimmy You-Way and a quarrel then ensued. My wife, Cummah, went and took Nellie out of the house and carried her to my quarters. We all then went to bed, and about midnight Jimmy You-Way came to my house, and shoved the door, and I woke up and asked: 'Who is that?' He replied: 'It is I.' He then said: 'What did you say when you and Nellie went to see me at my quarters?' And he also said to Nellie: 'Why is it whenever anything occurs between us you always run to your father with a complaint? You see this old poor thing (speaking about her father) you think you have seen something. Kpeh-You has brought me here. If you talk I will flog you.' He then also said to Nellie: 'If your father talk, I will flog him until he excrete.' He then shoved his finger in my face. My wife then said to me: 'Do not answer that man.' I went back in my room. Jimmy You-Way then took Nellie and carried her to his quarters. He then returned to my house, shoved the door, and said: 'If you come out here I will beat you until you excrete.' Anyway, he was prevented by the town people from entering my house. I then concluded to leave the house, and took up my large knife and went outside. But I did not go out with the intention of attacking Jimmy You-Way, but to go to another town owned by one Wilcox. In going, I took the road leading to Wilcox's town and in going I passed between two houses.

A grave was near these two houses. I saw an object. I then hit it with my knife, and a person hollered. It was not my intention to fight anyone, but leopards are plentiful in that section of the country. Decedent then made an alarm that I had wounded him. He then grabbed for my knife to haul it out of my hand. By doing so the knife cut him in his hand. Decedent then said: 'I am your stranger who lodged with you tonight.' I then said: 'Why did you not talk? I did not know it was you.' I then started crying. Jimmy then ran off, picked up a stick and started after me. He was unable to use the stick and dropped it. I then was afraid and reasoned to myself that when one does anything like this unintentionally they should go to some justice. I then rushed down to the beach. I then took the Harlandsville road to meet the justice of the peace so he could send to Lower Buchanan. Whilst going, day broke with me on the road in a town where they were playing. I was bare-headed and wet, and people asked me where was I going. I replied: 'I hurt somebody unintentionally and I am on my way to the beach.' They said I should not go but stop there. They then brought me to McCray's town where I met some officers to whom they delivered me. The officers being Justice Aaron Harris, they brought me there. I then told the justice that I did this unintentionally. The justice then said: 'You all take him to Buchanan.' They first took me to the police station and the next morning I was brought to jail. This is how it happened. I do not have anything against either of the Jimmies, the decedent neither the Jimmy You-Way."

Any reasonable person reading this statement of appellant very easily arrives at the following conclusions:

1. There was an altercation between appellant and his son-in-law, Jimmy You-Way, which was sufficient

to serve as the basis for harboring hatred and malice against said Jimmy You-Way.

2. He admits dealing the blow to decedent Jimmy, but he did not know what the object was because, to use his own language: "I saw an object. I then hit it with my knife, and a person hollered. It was not my intention to fight anyone, but leopards are plentiful in that section of the country. Decedent then made an alarm that I had wounded him. . . ."

Thus the defense by appellant in the court below was that he and Jimmy You-Way, his son-in-law, did have an altercation growing out of the dispute between his daughter Nellie and Jimmy You-Way over one dollar; and that he, appellant, did hit and cut an object with his knife; but he did not know it to be either Jimmy You-Way or Jimmy the decedent until after Jimmy had been cut. Moreover, he definitely states that he did not intend to cut or fight with any man.

On appeal, appellant's counsel departed somewhat from the above defense as set up in the court below. Appellant's original position was that he had been conscious only of hitting an object, not knowing whether it was human or animal, since leopards are plentiful in that section of the country. In this Court, however, appellant's counsel in the brief filed before us have set forth the following:

"Counsel appointed by his Honor, the Chief Justice, to represent said defendant appellant, having carefully read the records transmitted to this Court, find:

"That the defendant intended to do a wrongful act, that is to say to kill one Jimmy You-Way, husband of Nellie in quasi defense of her and her father.

"That the defendant, hearing the altercation between Jimmy You-Way and his wife Nellie, it being night, rushed out of his house with his cutlass in hand

and attacked Jimmie the decedent who was a bystander, believing him to be Jimmy You-Way, the husband of Nellie.

"That this is confirmed by the fact that, after he found out that it was not Jimmy You-Way whom he had attacked the night before, he made fresh threats against the said Jimmy You-Way as testified to be the latter.

"From the said evidence counsel for appellant are of the opinion that he should have been convicted of manslaughter and not murder."

The foregoing submission of appellant's counsel, although irreconcilably inconsistent with and contradictory to appellant's testimony, seems to present a plea that appellant acted in defense of himself and his daughter, Nellie. It is a well-settled rule of law that every person has a right to defend himself against aggression, and may even take a life in such defense where the surrounding facts and circumstances fall within the requirements of the law hereunder mentioned. Moreover, a parent is also authorized by law to defend his child, within the limitations and under the circumstances provided by law. To justify the exercise of this right it is imperative that the person defending himself, or the one being defended, be in imminent danger; for mere apprehension will not justify the taking of life in self-defense. Moreover, there must be no means of escape from the aggression.

In *American Jurisprudence* we have the following:

"In order that the homicide may be excusable on the ground of being in defense of another, the defendant must show, according to one view, that the killing was actually necessary, not merely that he had reasonable ground to believe that the act was necessary, and that he had no other way to prevent the threatened acts of the deceased." 26 Am. Jur. 266, *Homicide,* § 160.

"Nor can one justify a killing as being in defense of

another where the difficulty between such other person and the deceased had ended and they had separated, or where the killing was in revenge for a past injury." 26 Am. Jur. 266, *Homicide,* § 159.

Let us examine the record and see whether, from the evidence given by appellant, the following conditions existed at the time he injured the decedent:

1. Were he and his daughter, or either of them, in imminent danger?
2. Had the dispute between appellant's daughter, Nellie, and his son-in-law, Jimmy You-Way, ended?

We do not hesitate to answer that appellant did not in the slightest manner show that he was in imminent danger, or that he committed the killing to save himself or his daughter. We refer to Nellie's testimony on this score:

"Jimmy You-Way was owing me one dollar and I asked him to give it to me, as I was going to the beach, and he said: 'All right. Wait. When you are ready to go, let me know and I will give it to you.' I went to him the night I was to leave to go to the beach and asked him to give me the one dollar, but he did not and went to church service and therefrom he went to bed. I went to his house and called him and told him that I was leaving early that morning for Lower Buchanan. One Mlahn said to me that I should go back home and early in the morning I could go to him for the money, and I went home. That night, when Jimmy You-Way awoke, he came to my quarters with fifty cents. I then said to him: 'My money was not fifty cents. It is one dollar. Go and make it up.' Jimmy You-Way said, 'This is the place you generally sleep and always give me trouble. Come and let us go.' He then grabbed me and carried me in front of one Mlahn's house. Whilst tussling, a woman by the name of Cummah said to Jimmy You-Way: 'Leave her because it is dark. Let me take her until in the

morning.' Jimmy refused to let me go. He and I then sat on a log. My father the defendant, and Duo, remained inside of the house, and I really do not know when my father got out of the house and came outdoors; all I could hear was: 'You hurt me.' When I heard the alarm of Jimmy the decedent, I and my husband stood outside and we then scattered about. This is what I know."

Nowhere in the foregoing testimony is there a scintilla of evidence tending to show that Nellie was in imminent danger at the time her father gashed Jimmy's arm; but rather her statement shows that she and Jimmy You-Way, her husband, ended their quarrel and had sat down on a log when her father appeared with his cutlass. Appellant's argument with respect to self-defense is thus weighed in the balance and found wanting; it therefore falls like a thunder-smitten oak.

Next in order is appellant's contention that, even if he had intended to kill his son-in-law, Jimmy You-Way, and had come to the scene for that purpose, yet because of the fact that, in his effort to kill Jimmy You-Way, he mistakenly assaulted a third party, he could not be convicted of murder. This theory seems plausible at first blush, but the controlling law is to the contrary. It is an established rule that, where a party who intends to kill another kills a third party instead, he cannot justify or excuse himself on the ground that the victim was not the person he intended to kill. In *Corpus Juris Secundum* we have the following rule:

"Since legal malice does not require ill will toward the victim, the crime may be murder although the person killed was not the one whom accused intended to kill, as where the victim is mistaken for another, or where one shooting at another kills a bystander or third person coming within range, or where one partakes of poison which accused intended for another, or receives a blow intended for another. Actual malice toward

the unintended victim is not necessary. The grade of the crime in such cases will be the same as though accused had killed the person whom he had intended to kill.

"The intent in such case is transferred by law from the intended victim to the person killed." 40 C.J.S. 864, *Homicide,* § 18.

In *American Jurisprudence* the following is relevant: ". . . if A, intending to murder B, shoots and wounds C, he is guilty of an assault with intent to murder C." 26 Am. Jur. 580, *Homicide,* § 602.

In view of the foregoing citations of law, we are of the opinion that this point submitted by appellant is without legal merit and therefore cannot obtain the favorable consideration of this Court.

We shall now address our attention to the last point raised in appellant's brief, which counsel argued at this bar with forensic eloquence. Citing the medical certificate of Dr. J. A. Dingwall, who treated decedent when he was carried to the hospital, counsel contended that the death of Jimmy was not the direct or immediate result of the injury inflicted by appellant. Counsel also relied on the testimony of dresser Doe Williams, and Dr. Haller; and argued that, where the act of the accused is not the proximate cause of death of the victim, and another cause, but for which death would not have occurred, supervenes, proof of such supervening cause is a good defense.

In support thereof appellant cited *Padmore* v. *Republic,* 3 L.L.R. 418 (1933). To compare the facts and circumstances surrounding, and the legal principles enunciated in, that case with those of the present case, we have decided to quote said decision *in extenso.* But, before applying the law, we deem it proper to consider the evidence relied upon by appellant, since application of the law must depend upon facts. We therefore quote the medical certificate of Dr. J. A. Dingwall:

"This certifies that, on April 25, 1950, at 11 A.M., one Jimmy was brought to me from the clinic, where he was admitted at 10 o'clock the previous night and received first-aid treatment for traumatic injuries.

"They were inflicted by an apparently keen-edged instrument, both on the right arm. One on the upper arm was about six inches long and three inches deep into the bicips. Another on the forearm was about three inches long and one and one half inches deep. They were sutured and dressed.

"Healing began and continued, under the care of nurse and dresser, until the 7th instant. It was reported that, while the patient was resting in bed, a sudden movement of the arm occasioned a severe hemorrhage which resulted in a collapse before the nurse or dresser could arrive to relieve him by arrest of the hemorrhage. The man had apparently been healthy prior to the assault. The wounding was the primary cause of his death."

We also find it necessary to quote the testimony on cross-examination of dresser Doe Williams cited and relied upon by appellant:

"Q. Please state, if you can, your means of knowledge of the signature of one J. A. Dingwall, M.O.H., as testified by you.

"A. Dr. J. A. Dingwall, being the Medical Officer of Health of the department in which I am employed and working under him, I am acquainted with his signature from time to time as he has been signing documents in my presence.

"Q. I suggest, then, that the time of issuance of this document addressed to the County Attorney for Grand Bassa County, you were one of the dressers who treated the patient therein admitted."

At this stage the prosecution objected to the question, which the court, *sua sponte,* disallowed.

"Q. Please state for the benefit of the court and the

empanelled jury the capacity in which you serve in the department with Dr. Dingwall, that is to say, were you a nurse or dresser?

"A. A dresser.

"Q. I suppose, then, at the time of the issuance of this paper to the County Attorney for Grand Bassa County, you were a dresser, not so?

"A. Yes, I was still employed as a dresser.

"Q. I further suggest that you also sutured and dressed the wounds of one Jimmy at whose instance this document was issued. Am I correct?

"A. I did not suture the wounds. The suturing was done by Dr. J. A. Dingwall himself, and he also dressed the wounds. The suturing and dressing was done at Dr. Dingwall's own premises.

"Q. Then you, as a dresser in the clinic of Bassa County had nothing to do with the dressing of the said Jimmy's wound. Neither was he under your care as such a dresser. Am I correct?

"A. After the suturing the wounds were redressed by me as a dresser in the government clinic of Bassa County.

"Q. I further suggest that your dressing of the said Jimmy at the clinic continued up until his demise. Am I correct?

"A. Yes.

"Q. To the best of your knowledge how long was the patient, Jimmy, in the clinic up to the time of his reported collapse before you as a dresser could arrive and give him relief?

"A. The patient, Jimmy, having been sent to the clinic for treatment, was conveyed to the home of the relatives on the old field which is almost half a mile from my board. At 3 A.M. on the day of his death I was in bed when one Mr. Gofargar, a relative of the alleged deceased, came to me as he usually does, calling me at any time during the

day or night after official hours to attend to any emergency calls. I got up, opened the door, and asked what was wrong. He replied that Jimmy was bleeding from the wounds. I rushed with him to the house where the patient was. When I got in the room the patient bled so much that he collapsed. I tested his pulse and found it was weak and feeble. Not long thereafter he died, no medicine being on hand at the time to be administered. From the time the patient was brought for medical treatment to the time of his death was approximately ten days."

Appellant also relied on the testimony of Dr. Haller, which we quote:

"Q. Being Medical Officer for Grand Bassa County, you will look at this medical certificate signed by Dr. J. A. Dingwall, whose signature has been identified by two witnesses and explain to the court and jury said certificate if you can."

[Certificate passed to the witness.]

"A. This certificate states that decedent received wounds on his arm and that the wounds were large ones. The largest arteries of the arm were cut and the cause of the death was surely largely from the arteries.

"Q. You will please explain the latter part of the certificate.

"A. This certificate alleges that he was quite a healthy man before he received the wounds."

Counsel for the defense cross-examined the witness:

"Q. The instrument addressed to the County Attorney of Grand Bassa County, over the signature of J. A. Dingwall of Grand Bassa County—can you tell this court and jury upon what that certificate is based, that is to say, upon a diagnosis or upon an autopsy?

"A. It is based upon a diagnosis.

"Q. Does it state which of the arteries of patient's arm was affected . . . ?

"A. I can say from the certificate that the principal arteries, lying under the biceps were cut, because the deepness of the wounds, according to the certificate, was three inches; and the arteries are lying no deeper than two inches.

"Q. Then your statement as made with respect to the paper given by Dr. Dingwall has been given upon what is stated therein and not from any scientific diagnosis of your own?

"A. I never saw the late Jimmy; my statement is based upon the certificate given by Dr. Dingwall."

In order to explore the situation thoroughly, and especially to afford a fair understanding of the decision rendered by this Court in *Padmore* v. *Republic,* 3 L.L.R. 418 (1933) we deem it proper to review said opinion.

Although, in the syllabus of the above-cited opinion, this Court enunciated the principles that:

"1. If a man give another a stroke not in itself so mortal, but with good care he might be cured, yet if the party die of this wound within the year and day, it is murder or other specie of homicide.

"2. But when a wound that, not in itself mortal, but for want of proper application, or from neglect, turns to gangrene or fever which is the immediate cause of death of the party wounded, this is murder or manslaughter according to the circumstances."

thus giving the impression that the case was decided upon these principles and the death sentence reduced to manslaughter by virtue of same, nevertheless said principles were never applied by this Court to the facts in the case. It is not shown anywhere in said opinion that the sentence of murder pronounced against Salome Padmore in the court of origin was reduced to manslaughter because of the reasons or principles of law stated and enunciated in

the first and second points of the syllabus. Moreover, this Court, in stating its conclusions, never referred to the principles of law enunciated in the said syllabus, but (at 3 L.L.R. 434) stated its conclusions as follows:

> "So, too, we are of the opinion that the circumstances of facts as brought out by the evidence in this case of the constant threats made by the decedent against prisoner leading up to the very time the attack [was] made on prisoner, the prisoner's object in going up the street to collect money from a disinterested person without any intention or idea of meeting deceased, the use of the knife in eating a piece of sugar cane which she was then engaged in. On coming in view of the decedent, decedent running out and attacking her, in holding her hands, slapping and yoking prisoner, she being superior in size and strength to prisoner, are all sufficient in itself to bring us to the opinion that the prisoner is not guilty of murder as found by the jury and pronounced by the court below and the judgment should therefore be reversed."

To say the least, the said opinion, besides being confusing, seems evasive. It is our opinion, therefore, that even if the facts and circumstances in the present case were similar, or even identical, to those in *Padmore* v. *Republic,* that decision could serve appellant no useful purpose, especially when we consider the manner in which the conclusions and grounds upon which the sentence therein was reduced are stated.

Passing now upon the evidence we shall first consider the medical certificate issued by Dr. Dingwall, *supra,* since it is obvious that appellant desires to show by said certificate that the wound he inflicted upon decedent was not the direct, proximate, and immediate cause of death. In his argument at this bar appellant predicated his contention in this respect upon the following portion of the certificate:

> "Healing began and continued, under the care of

nurse and dresser, until the 7th instant. It was reported that, while resting in bed, a sudden movement of the arm occasioned a severe hemorrhage which resulted in a collapse before the nurse or dresser could arrive to relieve him by arrest of the hemorrhage. . . ."

Nothing in the foregoing clause of the medical certificate shows that the hemorrhage referred to was caused either by gross negligence of the patient, or by error on the part of the doctor or nurse; for it is reasonable to conclude that the sudden movement of decedent's arm was caused by sudden pain or by an insect bite, which certainly could not be interpreted as gross negligence, especially in the absence of any proof that decedent had been advised by the physician against moving his hand. But, even if there were proof that the hemorrhage was caused by the negligence of the decedent, and that the said hemorrhage was the intervening cause which brought about death, this could never relieve appellant of liability. While it is true that an outmoded decision of some state court of the United States of America held that a man who inflicts a wound on another is not guilty of murder if the death was caused by improper treatment by the attending surgeon, which decision we expect our dissenting colleagues to cite, the following rule is universally accepted as the common law of England and America:

"If a wound or other injury cause a disease, such as gangrene, empyema, erysipelas, pneumonia, or the like, from which deceased dies, he who inflicted the wound or other injury is responsible for the death. If the deceased died of fright and the fright was caused by the violence and assault of defendant, he is responsible. The same liability attaches if the injury was calculated to cause death, but the immediate cause was treatment of the injury deemed necessary by competent physicians. He who inflicted the injury is liable even though the medical or surgical treatment which was

> the direct cause of the death was erroneous or unskilful, or although the death was due to negligence or failure by the deceased to procure treatment or take proper care of the wound. The same is true with respect to the negligence of nurses or other attendants." 21 Cyc. 700–701, *Homicide,* I, D. 3.

A note to the above quoted section dealing with intervening causes cites *Com.* v. *Eisenhower,* 181 Pa. 470, 37 Atl. 521, as holding that the man who shot deceased is liable for his death, although a drainage tube, which was necessary and was properly inserted by the surgeon, got into the spinal canal of deceased, directly causing his death.

In *Corpus Juris Secundum* the subject is treated in the following manner:

> "One is not legally responsible for a homicide unless his unlawful act, or unlawful omission to discharge a duty which he owed to deceased, contributed to the death of the victim. . . . However, the unlawful act or omission of accused need not be the sole cause of the death; the test of responsibility is whether the act of accused contributed to the death, and, if it did, he is not relieved of responsibility by the fact that other causes also contributed. So, if an injury or act committed by accused contributed to the death, he is responsible, although the negligence of third persons also contributed thereto, or although other injuries or wounds, whether or not mortal, inflicted independently by another, also contributed thereto, and were subsequent in point of time." 40 C.J.S. 852, *Homicide,* § 11.

Passing upon the question of proximate cause introduced and urged by appellant we cite the following from *Corpus Juris Secundum:*

> "To warrant a conviction for homicide it is necessary, but sufficient, to establish that the act of accused was a proximate cause of death. *In this connection*

proximate cause does not necessarily mean the last act of cause or the act nearest in point of time to the death; it means rather nearness in point of causal relation. Accused's act or omission need not be the immediate cause of the death and he is responsible if the direct cause resulted naturally from his conduct. An injury is the efficient, proximate cause of the death where it directly and materially contributed to the happening of a subsequent accruing immediate cause of the death; or, as the rule is sometimes stated, if the act of accused was the cause of the cause of death, no more is required." (Emphasis added.) 40 C.J.S. 854, *Homicide*, § 11.

Our dissenting colleagues have strenuously endeavored to convince us and, we dare say, will contend in their dissenting opinion, that the illness of Dr. Dingwall, who was unable to attend the trial in the lower court and undergo cross-examination renders the facts and conclusions stated in his medical certificate faulty, especially with respect to the description and dimensions of the wounds. This argument would have some merit if the records certified to us had shown that appellant made an issue in the court below by objecting to the admissibility of the said certificate on this ground when offered in evidence, thus giving the required notice of intention to raise the issue in the appellate court in case of an adverse ruling in the trial court. Appellee would thus have been afforded an opportunity to contest the point in his brief and argument at this bar. But the records are lacking in this respect. Dilating on this point, it is interesting to note from the records that appellant's own statement tends to corroborate the conclusions stated in the medical certificate of Dr. Dingwall with respect to the fatality of the wounds inflicted upon decedent rather than support the point stressed by our dissenting colleagues. In referring to the condition of decedent after he had inflicted the wounds upon him, appellant said:

"Jimmy then ran off, picked up a stick and started after me. He was unable to use the stick and dropped it."

The question then is, why was decedent unable to use the stick? The answer is found in the following testimony of a witness for the prosecution:

"Jimmy, decedent, at this time, in an effort to defend himself, tried to pick up a club, but being already weakened by profuse bleeding which had taken place as a result of the wounds inflicted by appellant, he fell to the ground unable to even move."

The above statements tend to corroborate the conclusions in Dr. Dingwall's medical certificate as to the seriousness and fatal nature of the wound. They also corroborate the following testimony of Dr. Haller on cross-examination:

"I can say from the certificate that the principal arteries lying under the biceps were cut, because the deepness of the wounds, according to the certificate, was three inches; and the arteries are lying no deeper than two inches."

In addition to corroborating and emphasizing the medical soundness of the conclusions of Dr. Dingwall, the foregoing testimony of Dr. Haller expresses his expert opinion. Dr. Haller states, of his own certain knowledge, and from his professional experience, that, since the principal arteries in the arm lie no deeper than two inches, whereas the cut on the arm in this case was three inches in depth, it is apparent that the principal arteries were cut. Although our dissenting colleagues contend that Dr. Haller expressed no opinion of his own, such an argument is unjustified.

The dissenting opinion points out that, according to the evidence of dresser Doe Williams, the patient was neither living at nor being treated at the clinic, but was placed with a relative, and was treated by the dresser almost one and one-half miles from where the said dresser

lived. This is said to have constituted negligence and improper care on the part of the medical attendants and to have contributed to decedent's death. The pertinent law cited, *supra,* on this subject, definitely settles this question.

Sentiment has no place in this Court. Moreover, we should not be deterred by frowns or influenced by smiles. This is the last and final forum before which our brother man comes for adjudication of legal matters. It is our function to correct all errors committed by subordinate courts or even by this Court. Therefore, the position of our dissenting colleagues that a review of the decision in *Padmore* v. *Republic,* 3 L.L.R. 418 (1933), on the grounds and for the causes stated in this opinion, would be uncharitable on the part of this Court, is, in our opinion, purely sentimental, particularly where the dissent states, *infra,* that: "as we are, so once were they [meaning our former colleagues who delivered the said opinion], and, as they are, so some day we shall also be."

Every public servant in a democratic form of government such as ours, be he judge, administrator, or legislator, enters office with full knowledge that some person preceded him in said office and that, some day, someone must succeed him. Therefore men, and especially judges, should have no fear about the question of being out some day, so long as they are acting in a conscientious manner in the fear of God and according to their understanding of the law. Nor should the question of retiring to private life, or returning to where their predecessors are, serve as Banquo's Ghost to them. In the adjudication of causes before them they should frankly point out what, in their opinion, they consider right, and what they consider wrong, regardless of whether any such pronouncement offends their own kith and kin. We have said that there is error in *Padmore* v. *Republic, supra.* Moreover, it is obvious that appellant, not having discovered the error, acted under an illusion in basing his

defense upon the said opinion. Therefore, as priests officiating at this high altar of justice, we should be courageous enough to point out the error, and to overrule said opinion. It is not uncharitable to perform a duty enjoined upon us by law.

In view of the citations of law and the several conclusions stated herein, we are of the opinion that: (1) the decision of this Court in *Padmore* v. *Republic,* 3 L.L.R. 418 (1933) is hereby overruled for reasons stated *supra;* (2) it is our considered opinion, cited herein, in accordance with the law, that the wounds inflicted by appellant upon the body of decedent caused his death; and (3) the trial was regular and the evidence clear and convincing. Therefore, the judgment of the court below should be, and is, affirmed; and it is hereby so ordered.

Affirmed.

MR. JUSTICE SHANNON, with whom MR. JUSTICE BARCLAY concurs, dissenting.

The facts and circumstances constituting the alleged murder have been substantially stated in the majority opinion. I am in agreement with my colleagues that, from said facts and circumstances, there is no doubt that some criminal responsibility attaches to the appellant. I might have been in complete agreement with them had I not been so impressed by the document appearing in the records as the certificate issued by Dr. James A. Dingwall, Medical Officer of Health for Grand Bassa County, who attended the decedent, and by the supporting testimony of Doe Williams.

For the purpose of this dissent I consider it necessary to quote fully the text of said certificate:

> "This certifies that, on April 25, 1950, at 11 A.M., one Jimmy was brought to me from the clinic, where he was admitted at 10 o'clock the previous night and received first-aid treatment for traumatic injuries.

"They were inflicted by an apparently keen-edged instrument, both on the right arm. One on the upper arm was about six inches long and three inches deep into the biceps. Another on the forearm was about three inches long and one and one-half inches deep. They were sutured and dressed.

"Healing began and continued, under the care of nurse and dresser, until the 7th instant. It was reported that, while the patient was resting in bed, a sudden movement of the arm occasioned a severe hemorrhage which resulted in a collapse before the nurse or dresser could arrive to relieve him by arrest of the hemorrhage. The man had apparently been healthy prior to the assault. The wounding was the primary cause of his death."

From the above it is readily seen that, after the assault, decedent was taken to the clinic, where he received treatment for, say, twelve days, from April 24 to May 7; and that, from the suturing and dressing of the wounds, "healing began and continued, under the care of the nurse and dresser." There is no explanation in the record as to why the decedent was allowed to stop at a distance of approximately half a mile from the clinic. It is also difficult to understand why the nurse to whom said certificate refers was not also produced to testify.

The statement that the wounds were the primary cause of death suggests that there were other causes; and it would not take one long to ascertain that one of the causes was the indifference of the medical officers who, in treating a patient with such severe wounds, living at such a distance from the clinic, failed to furnish care, attention, and supervision so that, when the patient made certain movements of his arm, this caused a hemorrhage of the wounds that had been sutured and dressed, although there was evidence that healing had begun and had continued for upwards of ten days.

Since Dr. Dingwall was sick and unable to testify at

the trial, he did not give a detailed explanation of his certificate, and was not subject to cross-examination. Dr. Haller, another physician, who was called in to testify, pointed out that he never saw the decedent during his lifetime or after his death, so that all of his testimony was his professional and scientific opinion based upon the certificate given by Dr. Dingwall. Dr. Haller testified as follows:

> "I can say from the certificate that the principal arteries, lying under the biceps, were cut, because the deepness of the wounds, according to the certificate, was three inches; and the arteries are lying no deeper than two inches. . . . I never saw the late Jimmy; my statement is based upon the certificate given by Dr. Dingwall."

Notice how particular Dr. Haller was in his testimony. In connection with every major statement, he would point out that what he was saying was based upon the certificate of Dr. Dingwall. There was no assumption of responsibility on his part.

Doe Williams, the dresser referred to in the certificate, testified as follows:

> "I did not suture the wounds. The suturing was done by Dr. J. A. Dingwall himself, and he also dressed the wounds. The suturing and dressing was done at Dr. Dingwall's own premises. . . . After the suturing, the wounds were redressed by me as a dresser in the government clinic of Bassa County. . . . The patient, Jimmy, having been sent to the clinic for treatment, was conveyed to the home of the relatives on the old field which is almost half a mile from my board. At 3 A.M. on the day of his death I was in bed when one Mr. Gofargar, a relative of the deceased, came to me, as he usually does, calling me at any time during the day or night after official hours to attend to any emergency calls. I got up, opened the door, and asked what was wrong. He replied that Jimmy was

bleeding from the wounds. I rushed with him to the house where the patient was. When I got into the room the patient had bled so much that he had collapsed. I tested his pulse and found it was weak and feeble. Not long thereafter he died, no medicine being on hand at the time to be administered. From the time the patient was brought for medical treatment to the time of his death was approximately ten days."

Conceding as I do that, with this quality of evidence, criminal responsibility attaches to the appellant, let us see whether such responsibility is of the degree that could warrant upholding a conviction for murder.

There is a general principle of law, particularly of criminal law, that every person is held to contemplate and to be responsible for the natural consequences of his own acts. In this connection we find the following in *Ruling Case Law:*

"While the courts may have vacillated from time to time it may be taken to be the settled rule of the common law that one who inflicts an injury on another will be held responsible for his death, although it may appear that the deceased might have recovered if he had taken proper care of himself, or submitted to a surgical operation, or that unskilled or improper treatment aggravated the wound and contributed to the death, or that death was immediately caused by a surgical operation rendered necessary by the condition of the wound. . . . But, however this may be, the rule surely seems to have its foundation in a wise and practical policy. A different doctrine would tend to give immunity to crime and to take away from human life a salutary and essential safeguard. Amid the conflicting theories of medical men, and the uncertainties attendant upon the treatment of bodily ailments and injuries, it would be easy in many cases of homicide to raise a doubt as to the immediate cause of death, and thereby to open a wide door by which persons guilty

of the highest crime might escape conviction and punishment." 13 R.C. L. 751, *Homicide,* § 57.

I am in agreement with my colleagues to the extent that they attach responsibility to the appellant, especially when the facts and circumstances leading up to the injury are taken into consideration; but I have been unable to join them in declaring it murder.

Since Dr. Dingwall, the attending medical officer who sutured and dressed the wounds was, because of illness, unable to testify and be cross-examined as to the certificate which he issued, the character and dimensions of said wounds as shown in said certificate, issued ten days after the death, ought not be accepted; nor should the evidence given by Dr. Haller, which consisted wholly of professional and scientific deduction from the certificate, be accepted. Whilst the general rule stated, *supra,* and quoted from *Ruling Case Law* may prevent the opening of a wide door by which persons guilty of the highest crime might escape conviction and punishment, nevertheless persons criminally charged, as in this case, would be at the mercy of others who might accelerate the death of a wounded person by their unfair, foul, negligent, unscientific, and unprofessional conduct, if courts were to overlook such conduct and invoke the full force of this common law principle.

With this in view, some states in the United States of America have changed this common law rule; and, in Texas, it has been provided by statute that, where death is caused by gross neglect on the part of the person wounded, or his physicians or attendants, this shall be a good defense. 13 R.C.L. 752, *Homicide,* § 57. In this case, according to the certificate, the wounds were sutured and dressed, and healing continued for a number of days; but death was caused by a sudden movement of the arm by the decedent himself which caused a hemorrhage that could not be checked because decedent was a distance from the clinic, and because of the lack of medicine. It

can readily be concluded that, since the wounds had commenced healing, and were continuing to heal, death would not have ensued had not decedent himself suddenly moved his arm. This caused the hemorrhage, which could have been checked had the medical officers been near with medicines.

The citations of law quoted by my colleagues in their majority opinion, upon which they have based their conclusions, attach criminal responsibility in such cases despite the intervention of other causes between the infliction of the wounds and the time of death; but in almost all, if not all such cases, the defendants are said to be guilty of homicide without stating the degree thereof. We conclude that the determination of the degree of homicide must depend upon the particular facts and circumstances of each case. In the present case the medical officers were guilty of gross indifference and negligence; and the decedent's movement of his arm might have been obviated, had he been under direct supervision. These facts should tend to mitigate the degree of homicide from murder, as charged, to manslaughter or even to assault and battery with intent to kill.

In addition, if the wounds were considered fatal by the medical staff in Grand Bassa County, there is even greater support for my conclusion that they were indifferent and negligent when they left the patient by himself at such a distance from the clinic.

The attempt to overrule the decision of this Court in *Padmore* v. *Republic,* 3 L.L.R. 418 (1933) is unjustified, especially when the majority opinion clearly sets out that the facts and circumstances in both cases are dissimilar, and one is not applicable to the other. To justify the overruling of a decision of this Court, it must be shown that some error of law has been committed, and not, as is sought to be done herein, that the principles of law enunciated were not applied to the facts of the case or

to the conclusions thereon. Therefore I am in disagreement with the overruling of said opinion in its entirety, when it is only the first two points of the syllabus therein that the then Court is accused of having failed to apply, and without questioning the basic principles of law enunciated therein.

The imputation that this Court was evasive and confused in its handling of the *Padmore* case is, in my opinion, uncharitable. We should not forget that, as we are, so once were they, and, as they are, so some day we shall also be.

Because of the above I am dissenting and have withheld my signature on the judgment supporting the majority opinion.