J. D. A. SCOTT, Appellant, *vs.* **THE REPUBLIC OF LIBERIA**, Appellee.

[January Term, A. D. 1904.]

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

Witness—Recall—New trial—Discretion—Insanity—Expert testimony.

It is within the discretion of the trial court to allow the recall of a witness for further examination, before the case is submitted to the jury. The trial court is not bound to grant a new trial upon motion.

The testimony of ordinary witnesses that a defendant had shown signs of insanity is not sufficient to prove insanity, but must be corroborated by the evidence of a medical expert.

This case of murder was tried and determined in the Court of Quarter Sessions and Common Pleas, Montserrado County, at its June term, 1903. John D. A. Scott, a citizen of the settlement of Caldwell, St. Paul's River, in the County of Montserrado, was indicted and presented to the court for the wilful murder, with malice aforethought, of one Joseph T. Gibson, also of the settlement of Caldwell on the St. Paul's River, Montserrado County, the former being formerly a minister of the gospel in the Methodist Episcopal Church, and the latter a minister of the gospel of the Protestant Episcopal Church.

Upon arraignment before the court, the prisoner Scott pleads not guilty, whereupon the state introduced witnesses to substantiate the charge as laid in the indictment. The jury, being satisfied with the truthfulness of the evidence adduced, brought in a verdict of "guilty of murder," upon which the judge rendered judgment to the effect that the "prisoner be hanged by the neck until he be dead, on the 17thday of July, 1903." To this sentence the prisoner took exceptions and appealed to this court for a rehearing of the case.

In considering the bill of exceptions the court finds three points presented for consideration, as follows:

1st. That the judge below overruled the objections of defendant to recalling witness C. B. Douglas to rebut defendant's evidence, the objection being based upon the fact that the said witness had been examined, cross examined, and re-examined. To this, this court says that the court below did not err in admitting the said witness, for some fact might have been overlooked, that would throw important light on the case in favor of either party, that had not been drawn out in the previous examination, and the court, still having jurisdiction over the witness, before the arguments began in the presence of the jury, he had the discretion to admit or not admit the witness to testify again.

2nd. That the judge below overruled defendant's motion for a new trial. To this exception this court says that the court below was not bound to grant a new trial, if in its judgment the verdict of the jury was not manifestly against law and evidence, or otherwise illegal.

3rd. That the judge below rendered judgment on the verdict of the jury, sentencing defendant to be hung. This court fails to see the error of the judge below in rendering said judgment, he considering that the verdict was based upon the evidence and law in the case, particularly when no other issue in the defence was raised by the defendant, which he, defendant, had produced evidence to substantiate. However, in view of the great excitement and popular opinion, that were rife at the time against the prisoner, the court might have granted a new trial if in its judgment it felt that the jury was thereby influenced, but it was not bound so to do.

We notice in the record of the case, that appellant endeavored in the court below to establish the fact that he was insane when he killed Gibson. Although he plead not guilty, still the evidence shows that the killing was done by him; but he labored to show that he was insane. Appellant's counsel in this court, notwithstanding, excepting to the judgment of the court below for three reasons already stated, namely, the overruling of their objection to the recall of witness C. B. Douglas, the refusal of the judge to set aside the verdict and to grant a new trial, and the final judgment of the court, yet in representing the case before this court in their brief, they set up in the first place the insanity of

appellant, for which reason the judgment of the court below should be reversed.

In the record of the case, aside from questions asked and answered by counsel and witnesses, we find no plea of insanity raised ; and had the issue been legally raised in the court below, it is our opinion that that issue should have been decided upon proper evidence before the main charge was taken up ; for to allow evidence to prove or disprove allegations or facts not raised, would be irrelevancy. In this case, however, since the evidence on the point of insanity forms a part of the record, the court will briefly consider it and give an opinion.

Sarah J. Douglas, L. B. Douglas, C. A. Douglas, Milly Spelman and R. A. Kennedy were the most important of the witnesses who testified in the case, and without exception they all established the fact that appellant did kill J. T. Gibson on the 6th day of June, A. D. 1903. They further testified that the prisoner (appellant) at times would show signs of insanity, and at other times he would act and talk as any other sane person. Now it is the opinion of this court that while it does not discredit the evidence of the witnesses named, on the temporary insanity of appellant, yet, according to the statute laws of Liberia, it is not the best evidence that the nature of the case admits of ; and uncorroborated by the evidence of a medical expert, it fails to establish the fact of insanity. The evidence of the actual killing of Gibson by appellant is conclusive, to the mind of the court.

Again, referring to the evidence to support insanity, we quote the 32d article of Chapter XII, page 6o, of Liberia Statutes, and make comment thereupon: "A witness shall depose to facts only, not to opinions, except in cases of science, or peculiar knowledge which he may possess from his peculiar studies, occupation, or pursuits; and except in questions of general character." Now, then, this court says that insanity is a mental disease, and the testimony to substantiate the same must be sufficient and conclusive. Ordinary witnesses may depose in questions of general character as is within the meaning and spirit of the statute laws of Liberia.

The case cited by appellant, of Ledlow against Republic, in character and

circumstances is not analogous to the case before the court, and consequently the court is not bound to render the same decision. In the case of Ledlow for murder, the evidence of ordinary witnesses of their belief of his insanity from his queer actions was corroborated by the scientific testimony of Dr. H. J. Moore, and chiefly upon which the court based its decision. Let us quote from that decision: "Witness Moore's statement is also very pertinent to the cause, first, because of its scientific or professional character, and secondly, on account of the direct knowledge which he claimed to possess, growing out of his diagnosis, made in this particular case, of the accused. To the plea of insanity, upon which the case chiefly rested, the testimony of witness Moore was indeed of great weight and value to the determination of the case." Again, "It would be as difficult as it would be unsafe to lay down a rule that would apply to the infinite variety of forms in which insanity or derangement may show itself. Each case must therefore depend very much upon the circumstances, facts and developments which attend it."

Now, then, this court is not responsible for so-called insane persons going at large and murdering useful citizens, when the insanity pleaded is not conclusively made out, and will not lend its aid to such violation of law. Therefore the judgment of the court below is hereby affirmed, and upon a mandate issued from this court by the clerk hereof, the judge below is authorized to resume jurisdiction and execute said judgment as speedily as possible.