AMSTEAD WOOD, Appellant, *vs.* **REPUBLIC OF LIBERIA**, Appellee.

[January Term, A. D. 1905.]

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

Murder.

Constitutional law—Twice in jeopardy.

Where after a jury has been empanelled to try a prisoner charged with murder, one of the jurors separates from the panel and goes beyond the precincts of the court, and the trial judge thereupon disbands such jury and empanels a new jury and proceeds to try the cause, such action is not in violation of the section of the constitution providing that "no person shall for the same offence be twice put in jeopardy of life and limb."

This case is before this court upon an appeal from the Court of Quarter Sessions and Common Pleas for the County of Montserrado. From the record it appears that the accused was indicted and tried at the December term of said court in the year A. D. 1903, for the atrocious crime of murder. Upon arraignment the prisoner plead "not guilty" to the charge, whereupon a jury was empanelled to try the issue raised by said plea. It further appears from the record, that during the progress of the trial, that is to say, on the second day thereof, it was brought to the knowledge of the judge presiding over said trial, that on the first day's hearing of said case, and after a part of the evidence on the part of the prosecution had been heard and submitted, and the jury duly charged with the acquittal or conviction of the prisoner, one of the jurors absented himself from the panel and went a considerable distance beyond the precincts of the court and out of the sight and hearing of his fellows. It further appears that upon these facts being brought to the knowledge of the court, his honor, considering the influence which may have been brought to bear upon said juror while separated from his fellows, either for or against the prisoner, and in order that the stream of justice might not be polluted by the possible misconduct of a juryman, in the exercise of sound

discretion, well supported, as we think, by the principles of law, disbanded the jury to whom the case had been submitted and empanelled a new jury to try the cause.

At this stage of the proceedings the counsel for the accused presented a motion demanding the discharge of the prisoner upon the ground that the empanelling of a second jury to try the same cause operated as a second jeopardy to prisoner. The court below overruled the motion and proceeded with the trial. After hearing the evidence for and against the accused and the arguments presented by the learned counsel for the prosecution and defense, the jury, after due deliberation, on the 24th day of December returned a verdict of guilty. The counsel for the prisoner at this stage moved for a new trial, which motion was overruled, and the court below, on the 3oth day of said month, pronounced sentence of death upon the prisoner.

To this sentence, as well as to the other rulings of the court below in the premises, the counsel for the defense excepted and has brought the case before this tribunal upon a bill of exceptions for review. This court will now proceed to consider separately the several points laid in the bill of exceptions. So important does this court regard the principles of law involved in the first exception, that it deems it proper to set forth this exception in full. It is taken as follows: "Because when, on the 18th day of December, A. D. 1903, a jury having been empanelled to try the above entitled cause, your honor, on the 19th day of December, A. D. 1903, after the evidence had been gone into and not concluded, informed the counsel for the state and the counsel for the defense that one of the jurors had been seen away from the rest of the jury with one of the bailiffs of the court, and asked that the place of that juror be supplied and he be dismissed from said jury, or that the said jury be dismissed; to which the state's attorney assented and to which the counsel for the defense dissented, and your honor then disbanded said jury and ordered said case to be taken up *de novo,* to which prisoner excepted."

The law involved in this exception relates to a constitutional provision, and is one which the Supreme Court of the Republic of Liberia has never passed upon and thereby settled. The provision is borrowed from the American Constitution, after which our Constitution is framed, and appears to have been introduced into the organic law of this Republic as a safeguard against the

abuse of public justice and an equitable protection to life and liberty. The last clause of the 7th section of the Liberian Constitution declares that "no person shall for the same offence be twice put in jeopardy of life or limb"; that is to say, no person shall for the commission of the same crime be twice tried.

The question as to what is jeopardy and at what stage of a legal proceeding it may be technically said to begin, is one which has afforded a wide field for legal discussion and research. In the American courts the express enactments of the several states have declared what shall and what shall not be regarded as jeopardy in criminal prosecutions before the courts of the respective states. And so divergent and technical are the shades of opinions expressed in these states upon this great subject that a comparative study of them is rendered in a large degree perplexing, though exceedingly interesting and instructive.

But it is the common law definition of the term jeopardy which interests us in the consideration of the case under review, and not the *lex scripta* of the American states, and we shall therefore proceed to discuss the principles laid down on the point by some of the ablest and most profound common writers, whose works have been admitted as text-books in the courts of the Republic. And firstly, Mr. Bouvier defines jeopardy to be "The situation of a prisoner when a trial jury is sworn and empanelled to try his case upon a valid indictment, and such jury has been charged with his deliverance." (1 Bouv. Law Dict. p. 751.) Mr. Bishop in his treatise on criminal law confirms this view and enters into an exhaustive and minute treatment of the subject. We shall only quote here that part of his observations on jeopardy which applies to the case in point. "It appears," he says, "a point not very clear on the authorities, that the keeping of the prisoner's legal rights is not at all with the jury, but only with the judge; and that therefore if a juror of his own motive escapes so that no verdict can be rendered, such escape shows the prisoner *never* to have been in jeopardy. *The same result would perhaps follow if the jury separated with the consent of the officer in attendance who had no right to give any consent."* "So it plainly must be," he continues, "if it should be found that a juror was legally incompetent to sit, or not sufficiently sworn, or if the cause should appear to have been tried by a less number of jurors than the law requires." (1 Bisp. Crim. Law, sec. 670.)

Besides these exceptions to the general rule mentioned here by Mr. Bishop,

others laid down in the text books as legal necessities may be mentioned, and which have been uniformly upheld by the decisions of the English and American courts at law. As for example, where during the trial the judge takes sick and the trial cannot proceed, the jury, although sworn and empanelled, and the evidence perhaps gone into, may be disbanded and the trial postponed, and the prisoner is not entitled to a discharge on that account. So also the sickness or incapacity of a juror, sickness of the prisoner, expiration of the term, inability of a jury to agree, separation of the jury before their verdict has been made up. Whenever any of these cases arises during the course of a trial, the judge may, with or without the consent of the prisoner, disband the jury and if necessary postpone the trial, and the prisoner will not be entitled to a discharge nor can he legally raise the plea of jeopardy when a new jury has been empanelled to try his cause.

Let us for a moment enquire into the reasons of the law for so holding. And for this purpose we shall reason upon the facts presented in this case and which are pertinent to the foregoing observations.

Here, in the case before us, after the jury had been sworn and empanelled to try the issue raised by the plea of the prisoner, a juror separated from the panel and went beyond the precincts of the court. The possibilities were that he may, during said separation, have come in contact with some influence which may have swayed his mind and his vote in favor of or against the prisoner. He may have been approached by the hired agents or friends of the accused and bribed to give his vote in prisoner's behalf, no matter how conclusively the state may have proved his guilt. Or, on the other hand, what may be regarded as still more wicked and reprehensible, his vote and influence might have been secured by the haters of the prisoner, to bring down a verdict against him, however doubtful and insufficient the evidence against him may have been.

Under such circumstances, the judge, who, as we have seen, is charged with the keeping of the prisoner's rights, could not have an abiding conviction that the ends of public justice would not be defeated, if that juror were permitted to pass upon the prisoner's guilt. He could not feel a moral certainty that the verdict to be delivered under such circumstances would be guided by the preponderance of the evidence submitted, and that it would be free from the

taint of corruption and perversity. What, then, let us inquire, would be his reasonable duty under such circumstances? Obviously, as a dispenser of transparent justice, his duty would be to disband the jury whose legal disinterestedness in the cause could no longer be relied upon, and to empanel a new jury.

In summing up the law bearing on the point raised in the first exception in the bill, this court will remark that in its opinion the court below did not err in overruling the motion to discharge the prisoner upon the ground that the former jury had been disbanded. Under the circumstances surrounding the case, the judge was in the exercise of sound discretion; the necessity arising justified this course. To hold that the disbanding of a jury under such circumstances is illegal and should operate as a discharge of the prisoner, would be setting aside plain principles of the statute and common law, and producing loop-holes for the escape of the guilty. But the case would have been far otherwise had the court at this stage of the proceedings disbanded the jury for any cause not recognized by the law as a reasonable necessity for so doing.

In handing down its decision on this much-disputed provision of the Constitution, the court desires to have its premises, which it thinks are well upheld by law and reason, distinctly and clearly understood. Jeopardy, as this court understands the law, attaches when, upon a valid indictment, the prisoner is arraigned and pleads, and the jury empanelled and sworn to try the issue raised by the plea. If at this stage of the proceedings the jury is disbanded and trial postponed, except for the plain causes of necessity mentioned in the common law and referred to above, the prisoner, under the great provision of the Constitution, may demand his discharge. But if, on the other hand, the postponement arises from palpable necessity, over which the court had no control, the prisoner may be tried and convicted by a second jury, upon the same indictment, which proceeding is only a continuance of the former proceedings.

The supreme object of the Constitution, it appears to us, is to protect the prisoner against the inconveniences of repeated prosecutions for the same crime, which would tend to cripple his liberty and freedom. The chief guarantee of the Liberian Constitution is the protection of the liberties and

freedom of the commonwealth. The idea may have derived its origin from the study of the Roman and English law in its early stages, when the freedom of men was sometimes greatly crippled and hampered by repeated prosecutions for the same offence. But we fail to recognize in said provision of our Constitution any design to baffle justice and to screen crime. To admit this would be to impugn the righteous motives of the sainted framers of the organic law. This court refuses to entertain an opinion on this provision of the Constitution, which is in conflict with other portions of the solemn compact, in conflict with the interpretations of the American courts upon a similar provision in the American Constitution, and in conflict with natural law and the rules and principles of written law.

We proceed next to consider the 5th and 6th exceptions in the bill. The 5th exception is taken to the court's ruling on the motion presented by the learned counsel for prisoner, praying a new trial upon the ground that the verdict of the jury presented in said case "is manifestly against the law and evidence"; which motion the court overruled. The 6th exception is taken to the sentence pronounced upon said verdict.

The 5th exception brings us to the consideration of the evidence produced at the trial, upon which the guilt of the prisoner is claimed to have been established. Following the generally accepted principle of law that “every man is presumed to be innocent until the contrary is proven," and that "the burden of proof rests upon the party maintaining the affirmative," it follows that when a prisoner is charged with the commission of a crime the facts necessary to establish his guilt must be proven by the State. And so careful is the law in guarding the interest of the prisoner that the State, to convict, must not only make out an apparent case, but it must prove the guilt of the accused beyond a rational doubt. The proof must be so conclusive as to exclude every hypothesis of the prisoner's innocence.

Evidence is ranged by law writers into three general groups, namely, positive or direct evidence, presumptive evidence, and circumstantial evidence. Positive or direct evidence is that means of proof which tends to show the existence of a fact in question from knowledge of such fact derived from one's own senses. Presumptive evidence is that which shows the existence of one fact by proof of the existence of another, from which the first may be inferred.

Circumstantial evidence tends to prove a disputed fact by proof of the other facts, which have a legitimate tendency, from the laws of nature, or the usual connection of things, to lead the mind to conclude that the fact exists which is sought to be established.

From an inspection of the record we find that the evidence in this case chiefly falls under the last two heads, namely, presumptive and circumstantial. And the court would here remark that the greater number of crimes found upon the records of criminal courts are established by this species of proof. It is not frequent, speaking comparatively, that misdemeanors and crimes are committed before the public gaze. The natural tendency is to seek secrecy and concealment. So that if the law only recognized, as sufficient to convict, that quality of evidence we call positive, the safety of society would be greatly jeopardized by miscreants who would perpetrate their diabolical deeds either under cover of night, or under some other cover which the eye of justice could not penetrate. In this case the prisoner is charged with the willful and malicious killing of a human being, under circumstances greatly aggravated.

Summing up the evidence, we find that some time before the commission of the crime with which the accused is charged, deceased and prisoner had a quarrel about some ducks, which deceased accused prisoner with stealing; that shortly after this affair, deceased's house was fired into and prisoner was arrested upon suspicion, but was discharged for want of proof; that later, deceased's house was burned, but the felon was not discovered; that after the shooting into the house, prisoner went to wife of deceased, and, referring to the incident, warned her that a greater calamity would befall her. He mentioned a conspiracy which had been formed, as prisoner said, against her, and asked for money, in consideration of which he promised to stop the plot, alleging that he had the power to do so. It was given in evidence by witness John Hagan, that prisoner subsequently confessed that it was he who fired into deceased's house, and that his intention at the time was to kill deceased. It was also stated in evidence that on the day deceased was killed, a warrant was issued against prisoner and as the prisoner saw the officer approach the house of Garnet, where he was, he fled. Another witness states that in the afternoon of the same day the crime was committed, he saw prisoner on the road to Careysburg, wider circumstances which appear to the court very suspicious. He further states that prisoner had with him a gun. Witness

Mulbar's testimony, when taken together with the other witnesses', removes much of the doubt which otherwise would have surrounded the case. It is the last link of a long chain of evidence, which enabled the law to finally trace the crime to prisoner. Without Mulbar's testimony it would have been difficult to connect the former acts and admissions of prisoner, which laid the foundation for strong presumption, and his flight from the officer and other suspicious conduct, with the actual commission of the crime charged.

The voluntary confession of the prisoner to witness Mulbar, under circumstances which excluded the idea of its having been made under duress, or threat, or fear, or inducement, established a strong case for the prosecution, the *corpus delicti* having been proven by independent testimony. Taking witness Mulbar's statement, which proves the confession of prisoner to the alleged crime, together with the presumptive and circumstantial proof submitted, we feel no hesitancy in asserting that the guilt of the accused has been made out with legal certainty. It was the privilege of the prisoner to have rebutted this evidence and thereby raise a rational doubt as to his guilt, which doubt, if well founded, would have operated in his favor. But we find that this was not even attempted. Traversing the whole evidence with a determination to discover whatever could be discovered therein, in prisoner's favor, we have found not the slightest foundation upon which to predicate his innocence.

It was insisted upon by the learned counsel for the accused, in his arguments, that prisoner was not in the settlement of Bensonville at the time of the commission of the crime; but this fact, if it really existed, and if the defense intended to utilize it in its defense, should have been pleaded under the plea of *alibi,* and proven. This the prisoner failed to do.

Having most carefully and deliberately examined the whole evidence in this case and the law bearing upon the questions of law raised, we are forced to conclude, upon. the authority of the evidence, that the prisoner Armstead Woods did willfully and of his malice aforethought kill and murder Samuel Coker.

This court is consequently under the painful necessity, in the discharge of its solemn responsibilities as the highest dispenser of public justice in this country, to affirm the death sentence pronounced against prisoner in the court

below. The judgment of the court below is therefore affirmed and the clerk of this court is hereby authorized to issue from his office a mandate to the judge of the court below, informing him of this decision.