DARNENOH, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

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

Argued January 17, 1935. Decided February 1, 1935.

1. Any person who shall, without legal justification or excuse, unlawfully, and with malice aforethought, kill any human being thereby commits murder.
2. Malice aforethought may be either express or implied.
3. When a human being has been deliberately killed by another the law will presume malice even though no particular enmity has been proven.

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

C. H. Taylor for appellant. *James A. Gittens,* by appointment of the Attorney General, for appellee.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

At the November term in the year of our Lord nineteen hundred thirty-three of the Circuit Court for the First Judicial Circuit, Montserrado County, Darnenoh, of the town of Barmen, in the section of Merrutar, in the Central Province of the Liberian Hinterland, was indicted by the grand jury of the County of Montserrado for the commission of the atrocious crime of murder; and was arraigned on the twenty-second day of May, 1934, and pled not guilty.

The history of the case is as follows:

In the year nineteen hundred thirty-three, at the town of Barmen in Merrutar section, Darnenoh, appellant, became friendly with Ton-Won, the decedent, during the absence of her husband Sumoe. Upon the return of the said husband, he was informed of the illicit friendly relationship that existed between Ton-Won, his wife,

the decedent, and Darnenoh, the prisoner, now appellant. He thereupon went to the Chief of their town and apprised him of this fact, and requested that the appellant be warned to desist from his illicit connection with his wife. The Chief thereupon cautioned the said appellant to refrain from his familiarity towards the decedent, the wife of Sumoe, who answered the Chief and said, "The only way I will desist from my friendly actions will be for her to get from between us," which means between her husband Sumoe and him, the appellant. As this relationship still continued, Sumoe, the husband of the decedent, complained again to the Chief, and asked if he had not informed the appellant to leave his wife. The Chief then told him that the answer of the appellant was: "You must tell the woman also; and if I must leave her, then she has to get from between us." Record pp. 5, 6, Barmen's testimony; Record pp. 12, 13, Sumoe's testimony.

"After this there was a dance at Sukoto's town; and after this dance Ton-Won returned to Barmen's town where decedent resided, and Darnenoh, the appellant, who also attended this dance was there also. The next morning Ton-Won went into Jumboo's house, where Flombo and Quelmee were, and said to Jumboo, 'We went to play, what good did you leave for me?' Jumboo told her that she had some snuff, that she may give her some. Darnenoh, the appellant, also came into the house. Flombo and Quelmee were sitting down facing the door. Darnenoh, the appellant, took a gun from behind the door and aimed it at Ton-Won the decedent and said, 'Ah! my lover is sitting down, let me kill her.' At the same time according to the testimony of Barmen he aimed the gun at her heart, fired and shot her between her two breasts and she fell out doors and began to holler and cry, calling me to come. When I got to her I asked, 'Who fired this gun?' Darnenoh, the appellant, at

this time came out of the house and said that he had fired the gun. I then took the gun from him and gave it to one man who was there and caught him. I then asked him, 'What has this woman done to you which caused you to kill her?' He then said, 'If you ask me, I do not know how to answer you.' I then carried him into the middle of the town; and caught (sic) all the people who were in the house as witnesses for the killing of this woman by the prisoner, and carried them to Gbanga. The woman Ton-Won not being dead at this time, was crying and said: 'Darnenoh' (which is the prisoner) 'you have always said that you would kill me, and really you have killed me.' I then called other people to be witnesses of what the woman had said and they came and it was repeated to them."

The dying declaration of the decedent, the testimony of witnesses Barmen, Flombo and Sumoe, in our opinion, formed the necessary connecting links in the chain of evidence that is required by law to warrant a conviction in all capital offenses.

Murder is a crime at which human nature starts and which, I believe, is punished in most countries with death. The words of the Mosaical law, over and above the general precept to Noah that, "Whosoever sheddeth a man's blood, by man shall his blood be shed," are very emphatic and prohibit the pardon of murderers. "Moreover ye shall take no satisfaction of a murderer, who is guilty of death, but he shall surely be put to death; for the land cannot be cleansed of the blood that is shed therein but by the blood of him that shed it." Genesis 9:6; Numbers 35: 31, 34. The word "murder" was anciently applied only to the secret killing of another (which the word "moerda" signifies in the Teutonic language), and was defined to be homicide which is committed privately, no one witnessing it, no one knowing it, for which the village wherein it was committed, was liable to a heavy

amercement, which amercement itself was denominated "murdrum." This was an ancient usage among the Goths in Sweden and Denmark, who supposed the neighborhood, unless they produced the murderer, to have perpetrated or at least connived at the murder, and according to Bracton was also introduced into England by King Canute, to prevent his countrymen, the Danes, from being privily murdered by the English, and was afterwards continued by William the Conqueror for the security of his own Normans. And therefore if, upon inquisition had, it appeared that the person found slain was an Englishman (the presentment whereof was denominated engleseberie), the country seems to have been excused from this burden. But this difference being totally abolished by Statute 14 Edward III, Chapter 4, we must therefore define murder in quite another manner without regarding whether the party slain was killed openly or secretly.

Murder is therefore defined in the Criminal Code of Liberia of 1914 thus: "Any person who shall without legal justification or excuse, unlawfully with malice aforethought kill any human being. . . ."

Turning to culpable homicide, originally killing was killing and no distinction in guilt was made until by the passage of the Statute 23 Henry VIII Chapter I, and other subsequent statutes, certain kinds of killing were deprived of the benefit of clergy. Apparently, the distinction between these statutes was based on the difference between premeditated and unpremeditated killing, but the courts at that time construed the words "malice aforethought" in the statutes as requiring neither malice under any general or legal definition of the word or actual premeditation. What the courts have actually done is to treat as murder any killing which in the language of Greenleaf carries with it "the plain indication of a heart regardless of social duty and fatally bent upon mischief." This includes intentional killing where there is no con-

siderable provocation: 2 Jones's Blackstone *195, § 220, n. 14; Criminal Code of Liberia, 11, "Murder."

According to all criminal law writers, to constitute the crime of "murder" there must be some element of malice, either express or implied. From the records of this case, there is no trace of express malice to be associated with the killing of Ton-Won by Darnenoh, the appellant. This therefore brings us to consider the other class of malice, the application of which must be construed from the circumstances connected with the killing, and that is implied malice. In many cases where no malice is expressed, the law will imply it, as when a man willfully poisons another; in such a deliberate act the law will presume malice, though no particular enmity can be found. And if a man kills another without any, or without considerable, provocation, the law implies malice; for no person, unless of an abandoned heart, would be guilty of such an act upon a slight or no apparent cause.

It will be useless to go through all the cases of homicide which have been adjudged either expressly or impliedly malicious; therefore a specimen may suffice, and we take it for a general rule that all homicide is malicious, and of course amounts to murder, unless where justified by the command or permission of the law, excused on account of accident or self-preservation, or alleviated into manslaughter, by being either the involuntary consequence of some act not strictly lawful, or voluntarily occasioned by some sudden and sufficiently violent provocation. And all these circumstances of justification, excuse or alleviation it is incumbent upon the prisoner to make out to the satisfaction of the court and jury, the latter of whom are to decide whether the circumstances alleged are found to have actually existed; the former, how far they extend to take away or mitigate the guilt. For, all homicide is presumed to be malicious until the contrary appeareth upon evidence.

The appellant, Darnenoh, failing to comply with the

laws governing all cases of homicide in failing to remove the dark cloud of presumption of malice in this case, we are therefore of the opinion that the judgment of the lower court should be affirmed; and it is so ordered.

Judgment affirmed.

MR. CHIEF JUSTICE GRIMES, having been unwell when the above cause was heard, was unable to take part in the consideration and decision of this appeal.