proven. (Lib. Stat., Chapter on Injuries, p. 27, sec. 37.)

2. In the case *Lackman v. Johns* (I Lib. L. R. 455) the court in giving judgment against appellee, plaintiff in the court below, remarked as follows: "It is a settled principle of law, that special damages when relied on must be specially pleaded and proved. The mere fact of alleging a sum in the complaint as requisite to satisfy the injury complained of will not warrant a jury to take cognizance thereof unless it is proven by unimpeachable testimony at the trial." In the case *Crain v. Petrie* (Smith's Leading Cases, vol. 2, p. 494) it was held "that to maintain a claim for special damages, they must appear to be the legal and natural consequences arising from the tort, and not from the wrongful act of a third party remotely induced thereby." In other words, the damages must proceed wholly and exclusively from the injury complained of. (See also *Haller v. Miller,* and *Harrison v. Beverly. Ibid.*)

From these considerations it results that the judgment of the court below be reversed; and it is so ordered.

C. B. Dunbar, for appellant.

L. A. Grimes, for appellees.

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

HEARD OCTOBER 19, 1916. DECIDED NOVEMBER 1, 1916.

Dossen, C. J., Johnson and Witherspoon, JJ.

1. The evidence of one witness, supported by the voluntary confession of a prisoner, is sufficient to find a conviction for homicide.
2. The plea *se defendendo* will bar a conviction for murder when substantially proved by preponderating evidence.
3. Under this plea the onus shifts upon the defendant, and he must prove the legal elements of the plea by preponderating evidence. He must prove first that before the mortal stroke was given he declined any further combat and secondly that he then killed his adversary through mere necessity.
4. When a defendant claims that the killing was done in self-defense he must satisfy the jury by a preponderance of evidence. It is not sufficient for him to raise a reasonable doubt, nor need he establish his defense beyond a reasonable doubt. *Judgment affirmed.*

Mr. Chief Justice Dossen delivered the opinion of the court:

Murder. This case comes up before us upon an appeal from

a judgment rendered in the Circuit Court of the second judicial circuit of Grand Bassa, at its February term, A. D. 1916.

The records exhibit the following facts: Appellant was indicted, tried and convicted at the said term of court for committing at some during the year 1905, the atrocious crime of murder by killing with a gun one Kaih, with malice prepense. The indictment charged that the crime was committed at Owensgrove in the said county and Republic.

Upon arraignment the prisoner, appellant, plead "not guilty" to the charge whereupon a jury was empanelled to try the issue raised by said plea, who, after hearing the evidence for and against the prisoner, appellant, returned a verdict of "guilty" against the accused. The counsel for prisoner, appellant, objected to this verdict and gave notice of his intention to move the court for a new trial, but the records before us do not show that such motion was presented to the trial court, or, that it made any ruling in that regard to which exceptions were taken.

It is logical therefore to presume that the objection, so far as it related to the intention of the appellant to demand a new trial was waived.

There are but two points therefore addressed to our consideration in the bill of exceptions and they are formulated as follows:

1. Because the verdict of the jury is manifestly against law and the evidence in the case; and

2. Because the trial court on the 23rd day of February of the current year rendered judgment upon said verdict in which the prisoner, appellant, was sentenced to death.

The first exception involves the evidence upon which the verdict was predicated, and we shall proceed at once to consider same with the view of ascertaining whether or not it supported the conviction beyond a rational doubt.

We find from inspection of the records that the conviction is predicated upon the testimony of one direct witness to the commission of the crime charged, whose testimony, as far as it relates to the killing, is corroborated by the voluntary confession of prisoner himself, made to witness Fisk, a justice of the peace, before whom the accused was then taken when he was first arrested, and which it has not even been suggested by prisoner, was made under circumstances that would nullify its effect as evidence of high

grade. This evidence we think was sufficient to support the conviction unless it was overturned by some cogent proof that would establish the fact the homicide was justifiable or excusable. The records show that the prisoner endeavoured at the trial to justify the homicide by raising the plea *se defendendo,* and was upon the stand in his own behalf to establish said plea, but was unsupported in the least degree either by direct, circumstantial or presumptive evidence.

We would here remark that the plea of *se defendendo* when established will bar a conviction for murder by showing that the killing was done under circumstances which the law allows; as when a man is assaulted in the course of a sudden brawl or quarrel, he may in some cases protect himself by killing the person who assaults him, and excuse himself on the ground of *se defendendo* (self-defense).

But he who seeks to avail himself of this defense must take upon himself all the consequences which a failure to establish same by preponderating proof entails; for under this plea the *onus* shifts upon the defendant. The accused must make it appear, says Mr. Archbold in his treatise on Criminal Practice and Pleading (vol. 1, p. 631) "first, that before the mortal stroke was given he had declined any further combat; and secondly, that he then killed his adversary through mere necessity, in order to avoid immediate death." Lord Hale lays down the rule, "that it must appear plainly by the circumstances of the case, as the manner of the assault, of the weapon, or the like, that the party's life was in imminent danger—otherwise the killing of the assailant is not justifiable in self-defense."

To quote the language of another eminent jurist, Judge Parker, in the celebrated Selfridge's trial, he said: "that the application of the principle is limited to cases where there is not only a reasonable ground to believe that there is design to destroy life, but when that reasonable belief is based not on surmises or inferences, however intelligent, but on actual immediate and physical attack from the assailant." In 1 East Criminal Law, 271, 272 the rule is again cited as follows that "at common law, in order to justify the killing the bare fear of danger or great bodily harm, unaccompanied by an overt act indicating a present intention to kill or injure,

would not warrant a party in killing another. There must have been actual danger at the time."

Having quoted from the foregoing authorities the weight of judicial opinion on the plea of *se defendendo,* we shall now proceed to analyze the evidence submitted in this case and to apply the rule to same. Let us take up first the evidence of witness Garbar, the only disinterested witness who was present at the alleged commission of the crime. This evidence, which was not rebutted, shows that the act was preceded by a quarrel between prisoner and deceased. That throughout the quarrel deceased made use of no threat or other language that could reasonably be construed as a menace to prisoner's life, but that on the contrary threats and menaces were delivered by the accused against decedent. That no actual combat took place at any time between prisoner and deceased nor did the deceased at any time before the killing, in any way or manner, or by any means whatever, assail the prisoner and place him in immediate danger of his life. There is no suggestion in the evidence from which to make the deduction that the deceased at the time was in possession of a knife, or any other weapon capable of producing death or great bodily harm, with which he assailed prisoner, as the plea of self-defense would imply. On the contrary such an hypothesis would seem to be wholly excluded by the statement of witnesses, that when prisoner took up the gun, the instrument of the crime charged, deceased with witness and other bystanders fled, and that during the flight prisoner shot deceased.

We have been astounded to find from the records that on the cross-examination the prisoner made no effort to draw out evidence which would in any wise support the plea of self-defense, upon which his defense rested, the only question propounded by the defense and materially connected with the *res gestæ,* was the question:

"How far were you from the deceased when he was shot?"

to which the answer was returned:

"About twenty-four feet."

Now the failure of prisoner to draw out upon the cross-examination of this witness evidence that would in some degree support his plea of self-defense, is comprehensible to us only upon the presumption that prisoner felt the weakness of his plea, and purposely avoided any effort to uphold same by this witness, who, it must be borne in mind, was the only direct witness to the commission of the crime put upon the stand by either side.

Having shown that the evidence for the prosecution did not in the remotest degree directly, circumstantially or presumptively support the proposition of *se defendendo in* connection with the killing, we come now to consider the evidence submitted by the prisoner in support of his plea. This we find from the records is confined to the prisoner's bare testimony in his own behalf.

It is strenuously argued by the learned counsel for the defense that as a result of the evidence given by the prisoner in his own behalf in support of his plea that the mind of the jury could not but have been left in such a condition that they could have an abiding conviction to a moral certainty of the truthfulness of the charge, and that therefore there was a doubt to the legal benefit of which the accused was entitled.

Let us see whether these propositions are well founded.

Under the Act of the Legislature approved February 10, 1908, a defendant has the undoubted right to give evidence in his behalf in criminal prosecutions; but, says the Act, he does so "under the rules which govern witnesses." Now let us inquire what are the rules so far as they apply to the case at bar. We think we find the answer necessary to our purpose without going outside of the statute of evidence.

In chapter XII, section 2, of the statute it is laid down that the credibility and effect of all evidence submitted to a jury is subject to their deliberate judgment. After hearing the evidence for the defense they must decide whether or not they feel an abiding conviction as to the prisoner's guilt. If they do, they must find for the State and against the prisoner; but if they do not feel that abiding conviction, if the evidence for the prosecution has been so inconclusive as to leave a doubt upon their minds as to prisoner's guilt, then they must find for the prisoner and against the State.

But only where the records show a palpable failure on the part of a jury to carefully sift and weigh the evidence; or to correctly follow the direction in which it preponderates; or to ignore the rules governing evidence, will an appellate court set aside a judgment on the ground of its being predicated on an erroneous verdict. We feel no moral reservation in holding that from the records, it does not appear that the jury in the trial of the case at bar ignored any principle that would justify their verdict to be overthrown by

this court. As we have already said, a defendant who seeks to avail himself of the benefit of the plea of self-defense in homicide must accept the consequences which a failure to establish his plea by preponderating evidence will entail upon him. It must be borne in mind that under such a plea the *onus probandi* shifts upon the prisoner, so that he must not simply produce evidence sufficient to raise a reasonable doubt in his favour as might be sufficient under the general issue, but his proof in support of his self-defense must preponderate over the hypothesis of wilful murder. In *People v. Schryver* (42 N. Y. 1) the rule with respect to the quality of evidence necessary to support the plea of self-defense in homicide is stated in the following cogent language: "When a defendant claims that the killing was done in self-defense, he must satisfy the jury by a preponderance of evidence. He must produce the same degree of proof required in an action for assault and battery if he had set up the defense of justification. It is not sufficient for him to raise a reasonable doubt, nor need he establish his defense beyond a reasonable doubt."

Without quoting further from authorities we think it is obvious from the foregoing observations that the prisoner, appellant, has failed in his contention, and that the sentence of death pronounced against him in the court should be affirmed. And it is hereby so ordered.

P. J. L. Brumskine, for appellant.
Attorney General, for appellee.

ALFRED D. J. KING, Petitioner in Certiorari, *v.* M. C. H. LEDLOW, Respondent in Certiorari.

ARGUED OCTOBER 24, 1916. DECIDED NOVEMBER 1, 1916.

Dossen, C. J., Johnson and Witherspoon, JJ.

1. Writs of certiorari are granted to parties upon a petition setting forth truthfully the cause of complaint.
2. An informant in a summary investigation under the Act of 1902 providing for summary investigation in matters arising against justices of the peace, city magistrates and constables, can not legally be made a party to the proceedings; to do so would tend to hamper justice and the willingness to give evidence so necessary in such action.
3. Courts are the conservators of the rights of parties before them, and will carefully consider their acts to prevent innocent parties from suffering thereby.