

JOHN H. GREENWOOD, Appellant, v. REPUBLIC
OF LIBERIA, Appellee.

APPEAL FROM CONVICTION OF MURDER.

Argued January 27-30, February 3-6, 1941. Decided February 21, 1941.

1. The characteristic element of voluntary manslaughter is that it is committed in a sudden heat of passion aroused by provocation and without malice.
2. Adultery of a wife will not of itself reduce her homicide to voluntary manslaughter.
3. To sustain provocation as a defense, it must be shown that the defendant, at the time of the fatal blow, was deprived of the power of self-control by the provocation which he had received.

On appeal to the Supreme Court from a conviction of murder, *judgment reversed and case remanded.*

H. Lafayette Harmon for appellant. *The Attorney General* and *M. Dukuly*, County Attorney for Montserado County, for appellee.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

Salome Greenwood, at one time a human being alive, is not; for her husband John H. Greenwood, appellant, slew her.

In the peace of God he slew her with a pocket knife by inflicting fifteen wounds on various parts of her body and, as alleged, by breaking her neck and three of her fingers on each hand, according to the records certified to this Court from the trial court.

Sometime in 1937 it appears that Mr. Greenwood, the appellant, and Miss Wordsworth, the decedent, fell in love with each other and agreed to be married. Subsequently, Miss Wordsworth, the decedent, seemed to have broken off her engagement to Mr. Greenwood, and

thereupon on November 20, 1937, he addressed to her the following letter:

“WHITE PLAINS,
November 20th, '37.

“MISS WORDSWORTH,

“I have been studying your action out, since Oct. 31st, towards me. It is a birding [*sic*] shame now; I have decided in full what to do. You have caused me to create evil in my mind. A woman can always spoil a good man according to their action. I clearly see that you are trying to make a fool of me; you see that Eva McGill has made a fool of that young man, waiting and she got away; it is a lack of manhood; if the poor boy was a man, she would be sleeping in her grave now; she has not done half to him you have done [to] me, so you know I am not going to take it. You know what I am going through for you. You know the promise that you made to me when we came back from Monrovia. Now I am not going to let you and your friend make a fool, or a laughing stock of me. I don't believe I look like it. I am catching hell in my house, all on account of you. The idea, as hard as I work, I cannot have a maid in my house, all on account of you. We would have been married since May, but you made a fool of me. I told my friend, now I have invited my friend again. I never drunk yet in my life. I promised you that my manhood shall not fall and I shall never let it go down. If you think your body is too good for me, it will not be too good for the bugs in the ground, but I let you know that you will marry me, or I will make an example of you for the others. You will not fool any other man. I have no one to cry for me in this country. You must leave that mission and go home. You are to be ashamed working for 4 shillings a month. You can do better. Your mother is sick of it. I will change not the marriage date if hell stands before me,

I will marry you December, or we both die. I am waiting to hear from you.

"Excuse writing late.

"Yours truly,

(Sgd.) J. H. GREENWOOD."

With a profound sense of the seriousness, gravity and enormity of the crime charged, we approach the decision of this cause, as has been our wont in all matters coming before us for adjudication, with eyes blinded to everything except the evidence certified to us from the lower court and the law controlling the same, as is symbolized by the figure of justice which hangs suspended on the walls of this court room. Regardless of the social aspect, of the high tension in the public mind because of the fortunate rarity of such occurrences in this country, or of any other consideration, we look with eyes and mind fixed and centered on the motto of this Court from time immemorial: "Let justice be done to all men."

After Mr. Greenwood, the appellant, had written and dispatched to Miss Wordsworth the letter which we have previously quoted, a breach seems to have occurred between the appellant and decedent. But sometime thereafter appellant came to Monrovia and met the brother of decedent, Mr. Charles Wordsworth, who questioned appellant about the contents of the letter that he had written to Mr. Wordsworth's sister. Appellant said to Mr. Wordsworth *inter alia*: "You know we are all men. You know how love affair is. She is your sister for true, but you must judge between us." Mr. Greenwood apologized to Mr. Wordsworth for said letter and the matter was harmonized.

Mr. Wordsworth thereupon told Mr. Greenwood that all he had to do was apologize to Mr. Wordsworth's family, whereupon appellant wrote a letter to decedent and to her mother, apologizing for his letter written on November 20, 1937. Miss Wordsworth then wrote a letter

to Mr. Greenwood accepting his apology and saying that the matter was dropped.

When Mr. Greenwood was on the stand as a witness, he stated that on account of his annulled engagement to Miss Wordsworth he had sent his caretaker home and had nobody in the home with him. When decedent had broken her promise of marriage to him, he had to beg the lady to come back to his home. She was kind enough to do so.

One evening during the time of this breach in their relationship, a woman went to Mr. Greenwood's house and said that she had brought something for him. He asked her what it was, and she said it was a young lady who wanted to see him. This young lady turned out to be Miss Wordsworth.

The Court quotes here that part of the record according to Mr. Greenwood:

"November 15, 1939.

"A lady came to the door and rapped. I came to the door and we greeted each other and she said she brought something for me and I asked her what was that and she said, 'It was a young lady who wants to see you,' and I asked where was she and she laughed and she said I must guess. And I said, 'No, I can't guess.' She must tell me what she wants and who was she, and she said, 'Your sweetheart.' Then I said to her, 'Make it short. Tell me about what you want,' and she asked me if I would admit the young lady, and I said, 'You must tell me who.' She laughed and said in a joke, 'Your friend from the mission.' I said to her, 'Who is the young lady's name?' I said to her, 'Who is the friend I have on the mission?' and she called the young lady's name. I said to her, 'Don't make game after me. I and this young lady have been broken up for a year now.' And she said, 'She wants to see you.' And I asked her, 'Where

is she?' She said, 'Tell me if she can come.' I said, 'No.' Then she said, 'Oh, Mr. Greenwood, don't do like that,' and I caught myself quick and I muttered to myself, 'It is bad enough for a woman to let a man down but it is terrible for a man to let a woman down.' So I said yes, she could come. Then I asked her where was she, and she said, 'We are coming just now.' She went back and for a little while I looked on the long stretch of road. I saw three of them coming. I say I could not believe it, to myself. They turned in my gate and I asked them in and seated them and shook hands with one another. I was lost for words. Nevertheless, I entertained them. In my entertaining them I said, 'Well, strangers, where are you all going?' And they said, 'We came to visit you.' I said no, she told me yes. One of the youngsters said, 'I bring you your wife,' and I told her, 'Don't start off again.' So after a long entertaining, I demanded of Miss Wordsworth, 'Where are you all going?' and she said she had come to visit me today. She asked me if she could examine my home. I said, 'You are welcome.' Then I took them through the downstairs in the different rooms, went upstairs and I keenly watched her and found that her examination was somewhat interesting to her, so she said to me that she wanted to see my workshop. We went downstairs, but the other two young ladies did not go with us. They were left at the house. I called out to them but they did not care to go, so I and this young lady went down there, I showing her the different things and explaining them to her as well as my work, and thereafter she said she wanted to see my kitchen and I showed it to her. She told me to let us walk back to the workshop and we went back, and she told me she had come to let me know when she gets through with her studying she wants to get married. I said, 'What? Marry?' and she said, 'Yes.' I said, 'You have dis-

missed me without cause, never stating why, and now you want to get married like this.' I said, 'No. This is a sudden attack.' I said 'Well, there is a lady in my house looking after, but she is not here. She is sick . . . and it would not be fair for me to treat her like that, that is, for me to arrange everything about marriage during her absence, because I know my pledge towards her.' And she said, 'What kind of pledge? You intend to marry her?' And I said, 'I don't say that, but there is a certain pledge between us, and I have to wait until she gets well.' Then she persisted, saying that she had come for us to get married in a hurry and I said, 'No, wait.' I said I have to look my mind over first. I said to her that there was a queer rumor I had heard about her and she said, 'What have you heard?' I said, 'No, I can't tell you just right now,' so she laughed and said, 'I have heard something about you, too.' I asked her what had she heard, and she said that she heard that I was courting one young lady, whose name she would not call, and I said, 'No, it is not true.' Then we took a walk back to the house. We entertained them for a little while, escorted them a part of the way, and on their departure she said that I must pledge her when I expect to get married. I said, 'I will look my mind over and will let you know.' After looking my mind over, suddenly this lady who was in my mind and house died and I was left alone again. So I wrote to this young lady that she must set another date but she said no, she was unable to, but I must go to see her. So we agreed to that and I proposed a date and we met. I told her that I had two proposals to put to her. I told her that I am protecting myself from the rumor I had heard. I told her that the only way that I would consent to marry her, she must present me a deed medical certificate proving that she is a perfect lady, a virgin; otherwise, she must permit me to en-

close or be finished with her, and if I discovered that she was a lady I would not violate her until we married. She said she could answer it briefly, and said she would not permit me to enclose with her until she becomes my wife. I looked determined in her face and I asked her, 'Do you realize what you have said?' and she said, 'Yes.' I asked her, 'Do you realize that for true, true?' and she said 'Yes. After we marry everything will prove for itself.' Well, I took it for granted. I shook hands with her, and I told her I accept her word. Then I said, 'Blessed are they that don't see yet believe.' So I promised her I would never suggest anything to her of what I had heard anymore."

The appellee's counsel in his opening argument argued with great earnestness that the letter written by Mr. Greenwood on November 20, 1937, showed rather strongly a premeditated design on his part to kill decedent and tried to buttress said contention with the sequel that, just as Mr. Greenwood said in the letter above read, so had he really given her body to the bugs of the earth to eat.

It is from this angle that our colleague who dissents from us has allowed his mind to approach this case. But we have not been carried away with this, to us, legally unmeritorious theory which does not in our opinion follow as a logical consequence in view of the subsequent events which transpired in their relationship and in virtue of the law controlling the writing of threatening letters where agreement and conciliation occur thereafter and where the party some time later is killed by the other party, as in this case. For here is a case where, because of a breach of a promise to marry made by the decedent, appellant wrote her a threatening letter; but thereafter the dispute was settled and the cause of the threatening letter was overcome by the fact that decedent and appellant married. The facts, as revealed by the

records, are that decedent had refused to marry appellant after promising to do so; when afterward she consented to marry him and did actually marry him no reason whatever for putting these threats into execution remained. And, therefore, all suggestions that the killing of decedent by appellant grew out of a premeditated decision predicated on that letter are largely excluded.

We find support for this opinion in the following:

"[W]here there had been a quarrel between two persons, and a reconciliation between them, and afterwards, upon a new and sudden falling out, one of them killed the other, the killing was not murder, unless, under the circumstances, it appears that the reconciliation was but pretended, and that the hurt was done upon the score of the old malice.

"And where two persons met by accident and quarreled, and one assaulted the other with a grubbing hoe, and actually struck him with it, and thereupon the latter shot and killed the former, the motive of the homicide will be referred to the passion aroused by the blow, and not to previous malice, though such previous malice existed.

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"Though previous threats are evidence of malice, where provocation intervened between a threat by one person against another and the killing of the latter by the former, it is not a conclusive presumption of law that the killing was in pursuance of the threat, and not upon the passion produced by the provocation; whether it was so or not is a question for the jury.

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"And where one person makes a threat against the life of another, but thereafter their relations are shown to be friendly, and upon an immediate provocation the threatener kills the other, he should be convicted

of manslaughter only; since, after the reconciliation, the law will presume the crime to be due to the new sudden provocation, and not to the previous malice." Annot., 5 L.R.A., (n.s.) 809 (1907). In addition in *Cyclopedia of Law and Procedure* it is written: "But where a homicide has been committed, and it appears that there was an old grudge between the parties, but at the time of the homicide there was a fresh and sudden provocation given by the deceased to defendant, the law presumes that the killing was caused by such fresh provocation and not due to the old grudge." 21 Cyc. of Law & Proc. *Homicide* 758 (1906).

With the forceful cogency of the law of homicide in this respect before us and in our minds and with the circumstances attending the killing of Salome Greenwood by her husband as brought out in the evidence, they having reconciled their differences and married; the threats made in the letter written to her by him were entirely disconnected with the killing and we fail to see how it could be made juridical to establish premeditation in any sense whatever. If the reconciliation had been pretended merely, after such pretended premeditation appellant would not have married decedent and shown the solicitude for her comfort which the record discloses, but would have breached their engagement as a retaliatory measure.

From the statement of Mr. Greenwood, it appears that he had had considerable experience with bad luck in marital life and had decided to marry and settle down and build a family. He seemed, consequently, very keen on having a consort of unblemished moral character; and so, from excerpts of this statement just recited, decedent assured him that he would find her of such unblemished moral character.

Here we would postulate that while we are conscious of the tenderness of the feelings of a large number of friends, relatives, and acquaintances who were groaning

under the grievous affliction of having lost a relative and friend by means of a violent death, a death which they and the public may consider a most ferocious and brutal one, and while, further, we have due regard for the old Latin proverb *de mortuis nil nisi bonum*, which means speak nothing but good of the dead, and while, still further, the laymen are affected by the act, it having to do with the home and family life of the nation; yet we are and must be concerned first and foremost with the laying of correct legal principles and standards as we conceive the law from a juridical point of view. So we pass on to the second chapter in this unfortunate and regrettable tragedy.

With the wedding over, married life between decedent and appellant began. On the third day of their marriage appellant called upon decedent, his wife, for their first conjugal copulation, which, we have every reason to presume, from their antenuptial arrangement, he had looked forward to with great anxiety and the most pleasant anticipation; but upon the consummation of the act he felt himself disappointed, humiliated, and deceived. Here is what he had to say about it while in the witness box as witness for himself:

"I brought my wife home on the twenty-eighth of February. On the first of March I asked my wife to report in our chamber and I was terribly deceived. . . . [I]t is very regrettable to me to express this, . . . I had pledged to my wife that I would never expose her. But under these circumstances I must show to this honourable court my purity of love towards my wife. I pointed to God and myself, I was very much dissatisfied. My mother-in-law came on the twenty-eighth of February to spend time with us and one of the bridesmaids, so I wondered to myself what I should do. This is a terrible disgrace to send my wife away, because I loved the woman. I took it into consideration. This happened on the first

of March and I made the best of it because God and myself had decided what to do. I waited seven days but before those days came along, the four days that my wife spent in the home, the first Thursday, she kicked up smoke. I was down to my work and was very nice, and my mother-in-law herself, the bridesmaid, and myself were on the best of terms. I went down to the workshop and I heard a noise up to the house. She was quarrelling and I heard her curse, 'Damn.' It was a surprise to me because the people were just listening to hear Greenwood and his wife fussing. But I did not know anything about the fuss, and so I went up to the house to find out what was the matter. What did pierce me more was to hear my wife curse before her mother, but as soon as I reached the spot and she heard my footstep the noise ceased. When I went in, I saw Mama and I said, 'Mama, what is the trouble?' and she laughed. I said again to her, 'What is the trouble, Mama?' and she said, 'Your wife kicking up, son.' So I asked where was she. The bridesmaid said she was upstairs. I called her, but she did not answer. Mama called her several times, but she would not appear. Then the bridesmaid said, 'We are going to bring her down.' So they brought her down, although she was looking very reluctant. I said to her, 'What is the matter, dear?' She reluctantly answered me, asking me whether I expected her to go in the kitchen to cook. It was getting near time and I said, 'No, dear, I have a cook boy here.' I asked her whether that is why she is kicking so and making so much noise for I am surprised at her. Then she said, 'Where is the boy here?' I said, 'Don't worry. The boy went to the farm but the cook knows the hour.' I said, 'The boy starts cooking at ten and passes lunch at twelve, but,' I said, 'you are the madam now. I have nothing to do with that department, and,' I said, 'the boy will be

here to the limit half past nine because he knows that he starts cooking at ten.' Then I said, 'It is only that you are making all this noise, and then people passing by hear you and say we are kicking up.' So Mama said to her, 'Don't get in a hurry like that. What you don't understand, ask your husband. You all must live in peace.' So while she was speaking, the boy came through the gate and I looked at the clock. It was exactly half past nine. I hugged her and kissed her and made her feel jolly. She wondered and wanted to know how the boy knew when to return from the farm at such a correct time. I told her that I was a farmer and I have a bush clock. I told her I made the mark and showed him a shadow of a tree, and when the boy sees that shadow he should report home. It is only five minutes' walk from the farm to the house. I was quite amazing to her and so we were very jolly that day. Mama took me aside and said, 'Son, she is full of temper. When she starts fussing don't say anything to her. She has a time to carry on like that, and I myself who born her can't do anything to her at all. Just leave her alone to herself. When she gets out of that passion, you will not find any person better.' I said, 'All right, Mama, don't worry. I will train my wife, because they say it takes two to make a fuss and if I take her in a nice way she can't fuss.'

We connect what Greenwood had to say with what Mr. Henry, a witness for the prosecution, testified to, and this is what he said as a witness at the trial in the court below:

"As far as I can gather, he had absolute belief that the wife was a fit and proper help-meet and that she was chaste. It transpired, however, that three evenings after marriage he discovered she was to the contrary. Coupled with that, she had been a constant torment to him to leave him if he does not treat her

right. He remonstrated with her, saying she must not say it again. On the fatal day, after accusing her from information received within his own home of having received certain letters, she left the premises and went in town. During her absence, in the search for the said letters, he discovered another which he showed me to read. It was one of the wishy-washy lovesick letters signed with the initials D. M. This evidently incensed him. On her return he accosted her about it and the trouble ensued."

Thus commenced, very regrettably, a series of developments which ended in the fatal tragedy of Mrs. Greenwood's losing her life, for appellant discovered his disappointment just referred to when his wife's mother and one of the decedent's bridesmaids were in the home with them for their honeymoon. Mr. Greenwood, not wishing to expose his wife to the guests present, his mother-in-law being one of them, suggested to his wife that they take a walk down to the workshop, which they did, according to the record. The two sat down and he reminded her of the assurance given to him of her chastity prior to their marriage and told her that he had been deceived and requested her to explain how this had happened. She explained that it had happened when she was a very much younger woman and was sent to a spring for water, at which time a young man met her on the way and, since she was alone, he forcibly took advantage of her. Greenwood then asked who the young man was and where he was. She replied that he was drowned in the disaster to the steam launch *J. J. Dossen* which occurred in the year 1927. Appellant insisted that this account could not be wholly correct, for, if that had been the only occasion, as she then pretended, she would have closed up again, but she was too far out in life; and, further, the young man whom she had named belonged to the Fifth Regiment as did appellant and no member of the Fifth Regiment had paraded with the First Regi-

ment nor was any member of said Fifth Regiment drowned in the foundering of the steam launch *Dossen*. She then began to cry. He kissed her and told her that she should tell him the true cause, as her disgrace would be his, and that he had told her before their marriage that he had wanted as a wife a young lady who had not been violated. After a period of sobbing and weeping on her part and coaxing and entreating on his part, she lifted the curtain and explained how it all had happened. By this explanation a doctor of the hospital in Harrisburg was found to be the one who had deflowered her.

And we quote what Greenwood himself testified to on the stand as a witness:

"I said to her, 'Well, what must I do now? Does it look very nice that I should send you home? Mama is here with us. How do you think she would feel? She is waiting now, I suppose, for me to write her a nice letter concerning your prudence.' She said to me it was rather disgusting, what she cares if Mama ask me anything about it, she was going to ask mother if her husband found her a lady. Then I said to her, 'Suppose her husband did not court her as a lady?' So when she said this to me, I was very much disgraced. So I said, 'What compensation you have to give me to quash this?' I said, 'If I were to do the right thing, I would send you home and you would be a disgrace to the whole thing,' and I said, 'I will leave the matter alone; then you must give me some satisfaction in this regard.' . . . She promised me that it would never be the case again and she would never let me find her in any fault. All who were writing her on love affairs she dismissed to marry me. She promised me that she would be loyal and true and faithful to me. I said, 'All right. Thank you.' And I made my vow to her that I would never reveal it. I said, 'When any of my friends or family discuss you, I will but put you on the top.' She

thought it was very nice. We came back from the workshop peacefully. Mama did not know where we had been, so we went on very nice and in a peaceful manner. This was on a Thursday, the seventh of March."

Strange as it might seem that a man of Mr. Greenwood's maturity and experience should have been bent so seriously on procuring a virgin for a wife in an age where the finer sex demands general equality of privilege and treatment from the opposite sex and often resents any such proposition by retorting "if you are also one"; he, Greenwood, nevertheless made the demand of Miss Wordsworth who subsequently became Mrs. Greenwood. She accepted the challenge. He was disappointed and, after a conference together between them, their differences on this score were settled and they started on their married life anew. Thus after an abject apology and promises that he would never catch her in any deception again, that she had broken off with all her former lovers, and that she would be loyal and faithful to him; he had on March 7 expressed his willingness to forgive her.

But this new peace seemed doomed to an early breach. What a shock it must have been to him on the thirty-first of March, just twenty-four days later, to discover not only that she was continuing a correspondence with the mission doctor who had deflowered her and that both the doctor and one Hannah Moore had advised her messenger not to let the "old man," meaning her husband, see a letter the doctor had written to her; but also that she was continuing to carry on an amorous correspondence with two other persons.

The circumstances of Mr. Greenwood's discovery of the incriminating letters may be stated as follows: On the night of March 30, while they were at dinner, a servant of theirs brought in several letters addressed to decedent, most of them from a destination outside the country. As she opened and read each of these she passed them one by

one to her husband, but there was one domestic letter which, when she had finished reading, she attempted to secrete. Appellant asked decedent whether she intended showing him that one also. She tapped him lightly on the nose with it and said she would rather die than have him read it. This aroused his curiosity and suspicion. Early next morning he was told that another servant, Crusoe Anderson, who had been in her service before her marriage, had brought her a letter from the mission, and that she had torn this to bits and had thrown the pieces into the water closet rather than permit him to read the letter. Thus he satisfied himself that the letter was from the mission doctor, a Dr. Guilck, the man who had deflowered her. On discovering what letter it was she had received on the previous night, he waited until she went out for a stroll around noon of the fateful Friday, March 31, when he ransacked her things and found three letters, two of which are quoted immediately hereinafter in the order of their respective dates, which were submitted to the trial court and were marked by the judge thereof "1" and "4" respectively.

Letter marked "1" by trial court:

"Love conquers all things *

"March 14, 1939.

"Dew drop my own forever One,

"I was expecting a letter from you as per your loving promise, the very next two days after your marriage, unfortunately, I did not receive a single line from you until March the 14th letter delivered by my friend Mr. Flood at the hour of 5:30 P.M.

"I hope you will realize a lot as you were absolutely afraid of me, what are you afraid of now? Is it anything strange? The only thing, will you have a— before your and only boy assist. I would like to see it done. Have you not realized that I love you and that my love for you is perpetual? I do not care what

* The following two letters have been printed as they appear in the original.

happens, you are mine and I am yours. I love you dear, and as I sit tonight to express myself, I can't help but get booze before I write, to see that my baby had to force herself unto life; it hurts me dear, but how and what can I say or do? How did you enjoy the honeymoon night? Laugh! Were you thinking of me at that spur of the moment? How did you feel? Dear, do you see how broad I am? I will be sailing in April the 5th and must see you before then. Please come down this week, or else, you will see me no more.

"Salome dear, if you could only read my heart, you would have never dreamed of getting married, but it is all for personal experience.

"If you love me, I want to see you down here the end of this week or the beginning of next week; I am yours forever and you are mine. I am too glad you have found it out for yourself and this is not all yet. Your messenger by Williette was received and I was glad to hear from you.

"All that will satisfy me is to see you dear. Nothing else. Come, come, I want to see you, my pet! I will stand by you through blood or water. Don't have any fear. See my trouble I have gone through for you, and lies another one enjoying it to the limit, is it fair? Oh no!

"If you only imagine my position I am in now whilst writing you, you can just imagine, I am excused my dear, but—want to have you in my arms. Is it possible or not? If it is or if it isn't, I will see. "Here lies and the rest.

"Can you imagine what great feelings and attitude you placed me whilst you this epistle tonight? All I can say as much I couldn't get you to be my lawful wife and another one has gone before me, me, me; all I can say if you want to see your dear boy, come and

spend only a few seconds with him then you can go back, or else I will go back to a strange place where you will see me no more nor hear from me, come, come, come. If you love me dear, I will see you, you, you, and if you don't, I will not see you.

"My God, baby, come, or else I will die.

"It is finished.

"Enclosed, please find a letter from America in c/o me. And let me see you instead of in c/o of me. Forever your receiving letters from you.

"Forever yours,

Only heart,

J. W. M.

"Excuse all errors, as I am very much worried over you."

Letter marked "4" by trial court:

"12/3/30

"Dearest Miss Salomy,

"I wrote your name Miss because I do not agree to call you by old man Mrs. but I ask excuse. My sweetheart, I am sorry that I call on your place yesterday for what your husband threatening you my dear; it hurts me. I am glad if I shall be able to see you every day once; we have no way to talk to each other, not even a single word, but our hearts and our eyes talk everything.

"Polyine she said that you sent me a letter but she did not give it to me. I don't know if that is true or not. Therefore I don't know your idea about it. I have been telling you not to marry that old man, but you say that you will try him; I hope you are alright as you wish, and if not and you will divorce him, I still love you; don't you say I forget about you. I guess you read that in my eyes yet. In conclusion, if you wish to divorce, I will be ready to pay all the cost if you agree to stay with me as told you already.

Don't you let anybody see my note, and if you are jam you better destroy it before. Think good and let me know immediately.

"Beg your pardon for my writing. I am in hurry because I am in the store; believe me every night I dream of you that you sleep with me, and when I bring any sweet heart, your photo is my heart and by force I talk. I don't know whatfor job like you born me, and norn to you for that I go to see two times.

"Do what your heart tells you.

"Thanking you for a reply by the bearer,

"Yours,

A Friend."

Now is the time when, in the opinion of those of us concurring in this opinion, the words of Associate Justice Oliver Wendell Holmes, quoted by the Honorable Attorney General in the course of his argument, can be best applied. They are, "The life of the law has not been logic; it has been experience."

What must have been the feelings of appellant on obtaining such concrete proof of her faithlessness within such a short period after their marriage and within a still shorter period after her solemn assurances of her future fidelity! Could any reasonably self-respecting man be expected to maintain his mental poise under circumstances like those above pictured?

Nevertheless appellant tried to contain himself, hoping, it would appear to those of us concurring in this opinion, that on her return she would either have disavowed having knowledge of these letters which he had discovered in her suitcase or, at least, that she would show some measure of penitence for what had transpired. But, instead of that, what actually did happen is that when he took her aside and began to question her, she pretended having no knowledge of said letters. When he began reading excerpts therefrom, she became wild and replied, "Where in the hell did you get my letters

from?" and commenced to damn and curse, saying further, "I am tired of your damn foolishness. Damn you, my body belongs to myself, and I do what I damn please with it."

Joseph Carter corroborated this statement of Greenwood to some extent when he said the following:

"When we got upstairs, the woman went to take her hat. She said she was going in town to her cousin because she was tired of his damned foolishness."

After discovering letters of the nature and tenor of those just read and after discovering in the letter dated March 14 that the latter was in reply to a letter from Mrs. Greenwood which had been delivered by one Flood, what a bitter experience it must have been for Mr. Greenwood to be met with such a rebuff when he inquired about these letters!

Corpus Juris has the following to say about the matter:

"Defendant on trial for the murder of his wife may show that he was informed, and believed, that she had been unfaithful, as bearing on the question of provocation, although such evidence has been held irrelevant to the issue where the defense was a denial of the commission of the homicide. While it has been held that testimony of accused as to what he had heard prior to the difficulty concerning improper relations between deceased and his wife is inadmissible in the absence of evidence of threats or other predicate, the general rule is that such evidence is admissible for the purpose of showing provocation. It has been held that deceased's criminal intimacy with defendant's wife may be shown to corroborate evidence that she communicated such fact to defendant before the killing; but on the other hand proof of the truth of the wife's confession has been excluded on the ground that the only question involved is the effect the confession had on the mind of the accused. The state may offer in rebuttal any evidence tending to disprove this de-

fense, but such evidence must not be too remote. The infidelity of the wife, or reports and rumors thereof, cannot be shown in the absence of proof that defendant had knowledge thereof; but such evidence is admissible where knowledge on the part of defendant is shown." 30 C.J. *Homicide* § 458C, at 225-26 (1923).

Not only did Mrs. Greenwood use grievously provocative words to her husband when he called her into account concerning her infidelity, but also, according to Mr. Greenwood, while he was holding her around the waist to prevent her leaving his house she kicked him from behind her with the heel of her shoe on his shin until it was sore and eventually she caught hold of his testicles. He then asked if she wanted to fight. This expression, "you want to fight?" Joseph Carter also testified to.

Here it would seem that his human frailty manifested itself; here his human nature preponderated; here reason lost its functions; here his blood became heated; and, smarting under and incensed by the indignity, humiliation, provocation, effrontery and calumny imposed upon him by his wife, in a sudden transport of passion, not being himself armed at the time with a weapon that was capable of causing death but seeing her own pocket knife on the table, he reached for it and, holding it in his hand, raised it against the body of his wife. Upon and into her body he thrust the knife several times so that from the wounds so inflicted she died.

The applicable rule laid down in Wharton's *Criminal Law* is as follows:

"Manslaughter is distinguished from murder by the absence of deliberation and malice aforethought. The intent to kill being formed suddenly under the influence of violent passion or emotion which, for the time being, overwhelms the reason of the accused. It is not the weapon used, nor the intention to kill,

which fixes the grade of the crime, but the uncontrollable passion, aroused by adequate provocation, which for the time being renders the accused incapable of reasoning and unable to control his actions." 1 Wharton, Criminal Law § 422, at 599-601 (11th ed. 1912).

"Voluntary manslaughter is an intentional killing, without malice, in hot blood produced by adequate cause, and differs from murder in this, that though the act which occasions the death be unlawful, or likely to be attended with bodily mischief, yet the malice aforethought, which is the essence of murder, is presumed to be wanting; and the act being imputed to the infirmity of human nature, the punishment is proportionately lenient." *Id.* § 424, at 603-04.

"The characteristic element of voluntary manslaughter is that it is committed upon a sudden heat of passion, aroused by due provocation, and without malice. The passion thus aroused must be so violent as to dethrone the reason of the accused, for the time being; and prevent thought and reflection, and the formation of a deliberate purpose. The theory of the law is that malice and passion of this degree cannot coexist in the mind at the same time; and the grade of the offense is fixed by the preponderance of passion, or the legal presumption that the act was malicious and for motives of revenge. Mere anger, in and of itself, is not sufficient, but must be of such a character as to prevent the individual from cool reflection and a control of his actions. Such passion must be produced by due and adequate provocation, and be such that would cause an ordinary man to act upon the impulse of the moment, engendered by such passion, and without due reflection and the formation of a determined purpose. The moving cause of the action of the accused in any given incident under investigation may be either such anger as above de-

scribed, or fear, or terror of such a character or degree as to render the accused incapable of cool reflection."

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"Adultery of wife will not, of itself, reduce her homicide to voluntary manslaughter, in the absence of sudden heat of uncontrollable passion. . . ." *Id.*, § 425, at 604-09.

The same principle is in essence also enunciated in *Cyclopedia of Law and Procedure*:

"Voluntary manslaughter is the killing of another intentionally, but in a sudden heat of passion due to adequate provocation, and not with malice."

"While an intentional homicide, if neither justifiable nor excusable, is normally murder, yet where it is committed upon a sudden heat of passion, aroused by adequate provocation, technical malice being lacking, the crime is reduced to manslaughter. Although anger is the passion usually existing in cases of this class, yet any other passion, as sudden resentment or terror, rendering the mind incapable of cool reflection, may reduce the grade of the crime. The passion must be of a degree as would cause an ordinary man to act upon impulse and without reflection. But if it suspends the exercise of judgment, and dominates volition so as to exclude premeditation and a previously formed design, it need not entirely dethrone reason." 21 Cyc. of Law & Proc. *Homicide* 736-38 (1906).

"'We nowhere find,' said the North Carolina court, 'that the passion which in law rebuts the imputation of malice, must be so overpowering as for the time to shut out knowledge and destroy volition. All the writers concur in representing this indulgence of the law to be a condescension to the frailty of the human frame, which, during the *furor brevis*, renders a man

deaf to the voice of reason, so that, although the act done was intentional of death, it was not the result of malignity of heart, but imputable to human infirmity.'” *Id.* at 738, n. 46, citing *State v. Hill*, 20 N.C. 491 (1839).

And here were Mr. Greenwood's remarks when he recognized what had happened, as stated by witness Monroe Caine, who was standing in the street in front of Greenwood's house at the time of the killing: “I loved my wife but she treated me just like a dog.”

Before proceeding further, in order to clarify the issues, since the defense seemed to have been oscillating between self-defense and manslaughter, we have to endorse here the interlocutory opinion expressed by His Honor the Chief Justice during the argument of the learned Attorney General that, so far as the record certified to us went, the question of self-defense raised by appellant did not arise and the Attorney General should, therefore, confine his argument to the only two possible issues, namely murder and manslaughter.

Elsewhere in this opinion the difference between the two has been explained. It is important to remember here that to constitute a crime the evil intent and the wrongful act must coexist at the very moment of the fatal blow, a doctrine once more reiterated by our esteemed colleague, Mr. Justice Russell, speaking for us all in the case *Smith v. Republic of Liberia*, 7 L.L.R. 205 (1941), decided just a few moments ago. Hence it was most important that the prosecution should have established the intent with which the homicide was committed. If, at the time Greenwood requested his wife to be seated in the room which eventually became the death chamber, the intent to kill had been formed, the offense would undoubtedly be cold-blooded murder; but if no such intent was formed until after the contention between them, followed by sundry provocative acts herein adverted to, had so dethroned his reason as to render him

incapable of cool deliberation, then in spite of the brutality of his actions the offense can be but manslaughter. It is important to remember that in case of doubt as to the time such intent was formed and the existence or absence of an ability to form a deliberate design, such doubt, all the authorities agree, must operate in favor of the accused.

Our colleague who dissents from us insists that appellant had time to cool as he discovered the letters at around noon, but did not kill his wife until around five or six o'clock on the fatal evening. We think his position in this respect is untenable, for in the case *Haley v. State*, the court declared that "a court has refused to hold that a husband must be guilty of murder or not at all, and has sustained a conviction of manslaughter where the aggrieved man had laboured in great excitement and agitation for two days." See also, 1 Wharton, Criminal Law, § 608, at 766 (11th ed. 1912).

Again our colleague who dissents from us places a great premium on the statements of Joseph Carter and Crusoe Anderson, who were living with Mr. and Mrs. Greenwood, and, particularly, on that part of their statements where they declared that Mr. Greenwood said he would put an end to Mrs. Greenwood in his yard, that every woman he gets carries his bad name but this one will not, etc.

The same is true of the allegation of Joseph Carter and Crusoe Anderson that Greenwood, when stabbing his wife, turned a deaf ear to her appeals, replying, "This is damn murdering time."

Let us not overlook the fact that Greenwood had not too long before immigrated to Liberia without any relatives or other connections and was alone in this country. When, then, the tragedy occurred in his home, these children, Joseph Carter, Crusoe Anderson, and Louise Wordsworth, were all taken to live with the relatives and friends of decedent and were entirely under their influence and power, they being minors and dependents.

These circumstances certainly should be taken into consideration in giving weight and credit to their testimony.

On the other hand, Greenwood gave testimony in his own behalf and on both direct examination and cross-examination testified with a frankness and naiveté rarely, if ever, found in persons accused of crime; and said testimony, when taken together with the letters which he found in his wife's possession, and other facts, tended to establish that he suffered great provocation.

There was, however, one regrettable feature attending the trial of this case, and that was the absence of the evidence of the silent witness, Mrs. Greenwood, brought out so pathetically in that touching piece of allegory by the Honorable Attorney General when he made his striking forensic argument in the case at this bar; but that silent witness, as he said, will continue to be silent and will never speak or testify in any earthly court. Consequently, we say that we must decide this cause upon the evidence of those witnesses who could and did testify, leaving her, the silent witness' testimony to be heard and weighed by a more just and wiser judge than here.

Nevertheless, it would appear that such an argument as that made by the Attorney General here, together with the number of wounds inflicted upon deceased, so impressed the trial court that appellant's case did not receive that consideration which should have been given it. No better evidence of that fact is needed than the ruling of the judge on the motion for a new trial, a copy of which is in the record certified to us. It also appears that the prosecution and the defense were so sure of their respective sides that each gave but scant attention to the evidence the other side was placing upon record.

One of the prosecution's witnesses, a nurse who saw and handled the body after death, said that three of the fingers on each hand were broken. It would seem reasonable to conclude that Mrs. Greenwood must have had a hold on some part of her husband's body that occasioned her

fingers to have been broken, and this would tend to confirm the testimony of appellant that she did seize appellant's testicles and cause him great pain and distress in the struggle which ensued. And it is again significant that the two children who testified that Greenwood exclaimed, "Come and see what this woman is doing to me," were never questioned so as to elicit what that thing was in order to corroborate or refute Greenwood's testimony on this score.

There is another phase of this tragic affair we deem worthy of note and which we now reiterate for the purpose of emphasis. Greenwood did not arm himself with any weapon although he had a pistol in the house; but in this sudden affray, in a transport of passion with his blood heated, he grabbed her pen knife off the table, stabbed, and kept stabbing her until he had killed her. So great was his transport of passion that, he said, he drank her blood.

He was at the time, we think, mentally unbalanced, incapable of reasoning, and momentarily insane because of decedent's conduct of unfaithfulness and her provocative attitude when he approached her about it.

We who have joined in the opinion concede the correctness of the contention of our colleague that for one in a normal state of mind to kill his wife on the discovery of amorous letters which she was apparently cherishing would not *per se* mitigate the offense. But let us observe that that was not the case here for, in addition to the uncompromising attitude she assumed on being apprised of the discovery of these letters, there was an assault followed by a combat and, according to all the authorities quoted at this bar during the argument and independently examined by ourselves, the essence of the difference between murder and manslaughter is that in the former the mind of the slayer must be so normal as to be capable of a deliberate intent and such intent must synchronize with the act at the moment of the infliction

of the fatal blow; while in manslaughter the mind must be so beclouded by passion caused by provocation which the law considers adequate that the reason is temporarily dethroned and at the moment of the fatal blow reason has abdicated the throne and an ungovernable passion has overcome the accused.

"To sustain provocation as a defense it must be shown that the defendant, at the time of the fatal blow, was deprived of the power of self-control by the provocation which he had received; and, in deciding the question whether this was or was not the case, regard must be had to the nature of the act by which the offender causes death, to the time which elapsed between the provocation and the act which causes death, to the offender's conduct during that interval and to all other circumstances tending to show the state of his mind."

1 Wharton, Criminal Law § 582, at 747 (11th ed. 1912).

Our dissenting colleague places great stress upon the testimony of Joseph Carter and Crusoe Anderson that Mr. Greenwood had said to them that he would put an end to decedent in his yard and that every woman carries his bad name but this one would not for before that event they would carry her out. But this point is not well taken for, in addition to our previous comments in this connection, in the annotation to *Johnson v. State*, 120 Wis. 146, 108 N.W. 55 (1906) it is stated that:

"Though previous threats are evidence of malice, where provocation intervened between a threat by one person against another and the killing of the latter by the former, it is not a conclusive presumption of law that the killing was in pursuance of the threat, and not upon the passion produced by the provocation; whether it was so or not is a question for the jury." (Bolzer v. People, 129 Ill. 112, 21 N.E. 818 [1889].)

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“And where one person makes a threat against the life of another, but thereafter their relations are shown to be friendly, and upon an immediate provocation the threatener kills the other, he should be convicted of manslaughter only; since, after the reconciliation, the law will presume the crime to be due to the new sudden provocation, and not to the previous malice.” (State v. Horn, 116 N.C. 1037, 21 S.E. 694 [1895].) Annot. 5 L.R.A. (n.s.) 809, 820 (1906).

In the same annotation on the subject of heat of passion, it is stated that:

“Heat of passion sufficient to destroy the sway of reason, based on adequate provocation acted upon immediately or before the passion has cooled, mitigates a homicide from murder to manslaughter. And, except in a few cases of statutory manslaughter, heat of passion is an essential element of voluntary manslaughter. There is no mitigation in the absence of passion, however great the provocation; nor is there mitigation in the absence of provocation, however great the passion may be. Adequate provocation and sufficient heat of passion caused thereby must coexist to reduce a homicide to manslaughter; though passion founded upon inadequate provocation will reduce a homicide to murder in the second degree. The distinction between murder and voluntary manslaughter is found in the dividing line between malicious action on the one hand and action in the heat of passion on the other. Malice and heat of passion cannot coexist. A homicide cannot be both murder and manslaughter. If the incentive which moved the slayer was malice, the killing is murder; if it was heat of passion caused by sufficient provocation, it is voluntary manslaughter; and the question for determination is, By which was he moved when he did the killing? The theory of the indulgence shown by the law in a case of a killing in a heat of passion is that,

though the killing was intended on the spur of the moment, the sway of reason was temporarily suspended, and, therefore, there was no malice." *Id.* at 828-29.

In other words, what the majority of this Court sees in the record is that appellant, at the time of the homicide, was driven to the offense by a series of provocations, each in itself insufficient perhaps to make the provocation adequate, but not insufficient when taken cumulatively and coming so closely one upon the other within such a short period of the final act in the tragedy. These acts were: (1) Conclusive evidence of conjugal infidelity, (2) A disposition to treat the aggrieved husband in a cavalier manner when her attention was called to her faithlessness instead of showing any tendency to repent, and, (3) An actual assault upon the body of the aggrieved husband, coupled with his insufficiently corroborated but also unrefuted testimony that she kicked him on the shin and pulled his testicles in such a manner as to compel him to "ease up to her."

From the record certified to us it appears that the first two adults who appeared on the scene and talked with accused after the tragedy were Quelleh and Momolu; and why it is that no attempt was ever made by the prosecution to secure their testimony is one of the inexplicable neglects which, in spite of repeated questioning from this Bench during the arguments, we have not been able to account for.

Witness Cyril Henry, a respectable and responsible citizen, a friend and neighbor of accused, was the third person on the scene after the homicide; and he testified that he arrived approximately two hours after the homicide, not having been at home when the first of two messengers was sent by Greenwood, the accused, to call him. He testified that for the two hours after his arrival Greenwood sat and recounted the provocative acts which led to his killing his wife, but only one of these, Henry stated

in answer to a direct question, was the discovery of these amorous letters.

It struck us as exceedingly strange that neither the prosecution nor the defense asked Henry to testify to any of the other acts of provocation, but instead confined the examination and cross-examination to facts less closely connected with the pith of the case, namely the intent with which the stabbing was done.

No physician was called to view the body; the nearest approach to expert testimony found upon the record was that of Mrs. Eva McGill Dennis, a graduate nurse from the same institution as deceased, who helped prepare the body for burial. It was she and she alone who testified that although she saw nothing of the dead body until it had been carried from White Plains to Careysburg on the day after the tragedy yet, from her inspection thereof, she found fifteen wounds, a broken neck, and three fingers of each hand broken. The defense, in a motion to quash, made one of the grounds of exception to this Court a demurrer to his being charged with two such inconsistent modes of killing, for, he contended, if deceased had died from having been stabbed to death, certainly she did not die from having her neck broken, and vice versa. Moreover, Mrs. Dennis' testimony seems to afford some corroboration of the theory of the defense that accused was smarting under the humiliation following the discovery of these amorous letters hereinbefore referred to and was endeavoring to elicit some mental poise when decedent began to kick his shin and so seized his testicles that he had to "ease up to her"; for otherwise what could have been the cause of three fingers of each hand of decedent being broken in a struggle which Monroe Caine testified he stopped out in the street to listen to for quite awhile?

After carefully and deliberately considering the law and evidence in this case, we are of the opinion that, although appellant was not justified in killing his wife, yet the circumstances attending the killing, insofar as the

record certified to this court discloses, do not in our opinion constitute murder, but manslaughter.

Moreover, it seems very clear to us that appellant's side of the case has not been given that cool and impartial consideration that the law and the facts warranted.

We are therefore of the opinion that the judgment of the court below should be reversed and the case remanded in order that a new trial may be had, with instructions that the law governing the difference between murder and manslaughter should be carefully expounded to the jury by the trial judge; and it is hereby so ordered.

Reversed.

MR. JUSTICE RUSSELL, dissenting.

Being unable to agree with the majority of my colleagues of the Bench, I have deemed it proper, both in justice to the cause at bar and for the sake of my own conscience, to file this dissent.

One John H. Greenwood of the settlement of Robertsville, Montserrado County, on the first day of March, 1939, committed the atrocious crime of murder under the following circumstances:

The said Mr. Greenwood, about four years prior to his marriage to the decedent, proposed courtship to the said Salome Wordsworth, who was then a student at the Lutheran Mission, Harrisburg, and later a nurse at the hospital of said mission. For one reason or another, the young woman at one time seemed to have favored the dealings of the defendant Greenwood, but afterwards there was a break in their courtship. The defendant, enraged over this abrupt dismissal or termination of their courtship by his fiancée, wrote her the following letter:

“WHITE PLAINS,
November 20th, '37.

“MISS WORDSWORTH,

“I have been studying your action out, since October 31st, towards me. It is a birding [*sic*] shame now; I have decided in full what to do. You have caused

me to create evil in my mind. A woman can always spoil a good man according to their action. I clearly see that you are trying to make a fool of me; you see that Eva McGill has made a fool of that young man, waiting and she got away; it is a lack of manhood; if the poor boy was a man, she would be sleeping in her grave now; she has not done half to him you have done me, so you know I am not going to take it. You know what I am going through for you. You know the promise that you made to me when we came back from Monrovia. Now I am not going to let you and your friend make a fool, or a laughing stock of me. I don't believe I look like it. I am catching hell in my house, all on account of you. The idea, as hard as I work, I cannot have a maid in my house, all on account of you. We would have been married since May, but you made a fool of me. I told my friend, now I have invited my friend again. I never drunk yet in my life. I promised you that my manhood shall not fall and I shall never let it go down. If you think your body is too good for me, it will not be too good for the bugs in the ground, but I let you know that you will marry me, or I will make an example of you for the others. You will not fool any other man. I have no one to cry for me in this country. You must leave that mission and go home. You are to be ashamed working for 4 shillings a month. You can do better. Your mother is sick of it. I will change not the marriage date if hell stands before me, I will marry you December, or we both die. I am waiting to hear from you.

"Excuse writing late.

"Yours truly,

(Sgd.) J. H. GREENWOOD."

From the tenor of this letter the mentality of the man Greenwood will at once be discovered. How it happened the young woman should have afterwards married

a man of that bent of mind is one puzzle in this tragedy that I have been unable to solve, except that it was destined to set out in bolder relief the depravity of that heart later evinced by the said defendant in this atrocious murder of the wife of his bosom.

This threatening letter was by the said defendant handed to her brother, H. N. Wordsworth. The subject of the threats claimed the serious attention of the family and they were on the verge of taking appropriate legal steps with a view to protecting the life of decedent when, according to the evidence of the defendant, he came down to Monrovia and saw Charles Wordsworth, another brother of decedent. As to the conversation that ensued, Mr. Greenwood testified as follows:

"So when I came to Monrovia, I met my expected brother-in-law, Charles Wordsworth, and he told me the contents of the letter that I wrote his sister, and after we talked. I told him saying, 'Charles, you know we are all men. You know how love affair is. She is your sister for true, but you must judge between us.' So we both harmonized and I apologized to him. I told him that I did not mean a thing, and he said all right, he accepted it, and all I had to do was to make it good with the folks. When I went home I sat and wrote a nice letter to her mother and told them that I did not mean a thing. Then I stipulated to Miss Wordsworth that she must remember the note she sent me. She wrote me a letter accepting the apology and the matter was dropped of that letter."

In course of time, to wit, on the twenty-eighth day of February, 1939, the defendant and decedent were married. It would appear from the evidence of defendant that the decedent had stipulated that she was a chaste girl and, with that understanding, she had refused to allow him to enclose with her before their marriage. Defendant alleged that he was deceived. Defendant stated, "I courted you as a young lady not knowing any-

thing about life, now come to find out you are way in life.”

Upon querying his wife how it happened, decedent gave two versions which in our opinions are irrelevant to the decision of this case and therefore we shall pass over them.

From the evidence of witnesses who deposed in this case, it appears that there was continual quarrelling between the two spouses within a few days of their marriage, so much so that decedent threatened to leave defendant on the ninth of March, shortly after their marriage.

In this atmosphere of family unhappiness, decedent received certain letters which defendant made profert of in his testimony during the trial. Said letters were love letters written to decedent by three different persons at various times within the space of thirty-three days of their marriage and were admittedly improper letters to be received by a married woman. But this was not adequate provocation for the husband, John H. Greenwood, to commit murder, as will more fully appear and is explained later on in this dissent.

These letters were discovered by Mr. Greenwood on the Friday of the murder. Decedent, perpetually annoyed in the home by her husband, in order to get peace for her distressed soul and also in order to avoid what afterwards happened, left home on that Friday, the thirty-first of March, to spend the day with relatives of hers at White Plains, where she remained during the best part of the day. She returned home about four o'clock that evening, but during her absence in White Plains her husband had raided her trunks and had found the three letters above referred to in her suitcase from friends with whom she had ostensibly been on good terms before the marriage.

During the absence of the decedent in White Plains as aforesaid, defendant called one of the boys in the house, John Carter, who was one of the witnesses for the prosecution, and told him to tell decedent on her return that he

was tired of her nonsense and that he would end her life in the yard that day.

Witness Crusoe Anderson, after recounting that the two spouses continually quarrelled in the home and would a few days later make peace, stated:

"The last time they made fuss was on a Thursday and Mrs. Greenwood gave me a cassava to roast for her. After, I roasted the cassava and peeled it and carried it to her, and she sent me to Harrisburg to her friend Miss Rebecca Peal. After I came back that Thursday Mr. Greenwood and his wife had made fuss again. That was the last time. And Mr. Greenwood's wife cooked breakfast and put it on the table and Mr. Greenwood did not eat, and on Thursday he told Joseph Carter to tell Ma that he will end her life on Friday in this yard. Friday morning Mr. Greenwood and Joseph Carter were distilling gin. Mrs. Greenwood cooked the tea and he did not eat, and she cooked breakfast and Mr. Greenwood did not eat none. And after that Mrs. Salome went to White Plains to Mrs. Florence Ricks' place. When she came back, she went and got one pineapple and peeled and ate it and Mr. Greenwood and his wife went upstairs. . . . We found him and his wife kicking up, and Mr. Greenwood said to Joseph that he was toting news backward and forward between him and his wife. Mrs. Salome said, 'Since Joseph takes news between him and me, let Joseph go home and let me stay,' and Mr. Greenwood said, 'No.' Mr. Greenwood then asked Joseph, 'The thing I told you to tell your Ma, did you tell her?' And Joseph said, 'No.' And Joseph said, 'Ma, Mr. Greenwood said that he was tired of your nonsense and that he will end your life in this yard.' And Mrs. Salome came downstairs to go to Mrs. Florence Ricks' to sleep. Then Mrs. Salome took her helmet and started out. Then Mr. Greenwood grabbed her by the front door and told

her to come back and she said, 'No, because you have planned to kill me in your yard.' And Mr. Greenwood told Joseph to go and close the front door. . . . Then Mrs. Salome told Louise to go to White Plains and tell Mrs. Florence Ricks to come because Mr. Greenwood wants to kill her. And Mr. Greenwood told Louise that if she go, he would kill her, too. And Mrs. Salome began to holler and she told Mr. Greenwood to leave her alone. Then she hollered and told me to go—me and Joseph to go and help her, and Mr. Greenwood said if we went there, he would kill us. Then she told me, 'When you go home you must tell my Ma I am gone home, and I know that my soul is saved. Lord save my soul.' And after that Mr. Greenwood came outside to call me and Joseph in the house. When we went in the house Mrs. Salome was lying down on her face, and he told us that he had tried his best with his wife and she did not respect him, and he had sent her before to go and respect his God. And he sent Joseph to White Plains to call Quellie and Momolu. When the two men came, . . . he told them to come in the morning to take his things to the waterside as he was coming to Monrovia to give himself up. And Mr. Greenwood sent me to call Mr. Henry. When I got there Mr. Henry was not there, and I went back and told him and he sent Joseph to White Plains to call Mr. Henry. When Mr. Henry came it was about six o'clock in the night. . . . Mr. Henry asked the question, 'Is she dead?' Mr. Greenwood said yes, and that if she could not respect him, then she must go out before to respect his God. Mr. Henry and Mr. Greenwood carried chairs outdoors and sat out there half part of the night. When Mr. Henry was leaving, Mr. Greenwood told him to carry Louise to Mrs. Florence Ricks' place to sleep that night. Then Greenwood made us close the house

that night and he went and got a pineapple, peeled and ate it. . . . He told me that night that when I get up next morning I must go to Careysburg and tell Mrs. Salome's mother and brother that he had killed her and they must come and get her out of his house. That morning after I got up I saw Mr. Holt's truck with Careysburg people who came down to get her. That is all." See record, pp. 1-3, November 14, witness Crusoe Anderson's testimony.

In addition to this, the witness testified that:

"After Mr. Greenwood had killed his wife, he took the knife with which he had killed her and gave it to Joseph to wash. Joseph washed it and handed it back to Mr. Greenwood, who himself was full of blood." *Ibid.*

Joseph Carter testified *inter alia* as follows, to wit:

"The first fuss that Mr. Greenwood and his wife had, I do not know about it, but I heard it. The last fuss was concerning food. They were sitting at the table and he told his wife that he had so much food to a period to last him a year. That day they fussed the whole day. It was on Thursday morning when they started out. I was to the stillhouse distilling and Mr. Greenwood and his wife fussed the whole day. Mr. Greenwood came down there while I was stilling, and he said to me that every woman that he gets carried his bad name, but before this one carried his bad name again they will tote her out. So about twelve o'clock that day the woman put the food on the table and she came to call me. Then we went up to the house. When he went up to the house, I don't know what he and the woman talked when he went to the house, because he left me to the distillery. The next morning, which was Friday morning, I went to the stillhouse, and I don't know what he and his wife said up to the house. His wife was going in town and he called her back and she refused to come and she went

on. When she came back that evening she went upstairs, and Mr. Greenwood followed her from the stillhouse and went upstairs, too. And they began to quarrel. When they were quarrelling, Mr. Greenwood called us to the house. He told us to come and see what his wife was doing to him. We came up to the house. As soon as we got upstairs, the woman went to take her hat and said she was going in town to her cousin because she was tired of taking his damn foolishness. When she started outdoors, he grabbed her and brought her back in the house and he hollered at me to shut the front door. I refused to go, and he said if I didn't fasten the front door, he was going to do something to me. Then I ran to the door and shut it because I was scared. When I shut the door, then I went in the back and he and the woman started tussling. Then he asked the woman if she wanted to fight and he knocked her down and began to stab her. She began to beg him, and said, 'Daddy, I beg you, you will do your own wife like this?' She said, 'I am your wife and you are my husband. Will you do your little baby like this?' She said, 'I am pregnant for you and I will bring you a fine little baby. Don't kill me.' He said to her, 'You now know that I am your husband. This is damn murdering time.' The last word I heard her say was, 'Lord save me.' Then he called the boy and I in the house to come and see the cow. We came in the house and I saw the woman was dead. He sent me to go and call Mr. Henry. I went and called Mr. Henry and Mr. Henry himself came to the house. When he and Mr. Henry came to the house, I don't know what he and Mr. Henry talked about. When Mr. Henry left that night, he took the lamp and looked in her face and called her a cow again. Then he said he was going to bed. He got up three o'clock that Saturday morning and dressed, and he came to our door and knocked and

called me. When he came outside, he said to me he was coming down to give himself up to the government because he had killed his wife, and he came on down to Monrovia." See record, pp. 6-7, November 13, witness Joseph Carter's testimony.

The girl Louise Wordsworth, testifying for the prosecution, stated:

"The time he was killing her I was not in the house. I was outdoors. They were in the house quarrelling upstairs and she called me, Joseph, and Crusoe. She told us to come. When we went up, she told Joseph to come and tell her the thing his Pa had told him to tell her. He said, 'Ma, Pa said that thing what you have been doing, he tired with it and he will put an end to it.'"

Further in her testimony Louise Wordsworth stated:

"Then Mr. Greenwood said to Joseph to tell him what he, Joseph, said his Ma had told him about him Mr. Greenwood. Then Joseph said, 'Ma said that when she came to Mr. Greenwood's house she had to bring everything they were using and he did not have anything. So she got up and went upstairs. After she went, she called me and said, 'Louise, bring me my hat. I am going in town to cousin Florence. I will sleep there tonight and tomorrow I am going to Mamma.' After she said that Mr. Greenwood caught her by the wrist and he said, 'Come back here.' Then he said, 'You think the trouble I have seen for you, you will leave me so?' He said, 'No, sit down here.' She said, 'I don't want to sit down. Leave me alone. I am going to Mamma.' Mr. Greenwood told Joseph to go and shut the door, and she said, 'If you pass here, I will knock you down.' Then he said, 'Go and shut the door, Joseph.' After he shut the door, I was outside carrying breakfast. She had not eaten anything yet. He drove me outdoors and told Joseph to shut the back door, and Joseph

shut the door. He drove Crusoe outdoors and told Joseph to go, too. Joseph crept and went in their room, and he was peeping at them. I was outdoors. Auntie hollered to me to 'Go and tell cousin Florence to come, this man is killing me.' Just as I took my hat and was running out of the yard, he pointed the revolver at me and said, 'If you go a step, I will kill you.' So I got scared and went under the cellar. While I was there, I heard Auntie crying and said, 'I beg you pardon, Daddy. Don't kill me.' He said, 'Let us go upstairs.' Then I was crying under the cellar. I heard her praying, 'Lord have mercy upon me. I wish my soul is saved.' She called Crusoe and told him, 'When you go, tell Mamma I am gone.' So when she said that, I did not hear her say anything more. I heard Mr. Greenwood when he called Joseph and Crusoe in the house and said, 'Here is my wife. You two will be my witnesses.' He went upstairs and washed his hands and changed his clothes. He came downstairs and said to Joseph, 'Go and call Mr. Henry.' He said, 'Crusoe, go in town and call Quellie and Momolu, tell them they must come just now.' When they came, he had lighted the lamps. He was standing in the door and told Quellie, 'Here is the house. There are the canes. I will leave all in your charge. I am going to Monrovia. I have killed my wife. I am going to give myself up.'

"The thing that started the fuss of her friend—Tuesday morning they were sitting down at the table, drinking tea. Auntie was eating. Mr. Greenwood said, 'I like to see you eat so. It will keep you healthy.' So she said, 'I like to see you buy food, because since I have been here you have not bought anything to eat. I had to buy everything myself for you to eat. Then you say my friends cannot come to this table to eat? . . . The friends who fed me when

I was hungry? They are who you say must not come to my table?' He said, 'No, none must come to my table. The person in the whole family is your Ma must come to my table and eat.' She said, 'No, I don't agree to that. Where do you leave my brothers and my sisters and my friends?' He got up and went outdoors and Auntie was crying." See record, pp. 2-3, November 13, witness Louise Wordsworth's testimony.

From the evidence of Louise Wordsworth it would appear that the fact that Mrs. Greenwood complained that Mr. Greenwood had nothing in the house and bought nothing fit to eat made Mr. Greenwood ashamed and angry, for the witness stated that:

"When she cooks, he would not eat. She cooked dinner and called him to dinner and he said that he did not want to eat. Auntie was crying upstairs. He took the dinner out to the chickens. She called him and said, 'Daddy, but you mean that the food that I cooked, you did not eat it?' And he said 'No.' She said, 'Why?' and he wouldn't talk. She said, 'This will be the last time you do that thing to me.' She went upstairs. Thursday they did not speak to each other, and she cooked and he would not eat. He called me and said, 'Louise, this plate and this spoon—don't never put them on the table again for me to eat out of. These are your Auntie's dishes—herself must eat out of them.' He showed me an old cracked plate and an old rusty spoon and said, 'These are the dishes I want to eat out of because they are mine.' Friday morning she made tea and he did not eat. She cooked breakfast, and he did not eat. Just about dinnertime she called me and said, 'Louise, go and cook one pint of rice for me and you.' I cooked it and put it on the table. Just at the time I went to call her, that was the time he was wrestling with her in the sitting room. He drove me outside and told

her to sit down, and she said that she did not want to sit down. I heard when he kicked her. You could hear it just like a ball when he kicked her. That is the thing caused Mr. Greenwood to kill Auntie.”

Id. at 4.

In addition to the evidence of the inmates of the house, the prosecution produced Monroe Caine as a witness who happened to have been passing on the public highway when defendant was killing decedent. He said:

“On my way from Bensonville, coming to Robertsville, after I had passed Mr. Henry’s place I heard a noise. I said to myself, ‘Mr. Greenwood and his wife are gone out.’ When I got in front of Mr. Greenwood’s house, I found it was Mr. Greenwood and his wife making palaver in the house. ‘Leave me, I don’t want to sit down. Leave me again, I don’t want to sit down,’ Mrs. Greenwood said. Meanwhile I saw Crusoe and Carter run outdoors through the back way. I saw Louise under the house, with her head tilted on one side, looking through the floor crack. ‘Louise,’ said Mrs. Greenwood, ‘Go and call Mrs. Florence Ricks. Oh Lord, this man is killing me.’ While I stood there looking right through the house, I started with a shock, trembling. Louise ran from under the house towards White Plains direction. Mr. Greenwood came forward to the front door in the meantime. . . . He threw up a revolver on Louise. ‘Come back,’ he said. ‘If you don’t come back, I’ll kill you.’ He returned where he was in the house. I heard a rough rumbling and a loud screaming. I said to myself, ‘This man is killing this woman.’ I was afraid to go in because I had nothing to protect myself. He called Crusoe and Carter. The little boys ran in hastily. ‘I loved my wife. She is treating me just like a dog. God damn her.’ Then I went on my way.” See record, p. 8, November 14, witness Monroe Caine’s testimony.

Mr. Cyril Henry, the nearest neighbor and a friend of the defendant, testified as follows:

"On Friday afternoon, the thirty-first of March, I was in town, which is not far from the school where I operate. Mr. Greenwood's little boy, Joseph by name, approached me (I was in company with others, about to go to church practice) and said to me, 'Pa said come quick, he wants you.' Not having received messages of the sort before, I sensed something wrong. I told my friends there I will not go to practice, I better go out. I followed the youngster. I was curious to know what the real purpose was, so I asked him, 'What is the trouble?' He said to me, 'Pa said not to tell you.' I did not try to worm anything out of him again, but to get from him that it was a bad palaver. I went on and reached my home. I thought best to go inside to prepare for anything that might be up. I prepared myself, called my boy to go with me to see what the matter was. I should say it was just before dark—about six. Approaching his residence, he met me at his door fully well clothed and greeted me and said, 'Mr. Henry, my wife has deceived me. Step in.' As I stepped on the right in the hall, there before me was the body of Salome Greenwood prostrated on the floor in a pool of blood. My feelings can be better imagined than described. Though the pool of blood was large, I had a faint hope that she might be breathing yet. I stepped to the body, making about five steps from the door, looked down upon it, turned to Mr. Greenwood near the door, and said to him, 'Is there any hope?' He answered me, 'No.' I said, 'Is she gone?' He answered, 'Yes, she is finished.' Said he to me, 'Sit down, Mr. Henry.' I did not conclude that was a place to sit. I took the chair he offered me, and I brought it out of doors outside. He followed me and we sat down together, his back towards the body and

my face towards the same. I had to think fast. Then I decided, beyond saying I am too sorry, Mr. Greenwood, I must listen to what he had to say. Then for nearly two hours he related to me many, many circumstances connected with his life, courtship, marriage quarrels, and the final end. Said he to me, after all these recitations, that he killed her." See record, pp. 1-2, November 15, witness Cyril Henry's testimony. The witness was asked the following question:

"Q. What was the deception he complained of?"

"A. As far as I can gather, he had absolute belief that she was a fit and proper help-meet and that she was chaste. It transpired, however, that three evenings after marriage he discovered she was to the contrary. Coupled with that, she had been a constant torment to him to leave him if he does not treat her right. He remonstrated with her, saying she must not say it again. On the fatal day, after accusing her from information received within his own home of having received certain letters, she left the premises and went in town. During her absence, in the search for the said letters, he discovered another which he gave to me to read. It was one of the wishy-washy lovesick letters signed with the initials D.M. This evidently incensed him. On her return he accosted her about it, and the trouble ensued. She attempted the second time, reaching for her hat, to go out again. Thereupon he locked the door, drove the children out, the altercation ensued, and finally her death."

The same witness, testifying for the defense, answered questions put to him as follows:

"Q. On the day in question and at the time you went to defendant's house, in what attitude did you meet him? That is to say, did he appear to be

in a condition with nerves totally upset or how did you find him?

"A. To my mind he was fairly calm, as though holding himself under control."

The jury questioned the witness:

"Q. Did Mr. Greenwood inform you that it was that letter that was the cause of the killing?"

"A. He brought it in as one of the many causes."

The court questioned the witness:

"Q. Mr. Witness, did the defendant inform you that he discovered this letter among the effects of decedent?"

"A. Yes.

"Q. Did he say when he discovered it?"

"A. Yes, after she had gone in town on the first occasion.

"Q. How long, to the best of your knowledge, was this before the killing?"

"A. I should estimate four hours."

Mrs. Eva Dennis, a graduate nurse living at Careysburg, was called to dress the body of decedent after it was taken to Careysburg. She was asked the following question:

"Q. Please tell this court and jury the condition of the body when you found it.

"A. I observed six wounds on the neck, three wounds on the chest, one wound on the left breast, one wound on the wrist, one wound below the left breast, one on the back, one wound on the lip and one wound on the chin, . . . several serious bruises above the right jaw and below her abdomen. There was also a deep sink above and below the abdominal cavity."

This witness also testified to the effect that she could see fingerprints on the jaw of decedent, and that three fingers on each of decedent's hands were broken.

This is succinctly the evidence of the prosecution which, in my opinion, is clear proof of wilful murder, but which the majority of the Bench holds to be manslaughter. The defendant was then called upon to make his defense in keeping with his plea of not guilty. His testimony, which was voluminous, relating in minute detail the several quarrels between his wife and himself, has been summed up in count three of the brief of the defense counsel.

Now let us examine the law to see whether the contention of defendant Greenwood, which has been accepted by my colleagues, that he was in a state of mind so as to have reduced the commission of his act from wilful murder to manslaughter, is supported by law and evidence.

“Voluntary manslaughter is where one kills another in the heat of blood; and this usually arises from fighting, or from provocation. In the former case, in order to reduce the crime from murder to manslaughter, it must be shown that the fighting was not preconcerted, and that there was not sufficient time for the passion to subside; for in the case of a deliberate fight, such as a duel, the slayer and his second are murderers. And, though there were not time for passion to subside, yet if the case be attended with such circumstances as indicate malice in the slayer, he will be guilty of murder. Thus, if the slayer provides himself with a deadly weapon beforehand, in anticipation of the fight, and not for mere defence of his person against a felonious assault; or if he take an undue advantage of the other in the fight; or if, though he were in the heat of passion, he should designedly select out of several weapons equally at hand, that which alone is deadly,—it is murder.” 3 Greenleaf, Evidence, § 121, at 128 (16th ed. 1899).

In the evidence adduced in this case, it has not been proven that Mrs. Greenwood ever attacked Mr. Greenwood, except for the bare statement of Mr. Greenwood.

In proof that no injury to Mr. Greenwood was ever discovered, the prosecution strenuously contended, and quite justly, that before the contention of Mr. Greenwood could be taken into account to reduce the crime to manslaughter based on fighting or provocation, it was the duty of Mr. Greenwood to prove that he was assaulted by the decedent and that he killed her to save his own life; that neither immediately after the killing nor at any time after the killing did Mr. Greenwood ever exhibit to anyone any wounds or injury inflicted on his body by Salome Greenwood as would have justified his claim or allegation that decedent slapped him in the face, kicked him several times with her shoe heels on his shin, or pulled his testicles.

It has also been contended by the defense that Mr. Greenwood was provoked by the infidelity of Salome Greenwood. She was not chaste at the time of the union, contrary to her promise; she received numerous letters from three men within the short space of their marriage; and she taunted him with the insulting words, "My body belongs to myself, and I do what I damn please with it."

To dispose of the first contention, I have to observe that it is an unmistakable principle of law that killing is not murder if done for previous acts of unchastity on the part of the wife. In this case Mr. Greenwood simply alleged that he did not find his wife chaste. But from the day of their marriage up to the day of the murder, decedent had been out of their home but twice: once when Mr. Greenwood took her to White Plains to walk, according to his evidence, and again, the day of the tragedy when she went to visit her cousin Florence Ricks, leaving home at twelve noon and returning at four-thirty in the evening. She did not receive visitors at home. On that evidence, then, the defendant could not allege that decedent committed adultery after their marriage. As to Salome Greenwood receiving love letters, I find no hesitation in saying that said acts did not constitute

grounds for the taking of decedent's life by her husband.

The only reason or excuse known to law which would justify the husband taking the life of the wife is where he either detects the wife and the paramour in the very act of adultery or where the husband has reasonable ground to believe that they are or have been so engaged. 21 Cyc. of Law and Proc. *Homicide* 752 (1906).

"In *Fry v. State*, 81 Ga. 645, 8 S.E. 308, it was held that where defendant's wife, merely to irritate, vex, and insult him, told him that he was not the father of their children, and, in a sudden heat of passion provoked by her words and the animus with which they were uttered, although he had prior knowledge of her misconduct, he killed her, the crime was murder. . . .

.

"If some time has intervened between the receipt of the information and the homicide, so that defendant's passion has had time to cool, his killing of his wife or her paramour is murder and not manslaughter." *Id.* at 753, n. 2.

But the case at bar does not disclose any act of adultery on the part of the decedent committed at any time during their union. How then can the murder be justified and reduced to manslaughter?

It has been contended further that Mr. Greenwood was provoked by the alleged statement, "My body belongs to myself and I do what I damn please with it," which he attributed to the decedent. Admitting for the sake of argument that the decedent did use such an expression, let us see whether such words justified the killing.

"But the *proofs of provocation*, in order to reduce the act of killing to the degree of manslaughter, must, as we have seen, be by evidence of *something more than words or gestures*; for these, however opprobrious and irritating, are not sufficient in law to

free the slayer from the guilt of murder, if the person was killed with a deadly weapon, or there be a manifest intent to do him some great bodily harm." 3 Greenleaf, Evidence, § 124, at 131 (16th ed. 1899).

"In all these cases of voluntary homicide, upon provocation, and in the heat of blood, it must appear that the fatal stroke was given *before the passion*, originally raised by the provocation, *had time to subside, or the blood to cool*; for it is only to human frailty that the law allows this indulgence, and not to settled malignity of heart. If therefore, after the provocation, however great it may have been, there were time for passion to subside, and for reason to resume her empire before the mortal blow was struck, the homicide will be murder. And whether the time which elapsed between the provocation and the stroke were sufficient for that purpose, is a question of law to be decided by the court; the province of the jury being only to find what length of time did in fact elapse." *Id.* § 125, at 132.

The evidence in this case shows clearly that after defendant discovered the letters in question, the basis of the defense of provocation, four hours elapsed before the murder. While decedent was absent in town at White Plains and the defendant found the letters in question, he deliberately formed the design to kill decedent, as testified to by witnesses Joseph Carter and Louise Wordsworth.

"To constitute deliberation and premeditation, the design to kill must precede the killing by some appreciable space of time. The act must not be done on a sudden impulse. But the time need not be long. If it is sufficient for some reflection and consideration upon the matter, for the choice to kill or not to kill, and for the formation of a definite purpose to kill, it is enough. The questions to be answered are: Was there sufficient time for reflection? Did defendant

think over what he was about to do? Did he coolly form a settled purpose? *State v. Greenleaf*, 71 N.H. 606, 54 Atl. 38." 21 Cyc. of Law & Proc. *Homicide* 729, n. 94 (1906).

In the case *Republic of Liberia v. Mason*, 4 L.L.R. 81, 1 New Ann. Ser. 85 (1934), this Court held that where an altercation arose between defendant and one of his native women by the name of Wheamie and he, the appellant, became so enraged with Wheamie that he kicked, beat, bruised and wounded her, which resulted in her death on the morning of the very next day after the kicking, beating, bruising and wounding by the said Thomas Mason, this was murder; and he was executed by hanging.

In the case at bar, witness Louise Wordsworth testified that defendant kicked the decedent with such ferocity that it sounded like a football. Nurse Eva Dennis discovered wounds in the abdomen of the decedent when she examined the body the next day which could have only been produced by the kicks Louise Wordsworth heard and described.

In the description of this murder before the court, there was no evidence of a sudden stroke being administered in sudden heat of passion; the evidence shows conclusively that the murder was deliberate and premeditated.

Contrary to the principle of a "sudden blow" in the heat of passion, the evidence showed that, notwithstanding defendant had a revolver in the house with which he threatened the witness Louise Wordsworth if she attempted to go out of the yard to tell Mrs. Florence Ricks and threatened witnesses Joseph Carter and Crusoe Anderson if they came to the relief of their mother or did not close the doors, he finally chose to stab her in the chest with a knife, which resulted in her death. And after this atrocious murder, defendant broke the neck of his victim and made use thereafter of revengeful words as

these: "She did not respect me, and I have sent her before to respect my God" and "She bled like a cow."

As further proof that the murder was wilful and that there was time for reflection, Mr. Greenwood himself stated that while he was stabbing her decedent said, "Kiss me, Daddy. I am your wife." Defendant answered, "All this time, I have been asking you for a kiss, you wait until you get hurt before to respect [*sic*] my consent?" said defendant, "And I killed her."

This dialogue between the decedent and the accused shows conclusively the premeditation and deliberation with which defendant killed his wife, for it was after said exchange of words that defendant finally stabbed her in the chest, which caused her death. And even after she expired in his hands, he broke her neck to further wreak his vengeance.

These expressions of malice prepense fit in most logically with the threats previously made by defendant that every woman he took in his home carried his bad name away, but before this one, meaning his wife, took his bad name they would tote her out of his house. Did they tote Salome Greenwood out of Mr. Greenwood's house or did she walk out?

On the night of the murder, he instructed Crusoe Anderson to go to Careysburg the next morning and tell the mother and brother of decedent that he had killed his wife and they should come and take her out of his house.

That the murder was deliberate may be shown more clearly by the fact that the defendant, with a view of torturing the decedent, gave her fifteen stabs. In explaining why Greenwood did not shoot his wife but stabbed her to death instead, witness Joseph Carter testified:

"The reason is, since I was there I have not seen him with no other knife except this knife, and, when he got through killing her, he said that he wanted her and said that if he had shot her—there he ended, and

so he said he used his knife." See record, p. 9, November 13, witness Joseph Carter's testimony.

Ruling Case Law states that:

"Malice must be proven at least in the sense that it must appear in the case; but there need not be any evidence specifically directed to proof thereof,—it may be inferred from the acts attending the killing. The proof of malice may take any one of several forms. It may appear by direct evidence, as where it is disclosed by the declarations of the accused. Again, proof of malice may consist in circumstantial evidence, as in previous threats, the manner of killing, or the like. . . . Ordinarily, indicia of malice are to be sought in the facts attending the killing, and evidence of any facts which logically afford an inference of its existence is admissible. Evidences of hostility, quarrels, the utterance of threats, previous attempts to do injury, and measures taken in preparation—all tend to disclose express malice. Again, the manner of killing—as where it is attended with cruelty—may disclose express malice." 13 R.C.L. *Homicide* § 76 at 768-79 (1916).

"In determining as to the existence of heat of passion which will mitigate a homicide, all circumstances and conditions connected with the killing should be taken into consideration.

"The time which elapsed between the provocation and the killing, the prisoner's previous conduct, the deadly nature of the weapon, and the repetition of the blows, are all to be considered; since, though the law condescends to human frailty, it does not indulge human ferocity, but considers a man to be a rational being, and requires that he should exercise a reasonable control over his passions." Annot. 5 L.R.A. 809, 818 (1907).

During the whole tragedy there is no evidence that Mr. Greenwood at any time lost control of himself. Mr.

Henry testified that when he arrived at the house of the murder, he met the accused, properly dressed and "fairly calm, as though holding himself under control." The accused himself testified that after the murder he straightened the decedent and lit a candle over her for the night. Witness Crusoe Anderson testified that after the murder defendant dressed himself, took a pineapple, peeled it, and ate it.

Mr. Greenwood, cognizant of the consequences of his acts, voluntarily came to Monrovia, made his last will and testament, and disposed of largely all his worldly goods, and then surrendered himself to the authorities, believing conscientiously that justice would be meted out to him and that, in the killing of his wife under the conditions above portrayed, his life would be forfeited to the state.

Nor did defendant, after the murder of his wife, ever express any regret that he had killed her cruelly in sudden heat of passion. The only message sent to the family was that he had killed her and that they should come and get her out of his house.

In *Cyclopedia of Law and Procedure* it is stated that "Declarations of defendant made shortly after the homicide may be admitted to show malice. . . ." 21 Cyc. of Law & Proc. *Homicide* 942, n. 30 (1906).

In the case at bar, the murder was wilful and deliberate. There is no law to justify the assumption that it was done in the heat of passion and that therefore the crime is manslaughter, as contended by the majority opinion of the Bench.

"The law, however, recognizes no particular length of time for the formation of the design to kill or for carrying it into execution. Any period, no matter how brief it may be, will suffice, provided only that the formed intent to kill precede the homicidal act. It does not follow, because the killing was the result of the prompt and speedy execution of a hasty or im-

mediate resolution, that it may not have been done with express malice. While some length of time must elapse and this must be an appreciable period, it is sufficient if the slayer in fact understood and contemplated the consequences of his acts. Deliberation and premeditation imply a capacity at the time to think and reflect,—sufficient volition to make a choice, and by the use of the mental powers to refrain from doing the homicidal act.” 13 R.C.L. *Homicide* § 75, at 766–67 (1916).

This is the case; these are the circumstances; this is the evidence; and this is the law.

In view of the law and of the evidence set out in this opinion, I fail to see how the majority of my colleagues of the Bench could have reached the decision that the crime should be reduced to manslaughter when it is wilful murder; hence this dissent.