

G. SALOME PADMORE, Appellant, v. REPUBLIC
OF LIBERIA, Appellee.

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

Decided February 9, 1933.

1. If a man give another a stroke not in itself so mortal, but with good care he might be cured, yet if the party die of this wound within the year and day, it is murder or other specie of homicide.
2. But when a wound that, not in itself mortal, but for want of proper application or from neglect turns to gangrene or fever which is the immediate cause of death of the party wounded, this is murder or manslaughter according to the circumstances.
3. Malice is the main ingredient and characteristic of murder and whenever death ensues from a wound inflicted from the sudden transport of passion or heat of blood upon a reasonable provocation without malice, this is imputable to human frailty and the offense will be manslaughter.
4. When the facts in the case as given by the testimony of witnesses are considered and it cannot be clearly seen that the verdict is justified by the oath the jury took, the judgment based on such a verdict will be reversed.

Appellant, defendant below, was convicted of murder and sentenced to death. On appeal to this Court, judgment *reversed*, and sentence imposed of two years' imprisonment for the crime of manslaughter.

R. Emmons Dixon, H. L. Harmon, Coleman and Simpson for appellant. *The Attorney General* for appellee.

MR. JUSTICE PAGE delivered the opinion of the Court.

This is a case in which the appellant, defendant in the court below, was indicted at the February term of the Circuit Court for the First Judicial Circuit, Montserrado County, 1932, on the charge of murder; and at the May term of said court of the same year she was arraigned upon said indictment, to which she pled "Not Guilty."

Issue being thus joined, a jury of her own choice was

empanelled and after four days' hearing of the facts of the case, returned on the fifth day a verdict to the following effect: "That G. Salome Padmore the defendant is guilty of murder according to the statement of evidence." See records and verdict. On the 23rd day of May, two days after return of the jury's verdict, the defendant, now appellant, filed a motion in arrest of judgment to set aside said verdict and arrest the judgment of the court against her on the following grounds, to wit:

1. That the indictment on its face does not show that it was found by a grand jury duly sworn.
2. Contrary to the statute upon which it was founded and as such the Court was without jurisdiction to pronounce sentence.
3. The indictment was not signed by R. D. Smallwood, County Attorney for Montserrado County.
4. That the verdict is manifestly against the evidence and instructions of the court.

This brings us to consider the exceptions embodied in the bill of exceptions on which the appeal is taken. On a review of the records we do not hesitate to say that the 12th exception of the bill of exceptions is without legal foundation because by inspection of the records we do find that the indictment was presented upon the oath of the grand jury for the County of Montserrado. See Indictment. The indictment also concludes as follows: "Contrary to the form, force and effect of the Statute Laws of Liberia in such cases made and provided and against the peace and dignity of this Republic." See Indictment.

As to count 4 in said motion for arrest of judgment, we also fail to see legal reasons why judgment should have been arrested, because the indictment is signed by "R. D. Smallwood, County Attorney for Montserrado County, Republic of Liberia." It was therefore no error on the part of the court below in overruling said motion in arrest of judgment.

We are brought next to consider exception 13th in the bill of exceptions with respect to overruling of defendant's motion for new trial filed May 13th, 1932, nine consecutive days after rendition of jury's verdict. We regard this question too elementary to take up too much of the Court's time, for the rule on this point is as old as the statutes of Liberia upon which it is founded. The statutory provision for new trials as found in *Old Blue Book*, page 48, chapter 7, section 18 reads as follows:

"Every motion for a new trial must be made within four days after the verdict. . . ." This principle is so elementary that it is puzzling why the defendant's counsel should wait nine days after verdict before submitting this motion and on same being overruled, bring the exception up for this Court to review. The court, therefore, did not err in overruling said motion for a new trial.

Having now exhausted the law issues thus raised in the bill of exceptions we shall now enter upon the question of facts submitted at the trial which would justify the verdict as rendered by the jury. But, before going into the evidence, we feel that we should fully understand clearly before making an application of the evidence adduced at the trial, the term "murder" in its definition and ramifications.

Wilful murder is a crime at which human nature starts, and which is, I believe, punished almost universally throughout the world with death. The words of the Mosaic Law (over and above the general precepts to Noah that "whoso sheddeth man's blood, by man shall his blood be shed" [Gen. 9:6]) are emphatic in prohibiting the pardoning of a murderer who is guilty of death, but he shall be put to death; "for the land cannot be cleansed of the blood that is shed therein but by the blood of him that shed it." Num. 35:33.

Murder is therefore defined or rather described by Sir Edward Coke as "when a man or person of sound memory and discretion unlawfully killeth any reasonable

creature in being, and under the King's peace, with malice aforethought, either expressed or implied." (3rd Inst. 47.) The best way of examining the nature of this crime will be by considering the several branches of this definition, in order.

First: Capacity. It must be committed by a person of sound memory and discretion. Secondly, the mode of killing. It must be unlawful, and the unlawfulness must arise without warrant or excuse; and there must be an actual killing either by poisoning, striking, starving, drowning, or a thousand other forms of death by which human nature may be overcome. Third, the person killed must be a reasonable creature in being and under the King's peace. Fourth, with malice: the killing must be committed with malice aforethought to make it the crime of murder. The last is the grand criterion which now distinguishes murder from other killing; and this malice prepense, *malitia pre cogitate*, is not properly limited to malevolence to the deceased in particular, as any evil design in general; the dictate of a wicked, depraved and malignant heart, a disposition to commit a bad action may be either expressed or implied in law. Expressed, when one with a sedate, deliberate mind forms a design to kill another, which formed design is evidenced by external circumstances discovering that inward intention, such as lying in wait, antecedent menace and concerted schemes to do some bodily harm. In such a case where no malice is expressed, such as where a man poisons another, the law will imply or presume malice though no particular enmity can be proved. And if a man kills another suddenly without any, or without a considerable provocation, the law will imply malice; for no person, unless of an abandoned heart, would be guilty of such an act, upon a slight or no apparent cause.

The other species of criminal homicide is that of killing another man when voluntary, but arising from the sudden heat of passion called manslaughter, while murder arises

from the wickedness of the heart. Whenever death ensues from the sudden transport of passion, or heat of blood upon a reasonable provocation, and without malice, it is considered as solely imputable to human infirmity; and the offense will be manslaughter. It should, however, be always remembered that the person sheltering himself under the plea of provocation must make out the circumstances of alleviation to the satisfaction of court and jury by evidence adduced at the trial, as the presumption of law considers all homicide to be malicious until the contrary is shown or proved by evidence.

Having thus given a definition of the crime with which the prisoner is charged, we shall now enter upon the evidence of the case to see if there can be found sufficient facts and circumstances to justify the verdict and judgment pronounced against the prisoner or if there is ground for a sufficient indulgence which is shown by the law to the first transport of passion as a concession to the frailness of the mind of prisoner which rendered deaf the voice of reason; which fact would justify the provocation and thereby reduce the crime of wilful murder with which prisoner is charged to the offense of manslaughter. But before going into the evidence, we shall next address ourselves to the remaining exceptions which bring this case before us for review.

On inspection of the bill of exceptions, we observe that it constitutes chiefly charges of complaints against the trial judge for the exercise of legal privileges which seemed to him in disallowing certain questions put to the witnesses rather than a contest of certain rights reserved to the prisoner which were denied her. We find in the bill of exceptions, fourteen exceptions noted, seven of which are to the court disallowing questions put by prisoner's counsel. The question then on this point is, had the trial judge the right to disallow any question put to the witness during the trial of the cause? And if so, can the ruling of the judge in this instance become a matter

of exception? Is there a difference and if so what is the difference? In a treatise on the law of evidence, it is said: "Cases arise where the judge in the exercise of his discretion would interpose to protect the witness from unnecessary and unbecoming annoyance . . ."; the rule of English Supreme Court practice (Order 36, Rule 38) expressly provides that "The Judge may in all cases disallow any questions put in cross-examination of any party which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter." We have the following as to the two questions asked, to wit: "Improper questions put to a witness by a party or his counsel may be objected to by the other side, and the judge determines whether the objections are well founded. But, when the judge is the delinquent, who is to call to order? Decency and the Rules of Practice alike prohibit counsel from taking exceptions to the questions of the Bench; and indeed the doing so would be appealing to a man against himself." However, considering briefly the question put to witness James Goodridge which was disallowed, to wit: "If decedent had attacked prisoner successfully when you, your wife and others were not present, what did her attitude show would have been the result?" We say the court was right to disallow same because a witness shall depose to facts which lie peculiarly within his knowledge. Old Blue Book, Ch. 12, § 30. Second question: "Can you say what substance was applied?" meaning to the wound. In endeavoring to establish the fact that decedent died not from the wound given but rather from the treatment applied, the court did not err in disallowing the question, as truly questions of this kind occasionally arise as to the treatment of the wound, but it has been ruled by Smith on *Crimes and Misdemeanours* in his treatise, "that, if a man give another a stroke not in itself so mortal but with good care he might be cured yet if the party die of this wound within the year and day, it is murder, or other

species of homicide as the case may be; that is, if the wound or hurt be not mortal; and it should be made clearly and certainly to appear that the death of the party was caused by ill applications by himself or unwholesome salves or medicines by those about him and not by the wound or hurt. It seems that in such case this is not murder. But when a wound not in itself mortal but for want of proper application or from neglect, turns to gangrene or a fever, the gangrene or fever is the immediate cause of the death of the party wounded and the party by whom the wound is given is guilty of murder or manslaughter according to the circumstances, for if the wound had not been given, the immediate cause of death would not happen." The question therefore, in our opinion, is immaterial and the court did not err in disallowing same.

Having gone through the questions raised in the bill of exceptions which are of value, we come to consider the 14th and last exception to the verdict and judgment rendered against prisoner to the effect: "That the said defendant and prisoner is guilty of the charge of murder and hereby sentenced to death in punishment by hanging on the gallows on the 15th day of July, 1932, until she die, die, die between the hours of six o'clock in the morning and six o'clock in the evening." Exceptions to the verdict and judgment in this case having been taken, it becomes our next duty to go into what the law requires as necessary to support a valid verdict upon which the judgment in this case is founded and see as to whether or not the judgment of the court below should be disturbed. When the jury is sworn, the case is usually opened, and the evidence marshalled, examined and presented by the prosecution to enable the jury to draw their conclusions from the facts and render that true and valid verdict for which the oath was taken. A verdict to be valid must be in conformity with the facts submitted and the legal instructions of the court. Evidence is to the law what music is to the soldier. Let us see if the evidence submitted at the trial

supports the verdict returned and the judgment rendered.

The first witness, James W. Goodridge, on the stand testified that he knows the prisoner and decedent; on November 16 at two o'clock while sitting on his veranda in company with his wife and decedent, the latter related a message she said she got from prisoner concerning her, the decedent's husband.

"I insisted on her not believing it, stating that people are just going around making confusion; decedent replied, 'Cousin Jimmie, I am tired of Salome's foolishness; today she and I will have it; she will either beat me or I beat her.' Just at this time we saw prisoner coming up the street. Decedent jumped up and said, 'Today, today, will end our trouble,' and decedent started down the steps; my wife told me to part them; I replied, 'If I see them fighting, then I will.' Decedent met prisoner at the butter pear tree and slapped her and held her hands. Prisoner said, 'Ida leave me, oh leave me.' I parted them and held decedent because she was the stronger. Prisoner said, 'If you come to me, I will put your guts in your hand.' I observed a knife in her hand. Prisoner went with my wife into my place while I held decedent who was saying, 'Let me go, let me go, Cousin Jimmie, so I can beat that bitch.' I said, 'I will not, because what you all are doing is nonsense.' Prisoner said, 'Let her be, that's what got her beside herself; you all are holding her.' Mrs. Vann came and also insisted that I let her be. I got angry and said I am trying to save the situation and you continue to worry me. I loosed my hold and ordered them out of my yard. They had again met, rubbing up against each other when I saw prisoner stab decedent. I said, 'There you are; you are satisfied, you are cut,' which she denied and said it was only a slash on her finger. Prisoner started off on Governor Eastman's suggestion. Decedent pursued after her, calling her back

and saying, 'Don't think you cut me; it is just a slash on my finger, tussling over or scrambling over the knife.' "

Nancy Goodridge on the stand states:

"On the 16th day of November I went over to Amelia Vann's, not seeing her, on my way returning home, I met the deceased, Mrs. Pritchard, who went with me. While sitting down in company with Mr. Goodridge she said, 'I have always taken your advice but I am tired now. I heard something that Salome the prisoner said about me, that I should carry on or kick up but Alfred is hers.' Mr. Goodridge said, 'I have told you to leave Salome alone on this matter; you wait until I eat breakfast; then I will see Salome and ask her did she say these things and if she did, I will tell her she is wrong and she won't wrong you again.' Just at that time Ida (the decedent) looked down the street and she saw Salome coming when she said, 'There she comes, this is my chance; today is going to end me and Salome fuss.' She then rushed down the steps, got in the street right to the butter pear tree, caught Salome's both hands and slapped her and said: 'You belong to me.' Salome said, 'Ah! Ida, what's the matter with you? Well, I declare, Ida, leave me.' At that time Mr. Goodridge caught hold of Ida and said to Salome: 'Go home.' When I went to Salome, she said, 'Man, leave me, I am not fighting—I am going to Amelia Vann for my money.' At this time Mr. Goodridge tussled with Ida when Salome said: 'Mr. Goodridge, turn her loose—that is what got her beside herself.' I said, 'Don't mind this foolish woman; you hold on to Ida.' Salome and myself walked together until we got into my yard. Then here comes Amelia Vann running and saying: 'Oh no, Mr. Goodridge, turn Ida loose.' When Mrs. Vann said this, Mr. Goodridge got vexed, turned Ida loose and told them to take their mess out of his yard.

I was on my veranda irritated over the idea of turning Ida loose and paid no further attention to them until I heard somebody say: 'You are satisfied now, you are cut.' I then saw Ida holding her dress saying, 'No, I am not cut; I only got scratched on my finger scrambling over the knife.'"

Amelia Vann on the stand testified as follows:

"Mrs. Pritchard and Salome Padmore had been in confusion for a good while over her husband Alfred Pritchard. Ida Pritchard continued to abuse Salome and told her to leave her husband. Mr. Pritchard left his wife through the influence of Salome Padmore and got himself a room where Salome assumed the wife's responsibilities. I advised Salome against taking Ida's husband and advised Ida to go to Monrovia and spend a few weeks which she did. The husband seeing her, asked her to return home to him. On returning, he sent her to Miss Padmore, the prisoner, for his clothes which she refused to give up saying that if Mr. Pritchard wanted them, he must go for them himself. On the next day when I went to Salome's she said to me, 'You all better talk to Ida or else trouble is coming; some of these days I will get tired and put her guts in her hand.' I said, 'It is up to you,' and I left. I went to Kakata and on returning I was told by Mrs. Goodridge that Ida and Salome had been at it again. I scolded Ida and told her to leave it all and I went home. Miss Padmore went to teach her school, and Mrs. Pritchard came to my place where we cooked and ate breakfast and after a short talk with Goodridge, I went over to his place. At that time a boy came running saying, 'Ida and Salome are fighting.' When I got there, I met Mr. Goodridge holding Ida, and Salome standing akimbo. I did not observe that she had a knife. She said to Goodridge, 'Turn her loose; that's what got her upstarted now; turn her loose, let me put her guts

in her hands.' Not knowing that she had a knife, I told Goodridge to turn her loose, which he did, saying, 'If you want to fight, take the street for it.' On turning Ida (the decedent) loose, she went and rubbed against Salome, the prisoner. After she did that, they then got to fussing."

Witness Thomas Eastman on the stand stated that:

"On Monday the 16th of November, 1931 at 2:30 p.m. while thinking of the coming parade and the field being made ready, I walked up the road. I got to the house of the late Horatio Padmore, met Mrs. Amelia Vann and the decedent, when Mrs. Goodridge came in and said to decedent: 'I want to see you.' They both went toward the bedroom, not knowing that they had left the house. When a boy came running, telling us that decedent and prisoner were fighting, and as I rushed to the veranda, I saw Mr. Goodridge, his wife and prisoner going into the front yard of Mr. Goodridge. On reaching the scene I saw Mr. Goodridge's both hands around decedent's waist trying to keep her from fighting. I heard Goodridge say: 'Since you all won't hear me, and must have your fight, go have your damn fight, but take it out of my yard.' At this time decedent rushed up to prisoner saying, 'Beat me.' Prisoner said: 'I never said I will beat you, you said you would beat me,' and pushed her off. Decedent ran up to her the second time saying, 'Hear me, beat me, I say.' Prisoner in an angry fashion shoved decedent off with all her might saying, 'I am tired of this damn foolishness.' Decedent again with all her might charged prisoner. By that time they got into a tussle. I saw decedent when she yoked prisoner under her left arm. I noticed a weapon in prisoner's right hand which I took to be a pair of scissors. I rushed to them, pushed prisoner towards the road and advised her to go home, which she did. Decedent said, 'In tussling with that

woman, I got cut on my finger, but this fight is not finished.' ”

Dr. Fuszek on the stand stated that decedent was brought to him November 19th for examination and treatment. He found on the left side above the seventh rib between the frontal and axillary line a cut of about half an inch in length in a horizontal position with a sharp edged instrument. The cut did not seem to him very deep and there was no inflammation in the surrounding parts but the patient complained of pain at that point way inside her chest and she had slight fever. The wound was not directly a mortal wound but through an infection penetrating, it might have been fatal. She also suffered from enlargement of spleen and constipation, etc., etc.

Drs. W. O. Wehrle and J. A. Mendscole gave testimony that as a result of an autopsy, they are fully and unanimously convinced and agreed that the cause of the death of decedent was from infection in the wound inflicted on her; and that the symptom simulating pneumonia was brought on her by the destruction of the left lung.

Prisoner G. Salome Padmore on the stand testified as follows:

“To the charge against me, I have pled ‘not guilty,’ for many reasons. A Saturday afternoon I was coming from a store at Crozierville—decedent was behind me, walked and caught up with me, caught me by my two arms and shook me. I wrung myself from her grasp, went running up the street to my brother Jacob to come and take Ida (decedent) off me. On a Sunday as I stepped out of the gate on my way to church service decedent being over to her cousin’s place came down the steps and followed muttering and threatening to strip me. I never noticed her but continued on my way. On November 14th, 1931, I heard a loud noise in the street. I rushed to the piazza; I can’t

tell you the words that woman (decedent) was using, daring me to put my foot in the street, saying if I call myself a woman she dares me to go to church tomorrow (Sunday). 'I am going to beat you if I beat you in the church.' Hearing this, I did not go to church that Sunday. Early on Monday the 16th, I heard a wrap to my window and then a calling; I found it to be Mrs. Vann's voice who was owing tuition fees for her children who have been attending my private school I taught at my father's residence. That afternoon, after school, I decided to go to Mrs. Vann for the money before she left for Monrovia. Hence, I got from the desk. Towards my back I saw a piece of sugar cane in the corner. When I picked it up my son Bashford rushed to me and said, 'Mama don't eat all.' I went to the dining room looking for a knife. Then I saw a pocket knife of one blade lying on the table. Giving my son a portion, I walked out of the house up the street peeling and eating it. As I got in view of the Goodridges' house, I discerned three persons on the piazza—one of the three I plainly saw, jumped up out of the chair, rushed down the steps, coming towards me. Without any evil intent I walked on in the best mood composed. Decedent met me abreast in the public street, looking fierce and straight in my face said, 'Salome, today, today, today will end our trouble.' To tell the truth, I got frightened. I looked at her and laughed. She said, 'You laughing?' and then she slapped me. Then she caught my two hands and slapped me again. I said to her, 'Ah Ida, what are you getting at? Leave me.' She slapped me the third time. At this time Mr. Goodridge came and parted us and advised me to go home, as also Mrs. Goodridge. I said to her, 'Nancy, I did not come for any row; I did not know that this woman was up the street. I was on my way to Amelia Vann for my money.' Mrs. Pritchard, the decedent,

was cussing to the pitch of her voice asking Mr. Goodridge to turn her loose so she can beat that bitch. Knowing I wasn't a bitch, I said, 'Turn her loose.' Amelia Vann reached the scene and called to Goodridge to turn Ida lose because she knows what she is doing. She was turned loose and he ordered the fight out of his yard. The decedent rushed into me again when I pushed her off; she came again the second time. I pushed her the second time. She came the third time and yoked my head under her arm. I, in scrambling, trying to rid myself from her grasp as I felt as though I was iron yoked, having the knife in my hand in the scramble, she obtained this cut—not stab. Mr. Eastman came and parted us, and I went home leaving the noise behind me."

These statements constitute the material evidence in the case submitted to the jury at the trial upon which they returned a verdict of murder against the prisoner and upon which verdict the trial judge pronounced sentence of death by hanging. The questions which present themselves to our mind in the consideration of the case are as follows: (a) Is the evidence sufficient in itself to justify the verdict returned? (b) If not, is the judgment of the court supported by illegal verdict? (c) If not, could this Court of appeal legally pass upon and affirm such a judgment? (d) Has any criminal offense been committed according to this evidence? (e) If so, what denomination?

A jury is a body of men who are sworn to declare the facts of a case as they are proven from the evidence placed before them by witnesses under oath or affirmation; when they become unanimous and decide on such facts and the law, they report such findings to the court, which is called their verdict.

When the facts in this case as given by the witnesses in their testimony are considered, it can be clearly seen that the verdict in this case is not justified by the oath which the jury took to "well and truly try the issue joined

between the Republic of Liberia and the prisoner in this case and a true verdict give according to the evidence." If the verdict is unsupported by evidence, then there is no foundation upon which the judgment could rest, and if the judgment of the court below is not founded upon a legal verdict, said judgment could not merit that consideration so as to be affirmed by this Court to say that prisoner is guilty of wilful murder and not manslaughter.

In this specie of homicide, malice, Mr. Justice Russell in his treatise on *Crimes and Misdemeanours* says, must be the main ingredient and characteristic, or murder is wanting; and though in its degree the act is felonious, yet, it is imputed by the benignity of the law to human infirmity; to infirmity of the constitution. Whenever death ensues from the sudden transport of passion or heat of blood upon reasonable provocation without malice, it is considered as solely imputable to human infirmity; and the offense will be manslaughter. (Bk. IX, ch. I, pt. I, § I.)

We will here cite a case in point in the foregoing: The prisoner, a shoemaker, lived near the deceased. One afternoon the prisoner, very much intoxicated, passed accidentally by the house of the deceased's mother while the deceased was thatching an adjacent barn. They entered into conversation; but on the prisoner abusing the mother and sister of the deceased, very high words arose on both sides, and they placed themselves in a posture to fight. The mother of the deceased, hearing them quarrel, came out of the house, threw water on the prisoner, hit him in the face with her hand, and prevented them from boxing. The prisoner went into his house and in a few minutes came out again and sat himself down upon a bench before his garden gate, at a small distance from the door with a shoemaker's knife in his hand with which he was cutting the heel of a shoe. The deceased having finished his thatching was returning on his way home, by the prisoner's house; and on passing the prisoner as he sat on the

bench, the deceased called out to him, saying, "Are you not an aggravating rascal?" The prisoner replied, "What will you be when you are got from your master's feet?" on which the deceased seized the prisoner by the collar and dragged him off the bench. They both rolled down into the cartway. While they were struggling and fighting, the prisoner underneath, and the deceased upon him, the deceased called out "You rogue, what do you do with that knife in your hand?" and made an attempt to secure it; but the prisoner kept striking about with one hand, and held the deceased so hard with the other hand, that deceased could not disengage himself. He made, however, a vigorous effort, and by that means drew the prisoner from the ground, and during the struggle the prisoner gave a blow on which the deceased immediately exclaimed, "The rogue has stabbed me to the heart—I am a dead man," and expired. Upon inspection it appeared he had received three wounds, one very small on the right breast; another on the left thigh, two inches deep and half inch wide and the mortal wound on the left breast. After great argument and consideration the judges determined that the offense was only manslaughter. It appears that the judge thought in the case, that there was not sufficient evidence that the prisoner lay in wait for the deceased with a malicious design to prove him, and under that color, to revenge his former quarrel by stabbing him, which would have made it murder. On the contrary, he had composed himself to work at his own door in a summer's evening and when the deceased passed by, neither provoked him by words or gestures. The deceased began first by ill language, and afterwards by collaring and dragging him from his seat and rolling him in the road. The knife used was already opened before the deceased came and not concealed from the bystanders, though the deceased did not perceive it till they were both down. And though the prisoner was not justified in using such a weapon on such occasion, yet, it being already in hand

and the attack upon him very violent and sudden, the judges thought that the offense only amounted to manslaughter, and the prisoner was recommended for a pardon. Russell, *Crimes and Misdemeanours*, bk. IX, ch. I, pt. I, § VI.

So, too, we are of the opinion that the circumstances of facts as brought out by the evidence in this case of the constant threats made by the decedent against prisoner leading up to the very time the attack made on prisoner, the prisoner's object in going up the street to collect money from a disinterested person without any intention or idea of meeting deceased, the use of the knife in eating a piece of sugar cane which she was then engaged in. On coming in view of the decedent, decedent running out and attacking her, in holding her hands, slapping and yoking prisoner, she being superior in size and strength to prisoner, are all sufficient in itself to bring us to the opinion that the prisoner is not guilty of murder as found by the jury and pronounced by the court below and the judgment should therefore be reversed.

Our statute provides (Old Blue Book 78, ch. XX, § 11) that it shall be the duty of every court to which an appeal is taken, if the judgment of the first court is reversed, to give such judgment as the court ought to have given. The judgment of the court below being hereby thus reversed, it is the opinion and judgment of this Court that said judgment be set aside, and made null and void to all intent and purpose; but that appellant, defendant and prisoner in the court below, is guilty of manslaughter and therefore, in conformity with the statute law of this Republic made and provided for in the *Criminal Code*, 11, § 56, G. Salome Padmore, appellant, defendant in the court below, be punished with imprisonment in the common jail for a period of two consecutive years beginning from the date she was first taken in custody and put in prison.

And it is hereby so ordered: The Clerk of this Court

shall send down a mandate to the court below as to the effect of this opinion and judgment.

Reversed and sentence modified.

GEORGE R. FAZZAH, Appellant, v. REPUBLIC
OF LIBERIA, Appellee.

This cause having been called for trial the law firm of *Barclay & Barclay* appeared for the appellant and the *Honourable Attorney General, R. Emmons Dixon*, appeared for the appellee, whereupon the Attorney General filed notice of abandonment by the State, which was granted by the Court, and it is hereby adjudged that the case is hereby abandoned, cost disallowed. And the Clerk of this Court is hereby commanded to forthwith transmit under seal of this Court a mandate to the court below as to the effect of this judgment.