Railways [1912] A.C. 673, 689; *Walter Loeb* v. *Solomon Nasser* (1937) 3 W.A.C.A. 227.

It seems to me, therefore, that whilst the learned trial judge was right in construing the agreement as one for a fixed and definite period, yet, with respect, he went wrong in not applying the correct principle when he came to assess the general damages suffered or likely to have been suffered by the respondent. I do not think that it is right for a plaintiff to sit in happy idleness because he has been wrongfully dismissed, and expect the defendant to pay him his full wages as general damages for the unexpired term of his agreement, however long that may be. His duty, admittedly the standard of which is not a high one, since the defendant is a wrongdoer, is to take all reasonable steps to procure himself a like employment as soon as he can possibly find one.

I feel that in this particular case, taking all the circumstances into consideration, including the nature of his employment and the difficulty of getting such another or a like one and without intending it to be a precedent in all other cases, the respondent could have mitigated his loss within 12 months, and 12 months' notice from the appellants would have been reasonable. I accordingly vary the judgment of the learned trial judge, and substitute the sum of £360, representing 12 months' salary, as general damages.

Mr. McCormack did not argue the question as to whether or not the respondent was wrongfully dismissed, nor did he quarrel with the amount of special damages awarded. On these matters I agree with the findings of the learned trial judge except to add that the sum of £1 18s. 0d., the train fare paid by the respondent, should have been included under the head "special damage" and I so include it. The judgment I have arrived at, therefore, is as follows:

General damages	£360	0s. 0d.
Special damages	£205	18s. 0d.
Total ...	£565	18s. 0d.

[COURT OF APPEAL]

Freetown
July 26,
1962

Ames P.,
Dove-Edwin
J.A.,
Bankole Jones
J.

REGINA *v.* ABU BANGURA

[Criminal Appeal 11/62]

Criminal Law—Homicide—Murder—Whether there was sufficient evidence of identity of deceased—Self-defence—Provocation—Manslaughter—Whether evidence warranted conviction of murder.

Appellant was found guilty of murder and sentenced to death by the Supreme Court. The evidence for the prosecution was that a chief gave judgment against appellant's wife in a court case; that appellant thereupon became angered, hurled abuses at the chief and indiscriminately stabbed two men who had been present at the hearing of the case and a third, the deceased, who had not been present; and that this attack was wholly unprovoked. Appellant testified that

when he abused the chief the chief told "the people" to attack him; that they did attack him; and that he killed in self-defence. The chief testified that appellant had had stab wounds on his body after the incident. At the appeal, counsel for appellant argued that the verdict could not be supported having regard to all the evidence, and, specifically, that there was no direct evidence that the deceased was the man appellant was alleged to have killed, since the two witnesses who had originally identified the body had not been called to give evidence at the trial.

Held, (1) that, although it was regrettable that the two witnesses were not called, there was sufficient circumstantial evidence that the deceased was the man alleged to have been killed by appellant; and

(2) That, in view of the evidence of provocation, the evidence did not warrant a conviction of murder.

The court quashed the conviction of murder and substituted a conviction of manslaughter, sentencing appellant to five years' imprisonment with hard labour.

Samuel Beccles-Davies for the appellant.
Nicholas E. Browne-Marke (Acting Solicitor-General) for the respondent.

BANKOLE JONES J. The appellant was found guilty of murder and sentenced to death at the Supreme Court sittings in June this year at Kenema. The case for the prosecution very briefly was this: One, Fatu, a housewife, sued the appellant's wife, named Sampa, for what it is not quite clear. The appellant himself was present at the hearing which took place at the house of Allie Gblah, the Temne chief, in a village called Panderu. Judgment was given against Sampa, and this angered the appellant, who proceeded to hurl abuse at the chief who gave the decision. There were about 10 persons present and, when they dispersed, the appellant ran after them and indiscriminately stabbed two of the men and a third, the deceased man, who was not present at the hearing. The incident took place in the open and at night. The two men who survived gave evidence at the trial. According to the prosecution, the attack on the deceased was wholly unprovoked. The accused, however, put forward the defence of self-defence. This was what he said when he made a statement from the dock:

> "I told him (the Temne chief) that his decision was unacceptable to me and that I would not abide by it. He thereupon told the people to fall upon me and beat me. The people did so and wounded me on both arms. They were many and were beating me so I went to the blacksmith's shop and picked up an iron implement. I hurled abuse at those who had beaten me and they fell upon me again and I wounded three people. I then ran to the Mende chief and told him that they wanted to kill me. . . . Next morning I was taken to hospital."

When he was formally charged a day or two after the incident, the accused gave substantially the same story.

In this court counsel for the appellant applied for and was granted leave to abandon the grounds of appeal filed by the accused and to substitute the following ground: "The verdict is unreasonable and cannot be supported having regard to the whole evidence."

He argued that there was no direct evidence connecting the man who died, and on whose body a post-mortem examination was performed, with the James Kailahun who was alleged to have been killed by the appellant.

The witness, Max Bayoh, who identified the body of the deceased as that of James Kailahun, his brother, though called into court during the trial for the doctor to identify, was for some peculiar reason not called to give evidence. Also the wife of the deceased, who identified the body to a police officer, was again for some unknown reason not called to give evidence of this fact. Although this is a matter for regret, and one which ought not to have been allowed to happen, yet we find that taking the evidence as a whole there was ample circumstantial evidence from which the court could have come to the conclusion that the deceased man was in fact the James Kailahun who was killed by the appellant.

We think, however, that different considerations arise regarding the question as to whether or not the appellant acted under provocation. Whilst it is true that there is evidence that no one beat up the appellant and that he received no wounds that night, on the other hand there is evidence coming from Allie Gblah to the effect that when the appellant ran to the Mende chief's house after the incident, he had stab wounds all over his body. The learned trial judge, in his summing-up, after reiterating Allie Gblah's evidence, said of it:

> "This appears to be an exaggeration or faulty perception, for the accused himself says in his statement from the dock that he had wounds on both arms but omitted to mention the wounds on his mouth which he had told the police about and which had been recorded in his caution statement."

In his judgment the learned trial judge also said:

> "It is quite clear from the evidence that the accused received some beating that night and that blood was drawn from him but it was not of a *serious nature* as to drive him through transport of passion and loss of self-control to the degree and method of violence which produced the death."

The appellant was taken to hospital, but although the doctor was called to testify on his post-mortem examination of the deceased, no questions were asked as to whether he had seen the appellant, nor whether he had examined his wounds, if at all, nor also whether they were serious or otherwise. We are strongly of the opinion that in cases of this kind, the prosecution ought to lead such evidence. However, the main question which we have found difficult to answer is this, how did the appellant come by his wounds and was it before or after he had stabbed the deceased? There seems, on the evidence, to have been no satisfactory answer to this important question.

We think that in such circumstances the appellant should have been given the benefit of the doubt and the assessors should have been so told. Although, like the learned trial judge, we do not accept the defence of self-defence, yet the question of provocation should not in fairness have been altogether dismissed, and we think that the evidence warrants a conviction of manslaughter and not that of murder. We accordingly quash the conviction of murder and substitute one of manslaughter. The sentence of the court will, therefore, be five years' imprisonment with hard labour.