Mad Dogs and Englishmen: Pierson v. Post [A Ditty Dedicated to Freshman Law Students, Confused on the Merits]

Ridgely Schlockverse III*

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**Ridgely Schlockverse III**

**Preamble.**

Mad dogs and Englishmen go out in the mid-day sun.

They bark, they pant, they rave and rant, but most of all they run.

A monkey's uncle might have tea or sip some lemonade—

Why, even donkeys (turkeys, too) seek shelter in the shade—

But mad dogs and Englishmen go out in the mid-day sun.

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* A.B., Fritzleburg State University (1953); J.D., University of South Heidelberg School of Law (1957); M.A., Ph.D., Post Laureate, Osbridge University (1959). A.K.S. Kenneth Lassee, Professor of Law, University of Baltimore. The author thanks the editors for inviting him to contribute to this symposium issue on wild animal law.

J. With apologies to Noel Coward, the actual text of whose well-known comic poem has become increasingly obscure. *Pierson v. Post*, 3 Cal. R. 175 (N.Y. Sup. Ct. 1805), however, is cited and discussed in practically every property casebook and hornbook, going back almost a century. See, e.g., *SELECTED CASES AND MATERIALS AND OTHER AUTHORITIES ON PROPERTY* 1 (E. Warren ed. 1915). The author hereby exercises his own poetic license to assume that both litigants and judges in this poor passion play, though then living in the Catskills, were born Englishmen. (The dogs in this doggerel, bred in New York, were likely mad to begin with.)

Coward's verse reads in pertinent part as follows:

**Mad dogs and Englishmen go out in the midday sun.**

The Japanese don't care to, the Chinese wouldn't dare to,

Hindustan and Argentinians sleep firmly from twelve to one.

But Englishmen detest a--Siesta.

In the Philippines there are lovely screens

To protect you from the glare.

In the Malay States there are hats like plates

Which the Britshers won't wear.

At twelve noon the natives swoon and no further work is done.

But mad dogs and Englishmen go out in the midday sun.

**Mad dogs and Englishmen go out in the midday sun.**

The toughest Burmese bandit can never understand it.

In Rangoon the heat of noon is just what the natives shun.

They put their Scotch or Rye down—and lie down.

In a jungle town where the sun beats down

To the rage of man and beast,

The English go to of the English Sahib

Merely gets a bit more creased.
In Chile and in darkest Ghana, everybody says "manana."  
Once the heat of summer has begun.  
All who live near the Equator take a nap until it's later—  
Only dogs and Englishmen go out in the mid-day sun.  

Pierson v. Post in the curriculum.  
Who were the characters in this poor passion play?  
And who the deuce was daffier after all, that torrid day?  
(And why indeed do we still need to study this old case?—  
Perhaps the bloody law professors can still find a trace  
Of Truth and Confusion to inflict on first-year prey.)  

In Bangkok at twelve o'clock they foam at the mouth and run,  
But mad dogs and Englishmen go out in the midday sun.  

2. Daytime dozing, regarded by some as a sign of laziness or senility, is really a basic human need, according to scientists who specialize in napting. Law students have known this for some time; seasoned ones are able to do it with their eyes open. See Peter Gorner, ZZZonking Out, TORONTO STAR, Jan 27, 1992, at C1.  

3. Intimiation and confusion have long been part and parcel of the educational process in American law schools. Exhibit #1, of course, is the legendary Professor Kingsfield in the film "The Paper Chase" (also in book form). See generally ROTH, SLAYING THE LAW SCHOOL DRAGON 3-5 (1980); KARL N. LIEBEL, THE BRAMBLY BUSH (1951) (neither of which was ever made into a movie). Over four decades ago there was a short-lived effort to minimize the confusion felt by first-year law students. Harry W. Jones, Notes on the Teaching of Legal Methods, 1 J. LEGAL EDUC. 13-17 (1948). Others observe a phenomenon of self-fulfilling prophecy—students expect to be intimidated, and so they are. See James R. Elkins, Reflections on Humanistic Teaching, 5 ALSA F. 5-19 (1981).  

4. Students are advised not to study outside of an air-conditioned environment. The debilitating effects of heat have long been recorded by both poet and scientist. Rudyard Kipling, for one, was as easy to wilt as Noel Coward:  

But the worst of your foes is the sun over 'ead:  
You must wear your 'elmet for all that is said:  
If e find you uncovered 'e'll knock you down dead,  
And you'll die like a fool of a soldier.  

Rudyard Kipling, The Young British Soldier, in SELECTED PROSE AND POETRY OF RUDYARD KIPLING 45 (1928).  

While studying frequently causes students to succumb to the MEGO Syndrome (as in Mine Eyes Glazeth Over), heat exhaustion or stroke can bring on fainting, delirium, convulsions, or coma. E.C. POULTON, ENVIRONMENT AND HUMAN EFFICIENCY 142-43 (1970).  

Dogs in heat also do funny things.  

5. Legal scholars have theorized that Post was probably frustrated long before the hunt. Moniker given to seekers of the Loch Ness Monster [fragment of author's imagination]. Both Pierson and Post were young at the time; the former was born in 1870, the latter in 1777. Pierson and Post were young at the time; the former was born in 1870, the latter in 1777. Their fathers—Capt. David Pierson and Capt. Nathan Post—apparently encouraged this litigation as part of a pre-existing family feud. See J. ADAMS, MEMORIALS OF OLD BRIDGEHAMPTON 166, 319, 334 (1962); CHARLES DONAHUE, CASES AND MATERIALS ON PROPERTY: AN INTRODUCTION TO THE CONCEPT AND THE INSTITUTION 6 (1st ed. 1974).  

Your property professor may expect you to know that the legal term for captivity is "occupy." The court in Pierson v. Post dwells on the concept of "occupancy of beasts" as "occupy." But the actual concept of "occupation of beasts" is "occupy." The court in Pierson v. Post dwells on the concept of "occupancy of beasts" as "occupy." But the actual concept of "occupation of beasts" is "occupy." The court in Pierson v. Post dwells on the concept of "occupancy of beasts" as "occupy." But the actual concept of "occupation of beasts" is "occupy." The court in Pierson v. Post dwells on the concept of "occupancy of beasts" as "occupy." But the actual concept of "occupation of beasts" is "occupy." The court in Pierson v. Post dwells on the concept of "occupancy of beasts" as "occupy." But the actual concept of "occupation of beasts" is "occupy." The court in Pierson v. Post dwells on the concept of "occupancy of beasts" as "occupy." But the actual concept of "occupation of beasts" is "occupy." The court in Pierson v. Post dwells on the concept of "occupancy of beasts" as "occupy." But the actual concept of "occupation of beasts" is "occupy." The court in Pierson v. Post dwells on the concept of "occupancy of beasts" as "occupy." But the actual concept of "occupation of beasts" is "occupy." The court in Pierson v. Post dwells on the concept of "occupancy of beasts" as "occupy." But the actual concept of "occupation of beasts" is "occupy."
In Chile and in darkest Ghana, everybody says "manana."
Once the heat of summer has begun.
All who live near the Equator take a nap until it's later—
Only dogs and Englishmen go out in the mid-day sun.  

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And who the deuce was dafter after all, that torrid day?
(And why indeed do we still need to study this old case?—
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Of Truth and Confusion to inflict on first-year prey.)

In Bangkok at twelve o'clock they foam at the mouth and run,
But mad dogs and Englishmen go out in the midday sun.

Mad dogs and Englishmen go out in the midday sun.
The smallest Malay rabbit deplores this stupid habit.
In Hong Kong they strike a gong and fire off a noontday gun
To reprimand each inmate—who's in late.
In the mangrove swamps where the python romps
There is peace from twelve to two.
Even caribous lie around and snooze,
For there's nothing else to do.
In Bangladesh to move at all is seldom if ever done,
But mad dogs and Englishmen go out in the midday sun.

2. Daytime dozing, regarded by some as a sign of laziness or senility, is really a basic human need, according to scientists who specialize in napping. Law students have known this for some time; seasoned ones are able to do it with their eyes open. See Peter Gornert, ZZZzzing Out, Toronto Star, Jan. 27, 1992, at C1.

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Cannibals wouldn't get caught dead in it,
Monsters have an abject dread of it,
Noon's not fit for Vandal nor for Hun.
Some are ghastly, some are ghoulish, some are fierce and some are foolish—
But only dogs and Englishmen go out in the mid-day sun.

It was a beastly day.
Post and his hunting hounds left their estate at noon
to fetch a fox (not deer, nor cocks, nor ferrets, guese or 'coon)—
All parties were on fire 'cause it was so beastly hot,
And burning with desire (yes, perspiring a lot)
To nab, grash, and captivate the fox (who too hoped soon).

Mexicans choose to take siestas, Spaniards refuse to hold dinner.
'Til the heat of day is almost done.
Some like cows, some terrileus, some are tought as Pancho Villa.
But only dogs and Englishmen go out in the mid-day sun.  

A brief repose.

Finally the sun was pooped—but not even Pan's poor hounds.
The chase had cost them half a day, and all had lost some poign.
The first lay down, the dogs did too, and Pan slid off his horse,
Surveying the bedraggled beasts and weighing his last course.
He chose to sleep (as if perchance to dream of cooler straits.)

Doctors often get amnesia, dentists don't do anesthesia
Any day from noon 'til half past one.
Some are wise and some are wealthy, some are dumb and some unlucky.
But only dogs and Englishmen go out in the mid-day sun.

6. The heat of the Mexican sun has been known to sap even professional athletes. See Mowry Myers, Mexico's Hot Weather Troubles Pump Clubs, UPL May 31, 1986. But Mexicans aren't the only people who take siestas during the heat of high noon. See supra note 2 and accompanying verse.

7. Compare these lines from Kipling's Poguet, M.P.:

We reached a hundred and twenty once
In the Court at noon.
I've mentioned Poguet was partly
Poguet went off in a swoon.

Kipling, supra note 4 at 80. In most law schools, and some countries, the difference between names and fall is virtually indistinguishable. That's because law schools begin the academic year in mid-August, when in many places the heat is hottest. Compare England, where autumn (and Kipling) announces itself with a "whisper down the feld", with, say, Iraq, where "the fielis in nore, and crackle under the autumn sun. Pops split and seed weather, waiting for a winter's rain to give them life. The pomegranate..." begin to swell and ripen."

It was Bess Shad, The Whisper of the Squall, JERUSALEM POST, Sept. 19, 1990.

8. "Plainly he couldn't bear it any longer," wrote Kenneth MacRitchie in Ian—perhaps an alleyway for a freshman facing his first law exams. 2 POETRY IN AUSTRALIA 95-94 (1965). "Like the wind of a brood devil it thrashed mercilessly upon a man's head, it stabbed him...

... Often I see him walking down that slope thirsty and mad, never to return, never to return, never..."

9. The worst insult you can give to a Briton is to call him an interloper—otherwise known as a "queue-jumper." Such an effrontery can lead to violence. See Queue-Jumper Killed Officer, LONDON DAILY TELEGRAPH, Feb. 7, 1992; Chase Queue-Jumper Killed Officer, Sheher Khan, REUTER, May 11, 1992; Along with note 15. Both interloping and queue-jumping are similar to plagiarism, the worst crime that can be committed by a legal scholar. Don't do it.

10. There seems to be little substance to the theory that the reason tennis players live...
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7. Compare these lines from Kipling's "Fagot," M.P.

We reached a hundred and twenty once
In the Court at noon.
I've mentioned Fagot was portly.
Fagot went off to a souvo.

Kipling, supra note 4 at 80. In most law schools, and some countries, the difference between summer and fall is virtually indistinguishable. That's because law schools begin the academic year in mid-August, when in many places the heat is hottest. Compare England, where summer (said Kipling) begins itself with a "whisper down the field," with, say, Israel, where "the fields lie bare, and crackle under the autumn sun." Push into that heat, and some students, waiting for a winter's rain to give them life. The pomegranates... begin to swell and ripen." D'yer Bea Sheld, The Whisper of the Squall, JERUSALEM POST, Sept. 28, 1980.

8. "Plainly he couldn't bear it any longer," wrote Kenneth MacKenzie in 1857—perhaps an allegory for a freshman facing his first law exam. 2 POCKET IN AUSTRALIA 93-94 (1960). "Like the head of a bared devil plied mercilessly upon a man's head, it maddened him... Often I see him walking down that slope thirsty and mad, never to return, never quenched quite of his thirst, or of his hope that heat would ameliorate its ills."

9. The worst insult you can give a Briton is to call him an interlopers—otherwise known as a "queue-jumper." Such an effrontery can lead to violence. See Dunn-Jumper Killed by a Kennel Officer, LONDON DAILY TELEGRAPH, Feb. 21, 1992; Dunn Quoque-Jumper Killed on Shekman Exchange, REUTERs, May 11, 1992; see also infra note 15. Both interloping and queue-jumping are similar to plagiarism, the worst crime that can be committed by a legal scholar. Don't do it.

10. Whether there is a little substance to the theory that the reason tennis player Ed Nasturtium, Jimmy Connors, and John McEnroe are regarded as boors by the British is that they

11. A fine example of early English protocol, not seen much more except in the United States Congress. It is in high literary terms. It is "the manner-much of the good British have marred the American attitude to an art form, while the traditionally cool Americans insist on the parliamentary attack to an act form, while the traditionally cool Americans insist on the parliamentary attack."

Published in 1840, John Cotton: "MISCELLANEOUS AND RELATED WORK OF THE HOUSE OF COMMONS - 1898 [1853].

15. Dunn Quoque-Jumper Killed on Shekman Exchange, REUTERs, May 11, 1992; see also infra note 15.
Trespass on the case.

Mad dogs and Englishmen pursue their prey in sport
But when they're mad 'cause they've been had
they chase their case in court.
So Post filed suit in trespass on the case (an awkward tool,
Though what else can one do without a precedent rule)
In contract, or property, or even one in treaty?

Swedes think that it's very nice to swim in water cold as ice,
Italians eat spaghetti by the ton.
Many people run the range from mildly odd to wildly strange—
But only dogs and Englishmen go out in the mid-day sun.10

12. And here's a fine example of the pitted footnote (for the benefit of students who didn't recognize the hole in previous notes):

Weather affects the human mind in various ways. See, e.g., supra notes 2, 4, 6 & 8. A case study of one Julia Little showed that rats in temperature distinctly altered her mood. Although she was predisposed to psychotic disturbances, "the abrupt changes in the mood of the patient and the subsequent admission to the semitreatment occurred with a shock acceleration of ward weather." The study concluded that psychotic episodes were but reflections of changing biochemical states with the changing of meteorological conditions. W. F. PETERSON, MAN, WEATHER, 1st Ed. 111-116 (1977). Another woman was found "wrestling about Hempested in a conspicuous state of confusion," caused by a change in the weather. See BARTON, THE SIGN OF METEOROLOGICAL ENVIRONMENT AND PSYCHIC EPIDEMICS, 9 J. Mt. Sinai Hosp. 719 (1942); Wood and Ratliff, Progress in "Mycemmatous Mania", 113 Brit. J. Psychiatry 192-51 (1967).

13. Be the first in your class to impress your professor with a definition of trespass on the case: it's a form of action at common law, adapted to the recovery of damages for some injury resulting to a party from the wrongful act of another, unaccompanied by direct or immediate force or which is the indirect or secondary consequence of the defendant's act.

BLACK'S LAW DICTIONARY 1347 (2d ed. 1979).

14. For some reason the words "English" and "scentific" have always gone together like fish and chips. Students plugging "English wi' scentific eccentricitie" into the LEXIQUE database will discover over 1000 citations—compared to just six for Sweden, 26 for Mexico, 66 for Spanish, and 145 for Japanese. If you really want to have fun with.

15. In this as in L.A. Law, or what? Imagine McKenzie, Buckman & Gang taking filing on the learned barbary for Pierson and Post. Mr. Sutliff, for Pierson (citing numerous cases on the motion to dismiss): "There must be a taking—every wound will not give a right of

Lassen, 3 Cal. R. at 176-77. Mr. Cohen, for Post (citing Pullinfield & perty): "Post... gives an

exclusive right." Id. at 176.

Samuel Pullinfield (1843-1894) was the world's first professor of international law and

Lassen, 3 Cal. R. at 179, of Sutliff v. Sofer, 26 A. 188 (1895), where the order of the court held that fish captured and placed in an inlet with a net which blocked their access to a main stream would still be taken by another fisherman (especially if he screamed at the top of his lungs, "Sorry, Charlie").

16. Perhaps Englishmen should venture out into the afternoon heat precisely because there is no such thing as a British delicacy which might keep them awake at lunchtime—unless you


'centuries-old tradition of bad British cuisine', Calvin On New, Sept. 28, 1990. (Good gosper fry is as rare to Britain as good food is in British cuisine.)
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A noble dissent.

"Who, then, would keep a pack of hounds," asked the dissent,
"And who at peep of day would mount his steed and hunt 'til spent,
If just as dusk came on, a mere intruder—a galeot—
Could bear away in triumph the sole object of pursuit?"
(Just mad dogs and Englishmen's the answer that he meant.)

17. Judge Livingston's dissenting opinion was a good deal more eloquent in the original:

This is a knotty point, and should have been submitted to the arbitration of sportmen, without poring over Justinian, Fleta, Bracton, Puffendorf, Locke, Barbevane, or Blackstone, all of whom have been cited: they would have had no difficulty in coming to a prompt and correct conclusion. In a court thus constituted, the skin and carcass of poor Reynard would have been properly disposed of, and a precedent set, interfering with no usages or customs which the experience of ages has sanctioned, and which must be so well known to every votary of Diana. But the parties have referred the question to our judgment, and we must dispose of it as well as we can, from the partial lights we possess, leaving to a higher tribunal the correction of any mistake which we may be so unfortunate as to make. By the pleadings it is admitted that a fox is a "wild and noxious beast." Both parties have regarded him, as the law of nations does a pirate, "hostem humani generis," and although "de morti nil nisi bonum" be a maxim of our profession, the memory of the deceased has not been spared. His depredations on farmers and on barnyards, have not been forgotten; and to put him to death wherever found, is allowed to be meritorious, and of public benefit. Hence it follows that our decision should have in view the greatest possible encouragement to the destruction of an animal, so cunning and ruthless in his career. But who would keep a pack of hounds; or what gentleman, at the sound of the horn, and at peep of day, would mount his steed, and for hours together, "sub jove frigido," or a vertical sun, pursue the windings of this wily quadruped, if, just as night came on, and his stratagems and strength were nearly exhausted, a saucy intruder, who had not shared in the honors or labors of the chase, were permitted to come in at the death, and bear away in triumph the object of pursuit?

Pierson v. Post, (emphasis added).

18. Two blessings for freshmen law students faced with having either to 
(1) recite Pierson v. Post in class:

We've all had professors who themselves could be called mad dogs in heat. 
Illegitimus non carborundum (free translation: Don't let the bastards get you down, or No sweat!)

or (2) explain the law on an exam:

Blessed be he, who, having nothing to say, refrains from giving us worldly 
evidence of the fact.
A noble dissent.

"Who, then, would keep a pack of hounds," asked the dissent,
"And who at peep of day would mount his steed and hunt 'til spent,
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Voir Dire: Just When You Think You've Heard It All
Judge Charles Stone

A number of years ago I was conducting a voir dire. There was a woman sitting in the front row of the jury box who seemed particularly enthusiastic about her potential future as a juror. As I proceeded methodically through the litany of questions I had grown familiar with over the years, she eagerly responded ensuring me of her unwavering ability to be impartial. When I reached the question of whether she had ever been a juror before, she bobbed her head up and down vigorously.

“Oh yes your Honor. It was a robbery trial in the courtroom down the hall about seven years ago. In fact, the prosecutor was the same gentleman that is trying this case. I had an open mind you Honor, I really did. But, the man was just guilty. The camera at the convenience store took a photograph of him, and his fingerprints were everywhere. He obviously wasn’t too bright because he still had the money and the gun when he was arrested. Anyway your Honor, I’m sure that experience wouldn’t affect my decision here today one bit.”

I thanked the woman and continued questioning the other members of the jury pool. The last gentleman in the back row seemed very uncomfortable when it was his turn to respond. His voice was barely audible and he was slouched low in his chair. When I reached the question about whether he knew anyone else on the jury, his face flushed and he sat motionless for several moments. Finally, he held up his hand and cleared his throat.

“Your Honor, I was the defendant in the trial down the hall seven years ago.”


* Charles V. Stone, Judge of the Superior Court.