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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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.†

* A.B., Frizzleburg State University (1953); J.D., University of South Heidelberg School of Law (1957); M.A., Ph.D., Post Laureate, Osbridge University (1959). A.k.a. Kenneth Lasson, 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 (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,
Hindus and Argentines 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 Britichers 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 garb 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.\(^2\)

Pierson v. Post in the curriculum.
Who were the characters in this poor passion play?
And who the deuce was dafter 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.\(^2\))

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 noonday 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 carousals lie around and snooze,
For there's nothing else to do.
In Bengal, 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 Gorner, ZZZoking Out, TORONTO STAR, Jan. 27, 1992, at Cl.

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. Llewellyn, THE BRAMBLE 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 Noël Coward:

But the worst of your foibles is the sun over 'ead:
You must wear your 'elmest for all that is said:
The sun's a man and will 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, 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 Pierson was probably frustrated long before the hunt.

 Minds are made in 1983 by the Florida Bar Association. A press release issued by the Bar stated: "The court in Pierson v. Post dwells on the concept of 'occupancy of beasts in natura,' which it variously defines as 'the actual corporeal possession' of wild animals, and an host of Latin possession, enfrangement, circumvention, deprivation of natural liberty, and a host of Latin possession, enfrangement, circumvention, deprivation of natural liberty, and a host of Latin possession, enfrangement, circumvention, deprivation of natural liberty, and a host of
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.2

Who were the characters in this poor passion play?
Who did the deuce was dafter 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.3

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 despises this stupid habit.
In Hong Kong they strike a gong and fire off a noonday 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 snore,
For there's nothing else to do.
In Bengal, 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 without their eyes open. See Peter Gerner, ZZzonking Out, TORONTO STAR, Jan. 27, 1992, at CI.

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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.4

It was a beastly day.
To fetch a fox (not deer, nor cocks, nor ferrets, greese or 'coon)—
All parties were on fire 'cause it was so beastly hot,
And burning with desire (yep, perspiring a lot)
To nab, grab, and captivate the fox (who too hoped soon).5

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 easy to will to Noel Coward:

But the worst of your foes is the sun over 'ead:
You must wear your 'elmet for all that is said:
'If you 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 Glares), heat exhaustion or stroke can bring on fainting, delirium, E.C. POCULT, ENVIRONMENT AND HUMAN EFFICIENCY 142-43 convulsions, or coma.

5. Legal scholars have theorized that Post was probably frustrated long before the hunt.

Mexicanos chose to take siestas. Spaniards refuse to hold them.

'Til the heat of day is almost done.

Some like tequila, some terrillias, some are tough at Ponce Villa,
But only dogs and Englishmen go out in the mid-day sun."

A brief recapitulation.

Finally the fire was quenched—but not for Paul's poor hounds.
The chase had cost them half a day and all had lost some pounds.
The few left down, the dogs did too, and Paul slid off his horse.
Surveying the bedraggled beasts and weighing his best course,
He chose to sleep (as if perchance to dream of cooler shades)."

Doctors often get amnesia, dentists don't do anesthesia.
Any day from noon till half past one.
Some are wise and some are weak, some are dumb and some unclear,
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 Meyer Myers, Mexico's Hot Weather Troubles Cup Players, UPI, May 31, 1986. But Mexicanos 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 Puckett, M.P.

"We reached a hundred and twenty once

In the Court at noon.

I've mentioned Puckett was partly

Puckett went off in a mezzox."

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 autumn (and Kipling) announces itself with "a whisper down the field," with say, Israel, where "the fields lie bare, and crumble under the scorching sun. Pits split, and seed water, waiting for a winter's rain to give them life. The pomegranates . . . begin to swell and ripen." D. Besen bead, Before the Squall, Jerusalem Post, Sept. 19, 1990.

8. "Plainly he couldn't bear it any longer," wrote Kenneth Mackenzie in The Times, "letting his tone of a freshman facing his first law exams. 2 POETRY IN AUSTRALIA 95-94 (1965). "Like the band of a bear, he'd lie on the ground—perhaps an allegory for a freshman facing his first law exams."

Of the nation's heat, the heat would be armed in its short." Id. *
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We reached a hundred and twenty once
In the Court at noon
I've mentioned Piaget was partly
Piaget went off in a swoon.

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 autumn (and Kipling) announces itself with 'a whisper down the field,' with, say, Israel, where 'the fields lie bare, and cradle under the autumn sun.' Both Piaget and Piaget went off in a swoon. A great human tragedy--but not a legal one.

8. *Plaintly he couldn't bear it any longer,* wrote Kenneth MacKenzie in *Barr--perhaps an allusion to a Freshman facing his first law exam.* 2 POURI IN AUSTRALIA 93-94 (1969). 'Like the head of a horned devil plowed mercilessly upon a man's head, it embittered him.' Often I see him walking down that slope thirsty and tired, never to return, never quenched spite of his thirst, or of his hope that heat would amend its ills. *Id.*

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 *Dance-Jumper Killed Kajid Officer,* LONDON DAILY TELEGRAPH, Feb. 21, 1992; *Queued Jumper Chokes on Sushi* *Over Ex-sharmanson, Reuters,* May 11, 1992; see also supra note 15. Both Piaget and Piaget are similar to piageto's, the worst crimes that can be committed by a legal interloper. Don't do it.

10. There seems to be little substance in the theory that the reason tennis players like tennis is because they are in the heat of Wimbledon. (He who plays in the heat of Wimbledon, of course, will when they play in the heat of Wimbledon.)( *Verdict* *over Ex-sharmanson, Reuters,* May 11, 1992, supra.) Piaget and Piaget are born even when they play in the heat of Wimbledon. No sensible man would play in the heat of Wimbledon. *Verdict* *over Ex-sharmanson, Reuters,* May 11, 1992; see also supra note 15. Both Piaget and Piaget are similar to piageto's, the worst crimes that can be committed by a legal interloper. Don't do it.

11. A fine example of early English protocol, not seen much since except in the United States Congress. It is high irony indeed that the commons-union British have much on parliamentary faculties to an act form, while the traditionally New Englanders continue on as they wish. Thus Senator Clift-Claire from South Carolina to a line and might be moved to declare that his "distressed colleagues from South Carolina in a line and might be moved to declare that his *distressed colleagues from South Carolina in a line and might be moved to declare that his...*"  See *L. DUCHEUILER, JEFFERSON'S MANUAL AND RULES OF THE HOUSE OF...* 45 (1935).
Trespassors under the case.

But when they are read 'cause they've been had they chase their cause 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 equity?)

Sweeds think that it's very nice to swim in water cold as ice,

Italians eat spaghetti by the ton;

Many people run from mildly odd to wildly strange—But only dogs and Englishmen go out in the mid-day sun."
Schlockverse: Mad Dogs and Englishmen. Pierson v. Post: A Ditty Dedicated to Fr

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 cause in court;
So Post filed suit in trespass on the case (an awkward tool,
Though what else can one do without a procedural rule
In contract, or property, or even one in tort?)

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.

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

Weather affects the human mind in various ways. See, e.g., supra notes 2, 4, 6 and 8. A case study of one Julia Little showed that rises 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 sanitarium coincided with a steep ascension of warm weather." The study concluded that psychotic episodes were but reflections of changing biochemical status with the changing of meteorological conditions. W. F. Pettersen, Man, Weather, Snow (1947). Another woman was found "wandering about Hempested in a conspicuous state of confusion," caused by a change in the weather. See Bem, The Sign of Metamorphic Environment and Psychiatric Episode, 9 J. Mt. Sinai Hosp. 719 (1942). Ward and Rastalli, Progress in Myxoedema Madness, 113 Mt. J. Psychiatry 149-51 (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.

BLACKS LAW DICTIONARY 1347 (3rd ed. 1979).

14. For some reason the words "English" and "eccentric" have always gone together like fish and chips. Students plugging "English w/0 eccentric or eccentricity" into the LEXISNEXIS database will discover over 1000 citations—compared to just six for Sweden, 36 for Mexico, 66 for Spainards, and 143 for Japanese. If you really want to have fun with LEXISNEXIS, get into the "Assets" library and look up your "friends" (or professors)
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 sportsmen, without poring over Justinian, Fleta, Bracton, Puffendorf, Locke, Barbeor, 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 usage or custom 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 mortis 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?

Pierce 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 wordy evidence of the fact.
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Published by NSUWorks, 1993.

Pierson, 3 Cal. R. at 180-81 (emphasis added).
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 your 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 gentlemen 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."