

Pond V. People

[Shortened Version]

The story of the Murder of Isaac Blanchard by Augustus Pond, according to Court Records, follows:

Plant, Robilliard and the deceased, then went to the door of the prisoner's house. They asked admission, which was refused by the prisoner's wife. She asked what they wanted. They replied that they wanted the master of the house, and that they wanted to come in and search the house. They were not admitted. The door was fastened with a cord.

The whole three then went to the prisoner's net-house. Robilliard and the deceased stood outside, and they commenced tearing down the net-house; at the same time Plant went inside, where Dennis Cull was sound asleep in bed. The first that Cull knew was his being pulled out of bed on to the floor. Plant was on top of him with his hand on his throat, choking him. Cull asked who it was choking him, but got no answer. Just at this time, whilst Plant was in the net-house and Robilliard and the deceased were tearing it down, the prisoner came to the door of his house, opened it, and halloed thus: "Who is tearing down my net-house?" To this there was no response. Near or about the same time, the voices of a woman and child were heard crying near the prisoner's house, and by the woman's voice the words "For God's sake" were spoken twice.

The boards were rattling at the same time that these voices of the woman and child were heard. The prisoner said, "Leave or I'll shoot," and after this the tearing down of the net-house continued. In about half a minute after the first order to leave, the prisoner said again, "Leave, or I'll shoot." These orders to leave were spoken with a loud voice.

A little before the firing of the gun, and whilst Plant was in the net-house, the cries of Cull were heard in the net-house. He halloed as if he was in pain. He did not speak, but halloed twice.

The boards stopped rattling about three or four seconds before the gun was fired, and the gun was fired from, two to four seconds after the prisoner's second order of "Leave, or I'll shoot."

The gun was fired a little before daybreak, on the morning of Saturday, the 18th of June. It was proved clearly that the prisoner fired it. It was a double-barreled shot gun, loaded with pigeon shot. Only one barrel was discharged. The deceased was found dead the next morning, a little after daylight, in a small path in the bushes, about two hundred and twelve feet from the door of the prisoner's house, with wounds upon his person from pigeon shot, sufficient to cause death.

Without any cause or provocation given by Pond, we find Plant, Robilliard and Blanchard combining with an expressed intention to do him personal violence. On Thursday evening this gang, with from fifteen to twenty associates, having been hunting for Pond, found him at a neighbor's, and, having got him out of doors, surrounded him, while Plant struck him with his fist, and kicked him in the breast, with insulting language, evidently designed to draw him into a fight. He escaped from them, and ran away into the woods, and succeeded in avoiding them that night. That same night they tore down the door of the net-house, where his servants were asleep, in search of him, and not finding him there went to the house, the whole rabble being with them, and wanted Pond, and expressed themselves determined to have him; but refused to tell his wife what they wanted of him. Not finding him there, they started off elsewhere in search of him. This was between nine and ten o'clock at night. About noon of Friday, Plant and Blanchard met Pond, when Plant threatened again to whip him, and then went up to him, told him not to say anything, and that if he did he would give him slaps or kicks. Plant then took a stone in his hand, and threatened if Pond spoke to throw it at him. Pond said nothing, but went home quietly, and Plant went off and was heard making further threats soon after. Friday night neither Pond nor his family went to bed, being in fear of violence. Between one and two o'clock that night, Plant, Robilliard and Blanchard went to the net-house, and partially tore it down, while Whitney and Cull were in it. They then went to the house where Pond, his wife and children were, shook the door, and said they wanted Pond. Pond concealed himself under the bed, and his wife demanded what they wanted of him, saying he was not there, when Plant shook the door again, and ordered Mrs. Pond to open it; saying they wanted to search the house. She refusing, they resorted to artifice, asking for various articles of food, and objecting to receiving them except through the door. Plant then repeatedly commanded her to open the door, saying if she did not, she would regret it. On opening the door from six to twelve inches, by sliding the cord, to hand them some sugar, which they demanded, they did not take the sugar, but Plant seized Mrs. Pond's arm, and squeezed it until she fainted. Not succeeding in getting into the house, they then left for Ward's, and Pond went to the house of his brother-in-law, and borrowed a double-barreled shot gun loaded with pigeon shot, and returned home. While at Ward's, Blanchard told the latter that they had torn down part of Pond's net-house, and had left the rest so that when they went back they would have the rest of the fun. Blanchard also said, "I want to see Gust Pond; he abused an Irishman, and I want to abuse him just as bad as he abused the Irishman. Pond has to be abused any way." He also said to Ward, "This is good bread, I don't know but it may be the last piece of bread I'll eat." Plant also made threats. A short time after returning, they were heard to say they were going back again; were going to find him and to whip him, or have the soul out of him." It is to be remarked that we have their language as rendered by an interpreter, who was evidently illiterate, or at least incompetent to translate into very good English, and it is impossible for us to determine the exact force of what was said. The party then went back to Pond's, and asked admittance to search for him. His wife refused to let them in. They immediately went to the net-house, where Cull was asleep.

Plant seized Cull, and pulled him out of bed on the floor, and began choking him. Cull demanded who it was, but received no answer. Blanchard and Robilliard had commenced tearing down the boards. Pond went to the door and hallooed, "Who is tearing down my net-house?" to which there was no answer. The voices of a woman and child were heard crying, and the woman's voice was heard twice to cry out "for God's sake!" Cull's voice was also heard from the net-house, not speaking, but hallooing as if he was in pain. Pond cried out loudly, "Leave, or I'll shoot." The noise continuing, he gave the same warning again, and in a few seconds shot off one barrel of the gun. Blanchard was found dead the next morning. Pond took immediate steps to surrender himself to justice.

The Court's Decision

Error to the district court of the upper peninsula, for the county of Mackinac. The plaintiff in error was tried on an information for the murder of one Isaac Blanchard, and convicted of manslaughter.

We can not, upon a consideration of the facts manifest from the bill of exceptions, regard the charges asked by the defense as abstract or inapplicable to the case. It was for the jury to consider the whole chain of proof; but if they believed the evidence as spread out upon the case, we feel constrained to say that there are very few of the precedents which have shown stronger grounds of justification than those which are found here. Instead of reckless ferocity, the facts display a very commendable moderation.

Apart from its character as a dwelling, which was denied by the court below, the attack upon the net-house for the purpose of destroying it, was a violent and forcible felony. And the fact that it is a statutory and not common law felony, does not, in our view, change its character. Rape and many other of the most atrocious felonious assaults, are statutory felonies only, and yet no one ever doubted the right to resist them unto death. And a breaking into a house with the design of stealing the most trifling article, being common law burglary, was likewise allowed to be resisted in like manner, if necessary. We think there is no reason for making any distinctions between common law and statute felonies in this respect, if they are forcible and violent. So far as the manifest danger to Pond himself, and to Cull, is concerned, the justification would fall within the common law.

It is claimed by the prisoner's counsel, that we are authorized to pronounce upon the case the judgment which the facts warrant. Had the facts spread out in the bill of exceptions been found as a special verdict by the jury, this would be true. But as the case stands, we can only consider them as bearing upon the instructions given or refused. The errors being in the rulings, and not in the record outside of the bill of exceptions, we can do nothing more, in reversing the judgment, than to order a new trial. The district judge has ruled upon the law questions in such a way as to present

them all fairly as questions not before decided in this state. We think there was error in requiring the actual instead of apparent and reasonably founded causes of apprehension of injury; in holding that the protection of the net-house could not be made by using a dangerous weapon; and that the conduct of the assailing party was not felonious; and also in using language calculated to mislead the jury upon the means and extent of resistance justifiable in resisting a felony.

We do not deem it necessary to pass upon the minor points, as we do not suppose the authorities will deem it important to proceed further, unless the facts are very different from those presented.

The judgment below must be reversed, and a new trial granted.

MANNING and CHRISTIANCY JJ. concurred.

MARTIN CH. J. concurred in the result.

[1] There is no positive rule for the definition of justifiable homicide; it must depend upon the circumstances and surroundings of each case, *Patton v. People*, 18 Mich., 314. One who is threatened with an attack by an assailant is authorized to act, and his actions are to be judged in the light of the circumstances as they appeared to him at the time, and if his assailant follow him up in a threatening manner for the purpose of frightening him, and so as to make him believe that a violent attack is imminent, it is immaterial whether a forcible attack was actually intended or not, *Hurd v. People*, 25 Mich., 405; *State v. Martin*, 30 Wis., 216.

The Court's Explanation of the Decision in this Case:

This decision concerns self-defense with a firearm. Speaking of the **public role of private self-defense**, counsel for plaintiff argued, "A mere legal trespass is a private wrong, and no crime. A crime is a public wrong For the private wrong or trespass ... the law awards to the injured party his damages or compensation. But for the crime or public wrong, the law awards no compensation, but punishment." "There is, therefore, ample reason why a mere legal trespass or private wrong should not be resisted unto death. It has its ample remedy." "Not so with a crime or public wrong, for which, when once committed, there is no remedy, though it may be punished. The law of society, the public safety, therefore, requires that crime be resisted and prevented; and hence every citizen is invested not only with the right but duty to repel and prevent it; but the means employed must appear to be necessary and reasonable for the purpose, in view of the nature of the crime and all the circumstances of the case. "In its decision, the court commented on this **public role**, "But the rules which make it excusable or justifiable to destroy [human life] under some circumstances, are really meant to insure its general protection. They are designed to prevent reckless and wicked men from assailing peaceable members of society, by exposing them to the danger of fatal resistance at the hands of those whom they wantonly attack, and put in peril or fear of great injury or

death." "... justifiable homicides [are] where the slayer was regarded as promoting justice, and performing a public duty; and the question of personal danger did not necessarily arise, although it does generally. It is held to be the duty of every man who sees a felony attempted by violence, to prevent it if possible, and in the performance of this duty, which is an active one, there is a legal right to use all necessary means to make the resistance effectual." "[concerning rioters, private persons who can not otherwise suppress them, or defend themselves from them, may justify homicide in killing them, as it is their right and duty to aid in preserving the peace.

- ❖ *Homicide, excusable and justifiable.* The law does not require the necessity for taking human life to be one arising out of actual and imminent danger, in order to excuse the slayer; but he may act upon a belief, arising from appearances which give him reasonable cause for it that the danger is actual and imminent, although he may turn out to be mistaken. The guilt of the accused must depend upon the circumstances as they appear to him, and he will not be held responsible for a knowledge of the facts, unless his ignorance arises from fault or negligence.
- ❖ Homicide *se defendendo*, in resisting an assault not made with felonious intent, is excusable, where the danger to be resisted is to life, or of serious bodily harm of a permanent character, and unavoidable by other means in the power of the slayer, so far as he is able to judge at the time. But he is bound, if possible, to get out of his adversary's way, and has no right to stand up and resist if he can safely retreat or escape.
- ❖ A man assaulted in his dwelling is not obliged to retreat, but may use such means as are absolutely necessary to repel the assailant from his house, or prevent his forcible entry, even to the taking of life. And, if the assault or breaking is felonious, the homicide becomes, at common law, justifiable, and not merely excusable.
- ❖ The same circumstances which excuse or justify homicide in defense of one's self, will excuse or justify it in defense of his servant.
- ❖ Whenever a forcible felony is attempted against person or property, the person resisting the attempt is not obliged to retreat, but may pursue his adversary if necessary, till he finds himself out of danger. But he may not properly take life if the evil may be prevented by other means within his power.
- ❖ It is immaterial to the justification of homicide in resisting a forcible felony, whether the act was a felony at the common law, or made such by statute
- ❖ *Suppressing riots.* Private persons may forcibly interfere to suppress a riot or resist rioters; and they may justify homicide in so doing, if they can not otherwise suppress them, or defend themselves, their families or their property.
- ❖ *Curtilage.* A building thirty-six feet distant from a man's house, used for preserving the nets employed in the owner's ordinary occupation of a fisherman, is, in law, a part of his dwelling, though not included with the house by a fence. A fence is not necessary to include buildings within the curtilage, if within a space no larger than that usually occupied for the purposes of the dwelling and customary out-buildings.
- ❖ *Practice in Supreme Court: Reversing judgment on exceptions.* The Supreme Court can not, on reversing a judgment on exceptions, proceed to give such judgment as the facts set forth in the bill of exceptions would warrant. The court can only consider those facts as they bear upon the rulings of the court below, and order a new trial if the exceptions are sustained.