FRANK GOULD, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

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

Argued January 20, 21, 22, 1942. Decided February 6, 1942.

1. The right of self-defense is founded in the first law of nature, the right of self-preservation, and it cannot be superseded by laws of society.
2. The intent to commit an assault is essential to the establishment of the crime, and any evidence tending to show the intent of the accused is competent.
3. Verbal acts, in order to convict or warrant a remand for a new trial, must be sufficiently closely connected with the assault.

On appeal from a conviction of assault and battery, *judgment reversed.*

A. B. Ricks for appellant. *A. J. Padmore,* Revenue Solicitor, for appellee.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

The facts upon which the foundation of this case is based occurred on the second of November, 1939 in the Township of Barnesville in Montserrado County. Defendant, now appellant, dissatisfied with the verdict and final judgment of the Circuit Court for the First Judicial Circuit, Montserrado County, has brought his case on a regular appeal to this Court for a review thereof.

The prosecution put on record the evidence of John Freeman, the private prosecutor, who said that on the night of the dance at about midnight he left the dance in company with a friend to go and buy cigarettes. They did not get the cigarettes because the vendor would not open to their knocks. He left his friend and decided to

go home to close up his house and return to the dance. While passing appellant's house, singing a song called "Don't Forget the Family Prayer," appellant's wife hailed him, asking if the dance were out. He said:

> "I told her 'No.' She said, 'But you are out.' I said, 'We went to the waterside for some cigarettes.' Then she asked if there were some people at the dance from Johnsonville. I said, 'Yes.' She asked me, 'Do you know them?' At that time she opened the window and said, 'Who all from Johnsonville?' I said, 'Teacher Maximore, the Bettys people, and some of the Lee family.' At that time, before we got through, the defendant came on the scene. When he came he asked the woman, 'What are you doing with the door opened this time of the night?' By the time the woman could explain, he used the expression, 'I be damn, I have long been setting for John Freeman, I got him.' At that time I was standing at the door. He came and passed by me. As soon as he passed me I felt a stroke on the side of my neck, but I did not know I was cut."

This statement was not corroborated by Mrs. Gould.

S. Dema Payne, witness for the prosecution, stated *inter alia:* "We found blood stains on the floor just in the door leading to defendant's wife's room."

All the testimony agreed that John Freeman was cut in the house. If what private prosecutor Freeman stated is true, that he was passing and Mrs. Gould hearing him whistling asked him if the dance were over, etc., and subsequently opened the window, how is it that he was discovered by Mr. Gould in the latter's house at that non-visiting hour?

The principal defense relied on by defendant, now appellant, is that of self-defense, and it is with this view that we shall proceed to sift the evidence appearing in the record so as to discover, if possible, whether or not appellant's appeal warrants a reversal of the judgment of the court below.

The evidence of the defense is as follows:

Frank Gould, defendant-appellant, left his home on the evening of November 2, 1939 to go to a dance, promising his wife that he would remain only until the moon rose, at which time he would return home because he realized that she would be alone with the children in the house. At the said dance with many others was private prosecutor John Freeman who, about one or two o'clock in the morning, suddenly disappeared from the dance although his wife and sister-in-law were still there. Gould, in accordance with his promise to his wife, seeing that the moon was up left the dance to return home. Upon his arrival, to his astonishment, he met his wife standing at the door although it was after midnight. He queried her and, receiving no answer, entered his house. Taking a light from the bedroom and entering the dining room where the remaining portion of his dinner was, he saw an object. In trying to make it out, to his surprise he was suddenly assailed and knocked down by an unknown person, and the lantern which he held immediately extinguished. In the dark he managed to get his razor from his pocket and commenced cutting in the dark by way of self-defense, at the same time calling for help shouting, "Murder! My people! Rogue!" His assailant then jumped up and ran off. While chasing him, he then discovered him to be John Freeman, the private prosecutor.

On the stand Mrs. Gould, wife of defendant-appellant, testified that lying in bed she heard a knock at the window of her bedroom and, not replying, the window was subsequently forced open and Freeman entered. She did not know who it was at first because she closed her eyes thinking that it was her husband and, if he found out that she was awake and did not answer and open the door, he would be angry. But afterwards, as the person began touching her, she opened her eyes and discovered, to her surprise, that it was John Freeman. She immediately demanded that he leave her room, which she says he did. However, he left not through the window he had entered

but rather through the bedroom door into the body of the house. She further said that after a while, thinking that he had left the house, she got up to close the front door, at which time her husband arrived, meeting her at the door.

It does not appear from the record that the private prosecutor, John Freeman, was then present, for she goes on to say that after her husband entered the bedroom he took a light therefrom and proceeded to the dining room. Immediately thereafter she heard a scuffling and a fall and her husband shouting, "Murder! My people! Rogue!" She was too confused to go to the assistance of her husband as it was dark in the room. John Freeman subsequently ran out, chased by appellant.

There was testimony that it was not known that appellant had ever suspected private prosecutor with his wife or had had a quarrel with him or forbidden him, Freeman, from coming to his wife; and it has not been disproved by the State that appellant did not honestly believe that he had been attacked by a thief in the house.

Having thus succinctly reviewed the evidence in the case, we fail to see that any criminal intent, which is the kernel of this case as well as all criminal cases, was proven by the State, but it does appear that defendant, being so suddenly and unexpectedly attacked in his own house at that hour of the night, honestly and justly was under the impression that his life was in danger and therefore acted in self-defense.

> "The right of self-defense is founded in the first law of nature, the right of self-preservation, and it is not and cannot be superseded by the laws of society. . . . While it has been said that the necessity which will justify the use of force in self-defense can arise only where there is actual, imminent and apparent danger of injury to the person of the defender, yet the right to use force in self-defense cannot be limited to cases where there is in fact a real danger; and a person will not be held responsible civilly or criminally if he acts

in self-defense, from real and honest convictions induced by reasonable evidence, although he may be mistaken as to the existence of actual danger." 2 R.C.L. *Assault and Battery* § 27, at 548–49 (1914).

"The intent to commit an assault is essential to the establishment of the crime . . . and any evidence tending to show the intent of the accused is competent. His acts and words at the time of the assault are usually strong evidence of his intent and may therefore be introduced on the trial." *Id.* § 43, at 565.

In the case under review it has not been shown that appellant committed any acts or uttered any expressions before he was attacked so as to show his malicious criminal intent. He was unexpectedly and suddenly assailed and the record shows that not only was his fall to the floor heard by his wife, but he shouted, "Rogue," calling for help which did not come.

In the case *Alberty* v. *United States* the Supreme Court of the United States said:

"In the case of *Beard v. United States* 158 U.S. 550, the doctrine of the necessity of retreating was considered by this court at very considerable length and it was held, upon a review of the authorities upon the subject, that a man assailed upon his own premises, without provocation, by a person armed with a deadly weapon, and apparently seeking his life, is not obliged to retreat, but may stand his ground and defend himself with such means as are within his control; and so long as there is no intent on his part to kill his antagonist, and no purpose of doing anything beyond what is necessary to save his own life, is not guilty of murder or manslaughter if death results to his antagonist from the blow given him under such circumstances." *Id.*, 162 U.S. 499, 505, 40 L. Ed. 1051 (1875).

In this case the record does not disclose that John Freeman, the assailant, was armed with a deadly weapon. Nevertheless, the circumstances of his entering defendant-appellant's home at such an unseasonable hour well know-

ing that defendant-appellant was at the dance and, unprovoked, attacking and felling defendant-appellant to the floor in defendant-appellant's own house, thereby causing the lamp held by defendant-appellant to become extinguished, were sufficient, in our opinion, to justify defendant-appellant in defending himself as best he could in the protection of his person and of his property.

Our own criminal code in such cases provides that:

> "An act otherwise criminal, is justifiable when done to protect the person committing it or another person whom he is bound to protect, such as husband, wife or child, guardian, ward, master or servant, from serious personal injury which could only be prevented by the act or acts alleged." Crim. Code, ch. 1, § 17.

We regret that we are unable to harmonize our views with those of His Honor the Chief Justice who, although agreeing with us as to the right of self-defense of defendant-appellant in principle, yet feels that the following testimony is important: Mr. Freeman testified that just prior to the assault Mr. Gould stated, "I be damn, I have long been setting for John Freeman, I got him." Witness S. Dema Payne testified that immediately after the assault, "I asked, 'What is the trouble?' Mr. Gould then said, 'I cut the bitch and intended to kill him, but the razor broke. That is what saved him.' I asked him, 'What bitch?' He said, 'John Freeman.'" Rachel Capehard, a witness for the prosecution, stated that she heard a conversation during the excitement at which time appellant said, "I caught John Freeman inside my house and I hurt him. I cut him to my satisfaction. It is but one thing that I am sorry, that the razor broke. If the razor did not break this time I would be satisfied." These expressions, the Chief Justice contends, are verbal acts and, according to *Ruling Case Law,* should be regarded as indicative of the intent of the defendant-appellant at the time of the cutting. For:

> "It appears that the admissibility of one class of

> statements depends upon their being spontaneous and impulsive, the material inquiry being whether the statements offered as evidence were made at a time and under such circumstances as to induce the belief that they were not the result of reflection or premeditation. A distinct class, however, exists in the case of statements which themselves are facts constituting part of the transaction under investigation. The motive, character, and object or purpose of an act are frequently indicated by what was said by the person doing the act at the time. Such statements are of the res gestae, are of the nature of verbal acts, and are admissible in evidence with the remainder of the transaction which they illustrate." 10 R.C.L. *Evidence* § 159, at 976 (1915).

Viewing the evidence from that angle, the Chief Justice disagrees with the conclusions which the majority of this Court has reached. The greatest concession which the Chief Justice would make to the majority view would be to order a remand of the case for a new trial in order to more clearly bring out certain elements.

But the majority of this Court views the evidence otherwise. The majority maintains that the testimony of John Freeman was not corroborated and that the verbal acts were not sufficiently closely connected with the overt act, and, inasmuch as after the incident defendant-appellant quietly went back to the dance, the majority fails to see why any verbal expressions made by defendant-appellant in the heat of temper and during the excitement after the combat should, under the circumstances, affect his acquittal.

We are of the opinion therefore that the judgment of the court below should be reversed and defendant-appellant acquitted, and it is hereby so ordered.

Reversed.