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HOMICIDE BY NECESSITY.

SUPREME COURT OF ALABAMA.

January 26, 1893.

ARP V. THE STATE.

Arp was convicted in July, 1892, at the Alabama Circuit Court, of murder in the first degree, and was, accordingly, sentenced to death. He had murdered one Payne, in order to prevent him from appearing against him and two other men, Buckhalter and Leith, charged with retailing whiskey without a licence. Arp's excuse for the homicide was 'that Buckhalter and Leith threatened to take his life unless he killed the deceased; that they were present, armed with double-barrelled shot-guns, and threatened to kill him unless he killed deceased, and that it was through fear and to save his own life he struck deceased with an axe.' On this phase of the evidence the Circuit Court was asked to give the following charge: 'If the jury believe from the evidence that the defendant killed Payne under duress, under compulsion from a necessity, under threats of immediate impending peril to his own life, such as to take away the free agency of the defendant, then he is not guilty.' The Court refused this charge, and the refusal was upheld by the Supreme Court in Error. In delivering judgment, Mr. Justice Coleman said:—

This brings up for consideration the question: What is the law when one person, under compulsion or fear of great bodily harm to himself, takes the life of an innocent person; and what is his duty, when placed under such circumstances? The fact that the defendant had been in the employment of Buckhalter is no