

*Pierson v. Post*

3 Cal. R. 175, 2 Am. Dec. 264 (Supreme Court of New York, 1805).

“... Post, being in possession of certain dogs and hounds under his command, did, ‘upon a certain wild and uninhabited, unpossessed and waste land, called the beach, find and start one of those noxious beasts called a fox,’ and whilst there hunting, chasing and pursuing the same with his dogs and hounds, and when in view thereof, Pierson, well knowing the fox was so hunted and pursued, did, in the sight of Post, to prevent his catching the same, kill and carry it off. A verdict having been rendered for [Post, who was] the plaintiff below. [Pierson appealed]

TOMPKINS, J... The question submitted by the counsel in this cause for our determination is, whether Lodowick Post, by the Pursuit with his hounds in the manner alleged in his declaration, acquired such a right to, or property in, the fox, as will sustain an action against Pierson for killing and taking him away? ... It is admitted that a fox is *aferae naturae*, and that property in such animals is acquired by occupancy only. These admissions narrow the discussion to the simple question of what acts amount to occupancy, applied to acquiring rights to wild animals?

If the first seeing, starting, or pursuing such animals, without having so wounded, circumvented or ensnared the animal, so as to deprive them of their natural liberty, and subject them to the control of their pursuer, should afford the basis of actions against others for intercepting and killing them, it would prove a fertile course of quarrels and litigation.

However uncourteous or unkind the conduct of Pierson towards Post, in this instance, may have been, yet his act was productive of no injury or damage for which a legal remedy can be applied. We are of opinion the judgment below was erroneous, and ought to be reversed.

[Justice Livingston now gives his dissenting opinion.]

LIVINGSTON, J. My opinion differs from that of the court. ... By the pleading it is admitted that a fox is a ‘wild and noxious beast.’ ... His depredations on farmers and on barn yards 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 love frigido*, or a vertical sun, pursue the windings of his 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 honours or labours of the chase, were permitted to come in at the death, and bear away in triumph the object of pursuit?

[W]e are at liberty to adopt one of the provisions just cited ... that property in animals *ferae naturae* may be acquired without bodily touch or manucaption, provided the pursuer be within reach, or have a *reasonable* prospect (which certainly existed here) of taking, what he has thus discovered an intention of converting to his own use.