Case Brief
Pierson v. Post

Supreme Court of New York, 1805.
3 Cai. R. 175.
Johnson, pp. 17-20

Facts:

Post was chasing a fox when all of the sudden Pierson popped out of nowhere and killed the fox and took it away.

Post sued Pierson, claiming that he should rightly own the fox because he was the one chasing it.

The trial court ruled in Post's favor, and Pierson appealed, saying that Post failed to state a cause of action upon which relief could be granted.

Issue:

Did Post acquire the right to possess the fox by pursuit such that he has a cause of action against Pierson?

Rule: Mere pursuit of a wild animal does not constitute possession of that animal. ("Actual bodily seizure", killing, or "mortal wounding" is sufficient to establish possession.)

Analysis:

The majority cites "the authorities".

Although they vary slightly, none of them allow for possession by pursuit.

The majority is willing to go along with such authorities because they want to announce a simple rule that is easy and inexpensive to police.

They don't want to generate tons of vexing litigation.

Finally, they state that not everything that is impolite—or even immoral—shall necessarily be declared illegal.

Analysis Continued:

The dissent thinks the authorities aren't so important and that the court can and should announce its own rule since there is no case law or statutory authority to constrain it.

Judge Livingston argues that possession by pursuit is a better rule because it provides betters incentives for hunters to pursue foxes, which are considered a nuisance by society.

Judge Livingston further says that if a hunter thinks he might chase a fox all day just to have it cherry-picked by some jerk (the "saucy intruder") then he won't be as inclined to go hunt for foxes in the first place.

On the other hand, this might be just be a sarcastic comment about how dangerous and abhorrent foxes are.

Conclusion:

The trial court is reversed and Pierson gets to keep the fox.

Pierson v. Post

The People and Places:

Jesse Pierson - An educated farmer/school teacher who was descended from one of the longest settled, most prominent families in the Queens (then Long Island) area. Son of David Pierson, who was a highly respected leader in the community. As a farmer, Jesse viewed foxes as dangerous vermin who threatened his land and livestock. As a Puritan, Calvinist, he also viewed hunting for sport as wasteful and self indulgent.

Lodowick Post - The wealthy, son of a privateer captain (Nathan Post) that came to Queens in 1776. Like his father, Nathan, who owned a West India Merchant Ship, Lodowick was fond of hunting for sport and proud of his family's new found wealth and status.

The Fued - The two families, the Piersons and the Posts did not care for each other. As reported from the lower court, the two sons had express bad feelings for each other, and the fathers financed the litigation, with extremely prominent lawyers, which cost in excess of 1000 pounds sterling, an enormous amount, considering the only damages were the coat and caucus of a fox.

The Location - The fox was killed by an old abandoned well near the Pierson farm on a public beach.

Daniel Tompkins - The author of the majority opinion. He would later be elected Governor of New York and Vice President of the United States. He has a county in Central, New York named for him.

Henry Brockholst Livingston - The author of the dissent. He would later be appointed a Justice of the United States Supreme Court.

The Story:

Pierson v. Post 3 Cai. R. 175, 2 Am. Dec. 264 (N.Y. 1805),
This is a famous Supreme Court of New York case about a disagreement over a dead fox. The case is frequently used to illustrate the complexities of establishing "possession" under the law.

Facts:
Lodowick Post, a fox hunter, was chasing a fox through a vacant lot when out of the blue Pierson killed the fox and took it away. Post sued Pierson on an action for Trespass on the case for damages against his possession of the fox. Post argued that he had ownership of the fox as chasing it was sufficient to establish possession. The trial court found in favor of Post. The issue was put to the Supreme Court of Judicature of New York (an early court of appeals) as to whether one could obtain property rights to a wild animal (Ferae naturae), in this case the fox, by pursuit.

Ruling:
The Court cited ancient precedent in deciding the case:

"If we have recourse to the ancient writers upon general principles of law, the judgment below is obviously erroneous. Justinian's Institutes, and Fleta, adopt the principle, that pursuit alone vests no property or right in the huntsman; and that even pursuit, accompanied with wounding, is equally ineffectual for that purpose, unless the animal be actually taken. The same principle is recognized by Bracton."

"Puffendorf defines occupancy of beasts feroe naturoe, to be the actual corporeal possession of them, and Bynkershock is cited as coinciding in this definition. It is indeed with hesitation that Puffendorf affirms that a wild beast mortally wounded or greatly maimed, cannot be fairly intercepted by another, whilst the pursuit of the person inflicting the wound continues. The foregoing authorities are decisive to show that mere pursuit gave Post no legal right to the fox, but that he became the property of Pierson, who intercepted and killed him."

The court reasoned that given the common law requirement to have control over one's possessions, merely giving chase was not sufficient. Something more was needed, otherwise law would create a slippery slope.

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.

The majority opinion found that though it may have been rude for Pierson to have killed the fox, there was no reason to object as only the person to mortally wound or seize the animal can acquire possession of it. The majority opinion was by future Vice President of the United States, Daniel Tompkins.

The dissent, however, was not satisfied by the authorities used. Instead it was argued that pursuit should be considered sufficient, as it serves a useful purpose of encouraging hunters to rid the countryside of that "wild and noxious beast" known as the fox. The dissent further acknowledged that possession can be seen in relative terms where the continued chase may merely be a formality of the pre-existing control already exerted by the hunter. The dissent was authored by future Supreme Court Justice, Henry Brockholst Livingston.

Among the authorities cited by the court in its opinion were the works of William Blackstone, Fleta, Jean Barbeyrac, Samuel von Pufendorf, Hugo Grotius, and Justinian I.

Conclusion:

The trial court was reversed so Pierson did not have to pay any damages.

Reflections on the Case:

One commentator (James T. Adams) wrote: Jesse Pierson, son of Capt. David, coming from Amagansett, saw a fox run and hide down an unused well near Peters Pond and killed and took the fox Lodowick Post and a company with him were in pursuit and chasing the fox and saw Jesse with it and claimed it as theirs, while Jesse persisted in his claim.

Capt. Pierson said his son Jesse should have the fox and Capt. Post said the same of his son Lodowick and hence the law suit contested and appealed to the highest court in the State which decided that Post had not got the possession of the fox when Pierson killed it and that he had no property in it as against Pierson until he had reduced it into his own possession.

This became the leading case often cited because it established; and I think, for the first time, by the court of last resort in the State, that to give an individual right in wild animals, the claimant must capture them. To the public the decision was worth its cost. To the parties who each expended over a thousand pounds, the fox cost very dear. Memorials of Old Bridgehampton 166 (1916, 1962).