

Pierson v. Post

Supreme Court of Judicature of New York
3 Cai. R. 175 (1805)

[Post was engaged in a fox hunt. Foxes were considered a nuisance and the killing of a fox created a social benefit. Pierson interfered with the hunt by killing the fox and carrying it off. By pursuit, did Post gain a property right in the fox that prevented Pierson from taking the game? Is so, then the court must determine whether the investment in the hunt was sufficient to sustain a property right. If not, then investment in the pursuit of natural resources may go unrewarded.]

JUDGES: TOMPKINS, J., LIVINGSTON, J.

OPINION: TOMPKINS, J., delivered the opinion of the court:

....

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?

The cause was argued with much ability by the counsel on both sides, and presents for our decision a novel and nice question. It is admitted that a fox is an animal *ferroe nature* [wild animal], 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 right to wild animals.

...

... If the first seeing, starting or pursuing such animals, without having so wounded, circumvented or ensnared them, 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 source of quarrels and litigation.

However uncourteous or unkind the conduct of Pierson towards Post, in this instance, may have been, yet this 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.

LIVINGSTON, J. My opinion differs from that of the court. ...

Whether a person who, with his own hounds, starts and hunts a fox on waste and uninhabited ground, and is on the point of seizing his prey, acquires such an interest in the animal as to have a right of action against another, who in view of the huntsman and his dogs in full pursuit, and with knowledge of the chase, shall kill and carry him away.

... By the pleadings it is admitted that a fox is a "wild and noxious beast." Both parties

have regarded him, as the law of nations does a pirate, "*hostem humani generis*," [enemy of humankind] and although "*de mortuis nil nisi bonum*" [of the dead nothing is to be said except good] be a maxim of our profession, the memory of the deceased has not been spared. His depredations on farmers and on barnyards, 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 jove frigido*," or a vertical sun, pursue the windings of this 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 honors or labors of the chase, were permitted to come in at the death, and bear away in triumph the object of pursuit? ...

It may be expected, however, by the learned counsel, that more particular notice be taken of their authorities. I have examined them all, and feel great difficulty in determining, whether to acquire dominion over a thing, before in common, it be sufficient that we barely see it, or know where it is, or wish for it, or make a declaration of our will respecting it; or whether, in the case of wild beasts, setting a trap, or lying in wait, or starting, or pursuing, be enough; or if an actual wounding, or killing, or bodily tact and occupation be necessary. Writers on general law, who have favored us with their speculations on these points, differ on them all; but, great as is the diversity of sentiment among them, some conclusion must be adopted on the question immediately before us.

...

When we reflect also that the interest of our husbandmen, the most useful of men in any community, will be advanced by the destruction of a beast so pernicious and incorrigible, we cannot greatly err in saying that a pursuit like the present, through waste and unoccupied lands, and which must inevitably and speedily have terminated in corporeal possession, or bodily seisin, confers such a right to the object of it, as to make any one a wrong-doer who shall interfere and shoulder the spoil. The justice's judgment ought, therefore, in my opinion, to be affirmed.

Judgment of reversal.

Questions

1. The dissent argues that the hunt organizer does a public service by ridding the fox from the community. How does this decision affect investment in the hunt?
2. How does this decision affect litigation costs?
3. What are the potential harms and benefits that flow from this decision? How might it affect the investment in the search for natural resources?
4. The Coase theorem would suggest that if transactions costs are zero, the efficient use of the resources is independent of the rights distribution. Is that applicable in

the present case? The fox injures the farmer. The elimination of foxes, however, injures hunters.

Comment

If investment in the pursuit were sufficient to establish ownership of the wild animal, how would we know that ownership was sufficient? We would need an inquiry into sufficiency which would increase litigation costs. A heightened sufficiency standard may reduce the incentive to invest, because someone else may capture the game from between you hands. Alternatively, if you do invest, a potential challenge creates an incentive for you to capture the proceeds in a timely manner by increasing the speed of the investment.

Property rights are established in the wild by first possession. The courts must now determine what constitutes possession. Is a mere wounding of the animal enough to establish possession?

Related Reading

Dhammika Dharmapala, "An Economic Analysis of "Riding to Hounds": Pierson v. Post," *Journal of Law, Economics and Organization*, 2002, vol. 18, issue 1, pages 39-66.