

William Musschett

## The Fox and the Found What say thee, fox?

In an August 1805 case, the Supreme Court of New York ruled that he who mortally wounded or entrapped the noxious beast that is thy fox has manifested the intention to own such creature.

The question before counsel was whether sir *Post*, by the pursuit with his hounds, acquired such a right to, or property in, the fox, as to sustain an action against sir *Pierson* for killing and taking him away?

The New York Supreme Court found the judgement below obviously erroneous, citing general principles of law, *exempli gratia*: *Justinian's Institutes*, *Fleta*, *Bracton*, *Puffendorf*, and *Bynkershoek*. Decisively, these authorities had shown that mere pursuit gave *Post* no legal right to the fox, but that he became the property of *Pierson*, who intercepted and killed him.

Troubling, that our American Court rely on faux news from England, to decide one gentlemen's property to give to another.



The Battle of Lexington, 19 April 1775 - William Barnes Wollen, 1910

Betty Justice

## American Land, British Rule

Home of the Free, Land of the Brave, Laws of the Motherland?

Many recall the decade of tension and bloodshed that led to our Independence. Among the earliest oppressions were British Parliament enactment of the Stamp Act of 1765 and Townshend Acts, charging us simply for remaining in the British Empire.

This demanded the inquiry of whether Parliament had any legitimate jurisdiction over the thirteen colonies. Tax protests followed, such as the Pine Tree Riot of 1772 and Boston Tea Party of 1773. In response, British Parliament passed the Intolerable Acts of 1774, intending to punish us.

In September 1774, the First Continental Congress convened in Philadelphia for response. Congress organized the boycott of British goods and petitioned King George III to repeal the Intolerable Acts. King George refused.

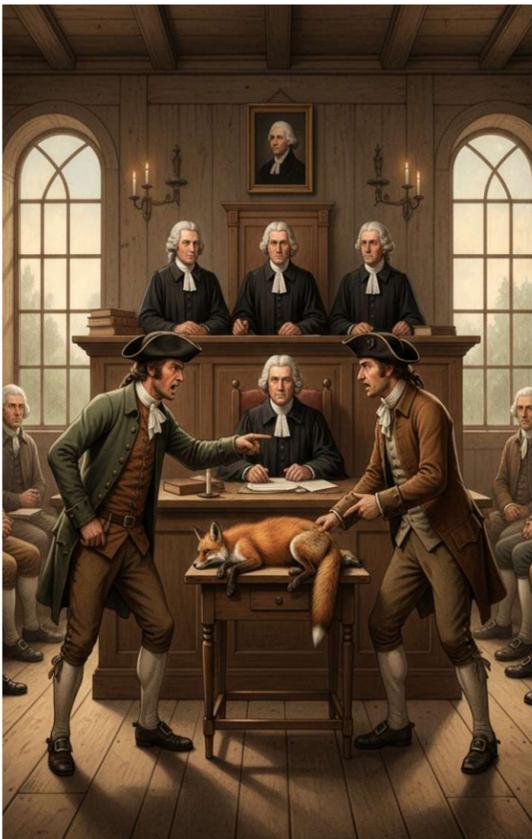
On April 19, 1775, the Revolutionary War would begin with the Battles of Lexington and Concord.

On July 4<sup>th</sup>, 1776, after a year of bravely fought battles, our Thirteen Colonies adopted the Declaration of Independence, ridding us of British rule. Yet, that left us without rule - or law - rather.

Thomas Jefferson has admitted that the Declaration had no original ideas, but was instead a statement of sentiments widely shared by supporters of the American Revolution.

Jefferson utilized the Constitution of Virginia and George Mason's draft of the Virginia Declaration of Rights. Mason also was influenced by the 1689 English Declaration of Rights, which formally ended the reign of King James II, and was a model of how to end the reign of an unjust king.

Now we are free to make our own traditions, rules, and laws. But will the Courts make it up as they go, or cite back to decision many died to get away from?

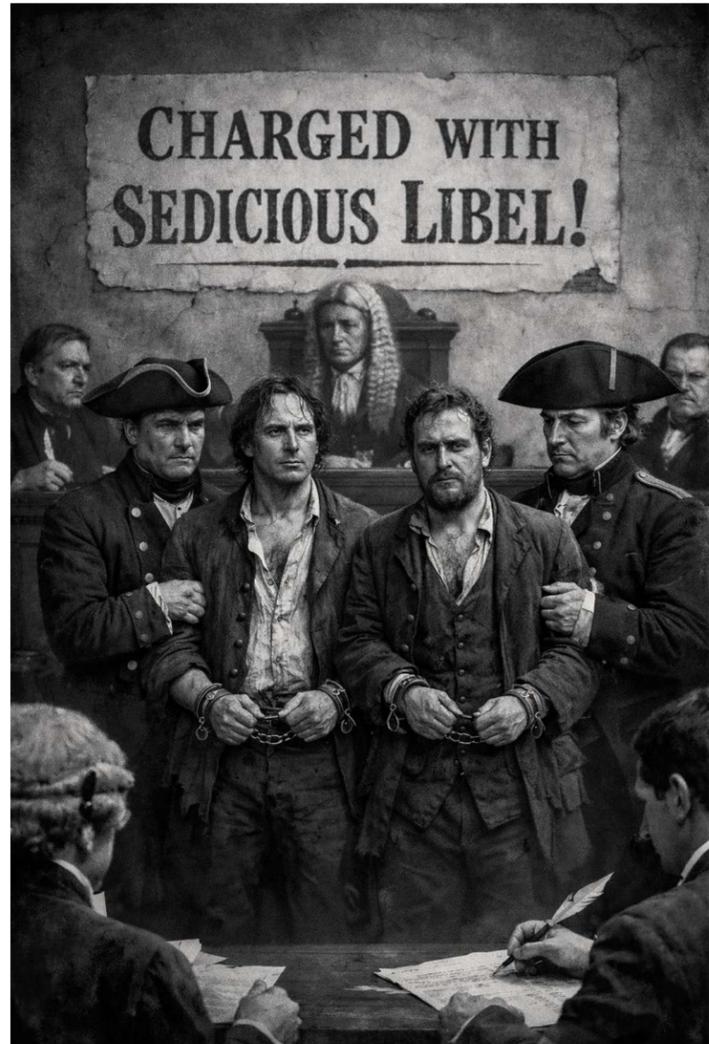


*Pierson v. Post* (1805) 1 Cai. R. 175

## FROM THE UTICA PATRIOT.

To Republicans.—When a government, weak or wicked, sacrifices the dearest rights of a nation, it is time to speak, full time to give vent to those indignant feelings excited by the occasion. No longer ought an ill timed shame of your misplaced confidence to prevent your exertions for the preservation of your wounded independence. The administration have recommended, and congress, having sat two months in secret conclave, have voted two millions of dollars, a present to Bonaparte, for liberty to make a treaty with Spain—Stop ye admirers of the boasted friends of liberty—stop a while! and before you venture to call the information a federal lie, resolve on the course you will pursue if found substantially correct. It is all that is desired: I know if you possess a particle of virtue, you must blush for your country. The degraded vassals of a foreign tyrant.

America, when weak and inefficient, without a bond of union, save what a common interest afforded, sustained an eight years war against a powerful nation, and for what? Sooner than pay an illegal impost of three pence a pound on tea, to be collected for the use of her acknowledged sovereign.



Defendants Hudson and Goodwin indicted for seditious libel for this reprinted article that appeared in a Utica, New York, newspaper; *U.S. v. Hudson* (1812) 11. U.S. 32; FJC.gov

## Common Law to Rule Them All

### Half a dozen years later, The Supreme Court thinks not?



Ismael Perrie

6 years after the infamous article was printed in the *Connecticut Courant*, the Supreme Court consider whether Federalist editors Barzillai Hudson and George Goodwin, defendants, were able to be charged with a libel on the President and Congress. Defendants accused them of secretly voting to give Napoleon Bonaparte \$2 million to make a treaty with Spain.

Johnson referred to principles of federalism in explaining his conclusion that the federal courts lacked jurisdiction over common-law crimes. “The powers of the general Government,” he wrote, “are made up of concessions from the several states—whatever is not expressly given to the former, the latter expressly reserve.”

The lower federal courts, which did not derive their jurisdiction directly from the Constitution, had no powers other than those granted to them by Congress.

U.S. District Court for the District of Connecticut, Judge Pierpont Edwards, and Jefferson loyalist, presided over a grand jury, which returned indictments against Hudson and Goodwin for seditious libel in September 1806. Yet, the Sedition Act of 1798 expired in 1801, leaving no statutory basis for the charge. Judge Edwards based the charge on common law. In Judge Edwards’s charge to a previous grand jury, he had described publications meriting criminal punishment as those “unfounded in truth, or principle, [and] calculated to create distrust and jealousy, to excite hatred against the government, and those who are entrusted with the management of it, and to bring any or all of them into contempt.”

In a short opinion that cited no precedent, Justice William Johnson, a Jefferson appointee, framed the question as “whether the Circuit Courts of the United States can exercise a common law jurisdiction in criminal cases.” Although the case at hand involved seditious libel, Johnson asserted that the same principles would apply to any other case involving a crime not defined by statute.

“The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offense.”

- Justice William Johnson, Jr.

In conferring jurisdiction on the courts, Congress was limited to exercising those powers that had been conceded to the federal government by the states. “The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the Court that shall have jurisdiction of the offense,” Johnson concluded.

In dicta, he also mentioned an exception to the general rule. Courts have some implied powers, such as punishing litigants for contumacy (contempt of court) and enforcing court orders.