To the Bag

Vulpes Lex

To the *Bag*:

Votaries of Diana[1] the world over quavered at the news that a fox had got the better of a Belarusian hunter.[2] After wounding the fox from a distance, the hunter attempted to finish it off with the butt of his rifle. However, the fox was saucier[3] than anticipated: it scuffled with the hunter, managed to put its paw on the trigger, shoot the hunter in the leg, and make its escape.

Apart from making an interesting story, this incident raises a number of important questions. Does this newly manifested ability of the fox change the law of occupancy? Would it sway and change the esteemed opinion of Barbeyrac?[4] After all, if a fox can shoot a hunter, just when does it come within the hunter's certain control? Moreover, is this just a fox story? Or, rather, has the fox set a prec-

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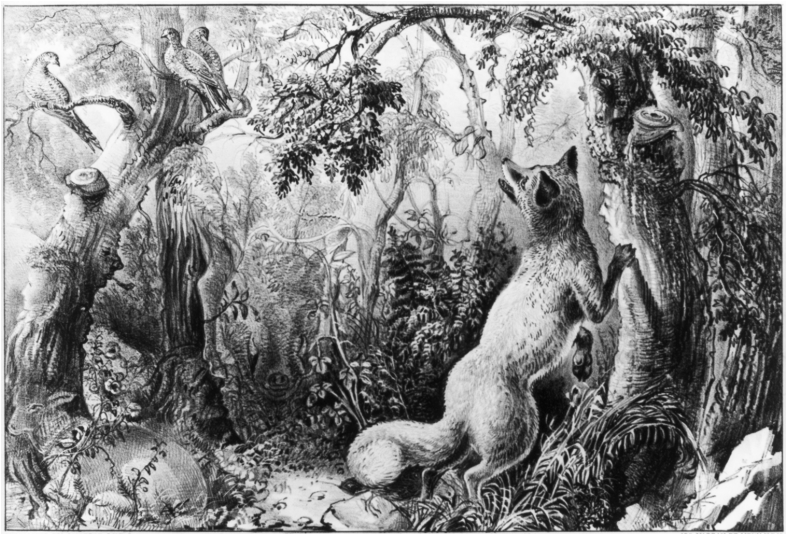
[1] *Pierson v. Post*, 3 Cai. 175, 180 (N.Y. Sup. Ct. 1805) (Livingston, J., dissenting); Diana is the goddess of the hunt.

[2] Amie Ferris-Rotman, *Fox Shoots Man*, Reuters (Feb. 23, 2011, 4:20 PM), www.reuters.com/article/2011/01/13/us-belarus-fox-idUSTRE70C5Q620110113.

[3] *Pierson*, 3 Cai. at 180-181 (Livingston, J., dissenting) ("[w]hat gentleman [would] . . . pursue the windings of this wily quadruped, if . . . [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?").

[4] *Id.* at 178 (possession is acquired when the "pursuer manifests an unequivocal intention of appropriating the animal to his individual use, has deprived him of his natural liberty, and brought him within his certain control").



edent for all things *ferae naturae*?[5] Will we see a mass revolt of wild and fugacious natures against those who seek to appropriate them to their individual uses? I, for one, would urge any future Buster[6] to use caution when approaching a deer, and perhaps a descendant of Mrs. Hammonds[7] would do better to clear off her land. The answers to these questions remain unknown. One thing, however, is sure: although Messrs. Pierson and Post may have been ridiculed by some for spending so much time and money quarreling over a dead fox, each can be happy that the fox did not shoot him. The outcome

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[5] *Id.* at 177 ("[i]t is admitted that a fox is an animal fertoe [sic] *naturoe,* and that property in such animals is acquired by occupancy only").

[6] *Buster v. Newkirk*, 20 Johns. 75 (N.Y. Sup. Ct. 1822) (holding that occupancy of a deer was not acquired by a hunter who wounded a deer but then abandoned pursuit and let his dogs continue the chase; an interloper, Buster, apprehended and killed the deer).

[7] *Hammonds v. Central Kentucky Natural Gas Co.*, 75 S.W.2d 204, 205-06 (Ky. 1934) (holding that a natural gas company did not trespass on Hammonds' land by pumping gas back underground to store it because gas is a mineral *ferae naturae*, of a "wild and migratory nature," and once it was turned loose into its proper element (the ground), the gas company was no longer its exclusive owner).

of the arbitration of sportsmen[8] (in the form of public opinion) in such a case would have been just as certain in New York in the 1800s as it is in Belarus today.

Evan Henley
Georgetown University Law Center

WHAT IS THE INCOME TAX ON?

To the *Bag*:

I was very much interested to read Erik Jensen's discussion of the role of prepositions in the Constitution (14 GREEN BAG 2D 163 (Winter 2011)), and in particular his argument that a capped tax on income is unconstitutional because it is not a tax "on" incomes, as permitted by the Sixteenth Amendment.

I take it I can stop paying Social Security now?

Jack Metzler
Covington & Burling LLP
Washington, DC

ACCESS TO EAGLES

To the *Bag*:

As a former resident of that land "out west," I enjoyed reading Professor Wexler's account of his trip to the National Eagle Repository.[9] However, the article contains an important legal error. Wexler asserts: "Applying to the Repository is the only way to legally get hold of any part of either eagle in the United States."[10]

This is not true. As the Tenth Circuit noted in *United States v. Winslow Friday*, "Native Americans whose needs cannot be satisfied

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[8] *Pierson*, 3 Cai. at 180 (Livingston, J., dissenting) (the case "should have been submitted to the arbitration of sportsmen, without poring over Justinian, Fleta, Bracton, Puffendorf, Locke, Barbeyrac, or Blackstone, all of whom have been cited: they would have had no difficulty in coming to a prompt and correct conclusion").

[9] Jay Wexler, *Eagle Party*, 14 GREEN BAG 2D 181, 183 (2011).

[10] *Id.* at 182.