

Case No. 18,158.

YOUNG v. HOOVER.

{4 Cranch, C. C. 187.}¹

Circuit Court, District of Columbia.

Dec. Term, 1831.

POUND-BREACH—JUSTIFICATION.

If cattle be impounded for damage feasant, the badness of the plaintiff's fence is no justification of pound-breach, but may be given in evidence in mitigation of damages.

Trespass and pound-breach {by Edward D. Young against Peter Hoover}.

Mr. Marbury, for defendant, offered evidence of the plaintiffs bad fence in justification.

Mr. Redin, contra, contended that it was no justification of the pound-breach, and cited Bradb. Dis. 287; Cotsworth v. Bettison," 1 Salk. 247; Lindon v. Hooper, Cowp. 414; 1 Rolle, Abr. 674, pls. 1, 5; Co. Lift. 47b; and Lat. Just. 135.

Mr. Marbury, in reply. If the distress be unlawful, the owner may take them out of pound if it be not locked, only latched, so as no violence be used. Com. Dig. tit "Distress," d. 2, p. 500.

THE COURT (nem. con.) said that the want of a sufficient fence was not a justification of breaking the pound, but may be given in evidence in mitigation of damages; the court having before permitted the plaintiff to give evidence of the actual damage done by the cattle in the plaintiff's garden in aggravation of damages.

¹ [Reported by Hon. William, Cranch, Chief Judge.]