

By the Law Inspired

Poetry and the Law in Michigan

By Heather J. E. Simmons

The intersection of law and literature, and more specifically, law and poetry, has long been a fascinating topic. Two famous Michigan cases have inspired poems: *Sherwood v Walker*¹ and *Fisher v Lowe*.²

The name *Sherwood v Walker* should ring a bell; you may remember it from first-year Contracts as the “pregnant cow case.” It concerns the sale of the famous Angus cow, Rose 2d of Aberlone. The opinion discusses the legal doctrine of mutual mistake, holding that a contract based on a common misunderstanding of fact by both parties may be rescinded.³ In 2009, Hillsdale College Professor Paul Moreno wrote a historical treatment of this case in a *Michigan Bar Journal* special supplement for the Michigan Supreme Court Historical Society.⁴ According to Thomas M. Cooley Law School Professor Emeritus Norman Otto Stockmeyer, the case has been immortalized by a historical marker in Plymouth, Michigan;⁵ songs; poems, including limericks; and even a YouTube video.⁶ I consider two of the poems in this article.

Written circa 1950 by Professor Brainerd Currie while he was at UCLA, *Aberlone, Rose of: Being an Entry for an Index* is a title only a law librarian could love. Originally published in pamphlet form by the author, the earliest extant printed version appeared in the *Harvard Law School Record* in 1954.⁷ The definitive version can be found in the *Student Lawyer* in 1965⁸ and includes lavish illustrations. The poem is reprinted in the posthumously published book *Quidsome Balm: The Collected Nonsense of Brainerd Currie*.⁹ In these later versions, the author made some revisions and added 17 footnotes, greatly enhancing the poem.

Aberlone, Rose of: Being an Entry for an Index is a poem of 350 lines in five sections, written in the style of Samuel Taylor

Coleridge’s *Christabel*¹⁰ with a little Ogden Nash added for good measure. Coleridge claimed to have invented a new form of poetry called “accentual verse,” which is based on accents rather than syllables. Though ranging from seven to twelve syllables, each line of the poem has only four accents. Later scholars have disputed Coleridge’s assertion, and claim *Christabel* is written in iambic meter with octosyllabic lines for the most part.¹¹ Compare the first stanzas of each poem:

Christabel

Part I

’Tis the middle of night by the
castle clock
And the owls have awakened the
crowing cock;
Tu-whit!—Tu-whooh!
And hark, again! the crowing cock,
How drowsily it crew.

Aberlone, Rose of: Being an Entry for an Index

I
’Tis the middle of night on the
Greenfield farm
And the creatures are huddled to keep
them from harm.
Ah me!—Ah moo!
Respectively their quidsome balm
How mournfully they chew!

“Quidsome balm” is a poetic way of saying cud; “quid” being another word for a wad

of chewing tobacco or something that is chewed. Later in the poem, Professor Currie discusses the seller:

Hiram Walker (no kin, I’m sure,
To the proximate cause of the
water cure)—

It was in fact that same Hiram Walker, the famous distiller, in his capacity as a gentleman farmer, who owned Rose 2d of Aberlone and was the defendant in this case. While his main farm was located in Walkerville, Ontario, Canada, he also kept livestock in Michigan. The plaintiff, Theodore Sherwood, was a banker. This was a dispute between two wealthy men who practiced husbandry as a hobby.

The closing lines remind us that all law students, at least those in the U.S., must suffer through this case:

For students of law must still atone,
For the shame of Rose of Aberlone.

Another poem inspired by this litigation is *Basic Assumption: A Poem Based on Sherwood v Walker*¹² by Alan E. Garfield of Widener Law School. The rhyme scheme in this 19-line poem is AA A.... Every line ends with a word that rhymes with “cow.” In fact, only one line ends in a word not spelled “-ow” but “-ou.”

Garfield’s *Basic Assumption* is shorter and more accessible than Currie’s Coleridge-inspired verses. It plays on the idiom “to have a cow,” meaning to be angry or upset.

The name *Sherwood v Walker* should ring a bell; you may remember it from first-year Contracts as the “pregnant cow case.”

Basic Assumption: A Poem Based on *Sherwood v Walker*

I'll tell you how a man with a cow had
a cow

because his cow had a cow.

Here's how.

The man with a cow had a cow
because he sold his cow for just chow.

How now?

He sold his cow for just chow
because he didn't know his cow had
a cow.

Had his cow had a cow it would have
been worth a thou
and would not have sold for just chow.

What now?

Well, the buyer said "Wow!"
The seller said "Yeow!"

And the Court finally said "Come now!
How can a cow with a cow worth a thou
sell like a cow for just chow.
Not never, and not now!"

So now you know how a man with a
cow had a cow
because his cow had a cow.

Another Michigan example of litigation-inspired poetry is *Fisher v Lowe*,¹³ where the opinion itself takes the form of a poem. The opinion in *Fisher* is based on the poem *Trees*¹⁴ by Joyce Kilmer. *Trees* begins:

I think that I shall never see
A poem lovely as a tree.

This poem was famously parodied by Ogden Nash in *Song of the Open Road*,¹⁵ where he compares trees to billboards. In its entirety, the opinion in *Fisher v Lowe* reads:

We thought that we would never see
A suit to compensate a tree.
A suit whose claim in tort is prest
Upon a mangled tree's behest;
A tree whose battered trunk was prest
Against a Chevy's crumpled crest;
A tree that faces each new day
With bark and limb in disarray;
A tree that may forever bear
A lasting need for tender care.
Flora lovers though we three,
We must uphold the court's decree.
Affirmed.

Not only does the opinion take the form of a poem, but the West editor played along and wrote a rhyming syllabus and headnotes.¹⁶

A wayward Chevy struck a tree
Whose owner sued defendants three.
He sued car's owner, driver too,
And insurer for what was due
For his oak tree that now may bear
A lasting need for tender care.
The Oakland County Circuit Court,
John N. O'Brien, J., set forth
The judgment that defendants sought
And quickly an appeal was brought.
Court of Appeals, J.H. Gillis, J.,
Gave thought and then had this to say:

- 1) There is no liability
Since No-Fault grants immunity;
- 2) No jurisdiction can be found
Where process service is unsound;
And thus the judgment, as it's termed,
Is due to be, and is,
Affirmed.

Headnote 1:

1. Automobiles

Defendant's Chevy struck a tree—
There was no liability;
The No-Fault Act comes into play
As owner and the driver say;
Barred by the Act's immunity,
No suit in tort will aid the tree;
Although the oak's in disarray,
No court can make defendants pay,
M.C.L.A. § 500.3135.

As a teacher of legal research, this case has long been one of my favorites. The entire thing fits on one page. It illustrates all the different parts of a reported opinion. It provides a lesson in headnotes and key numbers. It also demonstrates the critical concept that the most important information is often located in the footnotes.

One can only imagine the reaction of William Fisher, the plaintiff in *Fisher v Lowe*, when he read his lawsuit reduced to verse by the appellate court. He was not happy with the *Detroit Free Press's* coverage of the case and subsequently sued the newspaper for libel.¹⁷ Sadly, he lost again.

Fisher v Lowe represents but one instance of a jurist unleashing his literary muse. Other opinions written in verse are collected at the University of Washington Gallagher Law Library's website, *Judicial Humor: Parody & Verse in Opinions*.¹⁸ ■



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ENDNOTES

1. *Sherwood v Walker*, 66 Mich 568; 33 NW 919 (1887).
2. *Fisher v Lowe*, 122 Mich App 418; 333 NW2d 67 (1983).
3. *Sherwood*, n 1 *supra* at 578.
4. Moreno, *Sherwood v Walker: Cows and contracts* 66 Mich 568 (1887), 88 Mich B J S2 [January 2009].
5. See Gubbins, *Mutual mistake, the true story of Rose of Aberlone—Otto Stockmeyer reveals the truth of Sherwood v Walker* <<http://www.legalnews.com/ingham/771228>>. All websites cited in this article were accessed July 7, 2013.
6. See Norman Otto Stockmeyer, Professor, Thomas M. Cooley Law School, Presentation at the Thomas Jefferson School of Law 7th International Conference on Contracts, On the Road Again: A Trip Through the Poetry and Checkered Subsequent History of *Sherwood v Walker* (March 3, 2012), available at <<http://elanguard.cali.org/commons/content/road-again-trip-through-poetry-and-checkered-subsequent-history-sherwood-v-walker-text>>; see also Stockmeyer, *To err is human, to moo bovine: The Rose of Aberlone story*, 24 Cooley L R 491 (2007).
7. Harvard Law School Record, March 4, 1954, p 3.
8. Currie, *Rose of Aberlone*, 10 Student Lawyer J 4 (1965).
9. Kosma & Davies, eds, *Quidsome Balm: The Collected Nonsense of Brainerd Currie* (Green Bag Press, 2000).
10. Coleridge, *Christabel* (London: John Murray, 1816).
11. Greene & Cushman, eds, *The Princeton Encyclopedia of Poetry & Poetics* (Princeton University Press, 4th ed, 2012), p 246.
12. Garfield, *Basic assumption: A poem based on Sherwood v Walker*, 57 SMU L R 137 (2004). Reprinted with permission from the Law Review and the Southern Methodist University Dedman School of Law.
13. *Fisher*, n 2 *supra*.
14. Kilmer, *Trees and Other Poems by Joyce Kilmer* (New York: George H Doran Co, 1914).
15. Nash, *Song of the Open Road*, 12 Argosy 63 (July 1951).
16. Reprinted with permission from ThomsonReuters.
17. See *Fisher v Detroit Free Press, Inc*, 158 Mich App 409; 404 NW2d 765 (1987).
18. University of Washington Gallagher Law Library, *Judicial Humor: Parody & Verse in Opinions* <<http://lib.law.washington.edu/ref/judhumor.html#verse>>.