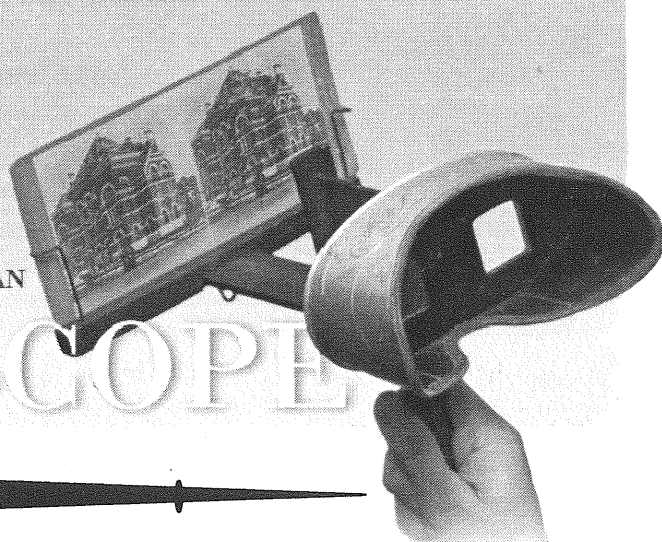


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# STEREOSCOPE



## To Err is Human, To Moo Bovine: The Rose of Aberlone Story

by Norman Otto Stockmeyer

[The following article first appeared in the *Thomas M Cooley Law Review* and was selected for reprinting in the 2009 *Green Bag Almanac and Reader of Exemplary Legal Writing*. It appears here by permission of the author and the *Cooley Law Review*.]

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### Introduction

**M**ore than a century ago, T.C. Sherwood of Plymouth entered into a contract to purchase a cow from Hiram Walker of Detroit. Because it was thought that the cow was barren, it was sold for beef. The price amounted to eighty dollars. Later, when Walker tried to back out of the deal, Sherwood sued him.

The resulting opinion, *Sherwood v. Walker*, 66 Mich. 568, 33 N.W. 919 (1887), handed down by the Supreme Court of Michigan in 1887, became a legal classic and is still studied by law students across the country. Indeed, in 1985 *American Heritage* magazine picked *Sherwood v. Walker*, as one of its "Five Classic Cases" that every law student must know. Additionally, in Sherwood's hometown, the State Bar of Michigan dedicated a Legal Milestone historical marker that, according to the *Michigan Bar Journal* for August 1993, recognizes the case as "one of the most celebrated contracts cases in American history."

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What could possibly be of such lasting importance about a dispute between two nineteenth-century farmers over a barren cow?

For one thing, nothing about the case is quite as it appears. Neither the buyer nor the seller was a farmer; rather, they were prosperous business men who could afford to pursue their dispute throughout Michigan's court system. More importantly, the cow turned out not to be barren after all, a mistake that formed the basis of the court's decision. And although Walker won the appeal, Sherwood ended up with the cow.

Here is the curious story behind the "Case of the Barren Cow," the parties to the lawsuit, its surprising aftermath, and its continuing importance.

## The Lawsuit

The story begins in May of 1886 when Sherwood approached Walker about buying some of his stock of purebred Angus cattle. Sherwood did not find any to his liking on one farm, so Walker suggested that Sherwood look at a few head of cattle on another farm, Walker's Greenfield farm, which was located some eight miles northwest of downtown Detroit in what was then Greenfield Township and now part of Detroit.

Walker told Sherwood that the cows on that farm were probably barren and, therefore, could not breed. Sherwood picked out a cow with the fancy name of "Rose 2d of Aberlone." The parties agreed on a price of 512 cents a pound, and Walker confirmed the sale in writing.

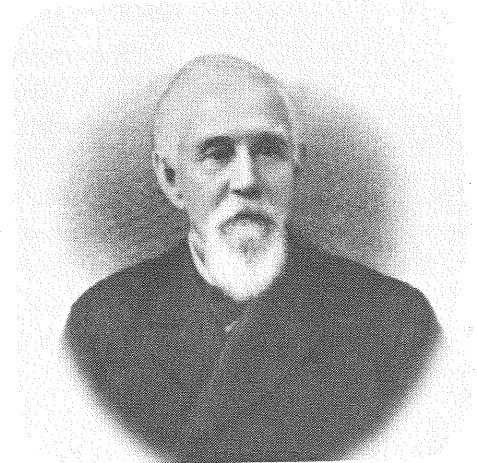
When Sherwood later returned to the Greenfield farm to take delivery of the cow, Walker refused to take Sherwood's money or to deliver the cow. By then, Walker suspected that Rose was expecting a calf, and if so, she was worth as much as \$1,000.

Walker offered Sherwood a different cow instead, "Lucy 8th." Sherwood refused. Instead, in July, Sherwood sued Walker, in Justice of the Peace court, to obtain possession of Rose under a writ of replevin, and he won.

Walker appealed to Wayne County Circuit Court. However, following a full jury trial that December, Sherwood won the case again. Meanwhile, Rose delivered a calf in October, therefore proving that she was on the way to motherhood



*Theodore Clark Sherwood*



*Hiram Walker*

when the contract was made. (The gestation period for a cow is nine months.)

Determined not to lose his cow, Walker appealed again, this time to the Michigan Supreme Court. His lawyers raised twenty-five assignments of error. Sherwood's lawyer responded that because of the contract, title to the cow had passed to Sherwood, and it was Walker's turn to deliver.

The Michigan Supreme Court overruled the lower courts. It held that if both parties believed that the cow was barren and useless for breeding purposes-when, in fact, she was capable of breeding-then the seller could avoid the contract. Why? Because the contract would have then been based on a mutual mistake.

The bronze letters on the Legal Milestone plaque summarize the decision this way: "Because a mutual mistake affecting the substance of the transaction had been made, Hiram Walker had a right to rescind the contract, and keep the cow."

Central to the Supreme Court's decision was its belief that the parties' mistake went to the very essence of the con-

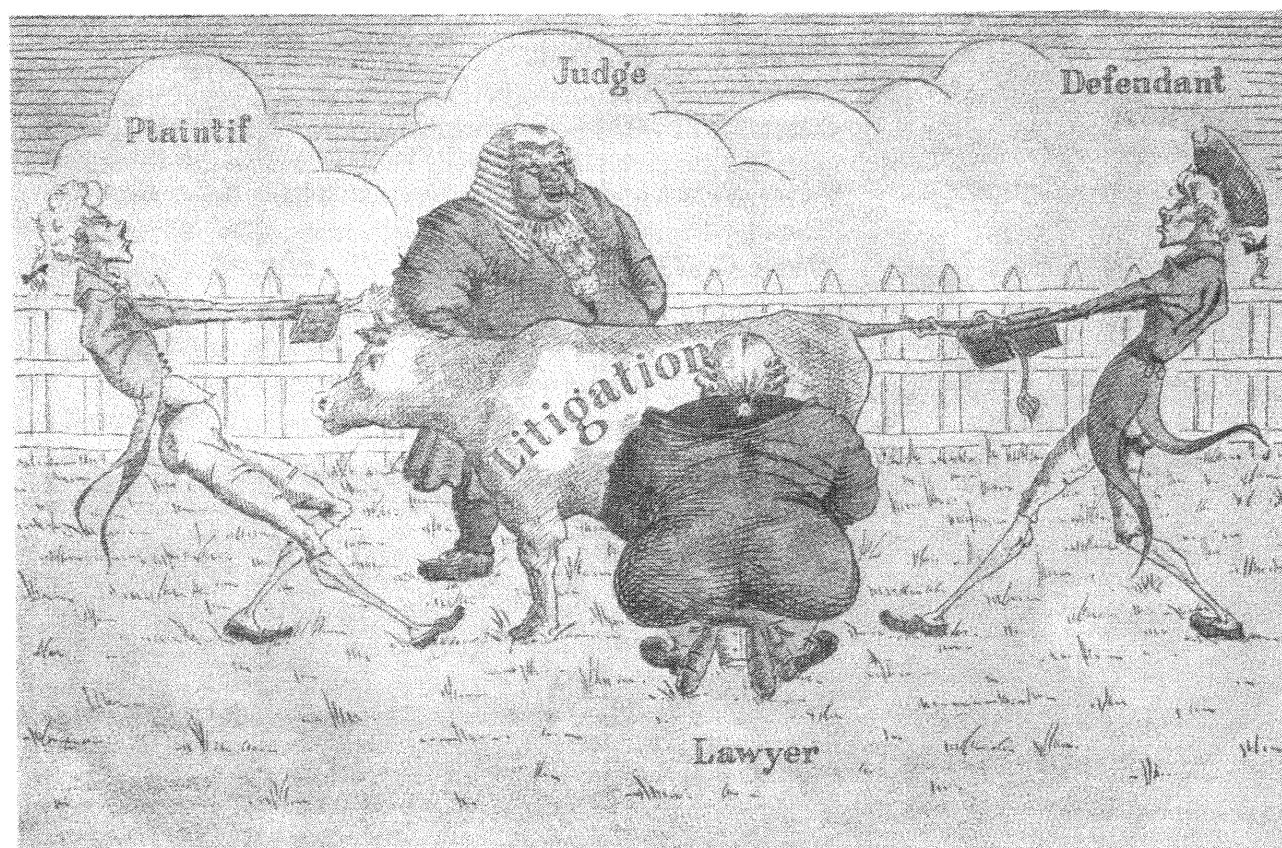
tract, the "root of the matter." To those nineteenth-century jurists, a barren cow was a substantially different creature than a breeding one; as different, the Court said, as "an ox and a cow." Thus, the animal as contracted for, a barren cow, did not exist.

(One may assume that the litigation delighted the lawyers. The case could well have served as the inspiration for "The Lawsuit," a lithograph from the 1800s that depicts a plaintiff and a defendant tugging at opposite ends of a cow while a lawyer milks it.)

## The Parties

### Theodore Clark Sherwood

Theodore Clark Sherwood (1839-1910) was age forty-seven at the time of the controversy. He owned an eighty-acre farm on Ann Arbor Road at Sheldon Road, just south of the village of Plymouth. There he raised the best breeds of livestock; his farm was one of the finest in the county. But Sherwood made his living as a banker. A refined individual and prominent member of the Plymouth com-



*THE LAWSUIT is the classical legal print. First appearing in a medieval wood carving above a fireplace in an old English manor house, it reflects the insults aimed at all lawyers today. While the Plaintiff and Defendant tug at the litigation "cow," the lawyer is milking.*

munity, it has been said that he always appeared in public wearing a tall silk hat.

Sherwood was born in Geneva, New York, in 1839, and he moved with his parents to the Detroit area in 1854. After stints as a schoolteacher in a district near Detroit and as a railroad cashier in Kalamazoo, he began his banking career working for the First National Bank of Battle Creek, thereafter the First National Bank of Plymouth, and the Grand Rapids National Bank. He returned to Plymouth in 1884 to become president of the newly organized Plymouth National Bank.

Two years after the Supreme Court's *Sherwood* decision, Governor Cyrus Luce appointed Sherwood to be Michigan's first State Commissioner of Banking, a position he held from 1889 to 1896. He had the task of organizing the new state banking department and drawing up rules and regulations for banking institutions. According to his first annual report, published in the *New York Times* for January 29, 1890, Commissioner Sherwood had oversight responsibility for 90 state-chartered banks with assets of \$47 million.

As Banking Commissioner Sherwood was credited with helping Michigan's banks through the financial panic of 1893 and the business depression that followed. A contemporary account said, "he is considered by business men of Michigan as one of the ablest financiers and one of the best informed men on financial questions in the state."

After his service as Banking Commissioner, Sherwood was president of Peninsular Savings Bank of Detroit for two years before retiring in 1898. He died October 1, 1910, at the age of seventy-one. He is buried in Plymouth's Riverside Cemetery, located on Plymouth Road west of Haggerty Road. An obituary referred to him as "a man of fine culture and pleasant address" and "the father of the state banking laws."

Coincidentally, the cemetery is directly behind the 35th District Courthouse. District Courts replaced the old Justice of the Peace court system, which Sherwood began his famous lawsuit. A former Contracts student of mine, 35th District Court Judge Ronald Lowe, has installed a display commemorating *Sherwood v. Walker*. It is located on the third floor of the court house and is open to the public.

Sherwood's Plymouth National Bank went through several consolidations before merging with the National Bank of Detroit. It subsequently became First Chicago NBD Corp, and then Bank One, which in 2004 was acquired by JPMorgan Chase. A toy store is now located on the site the bank once occupied at the corner of Main Street and Penniman Street in downtown Plymouth. The State Bar of Michigan's Legal Milestone marker stands across the street in Kellogg Park.

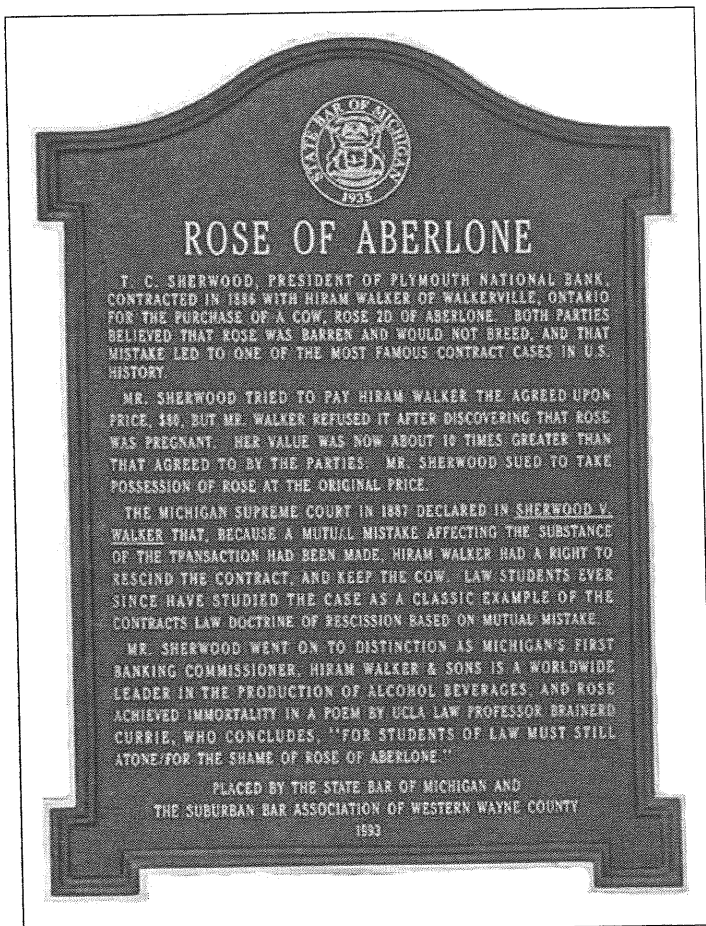
An indication of his banker's frugality may be gleaned from Sherwood's instruction not to water Rose on the morning she originally was to be weighed and handed over. Why pay 5½ cents a pound for water?

### Hiram Walker

Hiram Walker (1816-1898), then age seventy, seemingly was of a more generous nature. Even though Rose was being sold for a small fraction of what he had paid for her, Walker instructed his farm manager to throw in a free halter. (Of course, that was before he discovered that Rose might be worth ten times the sale price.) Walker could well afford to be generous, as he was at the time one of Detroit's most successful industrialists.

(Much of the information that follows comes from a collection of columns from the *Walkerville Times*, republished in 2006 in the second edition of *Best of the Times*.)

Walker was born on the 4th of July, 1816, in East Douglas, Massachusetts, near Boston. At age twenty-two, he



State Bar of Michigan Legal Milestone Plaque

headed west to Detroit to seek his fortune. His first ventures were not successful. His Detroit grocery store failed, and a tannery in which he was a partner burned down. But he had more luck as a grain merchant, buying and selling grain, and distilling some of it into whisky.

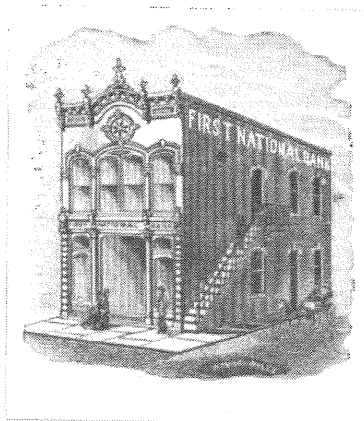
Attracted by lax liquor laws and cheap land across the Detroit River in Ontario, Canada, in 1856 Walker purchased 468 acres of land 1½ miles upstream from Windsor for \$40,000, and he went into the liquor business in a big way. An innovative merchandiser, he was among the first distillers to brand his barrels, the first to sell whisky in individual glass bottles, the first to employ whisky “runners” to promote his product, and the first to advertise with billboards and electric signs.

Walker was an innovator in other ways. He built the town of Walkerville to house his workers. By 1895, it had a population of 600. He used leftover mash to feed herds of cows, which led to a large dairy operation. He constructed Canada’s first concrete road between his distillery and cattle barn. The first electric streetcar in Canada ran from Walkerville to Windsor, powered by current from Walker’s plant. His Walkerville Wagon Works later became Ford of Canada. Indeed, he has been called “the Henry Ford of Canada.”

Hiram Walker’s Canadian whiskey—“lighter than Scotch and smoother than bourbon”—achieved great success. By the time of his dispute with Sherwood, Walker’s “Club Whisky” was being marketed throughout Canada and the United States.

In 1891, a new U.S. law required that product labels identify the country of origin. Walker boldly added “Canadian” to his product’s name. “Canadian Club” eventually became one of the most recognized brand names in the world.

The Canadian Club Brand Center in historic Walkerville (now part of Windsor) offers tours of Hiram Walker & Sons’ magnificent main office building, built in 1894. Located on the banks of



*First National Bank, Plymouth*

the Detroit River, it is five minutes east of the Detroit-Windsor Tunnel on Riverside Drive. Yes, there is a tasting room. Legions of law students have made pilgrimages to the site.

The most imposing residence in Walkerville is Willstead Manor. Noted architect Albert Kahn designed it for Edward Chandler Walker, Hiram’s eldest son. Tours of the thirty-six-room mansion are available.

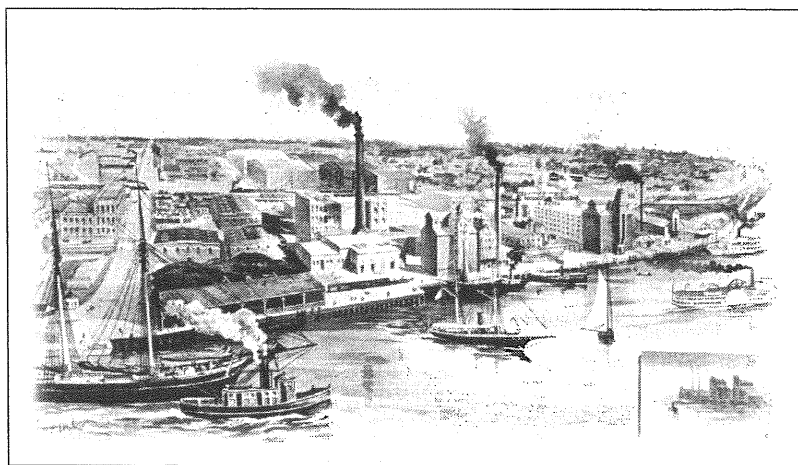
An article in the March 1995 *Michigan Living* magazine suggests that a day tour of Walkerville also might include the Town Hall, designed by Albert Kahn in 1904, and the Crown Inn on Devonshire, the town’s earliest hotel. Do not overlook Kildare House, on the corner of Kildare and Wyandotte, built in 1885 for a Walker employee, which, fittingly, has been turned into a neighborhood pub. A virtual tour of historic Walkerville can be accessed at [www.walkervilletimes.com/virtual-tour/virtual\\_tour.htm](http://www.walkervilletimes.com/virtual-tour/virtual_tour.htm).

Except for a few early years in Walkerville, Hiram Walker continued to live in Detroit. He commuted to work by horse and buggy from his home at the corner of Shelby and Fort Streets, on the site now occupied by the Federal Reserve Bank Building, to a dock off Atwater Street, then by ferry across the mile-wide Detroit River to a dock he built at Walkerville.

Walker never gave up his U.S. citizenship, but considered himself neither a Canadian nor an American, but rather (recalling his date of birth) a “Yankee.”

Hiram Walker died in 1899 at his home in Detroit. He was 84. He is buried in Elmwood Cemetery on Detroit’s near east side. His three surviving sons inherited the business. Hiram Walker & Sons was sold in 1926 for \$14 million, not a bad return on Hiram’s initial \$40,000 investment.

A glimpse into why a man of such means would take a fight over a single cow all the way to Michigan’s highest court is provided by this reflection at his seventy-



*Walkerville 1885, painted from a hot air balloon  
—Hiram Walker & Sons archive*

fourth birthday in 1890: “The young men of the present do not know the value of money. I had hardly the time, as a young man, to go fishing, for I was always working. My habit, in my younger days, of saving the pennies, has placed me where I am today.”

Walker could pinch pennies until they squealed—or in Rose’s case, moored.

### Rose

Rose (1881-?) was not what one would think from reading the opinion in *Sherwood v. Walker*. First, her name was not Rose 2d of Aberlone. There was little reason to think that she was barren. And despite the ruling in favor of Walker, she ended up in Sherwood’s possession. (All of this has been uncovered by the careful detective work of Texas Wesleyan University law professor Franklin G. Snyder, who has pored over cattle registry records of the period.)

She is called Rose 2d of Aberlone in the contract and in court papers, but her name was Rose 2d of *Aberlour*, not Aberlone. She was foaled at the Mains of Aberlour, near the River Spey, in Scotland. The purity of the river’s water, and the proximity to grain, led the distilling industry to flourish in that region. More than half of Scotland’s whisky comes from within twenty miles of Aberlour.

Rose was born on January 8, 1881, and subsequently registered with the American Angus breeders as number

2782. Her sire was Souter Johnny, named for a character in Burns’s “Tam O’Shanter,” and her dam was Delilah of Burnside.

Although no photo of Rose is known to exist, an engraving was made of her sister, Elaine of Aberlour. Rose herself became a “cover girl,” being depicted on the cover of the *Student Lawyer Journal* for April 1965, wearing the halter.

We do not know when or where Hiram Walker purchased Rose, but given his interest in whisky distilling and breeding Angus cattle, it is entirely possible that he bought her while visiting Scotland. Records show that Walker paid \$850 for Rose, so parting with her for \$80 can only be explained by his belief that she was unable to breed.

But was that belief justified? Here is perhaps the biggest surprise: Rose had given birth to a calf in 1883, registered to Walker as the breeder. She did not calve in 1884 or 1885, but she had proven her breeding potential.

Moreover, the court record lists four other Angus cattle for sale at the Greenfield farm in the spring of 1886. One, Waterside Standard, was a bull. Clearly, Rose’s delicate condition that May was not wholly unexplainable.

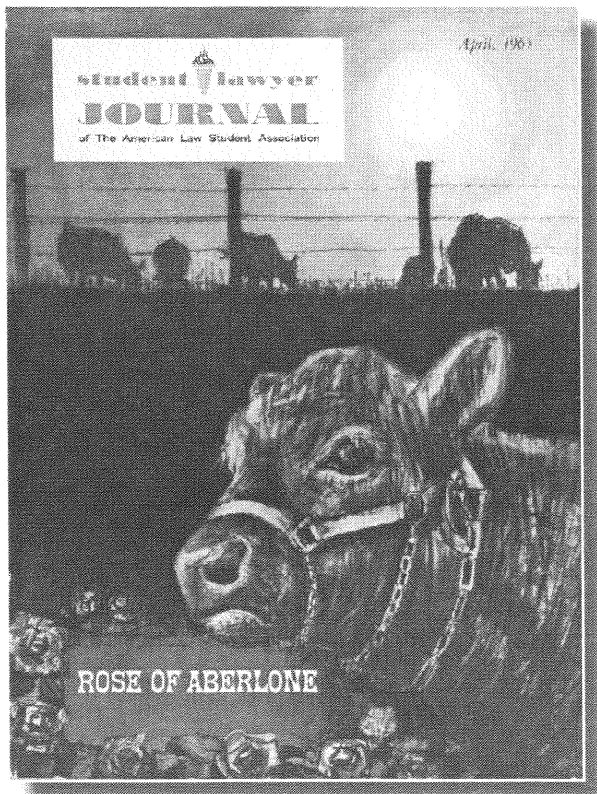
### The Aftermath

Here’s another surprising fact: after the appeal was decided, on remand a circuit court jury again sided with Sherwood. Rose’s subsequent offspring list “T.C. Sherwood” as breeder. So despite having prevailed on appeal, Walker ultimately lost possession of Rose.

At the unveiling of the Legal Milestone, one speaker was quoted in the *Plymouth Observer* as saying, “Plymouth never got to be the hometown of Rose of Aberlone, but (the city) got the plaque—What a perfect way to make amends.” As we now know, however, Rose did get to graze on Sherwood’s farm after all.

(Writing in the June 1998 *Michigan Bar Journal*, another former student, Michael Ellis, reported that the unveiling was accompanied by presentations pregnant with puns. “People were ‘udderly’ pleased, not ‘cowed’ by the experience, and ‘milked’ it for all it was worth.” But let us moove on before the editors start beefing and apply a cleaver to this paragraph.)

Being the most sympathetic character in the case, Rose has become much celebrated in verse. The most widely published poem is that of UCLA law professor Brainerd Currie, which first appeared in the *Harvard Law School Record* in 1954 and has been reprinted several times in other legal publications. The 350-line epic concludes with a scene that generations of law students can recall—perhaps more fondly



now than at the time:

Tis the middle of the night before the exam,  
 And there's nothing to eat but a cold bit of ham . . .  
 Mark how the eager students cram.  
 A dismal specter haunts this wake –  
 The law of mutual mistake;  
 And even the reluctant drone  
 Must cope with Rose of Aberlone.  
 She rules the cases, she stalks the page  
 Even in this atomic age . . .  
 In many a hypothetical  
 With characters alphabetical,  
 In many a subtle and sly disguise  
 There lurks the ghost of her sad brown eyes.  
 That she will turn up in some set of facts is  
 Almost as certain as death and taxes:  
 For students of law must still atone  
 For the shame of Rose of Aberlone.

(*Harvard Law School Record*, Thursday, March 4, 1954)

*Sherwood v. Walker* became “the single most loved law case at Harvard” due to Currie’s poem and the delight that Professor John P. Dawson, a native Detroit, took in teaching the case to generations of Harvard law students. But law students at the University of Iowa (who might know a thing or two about cows) were not impressed with Currie’s poem, according to this response:

*My Wild Iowa Rose*

(Anonymous)

Unlike another, my rhyme is terse:  
 Your name, Oh Rose is under curse.  
 I can think of nothing worse  
 Than to suffer through the Harvard verse . . .  
 (*Journal of Legal Education*, 1982)

Other tributes to Rose’s fertility include these two limericks, the first by Indiana University law professor Douglass G. Boshkoff, the other by an unknown author:

We’ve all heard the story of Rose  
 Whose failure to bear was a pose.

“For the stew pot, I’m not,”

Said Rose, like a shot.  
 And she wasn’t, as everyone knows.  
 (*Northwestern University Law Review*, 1996)

- and -

For this beef-cow who carried a calf,  
 The 80-buck price was a gaffe.  
 The injustice moves us  
 And so, it behooves us

To say: Here’s a cow-and-a-half.

Then there are these lyrics, by Professor Snyder, to the tune of Bob Dylan’s *Just Like a Woman*:

#### JUST LIKE A HEIFER

Now Sherwood needed a cow.  
 It’s not clear if for breeding, or for chow.  
 He went to Walker’s farm,  
 Thought there would be no harm -  
 But there he fell under Rose’s fatal charm  
 And he knew -  
 She’s the one.

#### CHORUS

She *moos*, just like a heifer  
 (Yes she does)  
 And she *chews* grass just like a heifer  
 (Yes she does)  
 And she *woos* bulls just like a heifer -  
 But she’s priced just like a side of beef.

(*Contracts Prof Blog*, May 15, 2006)

My favorite tribute to the case, which summarizes it fairly well in far fewer words, was handed to me after class one day by a student, James Marchant:

To err is human,  
 To moo, bovine.

### Continuing Importance

*Sherwood v. Walker* has been cited as legal authority in more than fifty court decisions, from New York to California. Judges have called it “celebrated,” “classic,” “leading,” and “seminal,” as well as a “paradigm case” “revered by teachers of contract law.”

James J. White, a distinguished professor of Contracts at the University of Michigan, recalled recently in exquisite de-

tail how his Contracts professor dealt with the “barren cow” case nearly fifty years earlier:

I can still remember the Monday morning when we took up the doctrine of mistake in Contracts class. After we had the normal Socratic discourse about the cases, Bob [U-M law professor Robert J. Harris] set out his theory about how the cases should be put together . . . . Being good obsessive, compulsive law students who yearn for certainty, we eagerly wrote down his interpretation of these cases. . . .

On Tuesday Bob commenced the class by saying, . . . . “Yesterday I told you that the cow case was correctly decided; now I think it was not. Today I believe the buyer not the seller should have won.” You could smell the hostility in the air that day. If any of us had had a gun, we would have killed him. Our learning—so carefully put down on Monday—was worthless and, worse, we feared Bob might disavow Tuesday’s analysis on Wednesday. (*Law Quadrangle Notes*, Fall 2005.)

Eventually White and his classmates came to love and respect their Contracts professor for showing them “the uncertainty and ambiguity inherent in contract law.” In that sense, *Sherwood v. Walker*, whether correctly decided or not, remains a great teaching vehicle.

Last fall I learned from a former Contracts student, Stephen M. Rice, that he had entered upon a career at Liberty University School of Law teaching Contracts. Perhaps his classroom discussion of *Sherwood v. Walker* will be influenced by recollections of our class back in 1992.

As suggested by Professor Harris’s change of mind, respect for the decision in Rose’s case has not been universal. First, there was a dissent in the case itself. Justice Thomas R. Sherwood (another coincidence?) agreed with the majority opinion on mutual mistake as a basis for rescission. But he doubted that the buyer shared the seller’s belief in Rose’s infertility. In the dissent’s view, the buyer thought that Rose “could be made to breed” and that “there is no pretense that (Sherwood) bought the cow for beef.”

University of Michigan law professor George Palmer in his 1962 book, *Mistake and Unjust Enrichment*, sided with the dissent: “I find it most difficult to accept the statement of the majority of the court that the buyer, Sherwood, shared the mistake . . . . The whole sense of the matter suggested that . . . he thought there was a chance that Rose 2d would breed.”

Today, students often harbor the same suspicions. One Contracts student, Donna Shackelford, was so worked up over the decision that she wrote me a long note saying that the author of the majority opinion, Justice Allen B. Morse,

must never have owned cattle. “All breeders know that there is always a chance that if a cow is left with a bull (as Rose was) it could produce a calf . . . . Plaintiff could not have wanted the cow for meat . . . because you don’t buy a cow for meat you buy a steer. And you certainly don’t spend your time shopping around in herds to pick one out—the first plump one will do.”

(Ah, the “plumpness” factor. Did Sherwood pick Rose over the other cows on the Greenfield farm because she was showing a little something extra? And if so, was Sherwood thinking “beef on the hoof” or “baby on board?”)

According to the Michigan Supreme Court Historical Society’s website, [www.micourthistory.org/resources](http://www.micourthistory.org/resources), Justice Morse attended Michigan Agricultural College, so he would have known something about cows. But Justice Sherwood was actually raised on a farm. In another of the case’s coincidences, after his service on the court Justice Morse was named Ambassador to Scotland, Rose’s birthplace.

A more veiled criticism of *Sherwood v. Walker* came from the distinguished Federal Judge Irving R. Kaufman. He declared in the 1969 case of *H. Kook & Co. v. Scheinman, Hochstin & Trotta*, that the opinion brought “a flood of nostalgia” but did not “furnish a flood of light” on the case before him.

### What about the *Lenawee* Case?

At one point the Michigan Supreme Court, sharing Judge Kaufman’s difficulty in applying *Sherwood v. Walker*, tried to disown Rose. The 1982 case was *Lenawee County Board of Health v. Messerly*, 417 Mich. 17, 331 N.W.2d 203 (1982). It involved the sale of a three-unit apartment building located on a 600-square-foot tract of land for \$25,500. Unknown to either party, a previous owner had installed the septic tank without a permit.

Within a week of the purchase, the buyers (Mr. and Mrs. Pickles) discovered raw sewage seeping out of the ground. The lot size was too small to support a legal septic system, rendering the property uninhabitable and virtually without value. The buyers sought to rescind their purchase based on mutual mistake. The issue was whether the parties’ mistake went to the essence of the property—in one sense it surely did—or merely its value.

The learned justice who wrote the Supreme Court’s decision, the Honorable James L. Ryan, expressed the view that *Sherwood v. Walker*’s essence/value distinction was “inexact and confusing” and “an impediment to a clear and helpful analysis.” Its holding was therefore to be limited to its facts (and thus of no legal precedent in non-cow cases).

But wait! What tipped the scales in *Lenawee* was an “as is” clause in the contract. Legally, the court said, that placed





*The Messerly Property*

the risk of any unknown defect on the buyers. So, despite the mutual mistake, the buyers could not back out.

When *Lenawee* came out, some scholars thought Rose's days were numbered. Law professor Michelle Oberman at Santa Clara University, writing in the *Arizona Law Review* in 2005, pronounced *Sherwood* to be essentially "dead law." And a limerick celebrating *Lenawee* by Valparaiso University law professor Jeremy Telman began making the rounds:

The sewage leak, that was no trickle.  
Now the property ain't worth a nickel.  
When "as is" you take,  
You eat your mistake,  
So *bon appetite*, Mr. Pickles.  
(*Contracts Prof Blog*, November 13, 2006)

Yet, in the twenty-five years since it was decided, *Lenawee* has failed to supplant *Sherwood v. Walker*. In the 2008 edition of Professor Dawson's popular law school casebook (carried on by others since his death in 1985), *Sherwood* is still reprinted in full, replete with a photo of Hiram Walker and an unidentified Angus cow. A relatively brief comment on *Lenawee* follows it.

I have examined 28 Contracts casebooks currently available. Thirteen reprint *Sherwood* and another 10 mention it, for a total of 23 (82%). Eleven reprint *Lenawee* and seven more mention it, for a total of 18 (64%). So, Rose holds the lead in law-school casebook coverage. (Six casebooks reprint both cases. Only two ignore both.)

The monumental encyclopedia of contract law *Williston on Contracts* continues to pay tribute to Rose. Volume twenty-seven of the fourth edition, which was published in 2003, devotes fully five pages to a discussion of *Sherwood v. Walker*. *Lenawee* rates a single citation—under the heading "Septic and sewer" cases.

Perhaps most telling of all, in a 2006 mutual-mistake case, *Ford Motor Co. v. Woodhaven*, a unanimous Michigan Supreme Court discussed *Sherwood* at length, ignored *Lenawee* completely, and announced that Rose's case was still viable: "Our review of our precedents involving the law of mistake indicates that the peculiar and appropriate meaning that the term 'mutual mistake' has acquired in our law has not changed since *Sherwood*."

So it has come to pass that the septic-tank case, rather than the barren-cow case, has become limited to its facts. And thank goodness. What law professor would not prefer to spend class-time discussing a frolicsome cow, rather than a leaking sewage system?

In addition to Rose's case, today's Contracts professors have several other mistaken-animal cases to choose from. There is the 1951 New York case, *Backus v. MacLaury*, involving a bull costing \$5,000 that turned out to be sterile. In a 1976 Kentucky case, *Keck v. Wachter*, a buyer who paid \$117,000 for a horse, which turned out to be "slipped" and worth just \$40,000, obtained rescission of the sale. A German court in 2006 ordered Viagra to be administered to a stallion after his new owner claimed he was impotent and refused to pay the full contract price. It worked, and the court ordered the buyer to pay up.

But those cases are merely variations on Rose's theme of shame and redemption.

## Conclusion

Several erroneous beliefs and eerie coincidences surround this historic case. Nevertheless, it remains one of the great contributions to contracts jurisprudence and law-school lore.

Michigan Governor John Engler, another former student, issued a proclamation of tribute to Rose's case in 1993. In his proclamation, the Governor rightly asserted that the case's significance transcends the misguided individuals involved in the dispute: "The details of this case are less important than the ruling, which remains as sound today as it was over a century ago. The principals are gone but the principle will never die."

*Norman Otto Stockmeyer is an emeritus professor at Thomas M. Cooley Law School. He is a graduate of Oberlin College and the University of Michigan Law School. This is his fourth article for the Thomas M. Cooley Law Review. Readers seeking more complete source citations may email the author at stockmen@cooley.edu. The author thanks Texas Wesleyan University law professor Franklin G. Snyder for sharing his research into cattle registry records relating to Rose and her offspring.*



# The Historical Society for the United States District Court for the Western District of Michigan

Dues Notice (2009 – 2010)

TO: Membership Selection

## Annual Dues

Student (\$15) .....\$15 x \_\_\_ = \$ \_\_\_\_\_  
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 Subtotal = \$ \_\_\_\_\_  
 FBA Member Discount (15%) ..... - \$ \_\_\_\_\_

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Please make checks payable to:

*The Historical Society for the USDC, WD of MI*

and return to

151 S. Rose Street, Suite 800, Comerica Building, Kalamazoo, Michigan 49007.

Contributions are tax deductible within the limits of the law.

NOTE: For FBA members, these dues are included in their yearly FBA membership dues.

## Video of Michigan Supreme Court Oral Arguments, Administrative Conferences and Hearings Available Online

### New service is collaboration between Michigan Supreme Court and State Bar of Michigan

**V**ideo of Michigan Supreme Court oral arguments, administrative conferences and administrative hearings will be going online, thanks to a collaboration between the Court and the State Bar of Michigan.

Video will be recorded at the Hall of Justice, then posted on the State Bar's "Virtual Court" web page at <http://www.michbar.org/courts/virtualcourt.cfm> within 24 to 48 hours after the hearing or conference. Viewers can watch selected video and view related agendas or press releases at the same time.

The first videos, including a welcome message from Chief Justice Marilyn Kelly, have been posted. Also available for viewing is video coverage of the Court's July 15 administrative conference, prefaced by an introduction from the chief justice.

Kelly said the new service is part of the Court's commitment to openness and transparency. "While our hearings and administrative conferences are in public, not everyone can make the trip to Lansing to attend," she said. "In a digital age, the public increasingly expects not only physical access, but also virtual access, to government. With this expansion of the Court's online presence, viewers will need only an Internet connection to watch the Court at work."

State Bar President Edward H. Pappas said the online video "will be a valuable tool for attorneys, particularly those who practice before the appellate courts. It's enormously helpful to see others arguing their cases, for example, when you are preparing to go before the Supreme Court yourself.

"But more than that, we believe this new service will give the public an additional window into the workings of the Supreme Court, not only as to the cases the Court decides, but also as to the role it plays in administration of state courts," Pappas added. "We'll continue to develop it and add improvements based on the feedback we get from viewers."

Kelly noted that Michigan Government Television will continue to broadcast Supreme Court proceedings, as MGTV has done since 1996. "We will still have television coverage, in many cases live coverage, of the Court, thanks to our valued partner MGTV," she said. "Online video is simply another way of making the Court more accessible."

MGTV's broadcast schedule is available at <http://www.mgtv.org/>.

### Western District Historical Society Mission

The Historical Society was created to research, collect, and preserve the history of the lawyers, judges, and cases that have comprised the federal court community in Western Michigan and the Upper Peninsula, and to share this information with the public in an effort to promote a better understanding of the region, the court, and the rule of law.