

# THE PALIMPSEST

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## The Jones County Calf Case

Bob Johnson, a reputable and well-to-do farmer, lived in Jones County. He had come from Ohio, bought a farm, and built a new house. No one who knew him in the early seventies would have suspected that he would become involved in one of the most noted lawsuits in the legal history of Iowa. Indeed, it is probable that he himself never anticipated such a contingency. But "it is the little foxes that eat the grapes", and not infrequently little controversies lead to extensive litigation, impoverish the participants, and multiply court costs.

In 1874 Johnson sold four calves for twenty-four dollars. A dispute arose. Litigation began and continued for more than twenty years. The famous "Jones County Calf Case", commonly spoken of in the singular, really involved three separate forms of action — a note case, an indictment for larceny, and an action for malicious prosecution. The latter, a

damage suit, was the one which became notorious for the length of time it remained on the docket of various Iowa courts. This case was tried repeatedly in five counties of the State, argued by more than a score of lawyers, and heard by over a hundred jurors. Four times it was appealed to the Supreme Court. Court costs mounted to seventy-five thousand dollars. Johnson, a prosperous middle aged man in 1874, was old and many times insolvent before the case was settled.

Bob Johnson and S. D. Potter, who had been boyhood friends in Ohio, came west and settled in the same neighborhood in Jones County. Later Potter moved to Greene County. In June, 1874, he returned to Jones County to buy some calves, and stopped over night at the Johnson home. He told Bob of his mission, saying that he was going on to Big Rock "to pick up some calves", that he would return in a few days, and asked his friend to buy a few calves for him in the meantime.

The next day Johnson and his brother Newt went to the town of Olin to purchase some hardware for the new house. While there he asked the proprietor of the hardware store if he knew of any one who had calves to sell, whereupon a stranger who was sitting in the store came forward and said that he had four calves down on the commons by the river which he would be glad to sell. Johnson replied that he was going on down to Stanwood anyway and that he would go past the commons and look at the calves.

“By the way, what is your name?” he inquired. The stranger replied, “My name is John Smith. I am Clem Lane’s son-in-law.” With this brief introduction the three men — Bob and Newt Johnson and Smith — mounted their horses and went to look at the calves.

When they arrived at the commons, they found three dark-colored calves that Smith said were his, but they could not find the fourth one. Smith assured Johnson, however, that the fourth calf was as good as the other three, whereupon Johnson told him to put all four in Len Hines’s pasture and to call at the Johnson home for the money. Smith said that he had been sued and that he needed the money that day, so upon further consideration Johnson paid for the calves and left Smith to deliver them.

On the following day Johnson went to Hines’s pasture to get the calves. There were several cattle in the pasture but among them Johnson recognized the three Smith calves, and with them was another — also a dark-colored calf — which answered the description Smith had given him. So he drove the four calves to a place where, in accordance with a previous agreement, he was to meet Potter. There he found Pete Onstott. Pete was a cattle man, too and a keen observer. According to his testimony in the courts, Potter had four light-colored calves in his possession before Johnson arrived, whereas the calves which Johnson brought were dark. Upon

Johnson's arrival the calves were all put in a single herd and the three men parted — Potter taking the calves with him to Greene County and the other two men returning home.

About this time John Foreman lost four light-colored calves. He searched the neighborhood but could not find them. Finally he heard that Potter had been in Jones County buying calves, so he went to Greene County and discovered his calves in Potter's herd. Potter claimed that he bought them of Bob Johnson, whereupon Potter and Foreman returned to Jones County to see Johnson.

Bob happened to be at Mechanicsville, where Charles E. Wheeler, a young attorney just out of the law school at Iowa City, had entered the practice of law. Being somewhat perplexed over the calf problem, the men went to Wheeler for advice.

"Charley," spoke Johnson, "John Foreman here lost four calves, and he has gone out to Greene County and found them in Potter's herd, and Potter says he got them of me. I got them of Clem Lane's son-in-law, named Smith. Now, what am I going to do about it?" After thinking a moment the young attorney said, "Well, Bob, if you have handled the Foreman calves, why, you have got to pay for them, and then you go and jump on Clem Lane's son-in-law." Bob said that he did not have the money with him. He explained to Potter and Foreman that he had purchased the calves of Smith, supposing them to be his and that if he had been deceived in this he

would give his note for the value of the calves and settle with Smith. This was agreed to and Johnson gave his note to Foreman for twenty-four dollars. The three men went across the street, had a drink, shook hands, and parted.

Johnson then went to the office of a justice of the peace, filed an information against John Smith, got a warrant and a constable, and started out to arrest Smith. But when they inquired of Clem Lane about his son-in-law, much to their surprise he said, "I never had a son-in-law named Smith." Although Bob Johnson hunted for twenty years, he never could find John Smith, the son-in-law of Clem Lane, nor the man from whom he bought the four dark-colored calves.

Soon after giving his note to Foreman, Johnson learned that the Foreman calves found in Potter's herd were light-colored. Thereupon he and his brother Newt went to Greene County to ferret out the mistake. Potter pointed out the Foreman calves — four light-colored animals. "Why, Potter," said Johnson, "I never sold you any light colored calves." But Potter maintained that he had. With an oath Bob jumped from his horse and made for Potter, but Newt stopped the fight and the two men returned home.

Realizing that he had not handled the Foreman calves, Johnson concluded that Potter had stolen them and tried to place the blame on him. At all events he had been induced to give a note for which

he had received nothing. Accordingly, he refused to pay the note and defended himself on the ground that the instrument had been given without consideration. In the meantime the note had passed into the hands of a bank, which held it as an innocent purchaser. The case was tried "about every full of the moon for several years", but finally Johnson was beaten and ordered to pay the note and court costs which amounted in an aggregate to about fourteen hundred dollars.

About this time the Iowa Branch of the Northern Missouri Anti-Horse Thief Association was organized in Jones County. Some of the members of this organization advanced the idea that Bob Johnson had stolen the Foreman calves — and the fact that the alleged John Smith never could be found tended to substantiate this view. Foreman and Potter became members of the Anti-Horse Thief Association and through their efforts Johnson was indicted for the larceny of the Foreman calves.

With the beginning of this suit, Johnson obtained the legal services of Colonel Isaac M. Preston, an experienced member of the Linn county bar, to aid Charles E. Wheeler in his defense. "Preston was the kind of a lawyer that is seen only on the frontier — the Abe Lincoln type. He was six feet two, wore a silk hat about his everyday business, a long-tailed coat with brass buttons and diamonds. He had no education, but he was the best jury lawyer, the most accomplished advocate that you most ever saw."

Attorney Wheeler, now long since retired and living in Cedar Rapids, says, "Johnson retained me to hold the colonel's hat while the colonel tried the case. I helped Bob hustle the testimony—I had nothing else to do."

The larceny suit was started in Jones County. Attorneys for the defense at once moved to quash the indictment because of an error in drawing and impaneling the grand jury. While this motion was pending Johnson's house burned. At first, members of the Anti-Horse Thief Association were accused of burning it, but in the end spontaneous combustion was given as the cause. A little later, Johnson found a rope on his horse block with a hangman's knot in it, and attached to the rope was a note saying, "We advise you to appear and be tried under the indictment with the defects if any exist, or take the lamented Greeley's advice and go west, or take this." Shortly afterward his barn burned, also on account of spontaneous combustion! The whole neighborhood was aroused. The feud interfered with school. Children of the prosecutors would blat like calves at the Johnson children, and men carried guns for each other. Everybody took sides, and the concensus of opinion seemed to be that Johnson was a thief. Even his lawyers suggested that he forfeit his bond and leave the country.

But Johnson was a fearless man. He succeeded in having the indictment quashed, but another was returned. A change of venue was taken to Cedar

County. There he was tried but the jury could not agree upon a verdict. At the second trial he was acquitted.

After Johnson had paid his note and proved that he had not stolen the calves, he sued his adversaries for ten thousand dollars damages on the ground of malicious prosecution. He was determined to "get his character back". It was this suit, known in court records as Robert Johnson *vs.* E. V. Miller, *et al.*, which was destined to make the Jones County Calf Case famous. Bob Johnson was the plaintiff and seven of his neighbors — E. V. Miller, David Fall, George W. Miller, Abe Miller, John Foreman, S. D. Potter, and Herman Keller — who had been the most active members of the Anti-Horse Thief Association were made defendants.

Fearing that they would not obtain justice in their home county, the defendants secured a change of venue to Linn County, and from there to Benton County. On the first trial the jury disagreed, but the second time the case was tried Johnson received a verdict awarding him three thousand dollars damages, only to have it set aside by the court. A change of venue was then taken to Clinton County, where Johnson was given a verdict for seven thousand dollars damages. Again the verdict was set aside and the case was taken to Black Hawk County. At the first trial in Waterloo, Johnson obtained a verdict assessing damages at five thousand dollars. From this decision the defendants

appealed to the Supreme Court of Iowa. Horace Boies, one of the leading attorneys in northeastern Iowa, who later became Governor of the State, argued the case before that tribunal and secured a reversal. A second trial held in Black Hawk County resulted in a verdict in favor of Johnson with six thousand dollars damages. Again the defendants appealed and again the Supreme Court reversed the decision. In the third trial at Waterloo, Johnson received a verdict for one thousand dollars against six of the defendants, the court having instructed the jury to return a verdict in favor of Herman Keller, whose connection with the Anti-Horse Thief Association was not proved. The six remaining defendants filed a motion to arrest judgment and another for a verdict in favor of the defendants on the ground that the findings were in conflict with the general verdict. Both motions were overruled and judgment was rendered against the six defendants. This case was appealed to the Supreme Court and affirmed. Thus Bob Johnson, old and impoverished, was at last exonerated.

But the court costs remained to be paid and another controversy arose. The six defendants contended that they should not be required to pay more than six-sevenths of the entire amount, and that Keller, the acquitted defendant, should pay his share of the cost of the defense. This question likewise went to the Supreme Court, where, on December 20, 1894, a little more than twenty years

after the litigation started, the six defendants were directed to pay the entire cost.

Throughout the long legal battle Bob Johnson stoutly maintained that he was innocent. "I want my character back", was his insistent reply to every suggestion that the case be dropped. When he was indicted for larceny, Colonel Preston proposed that he "jump his bond" as the simplest way out of the whole difficulty. "I shall never forget", said Charles E. Wheeler years afterward, "what old Bob said and did, and how he looked when I told him. We were walking side by side. Bob stopped, and I stopped. He took me by the shoulder and turned me facing him. He looked to me as high as the second joint of a liberty pole. He looked like an infuriated lion, and he says, 'Boy, I never stole the John Foreman calves, and by God, I will go to the penitentiary off my door step before I will ever jump my bond!' And from that day, during all the years that followed, and up to this day, I have never doubted that he told me the truth."

No, Bob would not jump his bond. Instead he started the malicious prosecution case. Time and again he won that suit, only to have the verdict set aside. Disappointed but determined, he would go home "and work like a nigger to get ready to try his Jones County Calf Case again." Having raised a little money he and his attorneys would appear in court, win another verdict, perhaps get a judgment, "and then the enemy would take it to the Supreme

Court, and the Supreme Court would pick it to pieces, and reverse it; but not so but what there was enough left of the case to try again." There were always a few remnants around somewhere that could be pieced together for a new suit at the next term of court.

At the last trial in Waterloo, Horace Boies handled the defense in a masterly way and closed with a spirited plea to the jury. Charley Wheeler, who had stood by his client through every adversity, was fairly chilled with the force of that argument. The time had come for him to speak and he was cold. Then Bob Johnson leaned over and said, "Charley, tell them I don't care whether they give me a cent or a million dollars. What I want is my character back!" What Wheeler told that jury is not recorded, but in spite of the logic and eloquence of Horace Boies he convinced those twelve men that Bob Johnson had been the victim of malicious prosecution.

"I know I was right in this case", declared Johnson when the final verdict had been rendered. "I do not regret the tiresome litigation. My honor and integrity were questioned. It pays to fight under such circumstances. I lost my farm of one hundred and sixty acres and all my property but I feel well repaid. My wife, my children and my friends know now I was innocent and I can look any man in the face without a blush."

Bob Johnson was middle aged when John Fore-

man lost his light-colored calves, and after the last lawsuit was closed he was bowed beneath the weight of nearly three score years. But despite his age and his many defeats he always "came back". When the case was finally settled he returned to Anamosa where he had been indicted so many years before. There he remained for more than a decade. As his former adversaries died, one after another, the "old lion of the calf case" insisted that they had gone to hell, but after they were all dead he changed his mind. "There wasn't no necessity for sending them to hell", he said. "Look what I done to them."

To Charley Wheeler, his faithful attorney, Johnson gave in settlement for fees and loans a spavined stallion and one hundred and thirty dollars in cash with a promise to pay the balance when he could. But Wheeler refused to accept any more, and so the two men "shook hands and looked the other way and Bob went back to Anamosa."

Though many of his debts were no longer valid, he paid every dollar that he owed and in the end he once more owned his own home and had a little money besides. So successful had he been in "getting his character back" that his fellow townsmen twice elected him mayor of Anamosa.

To this day nobody knows who stole John Foreman's calves.

J. A. SWISHER