

## Rose Redux

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JOHN MAYNARD KEYNES SAID that “practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist.” In the case of lawyers, who were all once law students, we are frequently not slaves, but willing acolytes, of those who taught us long ago. It is particularly fitting that the *Green Bag* reprints Brainerd Currie’s humorous and instructive poem on the travails and triumphs of Rose, the proud mother at the heart of *Sherwood v. Walker*, 66 Mich. 568, 33 N.W. 919 (1887). I did not have a course with Professor Currie, but I learned well the legend of Rose and have

done my part to pass it on to the next generation of lawyers. I had occasion to advert to it in *United States v. \$277,000*, 69 F. 3d 1491, 1496 n.2 (9th Cir. 1995), adding my small bit<sup>1</sup> to the scattered cases that have paid tribute to it,<sup>2</sup> and providing the impetus for yet further citations. See *United States v. \$515,060.42*, \_\_\_ F.3d \_\_\_ (6th Cir. 1998).

In addition to the poem’s direct influence, both in reminding us of the human (or bovine) side of the law, and in teaching a key legal principle, the poem’s clever word play even reached byword status in certain subcultures. While thinking about the case, I spoke to one of my college roommates, now a

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- 1 It is a particular habit of University of Chicago graduates to nurture the memory of obscure but nonetheless delightful bits of wisdom through occasional citation. We judges are no exception. For example, in addition to *Rose*, we have attempted to keep alive Baron Rolfe’s immortal idea that gross negligence is merely simple negligence “with the addition of a vituperative epithet,” a line we cribbed from the torts book used by Professor Kalven. See *Wilson v. Brett*, 11 M. & W. 113, 116, 152 Eng. Rep. 737 (Ex. 1843), quoted in Gregory and Kalven, *CASES AND MATERIALS ON TORTS* 88-89 (1959), and cited in *Jones v. Sherrill*, 827 F.2d 1102, 1106 (6th Cir. 1987) (Boggs ’68, J.) and *Archie v. City of Racine*, 847 F.2d 1211, 1219 (7th Cir. 1988) (Easterbrook ’73, J.).
- 2 See, e.g., *In re Florida v. Treasure Salvors, Inc.*, 621 F.2d 1340, 1349 (5th Cir. 1980). Professor Currie’s poetic paean to the famed cow appears to have been cited by only a single court, see *Hannibal Sales Co., v. Solter*, 551 S.W. 2d 936, 937 n.3 (Mo. Ct. App. 1977), providing all the more reason to reprint the poem.

corporate general counsel, because of his occasional use of the phrase "*Ich kann nicht udder*," and he had to confess that the usage was not original, but stolen from Currie.

I hope that this re-publication will lead a new generation of law students and readers to refresh their recollection of both this classic poem and the case that inspired it.