

(editor's note: This paper was transcribed from a handwritten cursive copy with various difficulties. For a perfect rendition, the reader might wish to consult the original, itself a copy, in the volume entitled *Literary Club Papers*, May 30, 1891 to February 6, 1892)

A Celebrated Case

Old John Poor was a sententious philosopher, and an earnest seeker after truth, so when he stood before my office door and read slowly and audibly the words on the card nailed thereon, "Gone to dinner, back in an hour", I was not surprised to hear him say, "Another lie nailed", still I affected not to hear him, opened the door, bade him enter and inquired his errand. He made no answer but taking out his spectacles, deliberately put them on, and surveyed me from head to foot. Then he spoke, I want a lawyer that can take the roof off the courthouse" I mildly suggested that he seek a trimmer, but he frowned at me severely and said, "Don't be frivolous, you knowed my meaning well enough, although I did use what Dan'l Webster called wax figgers of speech, I am ready to pay, but I want a fighting lawyer from away back." I assured old John that I would fight anything from a grass hopper to an Ostrich for a consideration.

"Well", said he, "I am glad to hear that, for if you are a cattle lawyer, then you are just the man for me." He still however appeared to be in some doubt but finally said, "May I ask you a question?"

"Why certainly", I said. "Well then have you ever drawn a cattle mortgage?" Realizing the humor of the situation, and that he really supposed a chattel mortgage and a cattle mortgage to be one and the same, I told him that only the week before a client of mine had mortgaged four cows and two horses. This seemed finally to convince him as to my ability and experience.

Jehn was the owner of a goat, a whiskered, battered, timeworn goat. His twin brother, John, harbored upon his premises, so Jehn said, a mongrel cur dog. The brothers were neighbors, occupying adjoining farms.

The elixir of life, in the shape of an aromatic incense was wafted on the breeze to the dog from that goat, and the former being a creature of impulse was unduly influenced by it, and conceived a violent prejudice against the latter. This was evidenced in several surreptitious nocturnal visits to Jehn's premises where it endeavored to gain entrance into Jehn's stable where the goat was kept.

One bright moonlight night Jehn was awakened by the barking of the dog in the stable, and the cries of the goat which appeared to be in distress. Then he remembered he had forgotten to close the stable door, and at once realized that his property was in danger. Seizing his trusty rifle, he hastened to the scene of the conflict; the dog had attacked the goat in the rear and had bitten it severely, there had been a fall of [], for the goat lay prone upon the ground.. The dog, perceiving in its turn an enemy, left its prey and fled, John pursued, just as the dog neared the open board fence, which separated the property from his brother's, Jehn raised his rifle, took aim and fired. When the ball sped on its mission, the animal was still on Jehn's property, when it reached its victim, it had cleared the fence, was not then at-large, but on the premises of its owner.

Alas! Too late, the bullet found its billet, "the dog it was that died."

The report of the gun brought to the spot two of John's boys who had been stealing watermelon from a neighbor, Jehn's identification was complete, there were two witnesses to the killing.

Great was the wrath of John, but the rage of his wife was sublime, she so influenced her spouse that he sought Bill Be Damned who had just been elected squire, and with his aid and assistance brought suit against Jehn for \$19.99, the value of the dog and for the loss of its services. From that moment all friendly relations between the families ceased, and there arose a bitter feud, partisans not wanting on either side, and their bitter discussions did not fail to add fuel to the wrath of the litigants. But all this was a week ago. Jehn had answered the summons, demanded a jury, subpoenaed his witnesses, the trial was to take place on the morrow, and Jehn had sought me to plead his case before the court and jury. I promised to be at the village of Levoll on the early morning train and I kept my word.

The news had spread through the village that the great dog lawyer from Cincinnati was coming to try Jehn's case, and the whole town was there to meet him. I was the only passenger on the train, the crowd eyed me curiously, and a voice from the rear was heard say, "Guess he could not come himself and sent his office boy". Jehn made his appearance, and took my arm; the crowd followed us as we walked to the town hall. This was a one story brick structure, having a large room in front and a small room in the rear, in the latter, were two iron cages or cells, and the room was evidently used as the town jail lock-up.

The Temple of Justice already full was soon packed to suffocation. The jury, the witnesses, the parties were all assembled. And there at the end of the hall, almost concealed from view by a pile of old books, evidently borrowed for the occasion, sat Dogberry- Old Squire BeDamned who kept the village tavern and grog shop; on his right was the newly elected constable, who also officiated as clerk. Jehn on the way up had said, "A bigger fool than old Josh Be Damned don't live, this case is the first case he ever tried, if you can't fool him, you aint no lawyer at all".

John Poor the plaintiff was represented by Mayor Dewitt. It was to his kindness that we owed the privilege of trying the case in the Town Hall-the scene of all-important litigations.

The mayor was a veteran at the Levol bar, and was evidently considered a great wit. He was in appearance long, lean and lanky and most important- air. This was outwardly manifested in the grandeur of his gestures, and the extreme condescension of his manners; He turned as I entered; on being introduced, he bowed from his waist-down, then with a courteous wave of his hand to the court, announced that both sides were ready for trial. Old BeDamned seemed considerably embarrassed; he had evidently been endeavoring to read up on the law on the case. The perspiration stood in beads on his venerable brow; he turned to the constable and said, "Open the court." Bill Adams took this injunction literally, he pushed through the crowd, kicked the front door open with his foot, raised all the windows and coming back to his seat said, " The court is now open", and the jury is here but Seth Smith wants to be excused".

All eyes were diverted towards Seth, a great six-footer who shambled up to the seat of justice and said, "Squire can you excuse me?" "I can, answered Old BeDamned but I won't, go back and take your seat." "But I aint got any respect for this court", shouted Seth, and under them circumstances how can I sit on this jury".

The Squire seemed puzzled for a moment and thumbed his Swan, then he turned to Seth and said, "If you aint got any respect for this court, there is a yet a law that fits your case, you've got to serve on this jury, now raise your right hand and be sworn; Seth did so, and the justice administered the following oath; "You, Seth Smith, you swear that you will truly serve as juror, and try this case without respect to persons or parties so help you God".

Seth was then directed to take his seat and the balance of the jury were also sworn. On behalf of my client I had filed a counterclaim for \$50 damages for injuries to the goat. Mayor Dewitt demanded that the same be itemized. The question was argued pro and con, and then submitted to the court that worthy decided it in one short pithy, pregnant sentence, which is here preserved for posterity. This here defendant must file a macadamized bill of particulars. The trial proceeded, the plaintiff's witnesses were legion, they swore with one accord that the dog was a noble animal of undoubted pedigree and of great value. \$19.99 was an insignificant sum, one witness said, "that it could do everything but talk", and his late mistress, in recounting his many virtues, broke down completely and wept like a child, saying, "That home would never be home again without that dog", at this both judge and jury were visibly affected.

It was clearly shown that Jehn had killed the dog, and that the bullet which did the deadly work entered the animal's body when the dog was on the premises of its owner; it was also proved that the dog was listed for taxation at \$12.00.

Here the plaintiff rested his case, and the court adjourned for dinner, they jury were told not to leave their seats under penalty of the law, but the squire sent them their meals and drinks. During the hour of adjournment Jehn informed me confidentially, that he would not believe his brother under oath, for he had seven illegitimate children. I strolled alone through the village during the remainder of recess and on my way back to the courtroom, was joined by Mayor Dewitt, who took my arm in a most friendly manner, and said, "I am sorry my young man that you have come here on so fruitless an errand, but you are certain to lose this case, your client is a desperate character, would perjure himself for a cent, and they all know it; he is a Brigham Young in disguise, he is the father of seven natural children."

Was this sort of thing catching? Was it in the atmosphere? 14 illegitimate children and only the plaintiff and defendant heard from. No man in justice to himself, ought to stay in a town over night. (I said nothing but thought much) we soon reached the courtroom where the trial was resumed.

Jehn's witnesses were equal to the occasion. The goat was shown to be a peaceable, unoffending animal of priceless worth; the dog a vicious mongrel tramp cur, picked up in the village, worth \$20.00 less nothing, its death was a blessing and Jehn a public benefactor, the animal was a constant trespasser, was found running at large on the night in question, and Jehn had the night to kill him which he admitted he did. This testimony so worked on the squire that he cried out, "Served him right, it was a bad dog."

Mayor Dewitt sprang to his feet and took exception saying, "Your Honor has no right to speak as you do or influence the jury in that way."

Whereupon Squire BeDamned, much embarrassed, contritely said, "I axes you pardon Mayor Dewitt and gentlemen of the jury, them were my private sentiments, and I withdraw them, gentlemen of the jury, what I said about that dog don't go."

The evidence being all in I called the attention of the court to Section 700g of the Revised Statues, which provided in substance, "That any person might kill any animal of the dog kind permitted by its owners to be at-large away from such owner's premises."

Mayor Dewitt admitted that such was the law, but drew the court's attention to the fact that this animal was no at-large when killed, true, he said, if there had been a sold board fence between the two tracts of land, the dog would have been stopped in its flight, and the bullet would then have reached its mark while the dog was at-large away from its owner's premises,

and the killing would then have been justifiable but such was not the case, the dog had cleared the fence, was at home and was killed while on its owner's land, the killing was therefore unlawful.

Old BeDamned said, "Gentlemen, this is a mighty ticklish point, go slow, go slow." Dewitt then read Section 4214 of the statues, which provides that the owner of any dog listed for taxation, killed contrary to the law, might recover from the person killing the same, as exemplary damages any sum not exceeding that for which the animal was listed for taxation;" He then waived the opening arguments and I addressed the jury.

I am satisfied it was the effort of my life. It must have been overpowering, for one of the jurors nodded off to sleep, whenever I stopped he awakened, whenever I resumed he continued his slumbers, Finally when I came to a full pause he opened his eyes and looked at me; then I earnestly requested his wakeful attention; "Young man he said don't mind me but drive right on, I reckon I aint missing much, if I do, and you say anything worth hearing, then some of them other fellows can tell me about it." When I had concluded Mayor Dewitt arose majestic was his mien, he cleared his throat -- no pen could do justice to that speech -- among other things he said, "Gentlemen I have been asked why I did not sue for \$20, why for only nineteen dollars and ninety nine cents? Gentlemen, I have a strong sense of justice, you have heard the evidence you know that in his lifetime the deceased dog had borne to him on the evening wind a scent of that goat, having received that scent (went) and died with it upon him, it was but proper that a reduction in that amount be made, and so it has been done. Could more be asked?"

Speaking of the twin brothers and their present alienation, he said, in earliest youth they were together, they took maternal nourishment at the same time from a Parent's breast, and now they live to see the silken cord broken, the tie severed by a Cincinnati lawyer and a dog."

When he had finished it was intimated to BeDamned that he must charge the jury; He sent for his books, and exhibited to our astonished gaze several cash items. “Gentlemen, I have already done that, I have charged them each 35 cents for dinner and a \$1.60 for drinks. We had some trouble setting him right, and explaining what the law required him to do. “Well, said he, “I never done this thing before but here goes.”

“Gentlemen of this jury if you think the plaintiff is right go for him, if you think he is wrong, go against him, and versa vice for the defendant, but if you don’t know which is right then may God have mercy on your souls.” He then instructed the constable to lock the jury up in the jail until they agreed.

We had been trying the case “from early morn, until dewy eve”, and I was completely tired out, it was then just 6 o’clock, and it was hoped that the jury would soon report, seven, eight, nine o’clock passed away, and a rumor then went out that Seth Smith was hanging the jury. This rumor was confirmed in a note sent by Seth to the squire, which was read aloud. Seth wrote, “I won’t agree and won’t come out. I aint got any respect for this court.”

Some wag in the audience suggested that the note be sent to his wife but this proved unnecessary for that amiable lady soon appeared upon the scene; she was a little bit of a woman, but the crowd quailed before her, the news had reached her in some mysterious way, she carried in one hand an old woolen sock, in the other a darning needle, there was a grain of determination in her eye; she spoke never a word, the crowd opened to let her pass, as she made her way through the courtroom to the door of the rear room, which answered for a jail; boldly she beat upon it and cried out, “You, Seth Smith you agree right off, and come out of there, if you aint

home in five minutes you will find someone there that wont agree with you I tell you, you hear me.” And then she took her departure.

It was not five minutes before a knock was heard at that very door, and the jury announced that they had agreed, Seth was the foreman.

For a few moments there was breathless silence, then the verdict was read. “We find for the dog and assess his value at \$2, so say we all.”

I never learned with what satisfaction this verdict was received, nor what judgment was entered upon it for at that moment the shrill shriek of the locomotive was heard, and as it was the last train homeward bound I hastened to board it, barely reaching it in time, nor did I ever receive a fee from old John I mailed him a bill some six months after, which was returned to me by the postmaster, who wrote that old Poor had moved to Kansas.

Simeon W Johnson

June 27, 1891