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ORPHAN HEIFER CAUSES STRIFE

Celebrated Case of McCann vs.
Kotzman

THE PLAINTIFF FINALLY WINS

On Account of a Technical Defect Appeal to Circuit Court was Dismissed and the Case Closed.
—The Story.

This is the story of the roan Durham heifer Mollie, orphaned at the tender age of four months, cosseted at the McCann homestead, a maverick on the range, branded by Adam Kotzman, recovered by McCann and passed through four ownerships to a law suit, at the end of which Kotzman pays \$87 costs and loses the heifer, valued at \$45.

Away back in the early autumn of 1906 L. H. McCann bought of Grover Caldwell a cow and calf. In an accident soon afterward the cow suffered the fracture of a limb and in mercy was slain, leaving the orphan bossy to be reared and petted about the McCann homestead. After a time the calf strayed out on the plain and lived for several months with a bunch of other cattle found there. Eventually she was discovered and taken back to McCann's, and the testimony adduced at the trial in Justice Court ran to the effect that the yearling manifested undisguised pleasure at getting back home, accepting the fondling of the family, frisking to her own stall in the far end of the stable, even paying a visit to the neighboring homesteader, E. A. Griffin, and there investigating receptacles where she had formerly found potato parings and similar toothsome refuse. In short, her behavior was very different from that of the ordinary range heifer.

In the course of time the heifer passed by purchase successively to Anton Ayne, J. H. Oneill, Charles Finley and J. H. Wood. Adam Kotzman was in town one day last fall and the mild-eyed heifer, now grown to a mature cow, fell under his eye. From marks which he identified as his brand he laid claim to the animal and scraghway took her to his home. Wood obtained a writ of replevin and recovered possession of the cow and the successive owners called upon McCann to make good the title he had conveyed to them. Thus the matter

got at issue before a jury in Justice Merrill's court.

The gist of the McCann side of the case is narrated above. Kotzman swore that he bought the gentle yearling from Mr. Dodson, on Crooked river, and that his brand upon the beast was properly there. He also said he knew where the McCann heifer, which was an entirely different creature, was. Mr. Dodson was not called in behalf of Mr. Kotzman, nor was the other heifer, said to be McCann's, definitely located. The brand, too, was so indistinct that it was necessary to shear the hair away to see it with any degree of clearness, and the ears had been slit in a manner more indicative of barbarism than ownership by anybody. At any rate, the jury brought in a verdict for McCann.

Notice of appeal was duly filed and the matter was to come on for hearing at the present term of Circuit Court in Prineville. A subpoena duces tecum was issued for Mr. Wood, with special instruction to produce the cow in court at the hearing, but it was served on Sunday and was therefore invalid. And when the case came on the appeal was found to be imperfect and it was dismissed on motion of Attorney Benson, for the plaintiff.

The cost bond given by Kotzman upon appeal was signed by W. Wurzwiler and Tom Baldwin as sureties, thus insuring the payment of the \$87 taxed by the justice, which does not include attorney's and witness's fees for the defense. The value of the cow was placed at \$45.

After the action in Prineville leaving the animal in possession and ownership of Wood, he promptly sold the cow to Butcher White. Further deponent sayeth not.

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