



ROSE OF ABERLONE

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The following bit of doggerel, which has acquired a certain notoriety, was originally written purely for the amusement of the students in my course in Contracts at the University of California at Los Angeles. Hence the Harvard Law School Record was in error when it stated, upon publishing the thing in its issue of Thursday, March 4, 1954, that "The following was written exclusively for the Record. . . ." On the contrary, my recollection is that Professor Lon L. Fuller, whose casebook I was using at UCLA, had some difficulty in persuading the editors of the Record to publish the "poem" at all. It had, in fact, been previously published, at my own expense (I regret to say), in pamphlet form, and widely enough distributed to destroy any claim of copyright that may be asserted by the Harvard Law School Record.

The original pamphlet gives the date of composition as February, 1950, and we are stuck with that because it has been so widely circulated. But that would have been in the first year of my teaching at UCLA, and I am inclined to doubt that I was so precocious. (The pamphlet was printed about 1952-53, and my memory—or my arithmetic—may have been faulty.) More likely the real composition date was February, 1951; but let that pass. Who cares?

I intend this to be the definitive version, so that I will never have to fool with it again.

ABERLONE, ROSE OF

Being an Entry for an Index

With cross-references to *Sherwood v. Walker*, 66 Mich. 568, 33 N. W. 919, 11 Am. St. Rep. 531 (1887), and to the *Christabel*^o of Mr. Samuel Taylor Coleridge—not to mention Mr. Ogden Nash, in a tight spot.

^oStudents of prosody who may not understand it should consult Coleridge's own explanation of the metrical scheme. See E. H. COLERIDGE (ed.), *THE POEMS OF SAMUEL TAYLOR COLERIDGE* 215 (1927).

I

'T is the middle of night on the Greenfield farm
And the creatures are huddled to keep them from
harm.

Ah mel—Ah moo!
Respectively their quidsome balm
How mournfully they chew!

And one there is who stands apart
With hanging head and heavy heart.
Have pity on her sore distress,
This norm of bovine loveliness.
Her gentle limbs, her hornless brow
Proclaim no ordinary cow:
Fair as a pasture sweet with hay
Mown in the very month of May!¹
Nay, fairer yet! And yet more fair!
She stands alone, the short black hair
Heaving sometimes on her breast,
Shunned and despised by all the rest.
If one should ask her why she doth grieve
She would answer sadly, "I can't conceive."²
Her shame is a weary weight like stone
For Rose the Second of Aberlone.

Her sire is of a noble line
Of most aristocratic kine:
Angus of Aberdeen, black and polled;
Their name is proud and their get pure gold.
Their procreation hath won renown,
But Rose the Second hath let them down.
Her forebears have labored for bitter meed,
For Rose is barren and will not breed.

Now the gate that is strait and the way that is
narrow
Call for a cow to forgo being farrow.

In a cow one condones a trifle of loose
 Morality if she will just reproduce.
 The stars in their courses deliver us
 From the cow that is non-frugiferous!
 If a heifer aspires to a niche on high
 She must certainly plan to fructify,
 And when she reaches puberty
 Must concentrate on uberty.
 No honor is there for the boss of that ilk
 That produceth no young and giveth no milk;
 And this is the reason her kith make moan
 For Rose the Second of Aberlone.

Nor maid nor mother, she stands forlorn,
 The tragic object of pity and scorn,
 Her very beauty a mockery
 Of all that a proper cow should be.
 Rue and hemlock! Sorrow and shame!
 She bears a noble and fertile name,
 But her lot is woe, unleavened by weal:
 She bears the name, but she bears no veal.
 She is hardly worth the price of her feed,
 For Rose is barren and will not breed.
 In a world of logic she finds no room;
 The curse of *Verwekoe*³ hath sealed her doom.

Hiram Walker (no kin, I'm sure,
 To the proximate cause of the water cure)—⁴
 Hiram Walker, of Walkerville,
 Hiram Walker, of Greenfield lord—
 Here was a wight with an eye on the till!
 Quoth he to himself, "I can't afford
 To yield me to sentiments weak and rash;
 The critter's no 'count, and I need the cash.
 The rule is laid down from time immemorial
 That a cow must have qualities more than
 pictorial."

And so he hath sold her to Banker Sherwood,
 His eyes cast down, for a glance at her would
 Have melted a heart of the hardest stone.
 O weep for the Rose of Aberlone!
 Sold like a carcass, as if for beef!
 From the pain of that there is no relief.
 Five and a half mean cents per pound
 (What will it be when the meat is ground?).
 Allow two score and ten for shrink!
 What would her sainted fathers think?
 The deal is closed, the parties bound;
 Will her loins be lean, will her steaks be round?
 Sold for a pittance, and sold incog—
 Lot 56 in a catalogue!
 Insult and injury! Humiliation!
 This is no end for a cow of her station!
 Said Walker to Sherwood, "I wait your pleasure.
 Take her and welcome. And for good measure
 I'll throw in a halter [What callous mirth!]
 Just to insure you your money's worth!"
 At this there escaped a hapless groan
 From Rose the Second of Aberlone.



II

Go, lovely Rose, to your degradation!
 Go, and go with you the tears of a nation!
 Methinks there ought to have been some bard
 To witness that scene in King's cattle-yard—
 Some bard who could justly, in verse or in
 prose,
 Make immortal the flowering of Aberlone's Rose.

They took her, that October morn,
 Before the dew was off the corn,
 To the cattle-yard with its sinister scale,
 The better to finish the dreadful sale.
 She was put in charge of good George Graham
 (Were there cows to be weighed? Well, he would
 weigh 'em).

Never had coat such glossy sheen;
 She was less a cow than an exiled queen.
 She walked with dignity and pride,
 And as good George Graham stroked her side
 He descried a slight rotundity
 Evincing, he fancied, fecundity!
 And he read in her mute, appealing eyes
 A message that caused him glad surprise;
 He caught his breath, and must not be blamed
 If his voice was broken as he exclaimed,
 "Rose, you're about to become a mother!"
 She blushed and replied, "Ich kann nicht udder."⁵

Then summoned he Walker of Walkerville,
 Who galloped his hardest o'er dale and hill,
 Who wanted to know what she did weigh,
 And what the deuce? wherefore, and why the delay?
 George touched his forelock and muttered an oath;
 Then, controlling himself, as follows he quoth:
 "Hold, Hiram! We wag on too fast by half,
 For Rose is, unless I'm mistaken, with calf!"
 Behold then Hiram, most contrite of men!

He apologized to her again and again;
He assured *her* that his heart was riven,
 And *she* assured *him* that all was forgiven.
 "But how did you do it, my Rose, my bloom?
 And who is the father—or should I say whom?"
 "I did it for you," she said, "my liege,
 I did it for you—and *noblesse oblige!*"

A star had set, a star hath risen!
 Her spirit, loosed from out its prison,
 Free from danger, free from fear,
 Soars and sings for all to hear,
 Flush with the knowledge of strong fertility,
 Free from the stigma of fell sterility!
 Vindication! O come, rejoice!
 Obligato for Rose's voice!
 Hers is the bliss for which she longed.
 In her all womankind was wronged;
 'T was not *she* who lacked testosterone—⁶
 Not Rose the Second of Aberlone!

Withal,⁷ her delicate condition,
 Compassion for poor Hi's contrition,
 And eke the burning sun at noon
 Made Rose to fall down in a swoon.
 O take her up tenderly, lift her with care!
 For Rose the Third is *en ventre sa mere*.



III

But they reckoned without the banker, Sherwood.
 Now, one would have thought that the gauchest
 cur would
 Withdraw from this tender and moving scene.
 But the banker's heart was little and mean.
 He twirled his moustache and his bill of sale,
 And the words he uttered turned Walker pale:
 "I am come to claim such as is mine own—
 To wit, Rose Second of Aberlone!"

Full long in speechless thought Hi stood,
 Then made reply as best he could:

"I wot not what to wit may mean,
 But thou wost who is right, I ween.
 And if thou thinkest to seize my Rose
 Thou has lost thy wit, and I'll punch thy nose.
 I wist there was some mistake, iwis,
 And now let there be an end of this.
 I said I was selling, but now I ain't—
 For Rose is, mirabile dictu, enceinte.
 You bought but a leathern bag of bone,
 Not Rose the Second of Aberlone."

Then Sherwood waxed exceeding wroth:
 "Thy prating irks me, by my troth!
 Such sophistries I must abhor;
 I'll hie me to a man of law,
 And though to litigate I'm loth,
 Ere night befalls I'll hale you both
 Before a justice of the peace,
 And thou shalt answer for his fees.
 I'll take this chit that thou hast written,
 I'll take it to the highest witan;
 I'll wage my law, I'll have my cow,
 I'll gain my gree, and that's a vow!"
 With that he went off withershins,⁸
 Leaving Hi's world in smithereens.

Bethink how Rose's heart was thrilled
 And how her being was fulfilled,
 How mad with ecstasy she went
 When she was found parturient—
 With what delirious elation
 She heard the news of her foetation!
 Ah! that were paradise enow
 For any merely mortal cow;
 But her penitent destiny has in store
 For gentle Rose one triumph more:
 'T is surely the animal seventh heaven
 To be the res in a writ of replevin;
 To be enshrined in a casebook—truly,
 This is the bovid ultima Thule.
 Prepare then the forensic lists,
 And chief of the protagonists
 Shall be that procreant paragon,
 Rose the Second of Aberlone.

A constable took her in custody
 On a writ that was issued by some J. P.,
 Who decently weighed her privily
 To see what the bill of costs should be,
 And to make right sure that no legal fiction
 Should interfere with his jurisdiction.
 She weigheth full an hundred stone,
 Augmented Rose of Aberlone.

The J. P. gave poor Hi short shrift.
 "This chattel's title has passed," he sniffed.
 "Judgment for plaintiff! A deal's a deal!"

Then Hiram straightway took appeal
To the Circuit Court for the County of Wayne,
Only to be rebuffed again.

But his lawyer was not a whit dismayed:
He asked that a modest refresher be paid,
And then he bade Hiram be of good cheer.
"In the circumstances our course is clear:
For the pearl of justice we'll fish again!
To the Supreme Court of Michigan
We'll take our honest and upright cause;
We'll confound old Reilly⁹ and give him pause.
What a bill of exceptions we'll contrive—
Assignments of error a score and five!
We'll file a brief that will knock his eye out!
We live under law, not Jennison's¹⁰ fiat!
We'll argue the rule and the policy too,
As any attorney is bound to do;
We'll rely on basic principle,
And perhaps be a wee bit technical;
We'll invoke both logic and history,
And, if need be, appeal to sympathy;
We'll quote full pages from Chancellor Kent,
And refer to many a precedent;
And should we be short on authority,
We'll construct a little analogy;
We'll lean on the wisdom of Joseph Story,
And pound the rostrum and wave Old Glory;
We'll balance the equities pro and con,
And when we are through the case will be won."

Oh! What will be the judgment's tone?
What fate for Rose of Aberlone?

IV

The briefs are in, the case submitted.
The lawyers on both sides acquitted
Themselves with nice distinction, ¹¹ just
As earnest counsel ever must
In fealty to their sacred trust.
Their arguments had an intensity
Befitting the issue's immensity;
And now they linger with cooling zeal
To learn the upshot of Hi's appeal.

Now, one of the Bench's keenest students
Of animal law and jurisprudence
Was Michigan's Mr. Justice Morse.
If a case involved a hind or a horse
They would call on him—for that was his forte—
To deliver the judgment of the court.
He knew far better than any jury
The ways of domitae naturae;
And when it came to the genus Bos¹²
There was no sounder man than Justice Morse.
And thus 't was fitting that he deliver
The opinion in this *cause celebre*.



"Now that this case has reached its end, I
Shall endeavor," Judge Morse began,
"To recount the ratio decidendi,
Avoiding dicta as best I can.
The question that is really crucial
Is whether the mistake so mutual
Quoad this ruminant's condition
Is such as justifies rescission.
That there *was* mistake there is no moot,
But does it go to the matter's root?
Or was the supposed sterility
Mere matter of quality, *i. e.*,
An attribute or characteristic
Below the level of facts juristic?
Was it simply a trait or accident
Inducing and not impairing consent?
Did it go to the substance at all, at all,
Or was it merely collateral?
Did it hamper unduly the parties' wills,
Or the exercise of their dickering skills?
In short, did it have anything to do
With the requisite mental rendezvous?"

"Now, there's a distinction, as I've been taught,
Twixt a cow that's pregnant and one that's not.
In fact, the fallacy is arrant
That places a potential parent
In even the same taxonomy
With that drain on our economy
That we deprecate by all that's holy—
The wretched beast that's sine prole.
In my submission, pullulation
Is the vital force of all creation—
A concept I shall not enlarge on
Except in an essay in the margin.¹³
Why, a creature acarpous is incomplete,
Like to a verse that has no feet;
Like to an ocean without a breeze,
Like to a dog that has no fleas;

Like to the works without the watch,
 Like to the soda without the Scotch;
 Like a delusion without a snare,
 Or a poker hand without a pair;
 Like Louis XV without DuBarry,
 Or like the White House without a Harry;¹⁴
 Like a ferry without a concertina,
 A coloratura without Rosina;
 Like to spaghetti without Chianti,
 Or like Don Quixote *sans* Rosinante;
 Like to a satrap without a minion,
 A judgment without a dissenting opinion!
 A cow in which that condition is regnant
 Is what might be called a negative pregnant.¹⁵
 But what a significant difference
 When a cow has secured her deliverance—
 When she proves that she can become a mother!
 If a man buy one, shall he have the other?
 I have viewed the premise, and do discern
 That here is no scrub but a going concern.
 This is an *operative* boner—
 As it were, an error in persona.¹⁶
 It's a case of mistaken identities—
 Of udderly different entities!
 (I fear I've been frightfully peripatetic,
 But that is the way of the muse nomothetic.)
 Thou, Jennison, Judge of the Circuit, errest!
 The judgment for plaintiff must be reversed!"

'T is the middle of night before the exam,
 And there's nothing to eat but a cold bit of ham.

Ah mel—Ah mool

Mark how the eager students cram,
 What coffee black they brew!

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 radioactive tracts of land,
 In hardly collectible notes of hand,
 In fiddles of dubious pedigree,¹⁷
 In releases of liability,
 In zoning rules unknown to lessors,
 In weird conceits of law professors,
 In printers' bids and ailing kings,
 In all mutations and sorts of things,
 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.

FOOTNOTES

1. Is spring the proper time for hay-mowing? Never mind.

2. Pun. (Hardly original.)

3. Many unlettered folk have inquired as to the meaning of this simple word. In Old Flemish¹ it means literally "barren cow." That there exists a "curse" of *Verwekoe* is a conceit of the author's.

Footnote 1 to Footnote 3:

For a clue as to the extent and accuracy of the author's knowledge of Old Flemish, consult any unabridged dictionary, no matter how revolting (e.g. *Webster's Third International*), for the etymology of the English word "farrow" in its non-porcine sense.

4. Wrong. This was indeed the founder of the distillery that still (*sic*) bears his name. The author learned this when a member of a prominent Chicago law firm, stating that he represented the company, telephoned to confirm the identity of the author. For a panicky moment the author wondered for what tort the company could sue, but was quickly informed that the company was preparing to celebrate its centennial anniversary and had retained counsel to negotiate for the right to republish and re-use the "poem" for advertising purposes in any form, including radio and television (and something may have been said about production in the legitimate theater and motion-picture rights). Regrettably, the author was forced to reply that, as if to prove the adage that every man his own lawyer has a fool for a client, he had not copyrighted the work but had broadcast it in the form of a printed pamphlet; consequently, the thing was in the public domain, and the company was free to use it as it saw fit. Nevertheless, on the insistence of its counsel, the company insisted upon demonstrating its appreciation—not in cash and not in kind, but by transfer of title to a modicum of its best product. The upshot of all this was that the president of the company quoted a few lines in an address to the members of

a private club. See (if you can, which is most unlikely) HOWARD R. WALTON, HIRAM WALKER (1816-1899) AND WALKERVILLE FROM 1858-1920 (1958).

5. If this is not self-explanatory it must not be sacrilegious either.

6. The author is aware that testosterone is the male sex hormone, and hence that the choice of words is not ideal. He has struggled in vain to make the point more accurately, and challenges all readers to try their hands at improvement.

7. Probably an inaccurate usage, but the author likes the way it sounds.

8. Look it up yourself.

9. Counsel for plaintiff buyer (Sherwood).

10. Judge of the circuit court. Why don't you *read* the case?

11. Pun (of sorts).

12. Pronounced "boss" or perhaps "borse." If your dictionary says otherwise pay no attention to it. By the way, this is the functional, or institutional, or fact-group-situation approach to adjudication, isn't it not? (Apologies here to Hart & Wechsler, or is it only Hart?)

13. Perhaps the author here confused Mr. Justice Morse with a former Justice of the United States Supreme Court; but, come to think of it, the latter's penchant was, strictly speaking, for Appendices rather than for footnotes.

14. A bit dated, but what can one do by way of revision? When the epic was written (for the information of the present generation) 1600 Pennsylvania Avenue was the residence of one Harry S. (for nothing) Truman.

15. But had better not be if you want to pass the course in Common-Law Pleading.

16. Probably bad Latin. Do you mind?

17. In the interests of sound scholarship (and repose) citations to the actual (as distinguished from the hypothetical) cases referred to in this stanza are omitted. Insert your own footnotes.