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# **Two Mules Make New Rules**\*

'S funny how when somethin' important happens, nobody seems to realize it's so important 'til a long time afterwards.

Take for instance Lincoln's Gettysburg speech, folks as heerd it didn't perk up their ears very much, an' some o' them newspaper fellas wrote it as bein' downright punk.

Well it's sorta that way with a case decided by our Supreme Court three-four years ago, viz, *Reed et alius v. Ordway State Bank*.<sup>1</sup> That case, 'cordin' to the court, involved "two certain mules"—an' right there anybody on his toes shoulda knowed the court was goin' to say somethin' important. Ain't no court gonna waste much time on two ornery mules, an' on top o' that, if the court was really gonna talk 'bout mules as such, the judge woulda given their names. When ever anybody as smart as our Supreme Court starts writin' decisions 'bout two nameless mules, you know they really ain't talkin' 'bout mules a-tall, but 'bout some idea like the Unknown Soldier an' such.

Well anyway here's what happened: A city fella livin' in Ordway—fella name o' Malone—had these two mules. Malone didn't have no place to keep the mules after the livery barn burnt down so after some dickerin' with one Boget, who ran a fair sized spread out o' town a piece, the latter agreed to keep an' feed the mules in return for their work, etc. After this had gone on 'bout a year, Malone sold or rather transferred 'em—the mules, I mean—by bill o' sale to the Ordway State Bank to pay up a debt which he'd owed the bank for quite a spell. The bank didn't have no work for the mules to do an' since grazin' weren't very good in an' 'rōund the bank, they just let the mules stay on out at Boget's.

Seems like Malone likewise owed the Reed brothers some money which he either weren't able to or didn't feel like payin' so the latter sued in J. P. an' 'tached the mules. Malone didn't much care 'bout the mules, 'cause he'd already transferred 'em to the bank some six months before, an' he didn't see much point in listenin' to the judge adjudge that he owed money to the Reed brothers, 'cause he already knowed that, so he jus' natur'ly didn't show up at the trial. The bank

\*By Judge Homer P. Lumkin, Dicta staff analyst.  
<sup>1</sup>102 Colo. 266, 78 P. (2d) 624 (1938).

weren't there either so all the J. P. could do was turn the mules over to the Reed brothers. Which he did.

Two-three months later the bank found out what'd happened and sued the Reeds in the districk court to get back the mules.

Now if you didn't think 'bout it too much, you might think the bank had a open an 'shut case, 'cause after all it is usually thought that a man can't sell what he don't own, an' since a 'tachment is 'bout like any other sale, 'cept that the judge does the callin', it seems like—well it jus' seems like that jasper Malone oughtn't to be 'lowed to pay two debts with them same mules. That's what the districk judge thought, too. But if you think you could get them Supreme Court judges to agree with the districk judge on reasons no better'n that, then it jus' goes to show you weren't never cut out to be much of a lawyer, 'cause if you was, you'd pay more 'tention to what them judges is thinkin' 'bout when they ain't on the bench.

Course now you maybe knowed at one time or 'nother what I'm 'bout to tell you, but I'll go over it all again jus' on the chance you maybe mighta forgot it.

For's long as I can remember, nearly everybody has belonged to one or t'other of two clubs or societies, both claimin' 'bout the same objects and purposes. One's brand's a picher of a elephant but seems like ain't many folks belongin' to that'n any more. Most folks is members o' the one whose brandin' iron is shaped like mules. Natur'ly all them latter folks is crazy 'bout mules so, that bein' so, we'll jus' call their club the Loyal Order o' Mulelovers, which o' course ain't their real name. Sons o' Wild Jack Asses ain't their real name neither, 'though I heerd one hombre called 'em that.

But to get back on the main trail, as I said before, all Mulelovers is crazy 'bout mules, but there's some other things 'bout which they ain't so crazy. One of 'em is bankers. They hates bankers 'bout as much as they likes mules. Bankers, they say, jus' ain't human. Now o' course you can see right away that turnin' two livin' emblems o' the Order over to a bunch o' bankers would send the cold shivers up an' down the backs o' all loyal Mulelovers. Why even to think o' such a thing is practic'ly a sacrilege. Trouble is everybody knows what a powerful lot o' folks is Mulelovers an' there ain't no sensible judge gonna rub their hair the wrong way if he can help it, leastwise not if he 'spects to get reelected. But more'n that, some folks say that anyway six out o' seven o' the Supreme Court judges themselves has claimed at one time or 'nother that they was members o' the Order!

Well now I've told you—you already know what the decision's gonna be. Or as them judges mighta said, "The decision's already arrived at. Now the only thing left is to figure out some legal means tellin' how we got there."

Course the court coulda said right off that mixin' mules an' bankers was agin public policy, which as near as I can figure means it's agin the morals an' interests o' society. Ain't no question but what it's agin the morals o' all Mulelovers. An' since it sometimes seems like Mulelovers an' society is practic'ly sinoneemus, maybe you got the answer right there. On top o' that, courts has been purty careful not to let folks know 'xactly what is an' what ain't public policy, so when you get all through, it's 'bout what the judge says 'tis. That way, nobody's got much comeback. Which maybe is good in some ways but which likewise is bad, too, 'cause everybody knows that what the judge says depends considerable on what his wife says or on what he's had for breakfast. So you can see that while this 'ere public policy might be good in a pinch jus' for short spurts, it ain't much of a horse for everyday ridin'. Anyway it's sorta like a ace in the hole an' you oughtn't to show it 'less you have to.

Sure looked for a while like they'd have to in this case an' then somebody that was plenty smart (must been the judge, 'cause lawyers mostly ain't that smart) went 'way back to '61 an' found this old statute which said a sale o' mules like this was cheatin' an' no good, so far as Reed brothers was concerned, 'less the bank took possession or control o' the mules. Course nobody ain't ever had much control over mules, so that part o' the statute was inconsequential an' unconstitutional, but the judge thought the bank coulda taken possession, even though there weren't no showin' that the bank had any place to keep the mules 'cept, o' course, in the bank. I've heerd it said that some bankers was stubborn as mules an' some folks even claim—metaforic'ly, o' course—that all bankers is jus' plain asses (which as everybody knows is mules' half-brothers), but personally I ain't seen no mules as such runnin' 'round banks for more'n fifty years.

You might think maybe the bank coulda set up a livery barn as a 'filiate, but that probably wouldn't o' done no good neither, 'cause lots o' folks think bank 'filiates is even worse'n banks. Like as not some of them Washington fellas woulda got out one o' them "cease an' desists" 'fore anybody coulda wrangled them mules anywhere near the barn.

Well it makes you kinda wonder jus' what the bank coulda done with them mules 'cept put 'em right back on Boget's spread where they was before, which was 'xactly what the court said they shouldn't o'

done. But it probably didn't make much difference, 'cause too many folks hold as how bankers jus' ain't s'posed to own mules nohow.

Natur'ly the judge which wrote the court's opinion adjudged them two nameless mules as belongin' to the Reed brothers, an' so's there wouldn't be no slip up, told the districk judge to rule 'cordingly. There weren't no dissent. Course you can guess why all them alleged Mulelovers did as they did, but it jus' sets you wonderin' why that one judge who weren't a member o' the Order didn't get up an' make a stink. Maybe he figured the decision was fair to middlin' law, an' maybe it was. Maybe that's what he figured, but I don't think so. Me, I'm thinkin' that seein's how he had to 'sociate with them six other judges, he jus' figured it was healthier to try an' get along with 'em. Ain't much point in makin' buzz saws outa a half a dozen fellas even if they is Swedes or Baptists—or Mulelovers, 'specially not jus' on 'count o' two ornery mules.

Well anyway, it all goes to show how important some little things is, an' mostly folks don't realize it 'till a long time afterwards.

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Members of The Denver Bar Association who do not belong to The Blue Cross non-profit group hospitalization plan may now apply for coverage for themselves and their families through The Denver Bar Association Blue Cross Group. Applications and payment in advance for the first year or six months must be submitted to the office of The Colorado Hospital Service Association at 810 Fourteenth Street, on or before September 15, 1941. Coverage on these applications will become effective on October 1, 1941. Applications which reach the office of the Association after September 15th, will be returned.

A large group of our members joined The Blue Cross at this time last year and a number have benefited materially through payment of hospital bills. A folder describing the Plan and an application card for your use are enclosed with this issue of Dicta. Call the office of The Blue Cross, CHerry 6567, for answers to any questions you may have.

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*Remember!—September 15th is the deadline!*