



COHEN GARELICK & GLAZIER

A Professional Corporation of Attorneys at Law

Outlaw vs. Rule of Law

Recently, court documents were uncovered from a successful civil case involving some notorious nineteenth century defendants who were better known for avoiding the legal consequences of their acts: Jesse and Frank James.

Not surprisingly, the case against the James brothers stemmed from one of their signature activities, a bank robbery. During an attempted bank robbery by the brothers in Gallatin, Missouri, in 1869, Jesse James killed a cashier. As the brothers made their getaway, Jesse was thrown from his horse, which he left behind in favor of doubling up on Frank's horse. Soon thereafter, the brothers happened upon the unfortunate Dr. Smoote, who was also on horseback. Jesse relieved Smoote of his horse, at gunpoint, and continued the escape.

Smoote was not the first or last victim of the James brothers, but he was unusual in then bringing, and winning, a lawsuit against them for the full value of the horse, saddle, and bridle that they had stolen.

One might expect the outlaws to have ignored the lawsuit altogether, but the brothers answered the lawsuit by arguing that they were not personally served with notice of it. Although a sheriff testified that he had delivered the papers

to the James family farm (pity the process server charged with serving a summons on Jesse James), the case was dismissed on that technicality. That might have been the end of the litigation, were it not for Jesse's decision to publish a letter in a newspaper declaring himself innocent of the holdup and murder.

Correctly pegging Jesse James as a newspaper reader, Smoote's attorney cleverly won the court's approval to file a notice of service in the classified section of a local newspaper, thus giving Dr. Smoote another bite at the apple. Again, through their attorney, the James brothers initially fought the lawsuit, but soon they withdrew from the suit and allowed a judgment to be entered against them for \$223. The judgment was satisfied when Smoote took possession of the horse which Jesse had left behind at the robbery.

Yes, Dr. Smoote had to endure the dreaded prospect of staring down the barrel of Jesse James's weapon, but in dollars and cents he fared well. The horse he now had, which Jesse had bought with cash gained from some of his successful robberies, was believed to have been from Kentucky racing stock and was valued at \$500 (a considerable sum for the time).