

David Levi Kokernot arrives in New Orleans with his father in 1817, takes to the sea, and moves to Texas

This extract from the life of David Levi Kokernot is a sample. Many pages as well as all citations are omitted. Contact the author if you are interested in the complete work.

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Many pages omitted here...

Aftermath and Feud

It has already been mentioned that David Kokernot's actions during the Revolution were watershed events in his life. The hostility of his neighbors eventually drove him to depart to a different part of Texas. An excellent window into that hostility is the record of litigation against him which stretched over more than a decade, terminating only with his departure.

David Kokernot pointed out that he was not naming any of the Tories that he was sent for—except for John Williams, who had already fled—because their descendants were good citizens. Many authors have amused themselves and readers since by speculating on who was on Houston's list, who was on "Tory Hill," whom Kokernot chased, and who were, in fact, Tories. Kent Gardien has made a compelling argument that one man, Jacob Freeland Winfree, was among them. Winfree was also the man behind the subsequent litigation and as a result, along with Kokernot of course, the source of a feud that persists to this day in Chambers County.

Jacob Winfree's first action was perfectly straightforward and natural. After the termination of hostilities with Mexico he filed a claim for compensation for his horse taken by David Kokernot after the Battle of San Jacinto. David had given Winfree a receipt, dated April 30, 1836, and valued the animal at \$100. Further, David wrote that "the said horse was lost

in the service of the Republic of Texas.” This receipt is, of course, a bit questionable, as David is suggesting the horse was impressed and lost within the five days since he received his orders from Houston, the first three of which days were spent emptying the whiskey barrel at his home. Cynics suggest the horse was lost on David Kokernot’s property. In any case, the claim was apparently rejected immediately. A faded scrap of paper, undated, in Winfree’s claim file says simply: “Rejected for [unreadable].” Winfree then doubled his efforts to assemble a more solid claim to take to the Auditional Court in Houston. He went back to David Kokernot and obtained a second affidavit, on May 21, 1839, in which David confirmed that “The within Horse has never bin returned to Jacob Winfree.” In fact, David added to the paper, “All So A Mare that was taken and never returned to the Barer Jacob Winfree and Lost in the Servis.” Then Winfree included certified copies of Houston’s order to Kokernot of April 30 and Burnet’s order of June 5 to return property and collect receipts. His case seemed to be simple: David Kokernot, an army officer acting on orders from his commander, took the horse, valued it at \$100, and lost it in service. That he didn’t return it as ordered by the president is proven both by Winfree’s possession of the original receipt and the later affidavit admitting that it was not returned. The court, consisting of Musgrove Evans, Auditor, and J. W. Simmons, Comptroller, issued their answer on June 21, 1839: “This case having been under advisement, is hereby rejected for want of sufficient proof.”

The case file contains nothing more. No summary of testimony or even an indication of who testified. We do not know if Kokernot appeared, but it seems unlikely based on his actions in other litigation. It’s hard to imagine what further evidence Winfree could have provided, and conclusions about the court’s reasoning can be only speculation. One such speculation, though, is that the court did not believe that the horse “was lost in the service of the Republic of Texas.” In other words, it had simply been stolen by Kokernot and therefore its replacement was not the responsibility of the Republic.

This speculation is strengthened by another legal action that was underway at the same time. On March 23, 1838, David Kokernot was indicted for grand larceny in Harrisburg (now Harris) County in the rude village of Houston, by then the county seat and temporary capital of the republic. For that county, and all the nearby others to which this case wandered, few records survive from the first years of the republic. There are no case files or actual indictments. All that remain are minute books, which contain only a terse recitation of results and rulings made. The March 23 entry says, in total: “The Republic of Texas vs. David L. Koker-not: Int for G.L.† A true Bill.” We know nothing about the alleged crime, not even the date or location. One rich speculation would be that it was

for stealing Jacob Winfree's horse. In any case, Kokernot could not be found to be served the summons, so on May 9 of the following year the case was continued and "alias ordered to Galveston County returnable to the next term of this court." In other words they looked for him in the next county, but again Kokernot made himself unavailable and on December 10, 1840, the same order was issued for Liberty County, to the east. Again, no luck. Finally, on May 21, 1842, the Harris court issued a *nolle prosequi*, dismissing the case but with the possibility of restarting it later.

Oddly enough, all those failed attempts to hail David Kokernot into the Harris county courthouse occurred in the same years that David was in that same court on other matters as both plaintiff and defendant. He successfully sued his neighbor William Scott for title to the land he bought in 1832 and was sued by Charles Stevens (David settled) and H. R. Allen (David won) for unknown causes. David was clearly selectively unavailable.

Horse Thief!

My own great-grandfather, and himself a great-grandson of David Levi Kokernot, George Levi "Lee" Barber took an interest for a time in family history, at least according to a story told me by an aunt. Lee was very strait-laced and honorable, twice sheriff of Dickens County, Texas. He was brought up short and could continue his study no further, he told the aunt, because he'd found a horse thief in the family. He didn't name the culprit, perhaps for the same reason David Levi didn't name his tories.

It's easy to imagine the fury of Jacob Winfree if this speculation is correct. First, in 1832, David Kokernot seized his boat in Trinity Bay as Winfree delivered provisions to his customer, the Mexican government, *his* government. Further, Kokernot gloated at "living high" off those provisions (page 33). Then Kokernot's whiskey-fueled chase through Winfree's neighborhood after San Jacinto surely provoked him further (page 53). Finally, all efforts at justice, both civil and criminal, failed.

But Winfree had one more shot to take at Kokernot and he took it in 1846, after a full decade of seething anger. David Kokernot was indicted for petit larceny, this time in Liberty county. Records are again limited, though better than for the previous Harris county prosecution. None specify when the crime occurred but it's clear, for reason's we'll see, that it was after the revolution and tory chase, so it was not for actions he took

† I.e. "indictment for grand larceny."

under Houston's orders. We know the names of the witnesses against Kokernot because they each had to post bond for their appearance at the trial which was moved to Huntsville for the convenience of the defense attorney, Sam Houston. They were Jacob Winfree, Jeremiah Fisher, and Thomas Carroway. Charles Ogsbury, who was with Kokernot on the tory chase (page 54), provided a description of the trial:

...I never saw him but once since, that was in 1848 in Huntsville, where he was tried for cow stealing. He was prosecuted by one of the very Tories that he had prosecuted in 1836, but, I believe it was through malice more than anything else that the suit was brought. The trial was held in Huntsville Walker Co., he having had the trial removed to that place from his own county. General Houston volunteered to defend him, not that he had any love for Kokernot, but, because he wanted to give the old Tory a *blizzard*, which he did; it, was full of sarcasm, he referred to his politics in 1835 & 6 and also to the flight he was put to by our party in 36.—Long before the trial was over, the old tory got on his horse and left. It is needless to say that Kokernot was cleared.

Like Kokernot, Ogsbury did not reveal names of this or any other tory but we know he must be among the trio of Winfree, Fisher, and Carroway. It could not be Carroway as he was not yet in Texas at the time of the tory chase. Jeremiah Fisher was by this time kin to Winfree by marriage but had been only a lad of sixteen at the revolution, living with his mother and stepfather, and could hardly be the "old tory" that Ogsbury paints. Jacob Freeland Winfree, about 50, was the old tory of both 1832 and 1836.

An unnamed writer adds more colorful detail of this trial in a newspaper article in 1874. Readers could rightfully feel skeptical of its accuracy—the writer claims to have gotten the details directly from Houston, who was by this time eleven years deceased. It nevertheless confirms all of what Ogsbury reported and likewise fails to name the tory witnesses. Two witnesses testified to seeing Kokernot, a male accomplice, and the wife of one of them on the prairie butchering a cow bearing the brand of "Mr. Herring." The author describes Houston's skill at diverting the jury's attention from the evidence, which was compelling, to Kokernot's heroism in the revolution. Not all of Houston's witnesses were helpful:

One of his witnesses testified that the defendant has performed important services to the army, in the impressment of horses (and [unreadable] said he impressed one for the army and two for himself.)

But Houston's rousing summation ultimately carried the day:

Houston shouting those words in a regular Indian war whoop. The effect produced upon all who heard him, was simply magical. Pausing for a moment, Houston resumed and said: "Gentlemen of the jury, the pre-

tended owner of the beef alleged to have been stolen, was a Tory. He fled the country under the just indignation and patriotic wrath of my client, Capt. Kokernot, and how dares one of those Tories to charge my client with stealing a beef!”

“It is needless to say that Kokernot was immediately acquitted” the article concludes, just as Charles Ogsbury had. But, in fact, the acquittal was not immediate. The court minutes show that the jury deadlocked and had to be sent back for further deliberations which yielded their acquittal the following day.[†]

David Kokernot dodged this final bullet from the victims of his actions after San Jacinto fully twelve years after the tory chase. But those had not been peaceful years. Besides the other legal actions already mentioned David suffered from the obsessing resentment of his neighbors. And as his children married and his victims’ children married these resentments became embedded into whole families, even resembling the feuds of Appalachian families, but without the shooting. Time didn’t seem to heal these feelings either but seemed to make them worse, like the throbbing of a festering sore. In the end the two sides could not even live together in the same county. The accused tories, Kokernot’s victims, who were mostly established landowners—Winfree, Fishers, Barrows, Whitings, and their kin by marriage—for the most part remained. Those on Kokernot’s tory chase, and their kin by marriage, mostly moved out by the early 1850s. David Kokernot himself by 1850, possibly sooner, was established in Colorado county, some one hundred miles west of his home on San Jacinto Bay.

It seems likely that most families involved in this feud probably quickly forgot its factual origins. What actually happened during the tory chase and the years immediately after are shrouded in darkness. Kokernot’s own account is self serving and probably unreliable. Charles Ogsbury’s is probably the only trustworthy narration in existence. Many others who could have provided details remained silent. Chief among these is George Conrad Maley, David’s brother in law who was with him throughout and doubtless knew all about the subsequent tension. George Maley didn’t write about his family history but he did leave extensive oral accounts which contained not a peep about the tory chase.

[†] Even knowing nothing of the republic’s statute of limitations we can conclude that Kokernot’s alleged crime took place after the tory chase both because Carroway had not yet arrived in Texas and because there is no evidence any wives participated in the tory chase.

The Feud lives on in humor

My own family, descending from Samuel and Elizabeth Barber, neighbors of Jacob Freeland Winfree during the tory chase, ended up on the Kokernot side of this feud through marriage. Their second son, John, married the Kokernot's first daughter Elizabeth, and their second daughter, Melissa, married Kokernot's brother in law and fellow tory chaser George Maley.

From my earliest visits to the area in the 1990s I became aware of what appeared to be a "Barber-Winfree" feud. I heard, for example, how the "tricky" Winfrees had gotten the name of the community of Barbers Hill changed to Mont Belvieu. Harry Daves, a lifelong resident then in his seventies and a local historian, and I were devoted to finding the lost burial place of Samuel Barber. I mentioned to Harry that I had rented a small Cessna the previous day to fly over the woods where we thought the gravesite was. "Oh, I heard about someone buzzing a deer hunter in the woods yesterday" Harry said. I replied jokingly that I wouldn't have flown so low if I'd known the residents were armed. Harry replied, in apparent seriousness, "He won't shoot you! He's not a Winfree."
