1

United States of America
State of Illinois } ss
Livingston County }

To all to whom
this shall come Greeting
Know ye
that on the 23rd day of November A.D.
1855 the following Bill in Chancery
was filed in the Iroquois Circuit Court
which is in words and figures following to wit

State of Illinois } Iroquois Circuit Court
Iroquois County } ss. Dec. Term A.D. 1855

To the Honorable Sylvester
W. Randall Judge of the Eleventh Judicial
circuit in the State of Illinois in Chancery
sitting.

Humbly complaining showeth unto
your honor your Orators Lemuel Mills of the
County of Iroquois and State of Illinois and
Franklin Howard of the State of New York
who are the survivors of William Howard
deceased. that heretofore and in the lifetime
of the said William Howard to wit. On the
Eleventh day of June A.D. 1851. one Foster
Moore being seized in fee simple of the following
described lands in said county to wit. The south
west qr of the S.W. qr & the N.E. qr of the N.W. qr of
Section 27 & the N.W. qr of the S.W. qr of 22 all in
Township Twenty 26 N of Range 12 west and being
desirous of obtaining of the said complainants &
said William Howard the advantages & profits
of a number of sheep applied to your Orator
& the said William Howard then in full life

but since deceased to survive & him the said
Foster Moore with four hundred and twenty
four head of sheep and for the use of which said
sheep for the term of three years the next following
the said Foster Moore then & there promised
agreed to pay and deliver to the said complainants
and the said William Howard at the town of
Monmouth six hundred and thirty four and a
half pounds of wool of an average quality from
the sheep that he should receive of your Orators
and said William Howard to be delivered on
or before the first day of July A.D. 1852 & an-
nually thereafter for the said term of three years
the first six hundred and thirty four & a half
pounds to be delivered on or before the first
day of July A.D. 1852 and also to deliver unto your
Orators & the said William Howard or the legal
representative four hundred and twenty four
head of sheep & the same that he received of them
or others as good & in good condition of the following
description to wit. one hundred and thirty
eight lambs one hundred and forty two
ewes and one hundred and forty three
wethers and three buck sheep and to be
delivered on demand at the farm of the said
Foster Moore on the eleventh day of June
A.D. 1854 and on a failure to deliver said
sheep as aforesaid he the said Foster Moore
then & there agreed to pay to your Orators
& the said William Howard six hundred
and thirty four dollars & fifty cents. And
your Orators would further show unto your
honor that your Orators & the said William

Howard then in full life but since deceased did then & there comply with the request of the Faster Moore and did accordingly furnish him the said Moore four hundred and twenty four sheep to be by him kept for the time aforesaid, and for the better security of the payment & delivery of the said six hundred and thirty four & a half pounds of wool on or before the first day of July A.D. 1852 & annually thereafter for the said term of three years and the delivery of the said four hundred and twenty four sheep or in failure thereof for the better ~~security~~ securing the payment of the said sum of six hundred & thirty four dollars and fifty cents by indenture of Mortgage duly acknowledged by said Faster Moore before Samuel Williams who was on the date of acknowledgement an acting justice of the Peace fully authorized to act as such and bearing date the said eleventh day of June A.D. 1851 and made between the said Faster Moore of the first part & your Orators & said William Howard then in full life but since deceased of the other part. The said Faster Moore for and in consideration of six hundred and thirty four dollars and fifty cents granted bargained and conveyed to your Orators and the said William Howard then in full life but since deceased the said lands above described which has since been recorded by the Recorder of said County in the records thereof in & by said Indenture signed & sealed with the seal

of the said Foster Moore will more fully & at large appear reference being thereto had for that purpose and which said indenture is herewith exhibited in open court marked A. & prayed to be made a part of this your Orators bill of complaint and to which said indenture was subject to & there was attached thereto a condition in writing whereby the above mentioned indenture was to be & became void upon the full performance by the said Moore of each and every of the terms of said agreement as by said condition will more fully and at large appear which said condition is herewith exhibited in open court and ~~made a part~~ marked B. & which your Orators pray may be made a part of this his bill of complaint. And your Orators would respectfully show unto your honor that said Moore did in part fulfilment of said contract deliver a part only of said 634½ pounds of wool annually thereafter has fully paid in cash. what of said wool he did not deliver to your Orators & the said William Howard so that there is not now due unto your orators as survivors of said William Howard any amount of wool or money. Your Orators would further show that the said Moore has not as yet delivered unto your Orators and the said William Howard during the lifetime of said William Howard or unto your Orators since the death of said William Howard or either of them

the said four hundred and twenty four sheep or any part or parcel of them either of lambs ewes wethers or bucks or any part thereof at the farm of said Moore or elsewhere either on the 11th day of June A.D 1854 or at any other time and farther that he has not as yet paid to your Orators and the said William Howard during the lifetime of said William Howard or unto your Orators since the death of said William Howard or to either of them or any person for them the said sum of six hundred and thirty four dollars and fifty cents or any part thereof according to the provisions & terms of said agreement or otherwise howsoever and as he was & is bound to do having failed to deliver the said four hundred and twenty four sheep. and further that there is now due your Orators as survivors of the said William Howard who is now deceased the sum of six hundred and thirty four dollars & fifty cents together with interest thereon from the said eleventh day of June A.D 1854 amounting to a large sum of money to wit the sum of fifty dollars. And your orators well hoped the said Moore would have delivered to your orators & said William Howard the said four hundred and twenty four sheep according to the terms of said agreement or would have paid to them the said sum of six hundred & thirty four dollars & fifty cents together with interest thereon as aforesaid or would have suffered your

Orators to have peacable ~~possession~~ & quietly to hold & enjoyed the said premises and for that purpose hath frequently applied to said Moore and requested him to deliver to your Orators as survivors of said William Howard the said four hundred and twenty four ~~sheep or else~~ pay to your Orators as such survivors the said sum of six hundred and thirty four dollars & fifty cents together with interest thereon or else peacably to deliver to your Orators as such survivors the premises aforesaid together with the title deeds and evidences of title & your Orators well hoped that the said Moore would have complied with such your Orators reasonably request as in justice & equity he ought to have done

But now so it is may it please your honor that the said Moore wholly refuses to deliver unto your Orators as such survivors the said number of four hundred and twenty four sheep or any part thereof and wholly refuses to pay unto your Orators as such survivors the said sum of six hundred and thirty four dollars and fifty cents or any part thereof or any part of the interest thereof. All of which actings and doings are contrary to equity and good conscience and tend to the manifest wrong and injury of your Orators as such survivors in the premises.

In consideration whereof and forasmuch as your Orators can can only have adequate

7

relief in the premises in a Court of equity where matters of this kind are properly relievable and cognizable. To the end therefore that the said Foster Moore may to the best and utmost of his knowledge and belief make answer without oath (which is waived hereby) the matters aforesaid as fully as if the same were again repeated & he thereto distinctly interrogated and that an account may be taken by and under the direction of this honorable court of what is due and owing to your Orators as such survivors for principal and interest upon or by virtue of said mortgage security & agreement aforesaid and that the said Foster Moore may be decreed to pay and satisfy to your Orators as such survivors what shall appear to be due and owing to them on the taking of said account by a day to be appointed by this honorable Court. together with costs and in default thereof that the said Foster Moore ~~&c~~ and all persons claiming under him may be absolutely barred and foreclosed of and from all equity of redemption and claim in and to said lands and every part thereof and that a special execution may issue upon the decree of this honorable court commanding said Mortgage premises to be sold by the Sheriff of said County to satisfy what shall appear to be due on said Mortgage together with costs of suit. And that your Orators may have such further and other relief in the premises as the nature & circumstances of

this Case may require & to your honor shall seem meet

May it please your honor to grant unto your Orators the most gracious writ of Subpoena of the People of the State of Illinois to be directed to the said Foster Moore thereby commanding him that on a certain day and under a certain pain therein to be limited personally to be and appear before your honor in this honorable court and then & there full true perfect and direct answer make to all and singular the premises and further to stand to abide and perform such further order direction and decree therein as to your honor shall seem meet and your orators will ever pray &c

Geo B Jones Sol for compts

Exhibit A. is in words and figures following to wit.

This Indenture made the the Eleventh day of June in the year One Thousand Eight Hundred and fifty one Between Foster Moore of the first part and William Howard Franklin Howard and Lemuel Milk of the second part Witnesseth That the said party of the first part in consideration of the sum of Six hundred and thirty four dollars and fifty cents to him duly paid before the delivery hereof hath granted bargained and by these Presents do grant bargain

8

and convey to the said party of the second part their heirs and assigns forever all the following described real Estate viz. The South West qr of the N W qr and the N E qr of the N W qr of Section twenty Seven and the N W qr of the S W qr of Section twenty two all in Township No 26 N of Range No 12 W in the County of Iroquois and State of Illinois With the appurtenances and all the estate. title and interest of the said party of the first part therein. And the said party of the first part do hereby covenant and agree with the said party of the second part that at the time of the delivery hereof the said party of the first part was the lawful owner of the premises above granted and seized thereof in fee simple absolute that he will Warrant And Defend the above granted premises in the quiet and peacable possession of the said party of the second part their heirs and assigns forever and that they are free from all incumberances whatsoever

In Witness Whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written

Signed Sealed and Delivered in Presence of
Samuel Williams

Foster Moore (Seal)

State of Illinois
Iroquois County ss

I Samuel Williams a Justice of the Peace in and for the said county in the

State aforesaid do hereby certify. That Easter Moore personally known to me as the same person whose name is subscribed to the above Mortgage appeared before me this day in person and acknowledged that he signed sealed and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this 12 day of June A.D. 1851

Samuel Williams J.P. Seal

Exhibit B is in words and figures following to wit

Now the conditions of the above obligation is such that if the said Easter Moore shall deliver to Wm Howard and Co or their agent at the Town of Monence in Will County Ills six hundred thirty four and a half pounds of wool of an average quality sheared from the sheep that he has this day received ~~from~~ of them in good order on or before the first day of July A.D. 1852 also the same quantity at the same time and place for A.D. 1853 and 1854 As shall he will deliver to the said Wm Howard and Co or their legal Representatives four hundred and twenty four head of sheep (424) the same sheep that he received of them or others as good in good condition of the following description one hundred and thirty eight lambs. one hundred and

40

11

forty two Ews and one hundred and forty three wethers and three bucks the sheep to be delivered on demand at the farm of the said Foster Moore in the County of Iroquois Ills on the eleventh day of June A.D 1854 he the said Foster Moore further agrees to keep the same bucks or others as good with said sheep On failure to deliver the sheep the said Foster Moore agrees to pay the sum of six hundred thirty four dollars and fifty cents

If the above conditions is complied with then the above obligation to be null and void otherwise to remain in full force and virtue

Given under my hands and seal this 11th day of June 1851

Foster Moore (L.S.)

Also on the 23rd day of November A.D 1855 there was issued from said court a Summons which is in words and figures as follows to wit.

Summons in Chancery

State of Illinois } ss
Iroquois County }

The People of the State of Illinois to the Sheriff of said County Greeting

We Command you that you Summon Foster Moore if to be found in your County personally to be and appear before the Circuit Court of said County on the first

day of the next term thereof to be holden at the Court House in the town of Middleport on the 4th day of December next to answer the matters and things contained in a certain Bill in chancery exhibited against him in said court by Lemuel Milk & Franklin Howard as survivors of William Howard deceased and further to abide the order of the Court in the premises - and have you then and there this writ

Seal

Witness Jesse Bennett Clerk of said Court and the Seal thereof at Middleport in said County this 23rd day of November AD 1855

J. Bennett Clerk

Said Summons bears the following superscription to wit

Served by leaving Copy with defts

Son this 24th Nov 1855

Service	.50
Copy	.50
5 Miles trav	25
Rtn	10
	$ 135

A. B. Roff Shf
by W. B. White dep

Also on the 28th day of November AD 1855 there was issued from said court a subpoena which is in words and figures following to wit

State of Illinois
Iroquois County } ss The People of the

12

13

State of Illinois to the Sheriff of said County Greeting

We Command You that You Summon Henry Horicks if he shall be found in your County personally to be and appear before the Circuit Court of said County on the fourth day of Dec next to testify and the truth to speak in a certain action now depending and undetermined in said Court Wherein Lemuel Milk Et al are Plaintiffs and Foster Moore is Defendant, on the part of the said Defendant and this he shall in no wise omit under the penalty of the Law: and have you then and there this writ with an Endorsement thereon in what manner you executed the same

Seal

Witness Jesse Bennett Clerk of our said Court and the seal thereof at Middleport this 28th day of November Anno Domini 1855

J Bennett Clerk

Said Subpoena bears the following endorsement to wit

Witness not found in the County

20 M Trav 1.00
Return 10
$ 1.10

A B Roff Shff
By W B White Dept

~~Filed Mar 30 A D 1859~~
~~B W Gray Clerk~~

State of Illinois
Iroquois County } ss

Pleas before the Honorable Sylvester W Randall Judge of 11th Judicial Circuit of the State of Illinois began and held at the Court House in the town of Middleport in said County on Tuesday the 4th day of December AD 1855

Present Hon S W Randall Judge of 11th Judicial Circuit
Sherman W Bowen States attorney
Asa B Roff Sheriff of said County
Jesse Bennett Circuit Clerk

Be it remembered that on the 7th day of December AD 1855 it being one of regular days of the December Special term of the Iroquois County Circuit Court for the year last aforesaid certain proceedings were had and entered of Record in said Court in words and figures following to wit

Lemuel Milk Etal
vs
Foster Moore } Bill to foreclose Mortgage

Comes the Complainants by their Solicitor Joiner and Enters their motion for a rule on Defendant to answer. It is therefore ordered that Defendant answer by 1st day of March next and that this cause be continued

14

And now on this 1st day of March A.D. 1886 Comes the respondent in his own proper person and files his answer to Complainants Bill which answer is in the following words and figures to wit

The State of Illinois } ss
Iroquois County }

In the Circuit Court of Iroquois County in Chancery

Faster Moore
ads
Samuel Milk &
Franklin Howard

Answer of Faster Moore

And the said Faster Moore Defendant in the above bill of Complaint filed by Samuel Milk and Franklin Howard Survivors of Philli Howard who was when in life the partner of the said Milk & Howard saving and reserving to himself all just exceptions to the said Complainants Bill of Complaint answering thereto. says that true it is that he made the Contract in writing as set forth in the Indenture Marked "A" on the 11th of June 1857 in which it is Covenanted and agreed by and between the said parties that the said Defendant Faster Moore should take the 424 sheep and to pay for the use of said sheep as is therein stipulated. but the said Respondent expressly denies that he solicited or was anxious to take the said sheep from the said Complainants Plaintiffs as is therein set forth but he stated the fact and insisted

that before the said contract was entered into by the parties the said Complainant urged and insisted that said Defendant should take said sheep at the terms stated holding out to the said Defendant great inducements of profit arising to him if he would enter into the Contract and then and there avering and warranting the said sheep to be sound and in a healthy condition and assuring the said Respondent that there was no ailment or disease among or with said sheep and the said Respondent then being ignorant of the nature of sheep and of the marks and signs by which any one well acquainted with the appearance of sheep could ascertain and determine as to their soundness and healthful condition and this Respondent then and there trusting to the assurance and warranty of the said complainants, he did then and there enter into the indenture of Mortgage as is aforesaid, Charged and then took possession of the said sheep to keep and render the rent as is above stated And the said Respondent would further answer and say that the said Complainants well knowing the bad condition and unhealthfulness of said sheep at the time of the Contract fraudulently warranted and assured the said Respondent of the sound

16.

17

and healthfulness of said sheep when they the said Complainants then well knew that said sheep were then & there unsound and diseased and with such disease and unsoundness that in all probability said sheep could not and would not live over the winter then approaching. And the said Respondent further answering would aver and state that soon after he took possession of said sheep they began to die and continued to die notwithstanding the said respondent took every care and attention of said sheep which he could or which others could take of them in his employ this Respondent all the while doctoring them and feeding them with oats, corn and good hay in quantities suitable to them, and according to the usual and best attention given to sheep by sheep raisers and farmers of the country. This Respondent would further answer and say that out of the 424 sheep taken by this Respondent of the said complainants in three days after the contract was entered into said sheep began to die and continued to die daily or nearly so until the next May following one hundred and ninety eight had died of the complaints and diseases which the said sheep had when the contract was entered into leaving only two hundred and twenty six to be sheared. And this Respondent further answering says that all the wool sheared from the remaining sheep

at shearing time was given to the agent of the said Complainants at Momence leaving one hundred twelve pound and a half yet due if there had been ~~a~~ no fraud in the Contract to be paid to the said Complainants This Respondent would further answer and say that some of the remaining sheep sheared in May 1852 died of the same Complaints notwithstanding all the care and exertions to keep said Sheep alive by good treatment and full feeding but although the said sheep had died of the complaints aforesaid the said respondent keep said sheep for another year and then in 1853 the said respondent again sheared the balance of the said sheep and gave to the said Complainants at Momence all the wool but thirty three pounds sheared from the balance of the said sheep. Again the said Respondent would further state that he still continued to take good care of the remaining sheep and gave to the said Complainants not only all the wool which was sheared from the remaining sheep but wool enough from other sheep which the said respondent had bought of other persons. Making six hundred and seventy three pounds. as appears from receipts marked "A." and made a part of this answer. And this respondent would further answer and say that when he discovered that said sheep were diseased and dying on his hands notwithstanding all the care and attention ~~he and~~

18

19

he & others in his employ could bestow on them — he would them and before any rent became due have returned the said sheep to the said Complainants but they were non — residents said to reside in the State of N York and so far off that he could not make the offer and he being ignorant of such business and not knowing what course it was best or most proper to take under the circumstances continued to keep them or the balance until the first rent became due and aimed to honestly do all on his he could on his part to prevent litigation or difficulty and to save himself from the great loss and expense which he saw would follow him by aiming to keep & perform the contract as is set forth in said Indenture. and when he had sheared and delivered all the wool taken from said remaining sheep to the agent of the said Complainants. he verily believed they would feel satisfied with the rent rendered accompanied with a full explanation of the loss and his exertions to save said sheep. But so it is that as soon as this respondent could see one of the Complainants. one of them said S. Milk signified and stated after hearing all the facts that at the final settlement they would do what was fair and right and not require full and complete fulfillment of the said Contract the said respondent relying on the said representations and declarations of the said Milk continued to try to pay the rent

agreed and did buy sheep to obtain wool and paid him one of the complainants cattle valued at his own price and wool at his price enough to make up the said rent or wool due to the said complainants had the said sheep been sound and in the condition the said Complainants warranted them at the time of the Contract This respondent would further state and answer that true it is he paid up all the rent in wool and money as is stated by said complainants and for the reasons above stated by him that he was ignorant of what course it was best for him to pursue as they the Complainants were non residents and he this Respondent never saw either of them till some time after he made the first payment to their agent and from the assurance of S Hill that if he would go on with the contract they would do what was equitable and fair giving this respondent to understand that all the sheep under the circumstances would not be required This respondent further answering would say that as demand has ever been made of him by the said Complainants or their agent of said sheep at his house or farm in Iroquois County on the 11th day of June 1854 or anytime since but he wishing to get rid of the remaining number of sheep and have a final termination of the contract and settlement and to comply with the suggestions made by

the said Meilk to do what was right if said respondent would go on with the contract – he this Respondent did after the 11th day of June 1854 deliver to the said Complainants one hundred forty six of the same sheep gotten of the said Complainants and one hundred and eleven dollars sixty eight cents paid towards sheep not delivered also $20.04 on sheep not delivered also $23.68 on sheep not delivered as per rect. marked "A" making in all according to the valuation of the said sheep by said Complainants a further delivery of one hundred & three sheep at $1.50 each making in all 249 sheep leaving a balance of 175 sheep which the said Respondent did not deliver to the said Complainants or their agent for the reason as above set forth in his answer and which he believed from the assurance of the said Milk at the time of the said respondent & the said Milk first conversed about the manner and way the sheep were delivered to the said Respondent and also before the time he delivered the said sheep to the said Milk and paid him the money above refered to. that all of the 424 sheep or others as good would not be required of him by the said Complainants and so distinctly told the said Milk their agreement and the assurances made by the said Milk. This Respondent then & distinctly denies the allegations

in the said Complainants Bill that he never delivered any of the said sheep to the said Complainants and calls on them for proof averring that he did deliver the number stated and supposed that would satisfy any reasonable honest man when the Complainants had overreached & taken in this Respondent in inducing him to take the said sheep in the diseased condition they were when this Respondent took them. But as it is that this Respondent was mistaken not only in the Charater of the Complainants when he received their diseased sheep but the sheep themselves and he has been disappointed in the assurances of the said Milk made to this Respondent in receiving their 249 sheep as a final settlement of this matter This Respondent in view of all the facts accompanying this case denies that $634,50 or any part or parcel are ~~demanded~~ due and unpaid on this Contract to the said Complainants and calls for proof. This Respondent having fully answered said Complainants Bill prays to be dismissed with his lawful costs against said Complainants.

Foster Moore

The receipts refered to in the foregoing are in the following words and figures to wit

Rec'd at Chubasco Six hundred & seventy three lbs of wool to the credit of Foster Moore on Contract

22

we hold against him

Chebanse July 22nd 1854

Howard & Milk

By

Lemuel Milk

Middleport July 17/54

Recd of Foster Moore one hundred & ~~forty~~ six sheep being a part of the sheep belonging to Howard & Milk as follows ninety nine ews ~~twenty~~ five Lambs twenty two weathers

H H Cooly

Recd at Shepherds Grove Iroquois County Ill Fifty dollars & ten cents ($50,10/100) for the 167 lbs of wool that was due on this Contract up to this ~~time~~ date. Also recd Twenty three dollars & sixty eight ~~$~~ $23,68/100 for interest on wool not delivered on this Contract at the time it was due up to this date Also recd Twenty dollars & four cents $20,04/100 as interest on sheep not delivered on this Contract when due up to this date Also recd one hundred Eleven dollars & Sixty eight cents $111,68/100 in part pay for the sheep that remains due on this Contract

Shepherds Grove Nov 18th/54

Lemuel Milk

Upon the back of said Bill ~~is~~ is the following

Filed March 1st 1856

J Bennett

Clerk

And afterwards to wit: On the 29th day of October A.D. 1856 it being also one of the regular days of the October Special Term of the Iroquois County Circuit Court. The following order was made and entered of Record in said Court to wit:

Samuel Milk
vs
Foster Moore
} Bill to Foreclose Mortgage

Comes now the Plaintiff by Joiner his Attorney and moves the Court to strike answer of Defendant from the files which said motion is in the following words and figures to wit:

State of Illinois
Iroquois County
} Iroquois Cd Circuit Court
Oct Term A.D. 1856

Samuel Milk
vs
Foster Moore
} Foreclosure

And now comes the Complainant by Joiner his Attorney & moves the Court to strike the plea & answer of Defendant herein from the files

Geo B Joiner
Atty for Compts

Upon the back of said motion was the following

Filed Oct 29 1856
J Bennett Clerk
Filed Mar 30th A.D. 1859
P W Gray Clerk

And afterwards to wit on the 30th day of October A D 1856 it being also one of the regular days of the October Special term of the Iroquois County Circuit Court the following order was made and entered of Record in Said Court to wit.

Samuel Milk
vs
Foster Moore } Bill to Foreclose

Now comes Plaintiff by his Attorney and moves the Court to Strike answer from the files — overruled

And afterwards to wit on the 31st day of October A D 1856 the Complainant by Joines his Attorney filed in Said Court the following exceptions to wit

State of Illinois } Iroquois Circuit Court
Iroquois County } October Term A D 1856

Samuel Milk
vs
Foster Moore } Foreclosure

And now at this term comes the said plaintiff by Joines his attorney and excepts to the answer of the said defendants by him filed herein for the following reasons to wit that said answer attempts to set forth that there was a partial failure of consideration of said Mortgage & a want of consideration & a set off of said Mortgage for this is unauthorized by law

Geo B Joines

Upon the back of said exceptions is the following to wit

Filed Oct 31st 56
J. Bennett Clk
By Bryant Depy

And Afterwards to wit On the 30th day of April A.D 1857 it being also one of the regular days of the April term of the Iroquois County Circuit Court. The following order was made and entered of Record in said Court to wit

Samuel Milk
vs
Foster Moore
} Bill to foreclose Mortgage

On Motion Ordered that this suit be continued. Also on Motion leave was granted to file cross bill by the first day of next term

Also afterwards on the 1st day of May A.D 1857 Samuel Milk Complainant in the above entitled cause by Seth B. Joines his Attorney filed his Replication to the answer of Foster Moore Defendant which is in the following words and figures to wit:

State of Illinois
Iroquois County
} April Term A.D 1857
Iroquois Cir Court

Samuel Milk
vs
Foster Moore
} The Replication of the said

27

Lemuel Milk Complainant to the answer
of Easter Moore Defts

This repliant saving and reserving
to himself all and all manner of advantage
of exceptions to the many insufficiencies of the
said answer for replication thereto saith
that he will own and prove his said bill
to be true certain and sufficient in law to be answered
unto and that the said ~~answer~~ of the said
defendant is uncertain insufficient and untrue
and not to be replied unto by the repliant
Without this that any other matters or things
whatsoever in the said answer contained
material or effectual in the law to be
replied unto confessed and avoided
traversed or denied is true. All which matters
and things this Repliant is and will be ready
to aver maintain & prove as this honorable
Court shall direct and humbly prays as
in and by said bill he hath already prayed

Geo B. Joines Atty for Compt

Notice to take Depositions in terms and
figures following to wit=

State of Illinois } In Iroquois Circuit Court
Iroquois County } of the April Term A.D. 1857

Lemuel Milk & Franklin Howard as
Executors of William Howard dec'd
vs
Foster Moore

Bill in
Chancery

The above named Complainants
or George B Joiner Esq their Attorney Counsel and
solicitor Will please take notice that on the 19th
day of January A.D. 1857 between the hours of nine
o'Clock in the fore-noon and five o'clock in
the afternoon of the same day I shall by myself
or my attorney appear before Henry C Bryant
a Justice of the Peace in and for the County of Iroquois
and State of Illinois at his office in the town
of Middleport in said County of Iroquois: and
I shall then and there cause the depositions of George
W Penman. George W Moore. Elijah Sopp and
Jacob Horl and others witnesses residing in
said County of Iroquois to be taken and before
the said Henry C Bryant as such Justice of the
peace and I shall so continue from day to day
before the said Justice of the peace at his office
aforesaid until all said depositions of said
Witnesses shall be taken: Which depositions
when the same shall be taken as aforesaid ~~Will~~
will be read and used as evidence on my part on
the trial of the above entitled cause now pending
and undetermined in the said Iroquois County
County Circuit Court on the Chancery side
thereof. When and Where you can attend and
put cross interrogatories to said witnesses if

28

you see proper

Respectfully &c

Foster Moore

By James Bletcher

his Attorney

Endorsed as follows to wit.

I do hereby acknowledge Service of the within Notice by Copy this 19th day of December A D 1856

Geo. B Jonier

Atty for Pltffs

And afterwards to wit on the 14th day of February A D 1857 the following Notice, & interrogatories were filed in the Office of the Clerk of the Circuit Court of said Iroquois County which Notice is in words and figures to wit

State of Illinois
Iroquois County } ss

Iroquois County Circuit Court
of the April Term A D 1857

Samuel Meilk & Franklin Howard
Executors of William Howard deceased
vs
Foster Moore

Bill in Chancery to foreclose Mortgage

The above named Complainants or George B Jonier their Attorney and Solicitor are hereby Notified that on the 14th day of February A D 1857 between the hours of Nine Oclock in the forenoon and four Oclock in the afternoon of the same day I shall apply by myself or my Attorney before the Clerk of the Iroquois County Circuit Court at his office in the Town of Middleport in the County of Iroquois and State of Illinois and there and then

I shall issue out of the Office of said Clerk of said Circuit Court a dedimus Potestatem or Commission under the Seal of said Circuit Court directed to Foster A Mitchel a Justice of the Peace at and residing in the Town of Westfield in the County of Fayette in the State of Iowa authorizing him the said Foster A Mitchel as such Justice of the Peace to take the Deposition of Aaron Patterson and Lucinda Patterson Witnesses for me residing in the said County of Fayette in the State of Iowa which Depositions when so taken and returned into the Office of said Clerk will be read and used as evidence on my part on the trial of the above Entitled Cause now pending and undetermined in the said Circuit Court in said County of Dubuque wherein the said the said Samuel Milk and Franklin Howard Survivors of William Howard deceased are Complainants, and I the said Foster Moore am defendant, said Foster A Mitchel as such Justice of the Peace will be authorized to cause said Witnesses to come before him at such time and place as he may designate, and appoint and faithfully take their depositions upon all such interrogatories as may be attached to said Commission and enclosed therewith both on the part of the said defendant and the said Complainants and none other— You are therefore requested to appear at said Circuit Clerks Office at the time and place aforesaid and Cause said Clerk to Enclose such interrogatories to be sent to said Witnesses as you may think proper according to Law &c

Jany 29th 1857

Foster Moore by James Thatcher his Attorney

30

The following are the Interrogatories which are to be put to said Witnesses of which the said Complainants are requested to take notice-To wit,

Interrogatory 1st

Are you acquainted with the parties to the above entitled Suit? If not with all. State which of the above Named persons both on the part of the said Complainants and Defendant you are acquainted with?

Interrogatory 2nd Do you know of the said Complainants and the said Defendant entering into a certain Contract respecting Sheep? And if so, State what that Contract was, as near as you can? And when and where the same was Made? And whether all of said Complainants were present when said Contract was made? If not all then what one or more of them was or were present?

Interrogatory 3d State if you know. Whether the said Complainants on or about the Eleventh day of June A D 1851 delivered to the said Defendant Sheep? If so how many they delivered to him? Where they were delivered? And State fully whether you saw said Sheep, when they were so delivered to the said Defendant? If so State fully what was the Condition of said Sheep as it respects their Order health and soundness

Interrogatory 4th State if you saw said Sheep after they had been delivered to the said Foster Moore at any time during the Summer fall and Winter of 1851 and during the winter and Spring of 1852? And if so State how often during that time you saw said Sheep? And where you resided from the Eleventh day of June A D 1851

until the first day of May A D 1852? and whether you often saw said Sheep during that time? If so how often? and State fully what the condition of said Sheep was during that time whether they were healthy and sound and in good order or otherwise?

Interrogatory 5th State if you know whether any of said Sheep died during the Summer fall and Winter of 1851 or during the Winter and Spring of 1852? If so State how many of said sheep died during the times aforesaid if any? And if any of said sheep died during the times aforesaid State at what season of the year they so died during the time aforesaid? and State fully what was the cause of the death of said sheep if any died as aforesaid? Were ~~any~~ of said sheep diseased? If so what disease had they? Were any of said sheep diseased at the time the said Foster Moore got them? If so. State if you know what disease they had? and how many were so diseased?

Interrogatory 6th State whether you were present on the 11th day of June A D 1851 when the said Complainants and the said defendant entered into a Contract respecting said sheep? If so State fully what the said Complainants said if anything respecting the health and soundness of said sheep And if any thing was said by the said Complainants as aforesaid, by which one of said Complainants the same was said,? And State fully all that was said at that time between the said Complainants or any one of them, and the said Defendant respecting the health and soundness of said Sheep?

Interrogatory 7th State if you know what the said Defendant has been

33

" damaged if any thing in consequence of said
" sheep dying in the manner and manner
" and at the time they so died? and state
" fully how you estimate the damage if any
" which the said defendant has sustained
" in consequence of said sheep dying as aforesaid?

Interrogatory 8th To Aaron Patterson "What is your business or occupation in life?"

I do hereby acknowledge service of the forgoing notice and interrogatories this 28th day of January AD 1857

Geo B Joiner
Atty for L Mills

On the back of which appears the following
Filed February 14th 1857
Thomas Vennum Clerk

Interrogatories filed February 2nd 1857

The following are the Interrogatories to be propounded to Each of said Witnesses to wit Aaron Patterson & Lucena Patterson on the part of the Complainant in the Cause of Howard & Mills vs Foster Moore in the Iroquois Circuit Court in the State of Illinois before Foster & Mitchel

1st What relation are you to Foster Moore

2nd What disease had said Sheep at the time they were delivered to Foster Moore

3d What were such Sheep as those that you say were diseased & poor worth at the time they were delivered to said Foster Moore and what were

good Sound & healthy Sheep worth at that time to sell the Summer of 1851

4 What were good healthy Sheep worth in Iroquois County in December 1851

5 Did any of said Sheep which were healthy when they were delivered to Foster Moon die in the year 1851 if so how many

6th Did you ever Count the whole number of said Sheep that died die in the year 1851 ? if not how do you know how many died die

7th How many of said Sheep died in the Summer of 1851 and how many died in October & how many in November & how many in December 1851 how many in Each of said months

8th What was wool worth per pound in December 1851 & what was wool worth per pound in the Spring of 1852 in Iroquois County Ill

9th Was there any thing the matter of the wool on the Sheep that died in the year 1851

10th Who herded said Sheep during the Summer of 1851 & who took Care of them during the winter of 1851 & 1852

11th Did any of said Sheep die in the year 1852 if so state how many & at what time in the year during what month and how many Each month

12th Did Any of said Sheep die in the year 1853 if so how many

13th Did Foster Moon have troughs in which to salt and feed said Sheep during the winter of 1851 & 1852

14th How did Foster Moon feed said Sheep during the winter of 1851 & 1852 State whether he fed them with hay & whether he fed the

35 ped for them on the ground or where he put it for them

15 Did Foster Moore have Sheds or other places to shelter said Sheep from the weather during the winter of 1851 & 1852 if so State what kind he had

16th State how many lots Foster Moore kept said Sheep in during the winter of 1851 & 1852 & whether there were Sheds in Each of said lots for said Sheep

17th How large were Each of said lots in which said Sheep were kept during the winter of 1851 & 1852 as near as you can tell

18th What was the Condition of the fence around said lots during the winter of 1851 & 1852

19th Could said Sheep go from one lot to the other generally during that time

20th were there not Bush or Bushes in Each of said lots during the winter of 1851 & 1852

21 Did any of said Sheep shed their wool during the winter of 1851 & 1852 if so how many and at what particular time

22 Will not Sheep do much better during ~~the winter~~ the winter time with Sheds to shelter them from the weather than they will without them

23d What disease are Sheep subject to If any that are Exposed to the weather & not sheltered from the Storms of Winter

24 Were You ever in the Sheep business if so State when and where & State how many you ever had at any one time

25 Did you ever see the written Contract

between the Complainants & Said Foster Moore if so State when and where & who wrote it out and who signed it?

Franklin Howard &
Samuel Milk Complaints
By Geo B Joiner their
Solicitor

And on the 14th day of February AD 1857 the Dedimus Protestatum mentioned in the foregoing Notice was sued out of the office of the Clerk of the Circuit Court of Iroquois County Ills which said Dedimus is in words and figures following to wit

37

State of Illinois }
County of Iroquois } ss

The people of the State of Illinois
To Foster A. Mitchell Esquire of the Town of Westfield
of the County of Fayette and State of Iowa
Whereas it has been represented to us that Aaron Patterson
and Lucinda Patterson are material witnesses in a
certain cause now depending in our Circuit Court in
and for the County of Iroquois aforesaid between
Franklin Howard and Lemuel Milk Plaintiffs
and Foster Moore, defendant and that the said
witnesses reside at the County of
Fayette in the State of Iowa aforesaid without the said
State of Illinois and that their personal attendance
cannot be procured at the trial of the said cause
Now know ye that we in confidence of your prudence
and fidelity have appointed you Commissioner to
examine the said witnesses and do therefore authorize
and require you to cause the said witnesses to come before
you at such time and place as you may therefor designate
and appoint and diligently to examine the said witnesses
on the oath or affirmations of the said witnesses by you first
duly in that behalf administered and faithfully to take
the depositions of the said witnesses upon all interrogatories
inclosed with or attached to these presents both on the part
of the said Plaintiffs and of the said Defendant and upon
others; and that in taking said deposition you cause all
such interrogatories together with the answers of the witness
thereto to be reduced to writing severally in the order in
which such interrogatories may be propounded and answered;
and the same when thus taken together with this commission
the enclosed interrogatories and exhibits if any you sil
immediately certify into our said Circuit Court with all
convenient speed by annexing at the foot of the depositions
so taken a certificate subscribed by your own proper name

(as such commissioner) stating that it was sworn to and signed by such witness together with the time and place when and where such deposition was taken by you as aforesaid; sealed up and directed to the clerk of our said Circuit Court at Middle Port in the County of Iroquois aforesaid; with the title of the said suit in the first part of this commission mentioned and the names of the said parties litigant indorsed thereon.

Witness Thomas Vennum Clerk of our said Circuit Court for Iroquois county aforesaid who has hereunto affixed the seal of the said court at the clerks office in Middle Port in said County this Fourteenth day of February A. D. 1857

Seal

Thomas Vennum Clerk.

39

Among the papers in this suit appears the following Notice to take depositions on the part of Complainants which Notice was served on Defendants attorney by Copy on the day therein named to wit on the 3rd day of February A D 1857 which Notice is in words and figures following to wit

State of Illinois
Iroquois County } Iroquois Cir Court April Term A D 1857

Samuel Milk and Franklin Howard
Vs
Foster Moore } In Chancery

The above named defendant or James Fletcher Esq his Attorney will please take Notice that on the 23rd day of February instant we shall proceed to take the depositions of Hiram Vennund John Strean George Martin John Martin Alfred Becket & Charles S Young Witnesses on the part of said Complainants—

Said depositions to be taken by and before Henry C Bryant a Justice of the Peace in and for said County of Iroquois at his Office in the town of Middleport in said County and continue from day to day untill all are taken and said depositions when taken are to be read as Evidence on the trial of the above Entitled Cause now pending and undetermined in the Iroquois Circuit Court in the State of Illinois and on the Chancery side of said Court and at the time of taking said

depositions you can attend and put Crop interrogatories if you see proper

Service Milk & Fountain
Howard Services of
William Howard Dec'd
By Geo B Jones their solicitor

Endorsed as follows

I do hereby acknowledge Service of the above Notice by Copy this 3rd day of February A D 1857

James Fletcher
Atty for Defendant

You see proper Respectfully &c
Foster Moore
By James Fletcher
his Attorney

Endorsed as follows to wit

I do hereby acknowledge service of the within notice & copy this 19th day of December A D 1856
Geo T Pinson
Atty for Defts

"And Afterwards to wit on the 21st day of October A D 1857 it being one of the regular days of the October term of the Iroquois County Circuit Court. The following order was made and Entered of Record in said Court to wit"

"Samuel Meith vs Foster Moore" "Bill to Foreclose Mortgage"

"And Now comes the Defendant in this Cause by Fletcher & Pinson his Attorneys and files herein a cross Bill and moves the Court to rule the Plaintiff to Answer the said Cross Bill"

"Said Cross Bill is in the ~~following~~ words and figures following to wit"

"State of Illinois } ss Iroquois County Circuit Court
Iroquois County } of the October Term A D 1857

"To the Honorable Charles B Starr Judge of the Twentieth Judicial circuit of the State of Illinois for the Iroquois County Circuit Court in Chancery sitting

Humbly Complaining showeth unto your Honor
Your Orator Foster Moore of the County of Iroquois
and State of Illinois That William Howard of the firm
of William Howard Franklin Howard and Lemuel
Mills (The said William Howard then being in full
life but since deceased) To wit on or about the Eleventh
day of June in the Year of our Lord one thousand Eight hun-
dred and fifty one at the County of Iroquois aforesaid
applied to your orator for the purpose of inducing
and prevailing upon your orator to take of him
a lot of Sheep upon the hereinafter mentioned
terms and conditions and for this purpose he drove
to the house of your orator about one thousand
Sheep and proposed to your orator to let to him
a portion of said lot of one thousand Sheep to wit
four hundred and twenty four head of said one
thousand sheep on the following terms and
conditions to wit that your orator should
to the said William Howard & Co or their Agents
at the Town of Momence in Will County and State
of Illinois Six hundred and thirty four and
a half pounds of wool of an average quality
sheared from the sheep that he proposed to
let your orator take, in good order, on or before
the first day of July A.D. 1852. Also the same
quantity at the same time and place for
A.D. 1853 and also the same quantity at the
same time and place for A.D. 1854 and to
deliver to the said William Howard & Co or
their Legal Representative four hundred and
twenty four head of Sheep. The same sheep
that your orator should receive of them the said
William Howard & Co or others as good in good

4.2

condition of the folloing discription to wit One hundred and thirty eight lambs one hundred and forty two ewes and one hundred and forty one wethers and three Bucks the sheep were to be delivered on demand at the farm of your orator in said County of Iroquois on the Eleventh day of June A.D 1854. Your orator to keep the same bucks which the said William Howard was to let him have or others as good with said sheep which he proposed to let your orator have, And further the said William Howard required of your Orator on failure to deliver the sheep aforesaid to pay to them the said William Howard & Co the sum of six hundred and thirty four Dollars and fifty Cents.

Your orator Shows the he at first declined accepting of the said proposition of the said William Howard believing that said sheep was ~~not~~ a good flock of sheep your orator was fearful that said sheep were diseased from the fact that many of them were then in flesh poor and lame and had a bad cough and it being at that time of the season to wit: on or about the Eleventh of June as aforesaid When your orator believed that if said sheep were in good health they would have been in much better order than said sheep were in and not same as many of said sheep were and would have been free from Cough. But the said William Howard then and there

claiming to be a man of great experience in the raising of sheep in order to induce your orator to take said four hundred and twenty four sheep warranted said sheep to be in a sound and healthy condition and that there was nothing wrong about said sheep. that the reason why they looked bad was that said sheep had been drove Drove through the mud and water which had the effect to make them look ~~poor~~ thin and poor and lame but said sheep were sound and nothing wrong about them and that when said sheep should rest a few days they would all be right. Your Orator would further show that he then and there believed that the said William Howard was an honest man and that he would not decive your Orator. And from the superior knowledge of the said Howard in the raising & driving of sheep. Your Orator believed that the said William Howard told the truth and that Matters and things stated by the said Howard as aforesaid were true and your Orator then and there placed Confidence in the said William Howard and accepted of the said proposition of the said William Howard. and then and there entered into an agreement in substance as before stated And further the said William Howard then and there professed to have a superior knowledge of sheep and from the Confidence which your Orator placed in the knowledge and honesty of the said William

45 Howard. Your Orator intrusted the selection of said Sheep entirely to him and that the said William Howard then and there pointed out and selected said Sheep. And your Orator then and there took and received such sheep as the said Howard pointed them out and selected them until the said number of four hundred and twenty four were made up. And further that when the said sheep were so selected and seperated from the balance of the said one thousand Sheep. Your Orator then and there entered into a certain agreement with the said William Howard &c in substance as before stated and in order to answer the faithful performance of the said agreement Your Orator made and executed his certain deed or mortgage which said deed or Mortgage and the agreement attached thereto is in substance as follows to wit: "This Indenture made the Eleventh day of June in the year one thousand Eight hundred and fifty one Between Foster Moore of the first part and William Howard Franklin Howard and Lemuel Meilk of the second part Witnesseth that the said party of the first part in consideration of the sum of six hundred and thirty four dollars and fifty cents to him duly paid before the delivery hereof hath granted bargained and by these Presents do grant bargain and convey to the said party

of the second part their heirs and assigns forever all the following described Real Estate Viz. The South East qr of the N W qr and the N E qr of the N W qr of section Twenty Seven and the N W qr of the S W qr of section Twenty two. all in Township No 26 N of Range No 12 W in the County of Iroquois and State of Illinois. With the appurtenances and all the Estate title and interest of the said party of the first part therein. And the said party of the first part do hereby covenant and agree with the said Party of the second part. that at the time of the delivery hereof the said party of the first part was the Lawful owner of the premises above granted and seized thereof in fee simple absolute that he will warrant and defend the above granted premises in the quiet and peacable possession of the said Party of the second part their heirs and assigns forever. and that they are free from all incumberances Whatever. In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above mentioned Signed sealed and delivered "Foster Moore Seal" in presence of Samuel Williams"

"State of Illinois Iroquois County } ss"

"I Samuel Williams a Justice of the Peace in and for the said County in the state aforesaid do hereby certify that Foster Moore personally known to me as

47

the same person whose name is subscribed to the above Mortgage approved before me this day in Person and acknowledged that he signed sealed and delivered the said instrument of writing as his free and voluntary act and for the uses and purposes therein set forth Given under my hand and seal this 12th day of June AD 1851"

"Samuel Williams J.N.E. Seal"

Now the conditions of the above obligation is such that if the said ~~Foot~~ Foster Moore shall deliver to Wm Howard and Co or their agent at the Town of Momence in Will County Ills six hundred thirty four and a half pounds of wool of an average quality sheared from the sheep that he has this day received of them in good order on or before the first day of July AD 1852. Also the same quantity at the same time and place for AD 1853 and 1854 and also that he will deliver to the said Wm Howard and Co or their Legal representative four hundred and twenty four head of sheep (424) the same sheep that he received of them or others as good in good condition of the following description. One hundred and thirty Eight lambs. One hundred and forty two Ews and one hundred and forty one wethers and three bucks. the sheep to be delivered on demand at the farm of the said Foster Moore in the County

of Iroquois Ills on the Eleventh day of June A.D. 1854. he the said Foster Moore further agrees to keep the same bucks or others as good with said sheep. On a failure to deliver the sheep the said Foster Moore agrees to pay the sum of six hundred and thirty four dollars and fifty cents If the above conditions are complied with then the above obligation to be ~~void~~ null and void otherwise to remain in full force and virtue Given under "my hand and seal this 11th day of June A.D. 1851"

"Foster Moore" "LS"

Your Orator would further show unto your Honor that he confiding in the honor of the said William Howard then and there believed that he had a good contract of the said William Howard & Co and then and there believed that he had a good lot of sheep and then and there believed that the said William Howard had told him the truth in relation to the soundness of said sheep and that the reason why said sheep look ~~bad~~ poor and were lame as aforesaid and coughed as aforesaid was that they had been drove through the mud and water and that they would be all right as soon as they should become rested. he therefore believed and so expressed himself to some of his neighbors that he had done well in making said contract for them he believed that the said William Howard

was an honest man and would not deceive your Orator

Your Orator would further show unto your Honor that notwithstanding the said representations and the said Warranty of the said William Howard of the soundness of the said Sheep. said sheep or a large portion of them were diseased at the time the said William Howard sold them to your Orator and at the time he warranted them to your Orator to be sound which said disease could not be discovered upon them ~~at the time~~ at the time of the said sale warranty and delivery as aforesaid otherwise than by the said sheep looking poor thin in flesh lame and by their Cough as aforesaid. And further that on the 14th day of June A.D. 1887 and within three days after your Orator had so received them as aforesaid said sheep commenced ~~dieing~~ and so continued to die between that time and the first day of December next following so that between the said 13th day of June and the first day of December aforesaid there died of the said flock of said sheep one hundred and eighty with the disease of scab. Rot or grub or some other disease which said sheep had contracted and had at the time the said Howard dilivered them to your Orator as aforesaid and which disease the said Howard fraudulently Concealed from your Orator in order to induce your Orator to take the same in manner and form as aforesaid in order that he might the better cheat

wrong and defraud your orator in the premises. and wrong and injure him as hereinafter stated. And further ~~that after~~ that after the first day of November 1851 many of the remaining number of said sheep died during the months of Novembe and December 1851 with the disease aforesaid And many of the remaining number of said sheep which survived and recovered from the said disease lost their wool and were otherwise greatly injured by the said disease so that as many of the said flock of the said sheep had died from the Effects of said disease that at shearing time of sheep in the spring of A.D 1852 there was left of the said flock of said sheep two hundred and twenty six that one hundred and ninety five had died with the disease aforesaid and one of said sheep had been killed by the wolves or dogs.

And your Orator would further show unto your Honor that soon after the said sheep had commenced to die. your Orator discovered that he had been deceived by the said Howard that instead of said sheep being sound that they were diseased and that only your orator could prevent the spread of said disease among said sheep and could relieve those which were then sick and others which showed symptoms of said disease that in all probability he would lose the whole of them taking this view of the matter and to save

60

all he ~~could~~ possibly could of said sheep he commenced doctoring them and did from time to time by every means and remedy which were known to him for such disease of sheep use and apply and and treat said sheep to the full extent of his knowledge power and ability in order to save said sheep from death and to heal them of their said diseases and restore them again to health That during all the time said sheep were diseased as aforesaid your Orator spent a great deal of time and trouble and to a large amount of expense in taking care of said sheep and in doctoring them and in trying to cure them of the said disease And your orator would further show unto your Honor that at and before the time the said Howard delivered said sheep to your orator and as one of the inducements which he held out to your Orator in order to get your Orator to take said sheep. he assured your Orator that the farm of your Orator was well adapted to the raising of sheep and that said sheep would do well upon the farm of your Orator. And further that the said Howard there and then went on to a certain piece of land near the residence of your orator and told your Orator that that would be a proper and good place for your orator to build the pens & Racks in which to keep said sheep during the

winter season and that he then and there directed your Orator how to build the pens & Racks aforesaid. and your Orator would further show that in pursuance of the directions of the said Howard he did in the manner and form as the said Howard had directed him upon the said ~~piece~~ Piece of Land where the said Howard had directed Said Pens & racks to be built afterwards & prior to the following times to wit. About the month of October 1881 built said pens and racks in manner and form aforesaid so that said Pens and Racks when they were completed were in all respects as to location form and size such as the said Howard had directed him to build. And your Orator would further show unto your Honor that during all the time of the sickness of said sheep as well as at all other times from the said time when your Orator received the same he together with his boys and hired hands gave said sheep good care and attention. during the summer season he herded them on good pasture salted them regularly and gave them such other attention as they required. And during the fall and winter season following the said 11th day of June A.D 1881 your Orator fed them well to wit that portion which had survived and penned them in the pens so prepared as aforesaid. and fed them on good healthy food and in sufficient quantity for them and of good quality and at the proper times so that in all respects of what kind or nature

52

53

soever said sheep had good and sufficient care and attention bestowed upon them by your Orator and that they wanted for nothing which they had not or which would have rendered them more healthy which would have been in the power of your Orator to procure

And your Orator would further show unto your Honor that in the spring of A.D. 1852 your Orator Sheared the remaining number of said sheep To wit the said two hundred and twenty six which had survived. And that after he so sheared said sheep To wit. on or about the 22nd day of June A.D. 1852 he delivered all and singular the wool which he had so sheared from said sheep amounting to five hundred and twenty two pounds to A.S. Vail at the Town of Momence then in the county of Will and State of Illinois who was there and there the agent of the said William Howard & Co leaving about one hundred and twelve and one half pounds of Wool undelivered to the said William Howard & Co according to the said contract of the Eleventh of June A.D. 1851 - And further that after your Orator had sheared said sheep in 1852 some of them died with the said disease which had still remained amongst them notwithstanding all that your Orator could do to prevent it and that your Orator kept over all that remained alive until shearing time of said sheep in the spring of A.D. 1853 when he again sheared them To wit all that remained alive and took and delivered at the Town of Momence aforesaid all and singular

the wool which he sheared from the same except thirty three pounds making five hundred and forty one pounds of wool which he delivered to Lemuel Milk one of the firm of William Howard & Co on the 30th of June A.D. 1853 — And further that your Orator kept the remaining portion of said sheep until the Spring of A.D. 1854. when he sheared the same and delivered all the wool he again in the spring of 1854 sheared from the same together with a large quantity of wool which he had that spring sheared from other sheep which he had then recently bought of other persons making in all six hundred and seventy three pounds which he delivered to the said Lemuel Milk on the 22nd day of July A.D. 1854 — And your Orator would further show unto your Honor that after he had so delivered the said wool as aforesaid there remained 167 pounds of wool which he had not delivered to the said William Howard & Co according to the said Contract of June the 11th 1851 but for the said deficiency in the said wool Your Orator paid to the said Lemuel Milk afterward To wit on the 18th day of November 1854 the sum of fifty dollars and ten cents which was then taken and received by the said Lemuel Milk in full satisfaction of the said deficiency of the said 167 pounds as aforesaid. And your Orator would further show unto your Honor that he paid to the said Lemuel Milk at Shepherds Grove on the 18th day of November A.D. 1854 the sum

of two hundred and five dollars and fifty cents. that fifty dollars and ten cents were to be applied for the payment of the said deficiency of the said one hundred and sixty seven pounds of wool which had not been delivered according to the said Contract of A.D. 1851 and the ballance To wit. the sum of one hundred and fifty five dollars and forty cents your Orator intended to apply upon the deficiency of the sheep which your orator had not delivered as herein after stated. And your orator so Expressly Charged the said Milk to so apply the same. But your orator here Expressly Charges the fact to be that when the said Lemuel Milk wrote the Receipt for said sum of money he contrary to the wishes and instructions of your Orator and for the purpose of defrauding your Orator wrote and delivered to your Orator a receipt for said sum which reads as follows To wit

Rec'd at Shepherds Grove Iroquois County Ills fifty dollars & ten cents ($50 10/100) for the 167 lbs of wool that was due on this Contract up to this date - Also Rec'd Twenty three dollars & Sixty Eight $23.68 for interest on wool not delivered on this contract at the time it was due up to this date. Also Rec'd twenty dollars & four cents $20.04 as interest on sheep not delivered on this Contract when due up to this date Also Rec'd one hundred Eleven dollars

& sixty eight Cents $111 68/100 in part pay for the sheep that remains due on this contract Shepherds Grove Nov 18th 1854
" Lemuel Milk

And your Orator then and there claimed a different receipt according to the intentions of your Orator & the understanding between him and the said Milk when he made said payment but your Orator charges that the said Lemuel Milk then and there refused to give any other or different receipt for said money and as your Orator had made said payment to said Lemuel Meilk and as the said Milk had said payment in his possession your Orator was then obliged to take said Receipt with its Errors aforesaid or be deprived of any receipt at all. And that without said receipt or some other he could not have proved said payment at all. And your Orator would further show unto your Honor that on the 17th day of July A.D. 1854 your Orator delivered to the agent of the said William Howard & Co to wit H. H. Cooley ninety nine Ewes Twenty five Lambs and twenty two wethers making in all one hundred and forty six Sheep. And further that he paid to the said Lemuel Milk as aforesaid on the said 18th day of November A.D. 1854 the said sum of one hundred & fifty five dollars & forty cents towards the the deficiency of said Sheep not delivered according to the contract

57

of the 11th of June A.D. 1851 as aforesaid which said sum of $155.40 is equal to one hundred and three sheep which added to the said one hundred and forty six sheep is equal to two hundred and forty nine sheep which left on the said 18th day of Nov A.D. 1854 one hundred and seventy five sheep which had not been delivered according to the said contract of June 11th 1851 And your Orator would further show unto your Honor that as soon as he discovered that said sheep were diseased as aforesaid he would have returned the same to the said William Howard & Co but they were nonresidents as your Orator then believed and was so informed and that there was no person as your Orator was informed and believed legally authorized to receive them residing in this county and your orator supposed that he was in duty bound to keep said sheep and take all the care of them that he could until such time as he could legally dispose of them. And further that afterwards about the winter of A.D. 1852 & 1853 the said Samuel Milk then and there being one of the firm of the said William Howard & Co came to the residence of your Orator Where said sheep were kept and your Orator then and there offered to let him take said sheep back and your Orator then and there related to the said Samuel Milk fully the history of said sheep from the time he received them up to that time and your orator then and there fully told the said Milk that said sheep were diseased

when the said William Howard delivered them to your orator. And that about one hundred and ninety seven had died from the effects of said disease. And that your Orator had been cheated wronged and defrauded by said William Howard and had been gredtly damaged by him and that your Orator wished and desired him to take back said sheep and make good the damage which your orator had thereby sustained; but the said Lemuel Milk then and there refused to take back said sheep. but then and there requested your Orator keep said sheep the term for which he had contracted to keep them and that he and those with whom he was associated would make it all right with him your orator. and then and there gave your orator to understand and believe that what ever damage your orator had sustained or should thereafter sustain in consequence of said sheep having been and being so diseased as aforesaid should be made right with your orator. And further that your orator put confidence in the said Lemuel Milk and went on to complete his contract as near as he could the circumstances considered believing that if he acted in good faith with the said William Howard & Co that they would extend Equal good faith towards him and to prevent litigation. and carry on good faith in all things he did make the payments aforesaid and delivered

the wool and sheep aforesaid supposing and fully believing that he would have justice done to him in the final settlement betwen them and him and that in no instance did your orator believe that he ought or that by law he would have been obliged to pay them any wool money or deliver them any of said sheep but rather than enter into a tedious and expensive littigation with the said William Howard & Co or any of them he thought it would be to his interest to pay them said sum of money and deliver them said wool and sheep and that had he not supposed that they would have dealt with him fairly according to the principles of equity and good conscience he would not have delivered them any of said wool or sheep or paid them any money for your Orator had been damaged more by said sheep having been diseased than the entire value of said sheep and the wool aforesaid, So that your Orator here charges that he only paid and delivered them said sheep & wool to prevent littigation believing that they would act honorable with your orator and give him no trouble either by suit or otherwise and would make him at last the allowance of the said one hundred and seventy five sheep which were not delivered as aforesaid and damage or as a just deduction from the whole amount of said sheep which your orator had agreed to deliver to the said William

Howard & Co by his said Contract of the 11th of June 1857 — Your Orator would further show that he has been damaged by said sheep having been diseased as aforesaid in the full sum of one thousand Dollars as your Orator Expects to prove and fully establish to the Entire satisfaction of your Honor But now so it is may it please your Honor that the said Lemuel Milk and Franklin Howard survivors of the said William Howard deceased combining and confederating with one Charles L Young & with diverse other persons how to injure and aggrieve your orator in the premises. Which other persons are at present unknown to your Orator, but whose names are at present unknown to your Orator but whose names when discovered he prays may be inserted herein and that they may be made parties hereto, with proper and apt words to charge them not only first that the said sheep were not diseased when the said William Howard delivered them to your Orator and that none of them died, but that they also pretend that your Orator never delivered any of said sheep to them Whereas your Orator charges that the said sheep were diseased when the said William Howard delivered them to your Orator as aforesaid and that a large number of them died as aforesaid and that your Orator did deliver a large number of them to the said Lemuel Milk as aforesaid

61

And that the said Lemuel Milk and Franklin Howard who are the survivors of the said William Howard deceased have Exhibited their Bill in this Honorable Court against your Orator setting forth among other things that the your Orator had made the said agreement with the said William Howard & Co that your Orator had delivered a part of the wool which he had agreed to deliver and that he had paid in cash for that portion of the wool which he had not delivered but Charges that your Orator has not delivered the said sheep according to the said agreement or any part thereof and has not paid the said sum of money in their Stead or any part thereof to them the said Complainants in their said bill - And praying that an account may be taken of what remains due upon said agreement ~~and that your Orator~~ and that your Orator may be decreed to pay to them the said Lemuel Milk and Franklin Howard as the survivors of the said William Howard dec^d what shall appear to be due and owing to them on the taking of said account by a day to be appointed by this Honorable Court together with Costs and ~~Cost~~ in default thereof that your Orator and all persons claiming under him may be absolutely barred & foreclosed of & from all Equity of redemption & claim in & to said Lands & Mortgaged as aforesaid and that a special execution may issue upon such decree commanding said Mortgaged premises to be sold by

the sheriff of said County of Iroquois to satisfy what shall appear to be due on said Mortgage together with costs of suit. Although the said Lemuel Milk and Franklin Howard well know that the said sheep were diseased when the said William Howard delivered them to your Orator, and that in order to induce your Orato to take the same the said William Howard warranta said sheep to be sound and healthy and fraudulently represented to your Orator that the reason why said sheep looked bad was because they had been drove through the mud and water and that as soon as they should become rested they would be all right - and that they well know that one hundred and ninety seven of said sheep died with the said diseases between the time your Orator received them and the next Spring thereafter. And they also well know that your Orator delivered to them the said wool and paid them said money and delivered to them said sheep as aforesaid in order to prevent Litigation and not because he was bound in justice so to do believing at the same time that they would on final settlement of the whole matter do what was just right and honorable with your Orator. And further they well know that they are guilty of bad faith with your Orator in commencing their said suit against your orator

62

and have violated their said promise to your Orator that they would do what was right as aforesaid with your Orator and that they well know that your Orator is not in Equity and good Conscience bound by any payment which he has made them or any of the sheep or wool which has delivered to them as aforesaid and that your Orator has a right in Equity and good Conscience to recover the full amount of his damage notwithstanding his said payments and delivery of said wool & sheep and for the reasons aforesaid your Orator has no full and adequate means of defending himself in the said suit which has been instituted by the said Lemuel Milk and Franklin Howard or of obtaining such relief as he is justly and Equitably entitled to without a full and complete answer from the said Lemuel Milk and Franklin Howard survivors of the said William Howard dec^d as a discovery and that he has no reason of proving his alligations or some of them without the aid of this Honorable Court. To the end therefore that your Orator may be better enabled to make such defence to the said bill of the said Lemuel Milk and Franklin Howard and establish his said allegations and charges in this behalf he humbly prays that the said Lemuel Milk and Franklin Howard and their Confederates when discovered may full

true and perfect answer make to all and singular the matters and things herein before charged and set forth (their and each of their oaths being hereby waived pursuant to the statutes in such case made and provided as fully and particularly as if the same were again set forth and they and each of them particularly interrogated thereunto And that it may be decreed by your Honor that the said contract or agreement & Mortgage be canceled and set aside as of no binding force or effect whatever and that the said Lemuel Milk and Franklin Howard may be decreed to pay to your Orator such sum of money as should appear to be just and Equitable over and above the said one hundred and seventy five sheep which have not been delivered under the said contract of June 11th 1851 - And that your Orator may have such other relief or may have such further relief as the nature of his case may require and shall be agreeable to Equity and good conscience May it please your Honor to grant the writ of summons herein according to Law and your Orator will ever pray &c

Foster Moore"

State of Illinois
Iroquois County ss

Personally came before me Thomas Vennum Clerk of the Circuit

65

"Court of said County and having heard this aforesaid bill read and understanding the same swear that the allegations made upon my ~~Oath~~ own knowledge are true and that those made upon others I believe they are true and correct October 19th 1857

Foster Moore

"Subscribed and sworn to before me this 19th day of October A.D. 1857

Thomas Vennum
Clerk.

"Filed October 19th 1857

Thomas Vennum, Clerk."

And afterwards to wit on this same day "Comes also the Plaintiff herein by Joiner his attorney and Enters his motion to have the Cause set for hearing on the Original Bill and Answer this Term"

"And afterwards to wit On the Sixth day of November A.D. 1857 it being one of the regular days of the October Term of the Poquois Circuit Court the following Order was made and Entered of Record in said Court to wit:

"Lemuel Mills
vs
Foster Moore } "Bill to foreclose Mortgage"

"And now comes the Complainant by his Solicitor Joiner and Enters his Motion to strike the Cross Bill in this Cause from the files of this Court"

which Motion is in these

and figures following to wit-

"State of Illinois } "Iroquois Circuit Court- October
Iroquois County. } Term A D 1857"

"Samuel Mills et al
vs
Foster Moore" } "In Chancery.

"And now at this time comes the Complainants by Joiner their Attorney and Moves the Court to strike the the Cross Bill herein filed from the files of this court"

"Geo B Joiner Atty for"

On the back of which appears the following

Filed Oct 23rd/57
Silas Semmons Clk
By Bryant Depy.

"And the Court upon hearing the Arguments of the Counsel Ordered that the said Motion be Overruled— Comes again the Complainant by Joiner his Solicitor and files his answer to defendants Cross Bill"

Which said Answer is in words and figures following to wit-

"State of Illinois
Iroquois County. } "Iroquois Circuit Court October Term
A. D. 1857"

"The joint and several answers of Samuel Mills and Franklin Howard

"Survivors of William Howard Decd To the Cross Bill filed against them by Foster Moore

These Defendants now and at all times saving and reserving to themselves All and All manner of benefit and advantage of Exception to the many uncertainties imperfections in said Cross Bill contained for Answer thereunto, or so much and such parts thereof as these defendants are advised are Material or necessary for them to answer And they answer and say that they deny all Knowledge. That said William Howard of the firm of William Howard & Franklin Howard & Samuel Milk applied to said Complainant for the purpose of inducing or prevailing said Complainant to take a lot of Sheep to keep, but these defendants are informed and believe that said Complainant applied to said William Howard and insisted upon him letting said Complainant have Sheep to keep and that said William Howard did in pursuance of said solicitation on the 11th day of June 1851 let said Complainant have four hundred and Twenty four Sheep to keep on the terms and conditions mentioned in said Cross bill of said complainants — These defendants deny all Knowledge that said Complainant at first declined accepting the proposition of said William Howard for the reason that they were not a good flock or any other reason — deny all Knowledge that said Complainant believe said Sheep were diseased & deny that said Sheep were poor & lame & had a cough

These defendants admit that said William Howard was a man of some experience in Sheep raising but deny that said William Howard Warranted said 424 Sheep to be healthy in order

to induce said Complainant to take them on for any other purpose. And deny that said William Howard said the reason why they looked bad was that they had been drove through mud & Water—

And these defendants further answering say that they dont know whether said Complainant believed said William Howard was honest and would not deceive said Complainant or not but these defendants believe said William Howard was an honest man and told nothing but the truth about said 424 Sheep but whether the statements of said William Howard had any influence with said Moore in taking said Sheep they cannot say

These defendants deny all knowledge of said Moore entries— the selection of said 424 Sheep to said William Howard but they believe said Moore selected such as suited himself uninfluenced by the pointing out of said William Howard

These defendants admit that said Moore at the time he selected said Sheep out of the flock of 1000 Sheep that he entered into the agreement as set forth in said Cross Bill as also the condition thereto attached— These defendants again deny all knowledge of said Moore's being influenced in taking said Sheep by any warranty or statements whatever of said William Howard as to the condition of said sheep, but they believe that said Moore was influenced in the selection thereof by his own judgement solely & so expressed himself to his Neighbors & that he had done well. And not from the Statements of said William Howard

These defendants deny that said Sheep

on any portion of the 424 Sheep were diseased at the time they were delivered to said Moore but they are informed and believe said 424 Sheep were in good order and condition for Sheep at that season of the year & not in any way diseased whatever. and deny that any portion of said 424 Sheep died untill in the fall of the year and no portion of them died on the 14th day of June 1851. but these defendants says that said Wm Howard at the time he delivered said 424 Sheep to said Moore gave said Moore some Seven or Eight Sheep which were old & poor but not in any wise diseased, & these defendants admit that some of said Seven or Eight Sheep so given to said Moore died soon after they were delivered to said Moore These defendants deny all knowledge that 180 of said Sheep died on or before the 1st day of December A D 1851 of the Scab or rot or Grub or any other disease whatever Contracted at the time said William Howard delivered them to said Moore & deny that said Howard Concealed any disease of Sheep as they say, that they had none when so delivered to said Moore

These defendants deny that any of said Sheep died of any disease had or Contracted at the time they were delivered to said Moore but these defendants are informed and believe that said Sheep began to die in the fall of the year from Unskilful management and neglect on the part of said Moore That Early in the fall ~~of the year~~ said Sheep were destitute of proper food and water for a good portion of the time untill they became very poor & very Early in the forepart of Winter of 1851 began to die off from said neglect and want of Care

69

& that they so continued to die for the greater part of the winter of 1851 & 1852 but these defendants cannot say as they dont know how many of said Sheep died during said fall and winter or how many were killed by dogs or wolves

These defendants deny that soon after said Sheep commenced to die or at any time said Moore discovered that he had been deceived by said Howard and deny again that said 424 Sheep were diseased in any manner whatever at the time they were so delivered to said Moore dont know whether said Moore doctored said Sheep or not therefor cannot admit or deny the same. do not know how much time & trouble he spent among said 424 Sheep

These defendants deny all knowledge that said Wm Howard in order to induce said Moore to take said Sheep assured him that his farm was well adapted to the raising of Sheep & deny the knowledge that said Howard at the time he delivered said 424 Sheep to said Moore he went on to a piece of land of said Moore and told him that it would be a proper and good place for said Moore to build the pens and Racks in which to keep said Sheep during the winter season & deny that he directed said Moore how to build the racks & pens & deny all knowledge of said Moore building pens & Racks at all but they are informed & believe that said Moore never built racks & Pens for said Sheep as he should have done that they

were wholey insufficient & improper for the use and benefit of said Sheep to shelter them from the Storms or in which to feed them

And believes that said Howard never gave directions to have them built as said Moore did build them

These defendants do not know at what time said racks & Pens were built

These defendants say that they do not know whether said Moore & his boys & hired hands gave said Sheep good Care and attention during the summer Season of 1851 but they are informed and believe as they have therein before Stated that said Sheep were not properly cared for & looked to by said Moore his boys or hired hands during the fall & forepart of the winter of 1851 & that said sheep became diseased and died of pure neglect want of Care food & water, and deny that said 424 Sheep were herded on good pasture during the fall of 1851 and deny that said Moore fed them well on good healthy food and in sufficient quantity and good quality and deny that said Sheep wanted for nothing which would have rendered them more healthy And which was in the power of said Moore to procure. These defendants further answering say that they are informed and believe that Moore during the first winter after he got said Sheep. Kept them on Coarse prairie Slough grass hay of the poorest quality for Sheep, that he had no sheds for them or other Conveniences to shelter them from the weather and that his racks which said Moore prepared to feed said Sheep in were so Clumsy & poorly

72

scantely made that a good portion of said sheep could not get to the feed at once— that the largest sheep could only get to the racks & they would keep the others away so that those that needed the most nursing & best feed. as these defendants are informed and believe there always are in all flocks some such head to subsist on the poorest of the poor feed that was furnished them by said Moore And in consequence of these deficiencies in the conveniences of said Moore to keep sheep from the weather, the want of feed troughs & proper Care, attention, food & water, these defendants are informed and believe that said sheep died in such numbers as is set forth in said Crop bill if at All

These defendants admit that said Moore sheared the remaining of said sheep in the Spring of 1852 but how many they do not know

Admit that Moore delivered 522 pounds of wool to A. S. Vail Agent of said Company as set forth in said Crop Bill leaving about 414 pounds undelivered according to Contract

These defendants dont know whether said sheep continued to die after shearing time of 1852 but they deny that said sheep died of disease contracted before and at the time of delivery to said Moore

These defendants admit that said Moore again sheared said sheep in 1853 but dont know whether or not he delivered all the wool he sheared from them Except thirty three pounds admit that he delivered 341 pounds to Samuel Milk one of these defendants on or about the 30th day of June 1853 Admit that said Moore

kept the Sheep again until the Spring time of 1854 but these defendants dont know whether or not the said Moore delivered all the wool together with a large portion which he shared from other Sheep then recently bought and Admit that he delivered about pounds to said Samuel Milk on or about the 22nd day of July A D 1854 Admit that there remained pounds of wool which he had not delivered to said Wm Howard & Co according to Contract of June 1851— These defendants Admit that said Moore paid said Milk on the 18th day of Nov 1854 fifty dollars and ten cents in full satisfaction of said ballance of Wool and Admit that said Moore paid on said 18th day of Nov 1854 two hundred and five dollars & fifty cents including the fifty dollars & ten cents, but these defendants deny that it was to be applied as charged in said Bill, but Aver that $50.60 was to be applied on wool not delivered on the Contract — & $2.56 to be applied as interest on wool not delivered on the Contract at the time it was due Also $2.04 as interest on Sheep not delivered according to Contract now due Also $111 68/100 as part pay of Sheep not delivered on the Contract, and that in pursuance of the agreement between said Moore & Milk on said 18th day of Nov 1854 the said Milk Entered the Credits to that effect on the back of said Contract

These defendants deny that said Milk wrote the Receipt Contrary to the wishes Expressed or instructions of said Moore but were to said Moores entire satisfaction at the time, and deny that Moore Claimed any other or different Receipt

43

and deny that said Milk refused to give any other on different receipt for said money, as no different one was asked for by said Moore, deny that said Moore was obliged to take this receipt, this defendant Milk never refused to admit the payments that said Moore made

These defendants admit that on on about the 17th day of July A.D. 1854 said Moore delivered to H H Cooley one hundred and forty six sheep of the kinds specified in said Cross Bill leaving 278 not delivered according to said Contract of 11th June 1851

These defendants deny that said Moore paid $155.40 on & toward sheep not delivered according to contract leaving on the said 18th day of Nov 1854 due these defendants as survivors of said William Howard on said Contract of 11th June 1851 $306.

These defendants do not know whether said Moore would have returned said sheep as soon as he discovered they were diseased. the defendants admit that they were non residents

These defendants aver that they have always since the 11th ~~day of~~ June A.D. 1851 had agents in the County to transact business for them

Admit that Moore supposed he must keep said sheep according to contract but deny that he took good care of them

These defendants deny that said Moore in 1852 or 1853 offered to return said sheep to said Lemuel Milk — they admit that said Moore related to said Milk that he had bad luck with the sheep but stated at the same time that

he thought or believed it was in Consequence of his not having Hay & Other food provided for them of a good quality and that he then knew more about taking care of sheep & he thought he would get on well enough with them: they positively deny that said Moore related or told or ever intimated to said Milk that said sheep were diseased at the time he received them of said Howard or that he said Moore had been cheated wronged or defrauded by said Howard and deny that said Moore desired said Milk to take back said sheep. And deny that Moore requested said Milk to make good the damage said Moore had sustained & deny that said Milk gave said Moore to understand or believe what ever damage he had or should sustain in Consequence of said sheep having been or being diseased should should be made right with said Moore

These defendants deny that said Moore went on to perform said Contract from any inducement held out to him by said Milk or any other inducements whatever other than those set out in the said Contract — admit that said Moore might have made said payments in same Litigation as he was bound by law to make them in accordance with the terms of said Contract but these defendants deny that said Moore made said payments of Money & Wool in discharge & performance of said Contract, but at the time said Moore made a payment he only asked and requested him to pay the residue & in no instance did he claim any damage whatever of these defendants or either of them in Consequence of said sheep having been diseased at the time of the

7.5

delivery of the same to him on said 11th day of June A.D. 1867 and never set up such a defence to the payment of the ballance due on said Contract until he found he was going to be sued on the said Contract

These defendants deny that said Moore was damaged more than the entire value of said Sheep & Wool in Consequence of them having been diseased. Admit that said Moore made said payments of Wool Sheep & Money on 18th Nov 1864 to save litigation and these defendants believe that said Moore thought and fully intended at the time he made the same that he would not give these defendants the trouble of Commencing suit against him as he would be able to pay the full amount of the ballance due on said Contract in a short time

These defendants deny that said Moore thought at the time he made said payments of Nov 18th 1864 that these defendants would give him no trouble either by suit or otherwise and that they would make him an allowance for any number whatever of sheep which were not delivered, but on the Contrary said Moore then informed said Milk that he would pay and discharge the whole of the ballance due them on said Contract in a short time and requested said Milk to wait on him a while ~~and he would~~ & he would pay it all up—

Deny that said Moore has been damaged from in Consequence of said sheep having been diseased

These defendants deny all and all manner of fraudulent Combination or Confederating either with the said Charles S. Young or with any other person or persons whatever to injure or aggrieve said

Moore— These defendants admit that they believe and believe that said 424 sheep were not diseased when said William Howard delivered them to said Moore they again deny that said sheep were in any wise diseased when delivered to said Moore

These defendants admit that they as sureties of said William Howard have Exhibited their bill in this honorable Court against said Moore stating forth that said Moore had made said agreement with the said William Howard & Co that said Moore had delivered part of the wool which he had agreed to deliver and paid in cash for that portion of wool he had not delivered and that said Moore had not delivered the sheep according to Contract or agreement or any part thereof all of which matters and things set forth in said Original Bill are true as these defendants believe Also in said Original Bill praying that an account be taken of what remains due on said Contract and that said Moore be decreed to pay the same to these defendants as sureties as aforesaid by a day to be appointed by this Court & Costs & in default thereof that said Moore and all others Claiming under him may be barred and foreclosed of and from all Equity of Redemption & Claim in and to said Lands so Mortgaged and that Special Execution may issue decree Commanding said Mortgaged premises to be sold by the Sheriff of said County to satisfy what shall be decreed to be due on said agreement or Mortgage & Costs of Suit

These defendants deny that they know said 424 sheep were diseased When said William Howard delivered them to said Moore and deny

that said William Howard in order to induce said Moore to take the same Warranted said Sheep to be sound although they knew that he might safely have done so as they believe they were on said 11th day of June AD 1857 perfectly sound and free from all and every disease whatever to interfere with there doing well if they had been properly taken care of and feed & watered as they should be

These defendants again say that they dont know how many of said Sheep died between the time Moore received them and the next Spring and admit that said Moore paid and delivered Sheep Wool & Money as herein before stated and not otherwise

These defendants deny that they are guilty of bad faith with said Moore in Commencing said Suit in Chancery against him and deny that they have violated any promise whatever with said Moore and deny that they know that said Moore is not bound by any payment he has made them or any of the Sheep or wool he has delivered them And deny that said Moore has any right to receive damage from them

These defendants deny all and all manner of unlawful Confederacy or Combination wherewith they are by said Cross Bill Charged. Without this that there is any other Matter Cause or thing in said Complainants Cross Bill Contained Material or necessary for these defendants to answer unto and not herein and hereby well and sufficiently answered Confessed traversed and avoided or denied is true to the knowledge and belief of these defendants

all which matters and things these defendants are ready and willing to aver Maintain and prove as this Honorable Court shall direct and humbly pray that said crop bill be hence dismissed and that these defendants recover their reasonable costs herein sustained

Lemuel Milk
Franklin Howard
By Lemuel Milk

On the back of which answer appears the following

"Filed Nov 6/57
Thos Vermilyea Clerk
By Bryant Deputy"

"And afterwards to wit on the 13th day of November A D 1857 it being one of the regular days of the October Term of the Iroquois County Circuit Court the following order was made and Entered of Record in said Court to wit"

"Lemuel Milk
vs
Foster Moore } "Bill to Foreclose Mortgage"

"On Motion of Defendants Solicitor this Cause is Continued with leave to both Parties to take further depositions by giving the Opposite party the legal notice of the same"

In pursuance of the above order the following

80 Notice was served on part of Defendant on Complainants attorney on the day therein named to wit on 22d February AD 1858 which Notice is in words & figures to wit

"State of Illinois
Iroquois County" } ss "Iroquois County Circuit Court of the April Term AD 1858

"Lemuel Milk & Franklin Howard Survivors of William Howard Deceased" } "Bill to foreclose Mortgage"
vs
Foster Moore"

"The Above Named Complainants or George B Joiner Esq their solicitor and attorney will please take Notice that on the Eleventh day of March AD 1858 the above named defendant the said Foster Moore will by himself or his attorney appear before Nathan L Griffing Esq a Justice of the Peace at his office at Middlefork Township in the County of Vermillion in the State of Illinois, and that the said Foster Moore will then and there between the hours of Nine O'Clock in the forenoon and five O'clock in the afternoon of said day, at the Office of the said Justice of the Peace in Middlefork Township aforesaid and before the said Nathan L Griffing Justice of the Peace as aforesaid Cause the depositions of Josephine Smith, D. S Holbert Nelson Moore and Samuel Blankinship and others to be taken and that he will so continue from day to day before the said Justice of the Peace at his Office as aforesaid untill the depositions of said witnesses shall be taken which said witnesses reside in said County of Vermillion and

State of Illinois which said depositions of the witnesses aforesaid to be taken as aforesaid will be returned in to the office of the Clerk of the Sangamon County Circuit Court in the State of Illinois, And the same will be used as testimony upon the trial of the above entitled Suit now pending and undetermined in said Circuit Court on the Chancery side thereof, And also the said Depositions will be used and read as testimony on the part of said Foster Moore wherein he is Complainant in the Cross Bill which he has filed in said Court in the said Cause Wherein he the said Foster Moore is Complainant and the said Samuel Milk and Franklin Howard Survivors of William Howard Deceased are defendants

Therefore you the said Samuel Milk and Franklin Howard Survivors of William Howard deceased or George B Joiner Esqr your Solicitor and Attorney Can Appear at and before the said Justice of the Peace at the time and place aforesaid and Cross Interrogatories to said Witnesses if you see proper so to do"

Yours &c"

Foster Moore"

By James Sketcher

his Solicitor and Attorney.

"I do hereby acknowledge Service of the above and foregoing notice by Copy this 23d day of February A. D. 1858

Geo B. Joiner

Atty for Milk & Howard"

And afterwards to wit on the 6th day of April 1865 the following agreement was Entered into between the parties to this suit said agreement is in words and figures to wit "It is hereby agreed on the part of Samuel Milk and Franklin Howard Survivors of William Howard dec'd by George B Jonier their Attorney and Foster Moore by James Fletcher his Attorney That no exception shall be taken by either of the parties in the case of the said Samuel Milk & Franklin Howard survivors of William Howard deceased are Complainants and the said Foster Moore is defendant in a suit in Chancery Moore defendant in the Iroquois County Circuit Court in the State of Illinois and Wherein there is a Cross Bill filed by the said Foster Moore. To the form of the taking of the taking of the depositions in said Cause or of the Official Character of any of the officers taking the same on either side whether the same be authenticated or not. And no Exceptions whatever shall be taken to the deposition on either side except to the question & answers of the witnesses of said deposition on either side any of said depositions may be objected to by either party as though this agreement had not been made

Witness our hands this 6th day of April A D 1865

George B Jonier Atty for
Samuel Milk & Franklin Howard

James Fletcher Atty for Foster Moore

Filed April 7th 1865 Thomas Cunnum Clerk

"And afterwards to wit On the 20th day of April A. D. 1858 it being one of the regular days of the April Term of the Iroquois County Circuit Court The following Order was Made and Entered of Record in said Court to wit"

"Lemuel Milk
vs
Foster Moore" } "Bill to foreclose Mortgage"

"Now Comes the Defendant by Fletcher his Solicitor on whose Motion the Defendant have leave to file Replication to plaintiffs Answer to Cross Bill"

Which said Replication is in words and figures following to wit"

"State of Illinois } ss"
Iroquois County } "Iroquois County Circuit Court of the April Term A. D. 1858"

The Replication of Foster Moore Complainant to the answer of Lemuel Milk and Franklin Howard Survivors of William Howard deceased Defendants to the Cross Bill of Complainant of the said Complainant Foster Moore

This Replicant saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer of the said Defendants for Replication thereunto says that he will aver and prove his said Bill to be true certain and sufficient in the law to be answered unto, and that

84

the said answer of the said defendants is uncertain untrue and insufficient to be replied unto by this replicant and without this that any other matter or things whatsoever in the said Answer contained material or effectual in the law to be replied unto confessed and avoided traversed or denied is true all which matters and things this replicant is and will be ready to prove as this Honorable Court shall direct and humbly prays as in and by his said bill he has already prayed

James Hitchcock, Sol
for Complainants

"And afterwards to wit on the 26th day of April A D 1858 it being one of the regular days of the April Term of the Iroquois County Circuit Court the following order was made and Entered of Record in said Court to wit:"

"Samuel Milk
vs
Foster Moore" } "Bill to foreclose Mortgage"

"Ordered that this Cause be continued with leave to both parties to take depositions."

"And afterwards to wit
On the 12th day of January A D 1859 it being one of the regular days of the January Special Term of the Iroquois County Circuit Court the following Order was made and entered of Record in said Court to wit"

"Samuel Milk & Franklin Howard
Survivors of William Howard Decd
Vs
Foster Moore" } "Bill to foreclose Mortg"

"And Now Comes the Complainants by Joiner their Solicitor and Move the Court to Dispose the Depositions taken on the part of the defendant"

"And afterwards to wit on the 15th day of January A D 1859 it being one of the Regular days of the January Special Term of the Iroquois County Circuit Court, the following Order was made and Entered of Record in said Court to wit;"

"Samuel Milk & Franklin Howard
Vs
Foster Moore" } "Bill to Foreclose Mortgage"

"And Now Comes the Defendant by Fletcher & Pearson his Solicitors and Moves the Court that Certain Issues in this Cause be Tried by a Jury and that an Order be Entered Setting this Cause for Trial at this Term by a Jury"

"Whereupon the Court Order that this Cause be Tried by a Jury as prayed for in defendants Motion"

Which said Motion at this same time filed is in the Words and Figures following to wit

"To the Hon Charles R Starr Sole presiding Judge of the 20th Judicial Circuit Court"

of Iroquois County Illinois"

"Your Petitioner Foster Moore a litigant on the Chancery side of this Court wherein one Samuel Milk &c are complainants seeking to foreclose a Mortgage and this your petitioner is defendant.

Your petitioner would represent unto your Honor that in the prosecution of said Complaint against him he has set up in his defence that in making said contract with the said complainants there was fraud and circumvention used by said complainants towards him and to induce him to enter into said contract; and damages have accrued to your petitioner in consequence thereof and which he has sought to establish in the depositions taken — All of which facts of fraud & damages in the prosecution of said suit he prays your Honor may be tried by a jury in aid of the correct and equitable decision, this Court is asked by the parties to arrive at in the final determination of this cause

All of which is respectfully submitted to this Hon-~~ble~~ Court

Fletcher & Pearson
Counsel for Deft. Moore"

"And afterwards to wit on the 24th day of January A.D. 1859 it being one of the regular days of the January Special Term of the Iroquois Circuit Court the following order was made and entered of Record in said Court to wit"

"Samuel Milk & Franklin Howard
vs
Foster Moore" } "Bill to foreclose Mortgage"

"And Now Comes Samuel Milk One of the Complainants and files his petition Verified by Affidavit and Enters his motion for a Change of Venue from this County in this Cause. Whereupon it is Ordered by the Court that the Petition be granted and that the Venue be changed to the Circuit Court of the County of Livingston in the State of Illinois and that the Clerk Make out Certify and Transmit to the Clerk of the Circuit Court of Livingston County aforesaid a Transcript of the proceedings of this Court in this Cause with all the papers filed in the said Cause"

Which petition as this same time filed is in Words and figures following to wit

"State of Illinois } ss "Iroquois Circuit Court
Iroquois County } January Term A.D 1859

"Samuel Milk &
Franklin Howard
vs
Foster Moore" } "In Chancery"

"To the Honorable Charles R Starr Judge of the 20th Judicial Circuit in the State of Illinois

The undersigned Petitioner would respectfully represent and show unto your Honor

88

that they fear that the said Foster Moore has an undue influence on the minds of the inhabitants of said County where the above entitled action is pending so that they cannot expect a fair trial of the issues of said cause which are to be submitted to a jury — That they did not know until the present term of this Court that there were any issues in said cause that were to be submitted to a jury for trial. Your petitioners therefore pray you hence to grant unto your petitioners a change of Venue of said cause to some County of this State where said undue influence does not exist for the trial of said issues and your petitioners will ever pray &c"

"Franklin Howard
Lemuel Milk"

"State of Illinois }
Iroquois County } ss.

"Iroquois Circuit Court
January Term AD 1859"

"Personally appeared in open Court the above named Lemuel Milk and after being duly sworn deposeth and saith that matters set forth in the foregoing petition are true as he verily believes and further saith not"

"Subscribed and sworn
to before me this 22nd day
of Jany AD 1859"

"Lemuel Milk"

"Thomas Vermund Clk."

Copy of Plff Cost bill 105.59

Samuel Milk et al
vs
Foster Moore } Iroquois County Circuit Court
Bill to foreclose Mortgage

Clerks fees

1855 Dec Term	Ent Apps. 15. 3 docks 30. Iss Spa in Chy. & file 45	.90
	File bill 5. Ent. Rule 20 Ent. rule to answer 20	.45
	Ent Rule to answer by March 1st	.20
Sept.	[illegible] 3 Docks 30 Ent Mo & Ord for Costs	.40
December	Ent Mo to strike Answer 20. Ent Order overruling 20 Ent Mo	40
	& ord of Court 40 Make & ent Cost bill 20	60
1857 April Term	3 docks 30 Ent Mo & Ord of Court 40 File Dep. 10 Opening Depositions 10	90
Oct Term	3 Dock 30 Ent & fill Cross Motion 25 Ent Mo to strike Cross Bill from files 20	75
	Ent Order overruling 20 File Answer 5 Ent Mo & ord of Court 40	65
	Ent Ord Granting leave to take Depositions 20	20
April Term 1858	3 Docks suit 30 Ent Mo & Ord of Court 40 Ent Mo & Ord Granting leave to take Dep 40	1.10
June Term 1859	3 Docks 30 Ent Mo to strike Dep. from files 20	50
	Copy Cost bill 20 Certif. & Seal 35	55
		$7.70

Sheriffs Roffs fees per White

Dec Term	2 services 2 Copies travel & return on Subpoenas	$2.75
	C F McNeills fees on Deposition	15.20
	H C Bryants fees " " (Paid by Plff)	44.22
	W S Kay Constable (Paid by Plff)	3.87
	P Leonard, Justice Vermilion Co " " "	5.45
	Constables fees " " " " "	2.65
	James Wilson Serving Spas " " "	1.75
	Witness fees, John Axtell 2 days " " "	2.00
	Henry Hudson 1 George Martin 1 Jno Strean 6 days " "	8.00
	Hiram Vennum 2 days A Beckett 1 day " " "	3.00
	J Kerr 1 day William Leonard 1 day " " "	2.00
	V Wiggins 1 day W Thurman 1 day & C S Young 1 day " " "	3.00
	C C Vennum 1 day R W Anderson 1 day Stephen Amos 2 days	4.00
		$105.59

Seal A true copy from my fee Book of Plaintiffs Costs
Thomas Vennum Clk

89

Copy of Defendants Cost Bill

Samuel Milk et al
vs
Foster Moore
} Bill to Foreclose Mortgage

Clerks fees

1855 Decr Term	Ent App 15^c Fil Proc Iss Spa & file 45^c	$ .60
	Ent Mo Cont 20¢ Ord thereof 20¢	40
	Making Transcript of Bill & Certifs (Paid)	2.45
1857 April Term	Ent Mo asking leave to file Cross Bill 20¢	.20
	Ord Grant 20¢ Iss Dedimus to Iowa 50¢	70
	Filing & Opening Depositions 10¢ Filing Notice & interrogations 20	
Oct Term		
	Fil Cross Bill 5¢ Ent Mo to Rule plffs Ans. 20¢	25
April Term 1858	Ent Mo for leave to file Replication 20¢ Ent Ord 20¢	40
Jan Term 1859	Ent Mo & Ord for Jury 40^c filing & Opening Depositions 30.	70
	N L Griffin J. P. Fees on Depositions	
	C F Mc Neiles J. P. Fees on "	42.88
Paid by Defendant	F. Mitchells " " "	5.00
	H C Bryant J. P. " " "	24.43
	Witnesses	
Paid by Defendant	Elijah Sapp William Sapp 1 day Each	2.00
	G W Vennum 2 days $2. Jacob Hoel 2 days $2.	4.00
	Alexander Wilson 1 day $1 G W Moore 2 days $2.	3.00
	S. A. Washington 2 days $2. Foreman Moore 3 days $3.00	5.00
	John Paul 5 days $5 C C Vennum 1 day $1.	6.00
	H A Horricks Non resident Witness 7 days $	11.50
		$ 109.71

A True Copy from My Fee Book of Defendants Costs

Thomas Vennum
Clerk

State of Illinois }
Iroquois County }

I Thomas Vennum Clerk of the Circuit Court in and for Said County in the State aforesaid do hereby Certify the above and foregoing is a true and Complete transcript of the proceedings in the Iroquois County Circuit Court in the Cause of Samuel Milk & Franklin Howard Survivors of William Howard Deceased vs Foster Moore as the same appears of Record in said Court And that the papers herewith transmitted Numbered from No 1 to No 25 inclusive are the original papers and all the papers on file in Said above Entitled Cause

In Attestation of which I have hereunto subscribed my name and affixed the seal of Said Court at Middleport in Said County this 28th day of March A D 1859

Seal

Thomas Vennum Clerk
By W H Sayler Deputy

92

United States of America
State of Illinois Livingston County } ss

Pleas before the Honorable Charles R Starr Judge of the 20th Judicial Circuit of the State of Illinois At a Regular Term of the Livingston County Circuit Court begun and holden at the Court House in the Town of Pontiac in said County and State, on the Third Monday being the 21st day of March A. D. one thousand Eight Hundred and fifty nine

Present The Honorable Charles R Starr
Judge of the 20th Judicial Circuit
A. E. Harding Esqr States atty pro tempore
William J Russell Sheriff

Attest
B. W. Gray Clerk

Be it Remembered that on the 30th day of March A D 1859 it being one of the Regular days of the March Term of the Livingston County Circuit Court the Manuscript and papers from which the foregoing has been Transcribed were filed in said Court

And afterwards to wit on this Second day the following order was made and Entered of Record in said Court to wit

65

Samuel Milk and
Franklin Howard
vs
Foster Moore

Bill to foreclose a Mortgage

This day came the parties

by their Counsel. And the Complainants by
their Counsel Moves the Court to Suppress the
Depositions filed herein of Respondents, And
thereupon it is Ordered by the Court by
Mutual Agreement of the parties herein
that this Cause be Continued

And Afterwards to wit on
the 19th day of October A D 1859 it being one of
the regular days of the October Special Term
A D 1859 of said Livingston County Circuit
Court the following Subpoena was issued out of
said Court in words and figures following
to wit

State of Illinois }
Livingston County } ss The People of the State
of Illinois

To the Sheriff of said County Greeting
We Command you to Summon
Charles S Young to be and appear before
the Circuit Court of said County on the Second
day of the present Term thereof to be holden
at the Court House in Pontiac begun on the
third Tuesday in the Month of October A D
1859 to testify and the truth to speak in a
certain Matter of Controversy pending in said
Court wherein S Mills & H Howard plaintiffs
and Foster Moore is Defendant and have you
then and there this writ

Witness B W Gray Clerk of said Court
and the Seal thereof at Pontiac
this 19th day of Oct A D 1859
B W Gray Clerk

(Seal)

93

And Now on this same day to wit October 19th AD 1859 the said Subpoena was filed in said Court Endorsed as follows to wit:

"Served by reading to the within named Charles S Young this 19th day of October AD 1859

"W. T. Russell Sheriff"

"Service 25 " By E R Maples Deptg.

Miles 1.00

Ret 10

1.35"

And afterwards to wit on the 26th day of October AD 1859 in being also One of the regular days of the October Special Term of the Livingston County Circuit Court The following Order was made and Entered of Record in said Court to wit:

65 Samuel Milk & Franklin Howard vs Foster Moore } Bill to foreclose a Mortgage

Now on this day comes the parties herein by their Counsel and on their mutual Agreement It is Ordered by the Court that this Cause be heard at Chambers, on the Objections to questions and answers of Depositions now taken, On Monday the 19th day of December next And that both parties herein have leave to retake and take further Depositions Ordered further that this Cause stand Continued untill next Term in Course

And afterwards to wit on the 17th day of September A D 1860 it being one of

the regular days of the September Term of said Livingston County Circuit Court the following Order was made and Entered of Record in said Court to wit=

"65" In the Matter of Lemuel Milk & Franklin Howard vs Foster Moore } Bill to foreclose a Mortgage Change of Venue from Iroquois County

This day come the Complainants and Respondent herein by their respective Solicitors and pray the Court to grant leave to open the depositions in this Cause yet remaining in the Office of the Commissioner

It is therefore Ordered by the Court that said Depositions be Opened

And afterwards to wit on the 18th day of September A D 1860 it being also one of the regular days of the September Term of the Livingston County Circuit Court the following Order was made and Entered of Record in said Court to wit

65 In the Matter of Lemuel Milk & Franklin Howard vs Foster Moore } Bill to foreclose a Mortgage

This day came the said parties Complainants and Respondent and Moves the Court to set a day for the trial by jury of the issue in fact herein joined between them It is therefore Ordered by the Court that this Cause be set for trial on Wednesday morning of next week being the twenty Sixth day of September A D 1860

Sixth day of September AD 1860

And afterwards to wit, on the Twenty Sixth day of September AD 1860 it being also one of the regular days of the September Term of the Livingston County Circuit Court the following proceedings were had and entered of Record in said Court to wit

In the matter of Samuel Milk and Franklin Howard vs Foster Moore

Bill to foreclose a Mortgage

This day came the parties Complainants and respondent herein by their respective Solicitors with an issue of fact joined in this cause and for trial thereof put themselves upon the Country

And thereupon a jury of twelve good and lawful men were Commanded to Come and try the issue joined herein to wit,

E C Allen, J P. Morgan, William R Tanner Joseph Barr, Albion Jones Thomas M Campbell. E H Snyder, J B Lamb, Thomas McClelland Charles Cranford Willard B Tucker and James Day — Who being chosen tried and Sworn well and truly to try the issue joined herein and a true verdict thereon render according to the evidence,

and the complainants

to prove and support the issues on their part read and submitted the following evidence to the Jury to wit-

The Bill, answer, and replication the cross-Bill answer and replication thereto and the Mortgage exhibited with said bill and marked "A" also the Exhibit- "B".

And thereupon the Defendant- to support the issues herein on their part- read to the jury the following depositions to wit-

98

Deposition of Elijah Sapp, Jacob Hood, Geo W Moore George Vennum, William Sapp on part of Defendant

Witnesses Subpoenaed &

Sworn before me a justice of the Peace at my office in Middleport in Iroquois County State of Illinois Commenced on the 19th day of Jan 1857 pursuant to the enclosed notice this deposition was taken on the part of the Defendant in a certain action now pending in the Circuit Court of Iroquois County in the State of Illinois Wherein Lemuel Milk & Franklin Howard survivors of William Howard Dec'd is plaintiff and Foster Moore defendant on the chancery Side there of

The Said Elijah Sapp

First Witness being of lawful age being duly sworn to testify the truth the whole truth and nothing but the truth relating to the said cause deposes as follows, to the following interrogatories

First ——— Are you acquainted with the parties to the above entitled suit

Ans. ——— I am not I believe I am not acquainted with Milk & Howard I am acquainted with Moore.

Second. ——— State where you resided on the 11th day of June 1851

Ans. ——— I resided about one mile and a half east of Foster Moore in the county of Iroquois and State of Illinois

Third. ——— State wether you had an acquaintance with Foster Moore at that time and how long have you been acquainted with him

Ans. ——— I was acquainted with him at that time

Bryant fee
2 Sub 37
Cattle 5 30
Depositions 23.76
24.43

E. Sapp 1.00
J. Hood 2.10
G Vennum 1.00
G.W. Moore 2.00
W. Sapp 1.00
A. Wilson 1.00
The above fees paid by Foster Moore

and had been for twelve years or more

Fourth. ——— Now state wether you knew of any contract having been entered into about that time between Foster Moor and Lemuel Milk and Franklin Howard Survivors of William Howard respecting Sheep and if so state what that contract was

Ans. ——— I dont know any thing about the contract except from Mr Moor himself and his having the Sheep

Fifth. ——— State what you know respecting his having Sheep who he got them off and how many

Ans. ——— I know that he had some four hundred and twenty head of Sheep there I dont know who he got them off except from Mr Moor himself

Sixth. ——— state wether you examined those Sheep about that time and if so what was their condition respecting health and soundness

Ans. ——— I did examin the Sheep some, I saw their was some of them coughing considerable, some lame and I did not consider that they were a good lot of Sheep or in good health

Seventh. ——— What circumstance was it that directed your attention to those Sheep that caused you to examin them

Ans. ——— I went to Mr. Moors to get a hundred head of those Sheep provided I could get them on good terms

Eights. ——— Did you take any portion of those Sheep

Ans. — I did not

Ninth. ——— Why was it that you didnot take them

Ans. — Beause I considered them an inferior lot of Sheep and the terms too high for a man to make

any thing and live

Tenth, ——— Was there any other reason why you did not take them, if so state what it was

Ans. —— I went to get the Sheep of Howard & Howard was gone with his Sheep when I got there. I examened Moores Sheep & I did not consider them a sound healthy lot of Sheep and the terms that Moore told me he had taken his, too high I had heard that Howard was at Moores with Sheep

Eleventh, ——— State whether the Sheep you saw in Moors possession spoken of in your last answer were in good order

Ans. —— I did not consider them in good order, that is not many of them.

Twelvth, ——— State what proportion of them was in good order & what proportion was not, and as to those that were not in good order state as fully as you can their condition

Ans. —— If I was going to answer for life I should not say there was more than one fourth that I thought in good condition, I did not consider them in good health, they had a cough and some of them lame, and not in good order. I think likely they had the rot from what I know of Sheep

Thirteenth, ——— Now state what is your business or occupation in life.

Ans. ——— My business is farming I was raised a farmer and follow farming yet.

Fourteenth, ——— State what your opportunities have been for judging of the condition of Sheep

Ans. —— I have owned Sheep of my own for about twenty years, and when they were not in good health they soon showed it.

Fifteenth. ——— From your knowledge of Sheep do you consider the Sheep you speak of that you saw at Mr Moors which were diseased were easly cured at the time you saw them, or was their desease of such a nature as likely to kill them.

Ans. ——— I do not consider that I am capabel of answering that question. I know that when Sheep are deseased they are hard to cure.

Sixteenth. ——— From your knowledge of Sheep whether a person who is not well skilled in the raising of Sheep can easly judge between deseased Sheep and those that are in a healthy condition

Ans. ——— I do not think they can

Seventeenth. ——— State if you know what the contract was between Foster Moore and Lemuel Milk & Franklin Howard respecting the Sheep you speake of which was in Mr Moores possession.

Ans. ——— Mr Moore told me that he was to keep them sheep three years, and give three pounds of wool to the head each year, and return the old stock as good as they were when he got them

Eighteenth. ——— Did you ever see the written contract between Mr Moore and Lemuel Milk and Franklin Howard respecting the Sheep you speak off upon which the said Howard and Milk have commenced their suit in chancery for the purpose of foelosing a certain Mortgage in the Iroquois County Circuit Court given by the said Foster Moore to the said Milk & Howard, to secure the preformance of said contract

Ans. ——— I did not

Nineteenth. ——— Read this contract marked A. and state fully what Foster Moore would be damaged to fully comply with such a contract

101

102

Ans. —— I cant read

George B Joines being duly sworn to answer questions in the above entitled cause

First. —— Will you take this contract and read it to Mr Sapp

When Mr Joines read contract marked "A"

Question 20" to Mr Sapp: Did you hear this contract marked "A" as just read by Mr Joines

Ans. —— I did

Twentyfirst. —— Now from your knowledge of the Sheep you saw in the possession of Mr Moore spoken of above will you state how much Foster Moore will be damaged by being compeled to comply with the contract just read by Mr Joines

Ans. —— Gentleman that is something more than I feel capable of doing I am not capable of making a calculation by figures at all. I would not have taken those Sheep and kept them as he did for any thing less than the price of the Sheep, I would not have done it from the fact that I considered them to be not a good lot of Sheep that they died in a great abundance with what I supposed to be reasonable care before feeding time

Twentysecond. —— From your knowledge of the Sheep spoken of above would the wool taken from them in three years from the time that Moore got them have paid for the care, attention, and trouble which the said Moore caused to be bestowed upon them

Ans. —— I do not know any thing about that Gentleman, I did not know what wool was worth

Twentythird. —— State whether you was acquainted with the said Sheep during the summer, fall, and winter of 1851 how often you saw them in that time and in whose possession they were during that time.

Ans. —— I saw the Sheep a great number of times, and was acquainted with them I saw Moores boys herding

them often in the summer 1851 I knew they were in Moores possession.

Twentyfourth, ____ State what the nature of the care and treatment of the said Sheep was during that time

Ans. ____ I know the Sheep was headed I believe the Sheep were taken reasonable care off through the summer and fall. as for the feeding of the sheep through the winter I do not know much about it for I was not there at feeding time

Twentyfifth, ____. State if you know if any of the said Sheep died through the fall or winter of 1851 and if so how many and at what time they died

Ans, ____ I do know their was a good many died through the summer and fall of 1851 for I saw them lying dead and through the winter anough of them died to make a large pile I cant tell how many

Twentysixth, ____ State from your knowledge of sheep what was the cause of those Sheep dying

Ans. ____ I think they had been badly wintered the winter before and were badly deseased.

Twentyseventh, ____ From your knowledge of taking care of Sheep what was it worth by the year to take care of the said Sheep and give them the same attention which Mr Moore gave to those Sheep

Ans. ____ I do not know Gentlemen what it would be worth I never had that amount of Sheep

Complainants object to the foregoing interogatories and answers.

Cross Interogatories

First, ____ Did you ever see Howard or Milk or either of them.

Ans, ____ I am not certain I ever seen either of the men to know them

Second, ——— At what time did you first see the Sheep that you you have testified about and did you then or ever count them.

Ans. ——— I saw the Sheep the morning that Moore took them, I am not certain whether it was the latter part of the Spring or the fore part of the summer, I believe I did count them some two or three times after he got them but I do not recollect the number.

Third, ——— Do you know the Sheep that you have been testifying about were the Sheep that Moore got of Howard & Milk only from Moors statements.

Ans, ——— I do not

Fourth, ——— What are the usual terms of letting out Sheep in this County and what have they been for the last twenty years,

Objected to.

Ans, ——— I never knew before that time of Sheep being let out any other way than for half of the wool and half of the increase.

Fifth. ——— What Disease did the said Sheep have the summer and fall of 1851.

Ans, ——— I know they had a cough & I supposed that they had the rot which was the cause of it

Sixth. ——— How many of said Sheep died before feeding time of the year 1851.

Ans, — I am not able to say how many did die for I was not with them every day and did not count them.

Seventh, ——— How long since you kept Sheep of your own

Ans. ——— Three years

Eighth, ——— How many Sheep did you ever have at one one time while you kept them & how many did you generally keep

Ans. ——— From two up to forty, I suppose they would average fifteen head at a time

Ninth, — Did you ever take any sheep to keep, or ever let out any,

Ans, —— I never did except it was to let them out of the lot to go to water.

Elijah his x mark Sapp

George W Vennum second witness being of lawful age was sworn to testify the truth and the whole truth in the above cause

First, —— Are you acquainted with the parties to the above entitled cause.

Ans, — I am acquainted with ~~the parties to the above entitled cause~~. Mr Moore. never seen the others that I know

Ans, —— of

Second, —— What is your business or occupation in life

Answer — Farmer —

Third — State whether you are acquainted with owning and taking care of Sheep — —

Answer — I am not well acquainted with the business of taking care of sheep.

Fourth — State if you was acquainted with Foster Moore on the 11th of June 1857 and if so- State whether you know of his having any sheep in his possession about that time, and if so how many.

Answer — I was acquainted with Foster Moore at that time and saw a number of sheep there, should suppose at least four hundred.

Fifth. —— State whether you examined those sheep and if so, what was their condition about that time.

Answer. —— I met those sheep on the road as I was going home from Middleport on my wagon. my impression was at the time that about one half of the flock was good sheep and in good condition, the other half I thought looked

in bad condition, the impression I have was that they had been heavily drove.

Sixth. ——— Have you ever seen those sheep since, and if so how often & where.

Ans. ——— It would be impossible for me to tell how often I saw them I a number of times passed his house. I saw some alive & some dead about ~~his~~ Moors premises.

Seventh. ——— Did you see said sheep during the fall and winter of 1851.

Ans. ——— I did not see them very often, I suppose some half dozen times.

Eighth. ——— Do you know of any of said sheep dying during the fall and winter of 1851 if so what number.

Ans, ——— I do not know any thing about them dying I saw a number dead passing there at one time I think in the fall of 1851. or winter. I was passing there and I counted 16 dead sheep in and about Moors yard & house. I never passed there for a year without seeing more or less dead sheep there.

Ninth, ——— State if you know what was the cause of said sheep dying in the manner they did,

Ans, ——— I do not think that I can tell the cause of their death. It may be from desease, or from want of feed for all I know

Tenth, ——— State how much it was worth to take care of four hundred of saith sheep as has been given in evidence from the 11th day of June 1851 for three years thereafter,

Ans. ——— About seventy five cents a head per year,

Eleventh, ——— Did you ever see the contract made between Foster Moore and Lemuel Milk and Franklin Howard.

Ans. ——— I never did unless that is the contract that you have there.

Twelfth, ——— Will you please take this contract marked "A" and read it, and then tell, from the knowledge you have of

the sheep spoken of above, whether Foster Moore sustained any damage in consequence of said sheep dying in the manner and the number in which they died and if so what amount of damage did he sustain.

Ans. ——— I suppose he suffered considerabl damage if he had them to pay for

Thirteenth, ——— What amount of damage if any will Foster Moore sustain if he shall be compelled to comply with the contracts you have just read provided one hundred and ninety eight of said sheep died before the first Shearing time then next following 11th June 1851

Ans, ——— I cant come at it without just lumping it, he has sustained some two hundred dollars perhaps more

Fourteenth, ——— You will pleas refer to the contract again and state whether two hundred dollars would cover all the damages that Foster Moore will ~~lose~~ in consequence of said sheep dying.

Ans, ——— I suppose he could have filled the place of the sheep at a dollar a head, and I do not know what amount of damage he sustained in the wool.

Complainant objects to the above interogatories and answers. Cross interogatories

First, ——— Do not sheep cough & limp more or lis, when they have been driven in the dust in the summer season.

Ans, ——— They do I have seen as healthy sheep as I ever seen in my life, that died after having been driven in that way. they are as liblely to take cold and cough as the human family standing out in a shower are liable to take cold and cough but get over it in a few days.

Second. ——— Were Foster Moores convenience and improvements on his place from the summer of 1851 and for three years thereafter as good as those of other men in the county who were in the habit of keeping sheep.

Ans, — I think not they were not as good as Brother Williams. I never seen any sheds on the place to shelter the sheep from the storm. George W Venum

By agreement of the attorneys in the above cause continued to 26th day of Jan.

3rd Wit, George. W, Moore being of lawful age, was duly sworn acording to law

First Question.

Are you acquainted with the parties to the above suit?

Ans, — I am acquainted with Moore and one of the Howards the old man Howard, and Lemuel Milk.

Second. — State wether you was present at the making of a certain contract respecting sheep made between Foster Moore the defendent in this suit, and Lemuel Milk and Franklin Howard & William Howard made on the Eleventh day of June 1851 and if so state what that contract was.

Ans. — Yes sir I was present when they was making a contract, it was reduced to writing. I cant state the contract exactly. Foster Moore was to keep the sheep three years, at the end of the three years he was to deliver them at Mr Moores place in as good condition as he got them if he failed to pay the sheep, he was to pay one and a half pounds of wool per head each year. that is all I remember about it.

Third. — State where that contract was made, and by and between whom it was made.

Ans, — It was made at Fosters Moores house in the county of Iroquois and State of Illinois. It was made between Foster Moore, and one of the Howards the one that is dead I believe.

Fourth Ques, — State whether there was any conversation between Foster Moore and the said William Howard at that time, respecting the soundness of said sheep

if so state what it was.

Ans. ——— There was something said Moore said he was afraid the sheep was not sound, and that they were drove sheep. Howard said that he would warrant and insure them to be healthy & sound sheep, and that they had not been drove. Moore said that he was afraid that they were deseased, Howard said there was no desease among them, that was the reason he insured them.

Fourth; ——— Did this conversation take place before or after the contract was consumated.

Ans, ——— It was before, it was at the time they were talking about the contract.

Fifth, ——— Did Foster Moore receive said sheep under the contract that you have spoken of, and if so how many did he receive.

Ans, ——— Yes sir he received them under the contract, four hundred and twenty four I think.

Sixth, ——— Did you see said sheep at the time they were delivered by the said Howard to Foster Moore, and if so state what condition they were in as it respects order, health and soundness.

Ans, ——— I seen the sheep when they were delivered, they were in a pretty bad condition, some was coughing, and some of them was running at the nose, some poor and some lame there was some of them, about one third that might be counted good sheep.

Seventh, ——— Where did Howard tell Foster Moore he got those sheep at the time they made the trade.

Ans, ——— He told him that he got the sheep in Vermilion County.

Eighth, ———, What did Foster Moore do with said sheep after he got them in his possession.

Ans. ——— He kept them and herded them on the Prairie

through the summer in the fall they run on stubble pasture and blue grass, and when it was feeding time he took them up and fed them, he fed them on hay and corn and shief oats

Ninth, ——— Did all of said sheep live and do well.

Ans, ——— No sir they died not all of them do well.

Tenth, ——— State what proportion of them died, and when they died, if any.

Ans, ——— The fourth day after we got them, their was two of them died ~~they died~~ they died from that on until about the first of January, there was one hundred and eighty-four found dead.

Eleventh, ——— Was there any dead between the 1st of January and Shearing time, if so how many.

Ans. ——— There was not many died after the first of January up to Shearing time that I recollect of now.

Twelth, ——— State how many of said sheep altogather died between the time Foster Moore got said sheep, and shearing time of sheep, and the followoring spring

Ans. ——— I cant tell how many died there did some die after the first of January. I do not recollect how many.

Thirteenth, ——— What kind of business do you follow for a living.

Ans, ——— I follow farming.

Fourteenth, ——— Did you live with Foster Moore, at the time said contract was made, and where have you lived since

Ans. ——— I lived with him at the time the contract was made and have lived with him ever since.

Fifteenth, ——— Who attended to said sheep feeding them and hearding them from the time they were delivered to Foster Moore until the next spring when feeding time was over.

Ans, ——— I attended to them part of the time, help feeding & hearding. We had a hired hand there. he help feed

them through the winter.

Sixteenth, ——— Were said sheep salted regularly and if so how many times each week.

Ans. ——— They were salted regularly. they were salted once a week, and some times oftener, and salted their hay.

Seventeeth, ——— State what was the cause of the said one hundred and eighty four sheep dying.

Ans. ——— Some of them had the Scots, and some of them had the foot evil, I dont know whether they had any other disease or not.

Eighteenth, ——— Did Foster Moore doctor said sheep during the time they were deseased and dying.

Ans, ——— He did but I dont know what he gave them

Nineteenth. ——— State whether that portion of said sheep that you speak of that look healthy, at the time they were delivered to said Moore died and if so how many.

Ans. ——— I cant say as to that.

Twentieth, ——— What damage has Foster Moore sustained in consequence of said sheep dying. in the manner and number you speak off.

Ans. ——— He was damaged about six hundred dollars.

Twenty first, ——— How do you make out the damage to be six hundred dollars.

Ans, ——— Well the sheep that he lost was worth one dollar and a half per head that would come to about three hundred dollars, The wool that he lost was as much as three hundred dollars.

Complainants object to the forgoing interrogatories, and answers.

Cross Interrogatories

112

First, Question, What relation are you to Foster Moore and how old are you

Ans, ——— I am a son of his. Eighteen years old the 9th day of this month.

Second. ——— Who wrote out the contract between your Father and Howard & Milk relating to the sheep.

Ans, ——— I think Howard wrote it I did not see him write it.

Third, ——— Was you present when it was written out and who signed it.

Ans. ——— I think I was in the house. when they was writing it.

Fourth. ——— Did you see Howard writing it.

Ans. ——— I seen him writing. cant say whether he was writing the contract or not.

Fifth. ——— Who signed the contract.

Ans. ——— Foster Moore I guess signed it no one else that I know of.

Sixth. ——— Where was he when he signed it and did you see him sign it.

Ans, ——— I guess it was at our house I did not see him sign it

Seventh. ——— Had Howard other sheep there. when your Father got his if so how many.

Ans. ——— Yes sir. I believe. there was over a thousand in all

Eighth. ——— Who all was present at the time the bargain was made.

Ans, ——— Well there was two hired hands with Howard. that was present.

Ninth. ——— Did your Father keep said sheep altogether generally.

Ans, ——— He kept them together in the summer time in the winter he seperated them. there was three lots.

Tenth.—— Did he have sheds to shelter them during the first winter from the weather.
Ans. No sir he had no sheds
Eleventh.—— Did he have troughts in which to feed them during the first winter.
Ans —— No sir he had not
Twelfth.—— Was there water in each of the three lots, in which he kept said sheep in during the first winter
Ans. There was.
Thirteenth.—— How much hay did your Father have to feed his stock during the first winter after he got said sheep.
Ans —— I cant tell you how much he had
Fourteenth.—— How many oats did he raise that season he got the sheep.
Ans.—— I cant tell you how many he raised.
Fifteenth.— Did he have corn and oats to feed said sheep during all of said winter. if so how much did he feed and how long.
Ans.—— Yes sir I guess he had corn and oats enough to feed them all winter.
Sixteenth.—— Did he buy any that winter, corn or oats or hay.
Ans.— He bought som hay I do not know exactly how much.
Seventeenth.— Who did he buy hay of that winter.
Ans —— He bought it of Samuel Appy.
Eighteenth.— What time in the winter did he buy the said hay.
Ans.—— It was in the spring of the year, about the last of feeding time.
Nineteenth.— Did you ever heard sheep before you heard that those that your Father got of Howard & Milk

Ans —— No sir.

Twentyeth. —— How much salt did you give them per week during the first year.

Ans. —— I do not know I could not tell how mu.

Twentyfirst. —— Did you use to salt them your self generally

Ans. —— Sometimes I would salt them and sometimes my Brother would salt them, and sometimes Pap would.

Twentysecond —— Where did you put the salt for them to eat during the summer and winter of the first year.

Ans. —— We put it on the ground and on the grass.

Twentythird. —— Did any of said sheep die during the second winter, if so how many.

Ans. —— There was some died I do not know how many

Twentyfourth, —— Was there any dead the third year. if so how many.

Ans. —— Yes sir I guess there was some. I dont know how many.

Twentyfifth. —— What finaly became of the flock.

Ans. —— Mr Milk got what did not die

Twentysixth. —— Where did he get them and how many did he get.

Ans, —— He got them I believe in the spring, after the three years was out, I cant tell how many he got.

Twentyseventh. —— How many said sheep died during the summer of 1851

Ans. —— I cant tell you

Twentyeighth. —— How many of said sheep died during the fall of 1851

Ans. —— I dont know that neither.

Twentyninth. —— Did you not count them as they died

Ans. —— Yes sir, we counted them Father generally, and sometimes I counted them.

30 "Question. Do you know how many of said sheep died during the month of December 1851

Ans. —— I do not recollect how many died

31 "Question. —— Do you recollect that you counted the dead ones yourself during the month of December. 1851

Ans. —— I do not recollect whether I did or not.

32 "Question. —— How did you get the number that died prior to the first of January of the first year.

Ans. —— Well sir I got it by counting the flock.

33 "Question, —— At what time did you count them and who helped you count.

Ans. —— I counted them pretty often. I counted them at feeding time, and at Shearing time, and a good many other times.

34 "Question. Do you recollect of counting them yourself, after the first of December, the first year, and before the first of March following, if so at what time.

Ans. —— I recollect counting them but I do not know at what time.

35 "Question, —— Did you ever study arithmatic, if so how far did you ever go in it.

Ans. —— I have studyed arithmatic. this winter, I went through division.

36 "Question, —— Did your Father save the wool of said sheep that died the first year.

Ans. —— I believe he saved some of it there was not much of it worth saving.

37 "Question. —— What was the matter with that, that was not worth saving and what perportion of it was not worth saving.

Ans. —— I do not know unless there was no wool grew on the Sheep

38 "Question. —— What were the sheep worth at the time they died during the first year.

Ans. —— I believe they were worth one dollar, and a half per head, that is what they valued them at.

39th Question. Did any of said sheep shed their wool before the first of March. 1852.

Ans. —— I do not know that they did, do not recollect whether they did or not.

40th Question. —— Did many of them shed there wool during the first year.

Ans. —— I do not know that they did.

41st Question. —— Were you present when Lemuel Milk took the sheep away.

Ans. —— I was there while they was counting them I dont recollect whether I was there when they started them or not.

42nd Question. —— Did he claim a ballance due from your Father on said contract if so how much.

Ans. —— I do not know certain whether he did or not

43rd Question. —— Do you know from your own knowledg that Lemuel Milk took any of said sheep, on said contract from your Father.

Ans. —— Yes sir he took some I do not know how many, I do not recollect whether. I was there when he took the sheep away.

44th Question. Do you know whether your Father paid him any mony at the time that he came there after the sheep.

Ans, —— I do not know that he did.

45th Question. How long had your Father been out of hay when he bought of Mr Appy as you have testified about

Ans. —— I do not think he was out of hay at all.

Direct examination

First; Ques. —— How were said sheep sheltered during the winter of 1851. and during the winter and spring of 1852.

Ans, —— All the sheltering they got was round the racks the racks was stakes set up across price, with room for the sheep to get hay out, the racks was in the backs. the racks

were kept full of hay all the time.

Second, —— Did said racks afford said sheep placed in the bushes as they were, a good shelter, and protection from the storm.

Ans. —— They made pretty good shelter for them, the racks and bushes round.

Third, —— Did said sheep have all the oats, corn, and hay that they wanted to eat during the fall winter and spring of 1851 & 2

Ans. —— I think they had all they could eat, all they wanted

Fourth, —— Was there any time during the first winter that your Father run out of corn, oats, or hay.

Ans. —— No sir I think there was not, he bought some hay in the spring, but had plenty at the time he bought.

Fifth, —— Did the wolves or any other animals, kill any of said sheep during first year, or did all the sheep die that you speak of as having died during that time, from disease.

Ans, —— I do not think the wolves killed any during the first year, not to my knowledge they did not. They died from disease.

Sixth, —— What did you do with said sheep that died

Ans. —— We piled some up & some we hauled off.

Seventh. —— How many piles did you pile up

Ans. —— I dont recollect but one

Eighth, —— How many sheep was in that pile.

Ans, —— I do not recollect how many.

Ninth, —— How did you haule them away.

Ans. —— Hauled them on a sled.

Tenth, —— State if you recollect how many ~~loads~~ you hauled away on said sled.

Ans. —— I dont know how many we hauled away

Eleventh, —— Did said sheep need any attention during the first year, which they did not get, and if so state the

nature of it.

Ans, —— I dont know that they did.

Complainants object to all the foregoing direct interrogatories and answers.

Cross Interrogatories

First, —— How did you feed said sheep during the first winter generally, whether you put the feed in the racks or on the ground

Ans. —— We put the hay in the racks, the corn and oats generally fed to them on the ground.

Second, —— Did any horned cattle or horses run in either of said lots with said sheep, during the first winter if so how many.

Ans. — No sir

George W Moore

Jacob Hoel fourth witness sworn

First, —— Are you acquainted with the parties to the above suite.

Ans I am

Second —— Do you know of a certain contract made between the defendent and the plaintiff in the above entitled cause respecting sheep.

Ans, —— I do not.

Third, —— Did you ever have a conversation with either of the said Howard or the said Milk respecting certain sheep which Foster Moore got of the said Howard and Milk, and if so with which one of them & what was said in that conversation by him or them.

Ans. —— I had a conversation with Milk, about his letting Moore have sheep, and the terms he let him have them on he let him have them for one pound and a half per head, per year, and Moore was to return him the same number back at the end of three years. this conversation

was not a great while after Moore got the sheep.

Fourth, ___ Did you ever see said sheep, which said Milk told you he had let Foster Moore have, and if so, when was the first time you saw them, and where were they when you saw them.

Ans. I saw them shortly after Moore got them at Moores house and I also saw them the night befor Moore got them passing my house.

Fifth, ___ Did you examine said sheep when you first saw them, and if so what were their condition, as it respect their order, health & soundness.

Ans ___ Not very particular I noticed them I should judge that part of them were in very good order and there was part of them that were poor, they looked as though they might not be healthy.

Sixth, What Proportion was in good order & what proportion was in bad order.

Ans, ___ I think that half of them was in good order

Seventh, ___ Did you see said sheep often during the summer fall & winter after Moore got them

Ans. ___ I did,

Eight, ___ Do you know whether any of said sheep died during the first summer fall & winter after Moore got them and if so how many died during that time.

Ans, ___ Some of them died I dont know how many

Ninth, ___ State whether you ever saw any of said sheep dead during the first year after Moore got them, and if so how many you saw dead and at what season of the year did you see them.

Ans, ___ I saw some of them through the summer & I saw a good many of them through the winter, that was piled up, I should think about one hundred in a pile and around the place

Tenth, —— What was the cause of the death of said sheep
Ans —— I dont know, some of them might have been disordered some of them might have been old.
Eleventh, —— State how much if any thing Foster Moore was damaged, in consequence of said sheep dying, in manner and number as you have above stated.
Ans, —— I should think he was damaged some three hundred dollars
Twelth, —— What is your business or occupation in life
Ans. —— Farmer
Thirteenth, —— Have you ever made the raising and lending sheep any portion of your business as a farmer, and if so to what extent.
Ans, —— I never was in the business much, never had over fifty or seventy five through the winter.
Fourteenth, —— How far did you live from Foster Moore during the summer fall & winter after he got said sheep
Ans, — Three quarters of a mile.

To the above and fore going interrogatories and answers the complainants object.

Cross Interrogatories,

First, —— Was there any thing about said sheep at the time you first saw them to indicate the disease more than their being poor, if so state.
Ans, —— I do not know that there was.
Second, — Do not sheep do much better on high ground than on low, during both summer and winter.
Ans, —— I suppose they do
Third, — Did not said sheep during the first summer heard on low ground generally.
Ans, —— Most of it was low flat Prairie.
Fourth, — What kind of feeding lots had Moore for said sheep during the winter of 1851 92 were they high

and dry or were they low and wet.
Ans, ——— Well they were middleing low and level, there was not much water stood in them, the branch run through one corner of said lots.
Fifth, ——— What was sheep worth during the winter of 1851 & 2 such sheep as Moore had and that died
Ans —— I should think they would have been worth one dollar and a half per head if they had lived on.
Sixth, ——— How then do you put Moores damage at three hundred dollars.
Ans, ——— For the entire lot that died I dont know that there was, more than one hundred dollars, there might have been one two hundred.
Seventh, ——— Was there anything the matter with wool of the sheep, that died from the appearance of the wool.
Ans, —— I do not know that there was, was not close enough to see.
Eighth, ——— Did said sheep appear to have the usual quantity of wool upon them during the winter of 1851 & 2
Ans, —— Some of them had not I dont remember the time some of them had not, through the fore part of the winter.
Ninth, —— How many had not the usual quantity through the fore part of the winter.
Ans, ——— I dont know
Tenth, ——— Do you think there was ten that had lost their wool prior. Jan 1st 1852.
Ans —— I cant state how many. I think there was ten.
Eleventh, ——— Had these ten lost much of their wool from appearance prior to Jan 1st 1852
Ans, ——— I think they had lost a good deal of it
Twelfth, ——— Are not sheep apt to lose their wool from

122

want of care.
Ans, — I dont know it is very often the case. that they loose their wool when they are fed too much
Thirteenth, — Do you belicve these sheep lost their wool from being fed too much.
Ans, — I do not

Direct examination.

First, — Do you know that there was any more than ten lost their wool prior to 1st Jan 1852.
Ans — I do not, there might have been a great many more
Second, — From your knowledge of said sheep was there any of that portion of them, which you say was in good order when you saw them, which died or lost their wool prior to the first of Jan 1st 1852
Ans, — I dont know that there were

Cross Interrogatories.

First, — Did you know that any portion that was in good order when you first saw them, did not die through the first winter,
Ans. — I do not,

Jacob Hoel.

By agreement of parties adjourned to 24th March AD 1857.
At which time came William Sapp who being of lawful age was sworn according to law to testify in the above case.
First, — Are you acquainted with the parties to the suite.
Ans, — I am with one I suppose with Foster Moon
Second, — State how long you have been acquainted with Foster Moon.

Ans, — I have been acquainted with him ever since I was acquainted with any man, ever since I can recollect

Third, — State how far you lived during the years of 1851 & 1852.

Ans, — Just a mile or about that

Fourth, — State whether you know said Moore getting any sheep of the said Howard and Neith at any time, and if so state when he got them & how many he got

Ans, — I know of Foster Moore getting some sheep, he got them in 1851. along about the last of May or first of June to the best of my recollection, there was four hundred and twenty four, Mr Moore and others said there was.

Fifth, — State if you ever saw said sheep if so state the first time you saw them.

Ans, — Yes sir I saw the sheep I saw them the day that Moore got them.

Sixth, — State when you first saw said sheep whether you particularly examined them, and if so state fully what was their condition as it respects order and appearance health

Ans, — Well sir I looked at the sheep there was some lame sheep amongst the flock, there was part of the sheep that looked poor and scrouny in my estimation. I am no judge, I do not profess to be. I could not say a great deal about that, some of the sheep, snotting around, laggy looked as though they were scowered, from some cause or other, I do not know what.

Seventh, — When did you next see those sheep

Ans, — I saw them to notice them frequently, two or three times a week during the summer and fall & winter & saw them almost daily.

Eighth, — Were you acquainted with the ground and

134 quality of grass upon which Mr Moore herded said sheep during the first summer and fall he had them, and if so state fully the character of the land whether high or flat and the quality of grass that grew upon the same.

Ans, —— I was acquainted with the quality of the land where he hearded his sheep during the first, second & third year it was both high and flat, they were hearded a good deal of the time on the mounds around Fathers fields. I see them there petty near every day for I was plowing. I do not know that it was every day but it was very near every day. the grass was about as it commonly is on the Prairie. good on the high ground & pond grass in the low wet ground.

Ninth, —— Was there a sufficient amount of high land where said sheep was hearded during the summer of 1851 for said sheep to do well upon without feeding in the low sloughy land and if so did they usually feed on the high land

Ans, —— As to the quantity of land I do not know how much it would take. there was a great deal of other stock in the neighbourhood. I should suppose there was, there was plenty of grass died on it. they fed both on the high land & low land. In driving them from the farm they had to cross this low land morning and evening

Tenth, —— State how far it is from Mr Moores sheep pens where he pened said sheep at night during the summer of 1851 to the hearding ground that you have been speaking about.

Ans, —— Well the way he drove the sheep I suppose it would be a mile befor he would come to fair ground for hearding.

Eleventh, —— State what was the character and quantity of the pasture, said Moore pastured said sheep on during the fall of 1851 if you know.

Ans. — Well there was a woods pastur that he kept them in. I could not say what the character of the grass was I have been through the pasture, but did not examin. if I did I do not recollect. He had the sheep in his medow and in his field, and in his strips after the corn was gathered out. I suppose the stalk field was about as good as stalk fields usually are. The medows were both pretty mixed with sage grass, timothy & red top, the medows were in seperate fields there was five acres in the east medow so called & ten in the west. that was what it was called.

Twelfth, — State what was the size of the fields you speak of in which the medows were situated.

Ans, — The east field had sixty acres in it was called sixty acres, West field I could not say. I should suppose between twenty five, and thirty five acres.

Thirteenth, — What kind of crops had been raised in said field during the year 1851

Ans, — The east field there was some fine corn and some not so good. there was thirty five acres corn, five acres buckwheat; and five acres medow, timothy & red top & sage grass, that is what they call it. I do not know the name for it. The west field I believe he had part in oats I believe it was all in oats. I do not recollect. all except the medow.

Fourteenth, — State whether in the west field you speake of where oats grew, after said oats was taken off any oats came up and if so whether it afforded any pastur for said sheep.

Ans, — I dont know that I can say any thing about that.

Fifteenth, — Now state whether you were acquainted with the character and quantity of feed which said Moore gave to said sheep during the fall and winter

125

126 of 1851 and if so, state fully all you know about it
Ans. I was not throughly acquainted with the character of his wild hay, his tame hay was pretty fair, put up in good order & stacked in good season. his oats about the same as the rest were and his corn about the same, put up in good order, there was ten acres of corn, the tame hay I could not tell, I did not help cut it that year, it was what came off 15 acres. all I know about that is his boys & hired hands told me I could not say the quantity of wild hay there was. To the best of my knowledge Moore had four stacks of oats that season, common sized ones.

Sixteenth, ——State whether you are acquainted with the manner in which said Moore fed said sheep, during the winter of 1851 & 2, and if so state fully the kind of treatment said sheep received during said winter.

Ans. —— I am in part only. I was about his house once in a while. I was at his house two or three times in three or four weeks. during the winter. I was past his house once in a while, generally seen the racks with hay in them. they had hay. corn & oats. when I saw them, the hay and oats at a feed, and the corn and hay at a feed. some times corn and hay. & sometimes hay and oats. the hay was put in racks when I was there. I believe the corn & fodder and oats was fed to them, on the ground.

Seventeenth. —— State whether from your knowledge of the manner in which said sheep was fed, whether they had all the feed that it was necessary for them to have during said winter.

Ans. —— They had at the time that I saw them feed of that kind. I am not acquainted with feeding sheep I do not know what is required. I do not know that there was any thing else required

Eighteenth, — State how many pens or inclosures said Moore kept said sheep in during the first winter after he got them.
Ans. — I think he had the sheep divided in two lots.
Nineteenth, — State the number of racks said Moore used during said winter, in which he put hay for said sheep, and state what was the lenght of said racks, and how they were built.
Ans, — The amount I recollect of was two, I measured them this morning from post to post. I expected to be asked that question & I wanted to state it correct. the longest rack was 56 feet from outside post, the other was 42 feet, I believe. there was post drove in the ground about a foot high, then there was pieces nailed or pined on top of the posts then there was stakes set straddle boath ways, —
Twentyith, — State whether you know of John Streans sheep & Hiram Vennums sheep getting mixed with the said Moores sheep at anytime, while said Moore had said sheep, and if so state when it was, they got so mixed,
Ans, — I was at work at Foster Moores either the second or third summer, after he got his sheep, and while we was in at dinner Strean and Vennum came there, and I went out to my work. It was sometime before they got out. I enquired what kept them in so long. they said they were sorting Vennums & Streans sheep from amongst theirs. that is all I know about the sheep being togather,
Twenty~~first~~, — Are you positive it was the second or third summer after Moore got said sheep, that Strean and Vennum came there after theirs as spoken of above, by you, or may you not be mistaken, and if you are not mistaken, state fully how you know it was the second or third year after he got the sheep, and not the first.
Ans, — I am certain it was the second or third summer or fall, for we was mowing grass. I am not positive which of them it was, the first year he had the sheep. It was

K27

X28

the last year that I had to serve under my father and he kept me at home all the time, the reason why I know, it I worked at home that season & I worked for Moore at different times, after that.

Twentysecond, ——— Are you certain you did not work for Moore mowing during the summer, or fall of the first year that said Moore had said sheep.

Ans, ——— I am certain I did not work on his farm during the first year.

Twentythird, ——— Are you certain that you was mowing for Moore on his farm and for him when Vennum and Strean came after their Sheep, as spoken of above.

Ans, ——— I am certain I was mowing on his farm and for him, he paid me for it

Twentyfourth, ——— State whether you know of any of said sheep having died during the first summer and fall after Moore got said Sheep, and if so state how many.

Ans, ——— I know that there was aquantity, of sheep died after Moore got them throughe the summer and fall, and on till the next spring, as to the quantity I could not name exactly, I suppose there was about two hundred head of sheep died, I dont know that there was that number I just supposed there was.

Twentyfifth, ——— State how soon it was after Moore got said sheep, that the first ones died.

Ans, ——— I suppose it was about three or four weeks, the first one I saw dead.

Twentysixth, ——— What proportion, of the two hundred sheep you speak of as having died, died befor feeding time of the first year.

Ans, ——— I could not say positively, I never counted the sheep in my life.

Twentyseventh, —— State what amount of damages said Moore sustained in consequence of having lost said sheep in manner as you have stated.

Ans. — I dont know that I could come at that exactly such sheep as them at that time could be bought for one dollar per head, I suppose he was to give two pounds and a half of wool a head, that is what I understood, and the wool at the time that he was to return the wool to Mr Howard was worth, 35 cents per lbs. I supposed it damaged him the price of the sheep & wool, I dont know through.

Twentyeigh, —— Will you state from the calculation you have made, what amount of damage said Moore has sustained in consequence of the loss of said sheep.

Ans, —— To the best of my knowledge, three hundred and seventy five dollars.

To the above and foregoing interrogatories and answers the plaintiffs object.

Cross Interrogatories

First, —— Who generally drove said sheep out to the boarding ground, during the first summer after Moore got them, or did they go out by themselves.

Ans, —— I could not decide that, generally him or his two oldest boys.

Second, —— Did they usually drive them the one mile and back again daily, during the hot weather in the summer, ——

Ans, —— I could not say as to every day but generally they did.

Third, —— State what other stock said Moore had besides said sheep, during said fall and winter he got them, how many horses and how many cattle and state if they run among the sheep.

129

Ans. —— I am not positive as to the amount of stock he had. I believe about ten head of cattle, and about four head of horses. to the best of my knowledge. as to their running in the lots, he had three lots all side and side if I am not mistaken. the cattle kept in the west lot, the poorest lot of sheep in the middle lot and the best lot of sheep in the east lot. that was the way they were fed. seperate in those lots during the winter that I was there.

Fourth, —— How many hogs had said Moore during the first year. and state if they did not at times run with said sheep during the winter.

Ans, —— I could not answer that question. I suppose a dozen or fifteen, I never saw them in the sheep pens

Fifth, —— Do you remember where said Moores hogs, run during the first winter.

Ans, —— Part of the time, I do while I was there. they run around the stables in the lane and in his wood pasture.

Sixth, —— Were the fences around Moores premises during the first winter, in such a condition, that his sheep and cattle could not get together at times.

Ans, —— The pens were good fences around them nine rails high.

Seventh, —— What kind of fences had Moore around his farm, during the first summer and winter.

Ans, —— The fence around his farm was not as good as it might be it was rather poor.

Eight, —— Did you ever see the racks without hay in them during the first winter.

Ans, —— I dont know that I ever seen them entirely empty, they were filled up once a day, that is what his hand told me.

Ninth, —— What relation are you to the defendant

Moore.

Ans.—— Nephew I suppose

William Sapp

and now at this time came Alexander Wilson, who was sworn to testify in the above case.

First,—— Are you acquainted with the parties to this suit.

Ans,—— I am acquainted with Mr Moore, and I have seen Mr Howard, not intimately acquainted with him

Second,—— State whether you know of Foster Moore getting sheep of Howard and Milk sometime in the month of June 1851. and if so state fully how you knew it.

Ans.—— I heard them both say that he did get sheep about that time. I heard Mr Moore say that he got sheep about that time and I heard Mr Howard say that he got sheep about that time

Third,—— State whether you ever had a conversation, with the said Howard or Milk and if so which one of them. about the time Moore got said Sheep. and if so when did said conversation take place. and under what circumstances, was said conversation had. and what brought said conversation about, and state fully what that conversation was.

Ans.—— Mr Howard and me had a conversation about that time, about them sheep but what it is I cant fix it in my mind. it was out in the Prairie, and there was sheep running all round us Mr Howard sayed that he had a lot of sheep, that he had let Mr Moore, have some, and it would suit him very well to let me have some of those sheep.

Fourth,—— Why was it that you come to be on the Prairie looking at those sheep.

Ans,—— I had just came back from California, and had met with some losses. Mr Howard had stoped his sheep on the Praire, and I think he came and took dinner at my house. we was talking on the Prairie for some time looking at the sheep he proposed letting me have the sheep for three years. I am so

132

forgetful, but I think that was the time. of such a part of the sheep there was some that was not sheared. them he wanted to carry home. But the remainder he would let me have, and throw in a lot of old ones. I had to pay one pound and a half of wool to the head. that he would throw in some eight or ten he would not count. old ones. well we went on then to gather the sheep. and put them in the lot. I suppose there might be a chance to make something out of the sheep, the increase and I concluded to take the sheep and keep them. that length of time they was drove into the lot and we went to counting the sheep

Fifth, ——— State fully whether you took any of said sheep of Howard at that time, and state all conversation that occured in making said contract, and how many sheep you took. and what was the contract you made with the said Howard.

Ans, ——— We commenced counting the sheep and there came a lame one along, and I told him I did not want it and he said let it go that he would not count it, I had not but a few in, when one came along with his eye sucked out and he sayed that he would not count that one, we got them all counted through, I dont remember the number, I think five hundred head, I cant say as to the number I cant remember considerable conversation then accured about the sheep a number of them was lame and running at the nose and looked poor. he said they had been out in the rain. that they would be all right in a few days. and I took the sheep I think it was a pound and a half to the head. I will tell you what I had insisted upon. that is a pound and a quarter to the head. as it was the tail end of the flock. and just take them as they come. he said that he had never let sheep out for less than that. never mind he said I think you will do a good part by the sheep and we can make it all straight if you should have bad luck with these sheep there is one lot that I got of one man that I was jibous of myself and if you should

have bad luck he would make some reduction. I dont know that these were his words, but something like it. Now said Mr Howard I have always been in the habit of taking Real Estate for security, I told him that I would not bind my self for a lot of sheep that I did not know anything about sheep anyway, I will not bind you to that as I think we can get along without it. I think I was to keep them three years, and give him one pound and a half to the head and the same number back at the end of that time

Sixth, ——— State if you know whether Foster Moore got his sheep of Howard out of the same flock, that you got yours out of, and if so how long was it after Moore got his sheep that you got yours.

Ans, —— I heard Mr Howard say that Mr Moore did get out of that flock of sheep a day or two before.

Seventh, ——— State now what was the condition of these sheep that you got of Howard at the time spoken of above, as it regards order, soundness, and apparent health at the time you got them, describe said sheep in these respects as fully as you can, at the time you got them.

Ans, —— There was some of the sheep that looked very well and some that looked very bad, and there was a several among them that was a good deal smutty at the nose, and two or three that we left on the edge of the Prairie, that was lame

Eight, —— What parportion of them looked well and about what parportion of them looked bad.

Ans, —— I cant state that, they had been driven, and most of them looked rather bad, there was a lot of sheep that was not sheared that I thought was very fine, Howard said that if he had the wool off them that he would as leave I would have them as any, I did not get them.

Ninth, —— State what kind of success you had with said sheep, whether they all lived and did well, or whether some died, and if some of them died state how many

Ans, ___ I had bad luck with them, they commenced dying, some of them the wool come off the back, and I had considerable talk with some of the neighbors. and they supposed there was some disease amongst them, and I began to feel uneasy about it Mr Howard in our previous conversation said he would pass my house on a certain day or week. I either sent word to him, or left word on the road where he could get it. and he stoped as he passed here and his sheppard with him. I told him about the sheep. that some of my neighbors thought it was the scab, and that I might loose my whole flock. Mr Howard said that if it was the scab, that it would certainly ruin the whole flock and we must go see. The sheppard called his dog and we put to the pasture, and caught three I think, and Mr Howard and his Sheppard said that it was nothing but the sun had burnt them and made the wool come off, that I need not be uneasy about the scab.

Tenth, ___ State how soon after you got said sheep. before they commenced dying.

Ans, ___ I cant say it was not long though.

Eleventh, ___ About how many of those sheep died through the course of the summer and fall, to the best of your recollection

Ans, ___ I cant tell that neither, I could suppose, there was several died through the summer and fall, but go to tell the number. I dont know, It would just be guess work.

Twelfth, ___ State if those sheep that died through the summer and fall, as ~~not~~ spoken of above were those that you supposed had the scab.

Ans, ___ Not all of them part of them died

Thirteenth, ___ What appearance did those sheep have that you supposed did have the scabs and how did that disease operate upon them.

Ans, ___ Well the wool came off the back & some of them was a little sore. I dont know neither, it was the sun or

not that caused it.
Fourteenth, ____ How long did you keep said sheep
Ans, ____ I think I kept them about one year
Fifteenth, ____ What became of them.
Ans, ____ Mr Enos, and me, made a contract & I sent them over to Mr Enoses.
Sixteenth, ____ Was Enos then the agent of Howard and Milk
Ans, ____ He was the agent of Howard. Howard told me Enos was his agent
Seventeenth, ____ Did Enos take said sheep back as the agent of said Howard; and what was the arrangement you made when he took them back.
Ans, ____ The way I would answer that question if you had not of asked me so much, I would have answered it by saying, Yes and darned glad to get out of it, I dont know myself what was the arrangement. I got some money for keeping the sheep, I did not shear them what amount I cant say, I think thirty dollars.
Eighteenth, ____ State how many of said sheep that you got of Howard at the time spoken of by you above, died between the time you got them and the time that Enos got them.
Ans, ____ In the neighborhood of one hundred
Nineteenth, ____ State what disease or diseases said sheep died with,
Ans, ____ I dont know how to answer that, I can answer part of that. I always thought there was something the matter with them. and gave them medicine, and they kept dying and I got rid of them. and that is the amount of it.
Twentieth, ____ State whether said sheep had the Scab, Rot. or foot-evil.
Ans, ____ Well I did suppose that the sheep had the Scab, Rot tail-rot and every thing.
Twenty first, ____ Did any of said sheep that died have a

136

bad cough.

Ans, ——— There was a cough amongst the sheep, and the snotters.

Twentysecond, ——— What did you suppose at the time said sheep was dying. and do you still suppose was the matter with them

Ans, ——— I always supposed there was some disorder among the sheep and that I should loose all of them if I did not get rid of them.

Twentythird, ——— Are you skilled in the diseas of sheep and has your experience been such with sheep, that you can determine, when sheep are diseased, what is the matter with them,

Ans, ——— No sir I am not skilled in them, and I am not acquainted with the diseases among sheep, as I never had but few for family use.

Twentyfourth, ——— Did you ever see the sheep that said Moore got of said Howard. after he got them, and if so state how long after you got yours, befor you saw his.

Ans, ——— I have seen them, but how long afterwards I cant remember, that same fall I think.

Twentyfifth, ——— Do you know if Moore lost any of his sheep. if so did you ever examine them to see if they died with the same disease that yours had, and if so state fully all

——— ——— ——— ——— ——— ——— ——— ——— ——— ——— ——— ——— ——— ———

you know about it.

Ans, ——— I know nothing about that. I dont recollect hearing any thing said about the sheep, I was passing there in the fall and saw the sheep, but dont recollect any thing about their dying.

Twentysixth, ——— When you saw said Moores sheep, after you got yours, what was their general appearance

and how did they crosspond with the sheep you got of said Howard.

Ans. ——— I was past there and saw the sheep, any more information than that I dont know any thing more about it than you.

Cross Interrogatories.-

First, ——— You say in your answer to direct interrogatories ——— No 18 that in the neighborhood of one hundred ——— ——— ——— ——— ——— ——— ——— ——— ——— died while you had them, Now please state at what time of the year said sheep mostly died. whether in the summer, fall, winter, or spring following.

Ans. ——— They died a good many in the fall and a good many in the spring, more so than in hard weather, they mostly died befor cold weather commenced, when cold weather commenced, I thought they were going to do well and in the spring when grass come they commenced dying again and I got scared and was going to wind up the sheep business

Second. ——— State if you had a conversation with Foster Moore, after he got his sheep of said Howard, about the quality of said sheep he got, if so state what that conversation was.

Ans. ——— I had a conversation with Foster Moore, I was talking about having some old sheep and something in, he stated that he had got young sheep that he was a judge of sheep and that they could not poke an old sheep onto him,

Third. ——— Did he say anything about getting rotten sheep of Howard, or diseased sheep at that time.

Ans. As sir. ———

Fourth. ——— Were you in the sheep business before you got those of Howard.

Ans. ——— No Sir. ——— A. Wilson

State of Illinois }
County of Iroquois } ss. I. H. C. Bryant a Justice of the Peace within and for said County and State. Hereby certify that the above E. Sapp. J. Hurd. G W. Moore. George Vennum and William Sapp and Alexander Wilson. were by me first duly sworn according to law to testify the truth the whole truth and nothing but the truth. relating to said cause. that their depositions were reduced to writing. and afterwards read to them and each of them sworn thereto by me that the said Hergard and Mills. adverse party attended by Gen B. former their Attorney Mr Mills being present part of the time. and said depositions were taken at Middleport County of Iroquois State of Illinois. Commenced on the 19 day of January A. D 1857 and continued from time to time until they were all taken. In testimony whereof I have hereunto set my hand and seal. this Eighteenth day of April 1857 H. C. Bryant J. P. (Seal)

139

State of Iowas }
Fayette County }

Depositions of witness taken in an action pending in the Circuit Court of Iroquois County and State of Illinois wherein Samuel Milk and Franklin Howards Survivors of William Howard deceased are Plaintiffs and Foster Moore is Defendant taken pursuant to notice hereunto attached and at the time therein mentioned before Foster Mitchell a Justice of the Peace in and for said County of Fayette and State of Iowas who is duly authorized by the said court of Iroquois County Illinois to take the same.

Lucinda Patterson of the County of Fayette and State of Iowas of lawful age being first duly sworn by me as herein after certified deposes as follows.

Interrogatory 1st Are you acquainted with the parties to the above entitled suit? If not with all state which of the above named persons both on the part of the said complainants and Defendant you are acquainted with?

Witness Ans I am acquainted with all the parties in the above entitled both the Complainants and Defendant

Interrogatory 2nd Do you know of the said Complainants and the said Defendant entering into a certain contract respecting sheep and if so state what that contract was as near as you can? And where and when the same was made? And whether all of said Complainants were present when said contract was made? If not all then what one or more of them was or were present?

Witness Answer Know of the complainants entering into a contract with the Defendant respecting sheep the contract was

that the Defendant was to take the sheep for three years and give One and one half pounds of wool per head each year for the use of the sheep and return the same number at the end of the term of three years thinks the contract was made the first of June A.D. 1851
All of the complainants were not present when the contract was made but that William Howard was present with whom the contract was made.

Interrogatory 3d — State if you know whether the said complainants or any about the eleventh day of June A.D. 1851 delivered to the said Defendants sheep? And if so state how many they delivered to him? When they were delivered? And state fully whether you saw said sheep when they were so delivered to the said Defendant? If so state fully what was the condition of said sheep as to respect their order health and soundness?

Witness Ans — Was knowing to the complainants on or about the 11th day of June A.D. 1851 delivering to the said Defendant Four Hundred and Twenty Four sheep I saw the sheep when they were delivered to the said Defendant think the sheep were in a poor condition at that time. Could not say further as to health and soundness.

Interrogatory 4th — State if you saw said sheep after they had been delivered to the said Pastis Moore at any time during the summer fall and winter of 1851 and during the winter and spring of 1852 and if so state how often during that time you saw said sheep? and where you resided from the eleventh day of June A.D. 1851 until the first day of May A.D. 1852. And whether you often saw said sheep during that time? If so how often? And state fully what the condition of said sheep was during that time? Whether they were healthy and sound and in good order or otherwise?

Witness Ans — She saw the said sheep frequently during the summer

120

141

fall and winter of 1851 and also during the winter and spring of 1852. Could not say how often - sometimes every day She lived at the said Foster Moores, from the eleventh day of May A. D. 1851 until the first day of May A. D. 1852,, and that she saw the said sheep very often during that time and that the said sheep continued poor and sickly during that time. The sheep died at least many of them soon after the sheep were brought to the Defendants house?

Cross examination 5th

State if you know whether any of said sheep died during the summer fall and winter of 1851 as during the winter and spring of 1852. If so state how many of said sheep died during the time aforesaid if any And if any of said sheep died during the time aforesaid state at what season of the year they so died during the time aforesaid? and state fully and distinctly the cause of the death of said sheep if any died as aforesaid. Were said sheep diseased? If so what disease had they? Were any of said sheep diseased at the time the said Foster Moore got them. If so state if you know what disease they had? And how many were so diseased?

Witness Ans

She knows that some of said sheep died during the summer fall and winter of 1851 and during the winter and spring of 1852 thinks that about one hundred of said sheep died during said time that some of said sheep died immediately after said Moore got them but most of them in the fall of 1851 and some of them in the winter following and some in the spring of 1852 that said sheep died with a disease called the rot that said disease was occasioned by the poor condition of said sheep at the time the said Moore took them and such diseases as did kind aforesaid

Interrogatory 6th State whether you were present on the 11th day of June A. D. 1851. when the said complainant and the said Defendant entered into a contract respecting said sheep? If so state fully what the said complainants said if anything respecting the health and soundness of said sheep? And if anything was said by the said Complainants as aforesaid by which one of said complainants the same was said? And state fully all that was said at that time between said Complainants or any one of them. And the said Defendant respecting the health and soundness of said sheep?

Witness Ans I was present on the 11th day of June A. D. 1851 where the said Complainants and the said Defendant entered into a contract respecting said sheep. The complainant warranted the said sheep to be sound. repeated it frequently. The defendant hesitated to take the sheep saying he feared they were unsound. they looked so bad then the complainants said he would warrant them healthy and sound this warrantee was made by the said William Howard.

Interrogatory 7th Said if you know what the said Defendant has been damaged if any thing in consequence of said sheep dying in the manner and at the time they so died? and state fully how you estimate the damage if any which the said Defendant has sustained in consequence of said sheep dying as aforesaid?

Witness Ans I could not say being entirely unacquainted with estimating such damage. I do know that it was a great damage to said Howard the said sheep so dying.

Testimony on part of the said complainants as taken at the same time of taking answers to interrogatories propounded by the Defendants.

Interrogatory 1st What relation are you to Justus Howe?

142

Witness Ans = I am a daughter of the said Foster Moore.

Interrogatory 2nd What disease had said sheep at the time they were delivered to Foster Moore?

Witness Ans = I am what I could learn the disease was called the rot.

Interrogatory 3d What were such sheep as those you say were diseased and poor worth at the time they were delivered to said Foster Moore and what were good sound and healthy sheep worth at the time in the summer of 1851.

Witness Ans I should not value them highly I do not know what good healthy sheep were worth.

Interrogatory 4th What were good healthy sheep worth in Grayson County in December 1851.

Witness Ans = Do not know

Interrogatory 5th Did any of said sheep which were healthy when they were delivered to Foster Moore die in the year 1851 if so how many?

Witness Ans I guess they were all unhealthy and unsound.

Interrogatory 6th Did you ever count the whole number of said sheep that did die in the year 1851 if not how do you know how many did die?

Witness Ans I did not count the number that died I only know the number by hearing the family say.

Interrogatory 7th How many of said sheep died in the summer of 1851. and how many died in October and how many in November and how many in December 1851 how many in each of said months

Witness Ans I could not tell how many died in each of the months but think about two hundred died before the first of January A. D. 1852 or at least before shearing time in the spring of 1852.

Interrogatory 8th What were wool worth per pound in December 1851 and what were wool worth per pound in the spring of 1852 in Grayson County Va

Witness Ans — Could not say. have heard but do not recollect

Interrogatory 9th — Was there anything the matter of the wool on the sheep that died in the year 1851.

Witness Ans — I guess the wool was as good as any pulled wool there was not much wool on many of the sheep that died in 1851.

Interrogatory 11th — Did any of said sheep die in the year 1852 if so state how many and what time in the year during what month and how many each month?

Witness Ans — There were many sheep that died in 1852 Could not say what month but they died almost daily.

Interrogatory 12th — Did any of said sheep die in the year 1853 if so how many.

Witness Ans — Many died in 1853 could not say how many.

Interrogatory 13th — Did Foster Moore have troughs in which to salt & feed said sheep during the winter of 1851 & 1852.

Witness Ans — He had some troughs to feed and salt in.

Interrogatory 14th — How did Foster Moore feed said sheep during the winter of 1851 & 1852 state whether he fed them with hay and whether he put the feed on the ground or where he put it for them

Witness Ans — He fed the sheep hay during the winter of 1851 & 1852 and he fed them even both in troughs and on the ground.

Interrogatory 15th — Did Foster Moore have sheds or other places to shelter said sheep from the weather during the winter of 1851 & 1852 if so state what kind he had?

Witness Ans — He had no sheds but he had racks and the white oak thicket aside from his barn for a shelter.

Interrogatory 16th — State how many had Foster Moore kept said

sheep in during the winter of 1851 & 1852 and about how there were sheds in each of said lots for said sheep?

Witness ans — We had three lots to keep the sheep in - there was not sheds in each lot -

Interrogatory 17th — How large were each of said lots in which said sheep were kept during the winter of 1851 & 1852 as near as you can tell?

Witness ans — One lot had about one acre and one acres in it another about twenty acres and the third about thirty acres.

Interrogatory 18th — What was the condition of the fence around said lots during the winter of 1851 & 1852

Witness ans — The fence was good.

Interrogatory 19th — Could said sheep go from one lot to the other generally during that time.

Witness ans — They could

Interrogatory 20th — Were there not brush and bushes in each of said lots during the winter of 1851 & 1852.

Witness ans — There was brush in one acre and one of the lots.

Interrogatory 21st — Did any of said sheep shed their wool during the winter of 1851 & 1852, if so how many & at what particular time?

Witness ans — Think must shed in the fall but some in the winter could not say at what particular time.

Answers to the 22, 23 & 24. Interrogatories did not consider herself competent to say.

Interrogatory 25th — Did you ever see the written contract between the complainant and said Foster if so state when and who wrote it and and who signed it?

& return

Witness ans — I saw the parties writing the contract was about the first of June A.D. 1851 & Foster Moore signed but I do not know who signed it

Lucinda Patterson

Subscribed and sworn before me this 27th day of February A.D. 1857

Jasta Mitchell
Justice of the Peace

Aaron Patterson of the County of Fayette and State of Iowa of lawful age being first duly sworn by me as hereafter certified deposeth as follows

Interrogatory 1st Are you acquainted with the parties to the above entitled suit. If not with all state which of the above named persons both on the part of the said complainant and defendant you are acquainted with?

Witness Ans Is acquainted with the defendant and one of the complainants to wit Samuel Milk.

Interrogatory 2nd Do you know of said complainants and the defendant entering into a certain contract respecting sheep and if so state what the contract was as near as you can and when and where the same was made and whether all of said complainants were present when said contract was made if not all what one or more of them was or were present?

Witness Ans Do not know of the contract having never seen or heard the parties say when together anything about such contract all he knows about the contract is hearsay.

Interrogatory 3d State if you know whether the said complainants on or about the eleventh day of June A.D. 1851 delivered to the said Defendant sheep and if so state how many they delivered to him, when they were delivered and state fully whether you saw said sheep when they were delivered to the said defendant if so state fully what was the condition of said sheep as it respected their order health and soundness?

147

Witness Ans — Knew one of the complainants to wit Samuel Milk to leave some sheep at the defendants about the forepart of June 1851 does not know how many were so delivered. Saw the sheep soon after they were delivered to the defendant they were poor and looked sickly looked as if they had been drove a great distance.

Interrogatory 4th — State if you saw said sheep after they had been delivered to the said Foster Moore at any time during the summer fall & winter of 1851 and during the winter and spring of 1852 and if so state how often during that time you saw them the said sheep and where you resided from the eleventh day of June 1851 until the first day of May 1852 and whether you often saw said sheep during that time. If so state fully what the condition of of said sheep was during that time. Whether they were healthy and sound in good order or otherwise

Witness Ans — Did see the sheep during the summer, fall and winter of 1851 and during the winter and spring of 1852 occasionally but during the fall of 1851 saw them almost daily. Resided during the summer and first part of the fall at Aaron Hoel and during the latter part of the fall and winter resided at A. Pattersons but frequently passed the defendants during that time and frequently saw said sheep during that time the condition of said sheep still continued to be about the same as when first seen by witness or such of them as were living, often when passing the sheep were in the road some of them dead others dying

Interrogatory 5th — State if you know whether any of said sheep died during the summer fall and winter of 1851 or during the winter and spring of 1852. If so

state how many of said sheep died during said time if any, and if any of said sheep died during the time aforesaid. State at what season of the year they so died during the time aforesaid and state fully what was the cause of the death of said sheep if any state at what season of the year they so died during the time aforesaid and state fully what was the cause of the death of said sheep if any died as aforesaid was said sheep diseased if so what disease had they was any of said sheep diseased at the time said Foster Moore got them if so state if you know what disease they had and how many were so diseased

Witness ans to 5th Interrogatory

Knows that some of said sheep died during the summer, fall and winter of 1851 and also of the winter and spring of 1852 thinks about two hundred died during the first year after said Foster Moore took them thinks the cause of the sheep so dying was they had been drove so far that the said sheep had got so poor as to become diseased and thus cause them to die thinks the sheep died with a disease called the rot. said sheep were diseased at the time said Foster Moore took them. cannot tell how many of said sheep were so diseased but a large portion of them were worn out lame and sickly.

Interrogatory 6th State whether you were present on the 11th day of June 1851 where the said complainants and the said Defendant. Entered into a contract respecting said sheep. If so state fully whether the said anything respecting the health and soundness of said sheep and if anything was so said by said complainants ~~the~~ as aforesaid by which one of said complainants the same was said and state fully all that was said at the time between the said complainants or any one of them and the said

149 Defendant respecting the soundness and health of said sheep

Witness ans Was not present at the time the said complainants and the said defendant entered into contract respecting said sheep. Witness cannot answer to any of the interrogatories in number 9.

Interrogatory 7th State if you know what the said defendant has been damaged if anything in consequence of said sheep dying in the manner and number and at the time they did so died and state fully how you estimate the damages if any which the said Defendant has sustained in consequence of said sheep dying as aforesaid

Witness ans Thinks the defendant has been damaged One thousand dollars in consequence of the said sheep so dying at the time and manner aforesaid. Witness comes to his estimation by taking into account the sheep that died the expense of keeping buying others to replace those that died

Interrogatory 8 To Aaron Pattison what is your business or occupation in life?

Witness ans His business in life has been planting corn in the summer and making horses in the winter.

Testimony taken on the part of the complainants as taken at the same time of taking answers to the interrogatories propounded by the defendant.

Interrogatory 1st What relation are you to Isaac Moore

Witness Ans I am son in law to Isaac Moore

Interrogatory 2nd What disease had said sheep when delivered to Isaac Moore.

Witness Ans Does not know what disease the sheep had at the time they were delivered to the said Isaac Moore

farther then they were very poor and had the appearance of having driven a great distance.

Interrogatory 3d What were such sheep as those you describe as being diseased and poor worth at the time they were delivered to said Foster Moore? and what were good sound & healthy sheep worth at that time to wit: the summer of 1851

Answer Think they the sheep were not worth more than seventy five cents at the time they were delivered to Foster Moore good sound healthy sheep were worth from one dollar to one dollar & a half at the same time

Interrogatory 4th What were good healthy sheep worth in Grayson County in December 1851.

Witness ans Think good healthy sheep were worth in Grayson County in December 1851 about the same as in the summer before

Interrogatory 5th Did any of said sheep which were healthy when they were delivered to Foster Moore die in the year 1851 if so how many

Witness ans Does not think that those which were healthy died so die but thinks there was but few that were healthy cannot tell how many died in 1851 but says quite a number died so die but did not count those that died

Interrogatory 7th How many of said sheep died in the summer of 1851 and how many died in October & how many in November and how many in December 1851 how many in each of said months?

Ans Does not know many in each of those months did not take any account of them at the time but they died almost daily

Interrogatory 8th What was wool worth per pound in December 1851 and what was wool worth per pound in the spring of 1852 in Grayson County Ill

130

151

Witness Ans — Thinks wool was worth in December 1851 and also in the spring of 1852 about 35 cents

Interrogatory 9th — Was there any thing the matter of the wool on the sheep that died in 1851

Witness Ans — Do not know as there was any thing particular the matter of the wool on the sheep that died in 1851.

Interrogatory 10th — Who herded said sheep during the summer of 1851 and who take care of them during the winter of 1851 & 1852:

Witness Ans — The defendants boys herded the sheep during the summer of 1851 and himself boys & hindman during the winter of 1851 & 1852

Interrogatory 11th — Did any of said sheep die in the year 1852 if so state how many and at what time in the year during what month how many each month.

Witness Ans — The sheep died in every month in the year 1852 but cannot tell how many in each month as he did not take any account of the number

Interrogatory 12th — Did any of said sheep die in the year 1853 if so how many?

Witness Ans — Said sheep died in 1853 cannot tell how many.

Interrogatory 13th — Did Foster Moore have troughs in which to feed and salt said sheep during the winter of 1851 & 1852

Witness Ans — Said Foster Moore had some troughs in which to salt and feed said sheep in 1851 & 1852 cannot say how many

Interrogatory 14th — How did Foster Moore feed said sheep during the winter of 1851 & 1852. State whether he fed them with hay and whether he put the feed on the ground or where he put it for them

Witness Ans — Foster Moore fed the sheep during the winter of 1851 & 1852 with hay in a rack and sheaf oats and corn the corn was feed in troughs and scattered on the

ground while froze

Interrogatory 15th Did Foster Moore have sheds or other places to shelter said sheep in from the wether during the winter of 1851 & 1852 if so state what kind he had?

Witness Ans Foster Moore had rails crossed and filled with hay in the edge of the thicket or timber lot for the shelter for the said sheep during the winter of 1851 & 1852

Interrogatory 16th State how many lots Foster Moore kept said sheep in during the winter of 1851 & 1852 and whether there were sheds in each of said lots for said sheep.

Witness Ans Foster Moore had four lots in which said sheep could go during the winter of 1851 & 1852 there was not sheds in all of the lots the rack above described was in one lot & the thicket in another lot.

Interrogatory 17th How large were each of said lots in which said sheep were kept during the winter of 1851 & 1852 as near as you can tell

Witness One lot of 1½ acre & one of ½ an acre one lot of about 50 acres the brush lot had about 35 acres to the best of his judgement in which the said sheep during the winter of 1851. & 1852

Interrogatory 18th What was the condition of the fence around said lots during the winter of 1851 & 1852.

Witness Ans The fence was some of it good and some of it was not

Interrogatory 19th Could the said sheep go from one lot to the other generally during that time

Witness Ans The sheep could go from one lot to the other during the said time

Interrogatory 20th Were there not brush & breakes in each of said lots during the winter of 1851 & 1852.

Witness Ans There was no bushes or brush in but two lots

Interrogatory 21st Did any of said sheep shed their wool during the

152

153

months of 1851 & 1852 if so how many and at what particular time

Wit ans — Said — did shed some of them mad during the winter of 1851 & 1852 cannot say how much or at what particular time

Interrogatory 22nd — Will not sheep do much better during the winter time with sheds to shelter them from the weather than they do without them.

Wit ans — Sheep will do better with sheds than without them.

Interrogatory 23d — What disease are sheep subject to if any that are exposed to the weather and not shelter from the storm in winter.

Wit ans — Do not know as sheep are subject to disease that are not sheltered in winter but it will take less feed

Interrogatory 24th — Were you ever in the sheep business if so state when and where & state how many you ever kept at any one time

Witness ans — Was never in the sheep business

Interrogatory 25th — Did you ever see the written contract between the complainants and said Foster Moore if so state when and where & who made it out and who signed it.

Witness answers — Says he never saw the written contract between the said complainants and the said Foster Moore

Aaron Patterson

State of Iowa }
Fayette County } ss

I Foster Mitchell of said County and State having been appointed by the Honorable Circuit Court of Dubuque County and State of Illinois a Commissioner to take certain deposition above mentioned

Do hereby certify that the above named witness was first duly sworn by me to testify to the truth the whole truth &

and nothing but the truth and that the foregoing depositions by them respectfully subscribed were reduced to writing (that is that taken of Lucinda Patterson by Fredrick A Mitchell a disinterested person at my request and that taken from Aaron Patterson by myself that the said depositions were read to the said witnesses who there (that is to say the said Lucinda Patterson on the 27th day of February 1857 and that of the said Aaron Patterson on the 6th day of March 1857) subscribed in my presence at the times and place before mentioned who were severally sworn to the truth of the same

In testimony whereof I have hereunto set my hand this 6th day of March A. D. 1857

Y. A. Mitchell
Commissioner

The initial A in my name in the commission is an error not belonging to my name

Y. Mitchell

Fees taking 960 folios Depositions	$4.00
Certifying to same	25
Postage	15
	5,00

Received the above fee

Y. A. Mitchell
Commissioner

Filed March 30th
A. D. 1859.

B. W. Gray
Clerk.

155

State of Illinois } Iroquois County Circuit Court
Iroquois County } ss of the April Term A.D. 1858

Samuel Milk Franklin Howard
Survivors of William Howard dec^d
vs
Foster Moore } Bill in Chancery to foreclose mortgage

The said complainants or George B. Joiner Esq their solicitor will please take notice that the said Foster Moore will on the 13th day of January A.D. 1858 will appear before C. F. McNeill at his office in the town of Middle port in the County of Iroquois and State of Illinois between the hours of Nine Oclock in the forenoon and five Oclock in the afternoon of said day and then and there be the said Foster Moor will cause the depositions of Henry Hoover C. C. Vennum, John Paul, Foreman Moore, John A Moore, to be taken before the said C. F. McNeill so being Justice of the peace as aforesaid and he will so continue from day to day until of said depositions are taken which deposition when they shall be taken as aforesaid will be read and used as evidence upon the trial of the above entitled cause, as well as on the part of himself whenever he is complainant in a cross bill filed in the said cause and which is now pending and undetermined in said Court together with the above entitled Suit when and where you can and are hereby requested to appear and put cross interrogatories to said witnesses if you see proper so to do

Yours very truly &c

Foster Moore
By James Fletcher
his attorney & solicitor

J. P. Fees
2 Subps 37½

Jan 2nd 1857 Subpoenas issued for all the above witnesses & delivered to W. S. Kay Const. to serve Subpoenas returned served Fees $ 1.85 } C. F. McNeill J.P.

I do hereby acknowledge service of the within notice by copy this 28th day of December A.D. 1857

Geo. B. Joiner

Filed Mar. 30 A.D. 1859

B. W. Gray
Clerk

State of Illinois }
Iroquois County } ss

Samuel Milk and Franklin Howard
Survivors of William Howard Deceased
vs
Foster Moore } Bill in Chancery to Foreclose mortgage

Depositions of Henry Harris Foreman Moore and John Paul being of lawful age and sound mind taken by and before me the undersigned justice of the peace in and for said County on the 13th day of January A.D. 1858 between the hours of 9 Oclock in the forenoon and five Oclock in the afternoon in pursuance of the attached notice Said depositions to be read in the above entitled case now pending in the Iroquois County Circuit Court said witnesses being first by me duly sworn to testify the truth the whole truth and nothing but the truth in relation to the matter in controversy in the above entitled cause according to law so far as they may be interrogated depose and say in answer to the following interrogatories to wit.

The said Henry Harris being first duly sworn deposeth and saith

1. Interrogatory 1st by Foster Moore

156

Are you acquainted with the parties to the above entitled suit?

Answer — I am acquainted with one of them Mr Foster Moore

2 Question 2nd — State whether you were acquainted with Foster Moore in the summer or fall of 1881 and if so how you became acquainted with him and under what circumstances you became acquainted with him at that time

Answer — Some time about the middle of the fall of 1881 I hired to him to attend to sheep. He had mostly sheep

Question 3d — State how long you were hired to him the said Foster Moore and how long you remained with him and what business you followed during the time you were with him?

Answer — I was hired to him for a certain length of time. I remained as well as I can remember with him some eight months The most of that time I attended to his stock and when I was not attending to the stock I would go into the woods and make rails and chop wood and the like

4 Question 4th — How many sheep did Foster Moore have on his farm when you first went there and how many did he have when you left?

Answer — He had when I went there about four hundred There may have been some over or some under that number When I left he had about two hundred and fifty some of them were lambs

5 Question 5th — Please to explain the reason why Foster Moore did not have as many sheep when you left there as when you went?

Answer — Because the sheep died of disease

6 Question 6th — State at what season of the year those sheep died and what was the cause of their death?

Answer — They were dying from the time I first went there as near as I can tell till the middle of March the next spring

7 Question 7th — State what proportion of them died in the fall before cold weather and what proportion died from that until the middle of March?

Answer — It is hard for one to tell what proportions there were. They continued dying more or less every week from the time I went there till I left

8 Question 8th — State who fed and took care of those sheep from the time you went to the said Foster Ranch until the time you left?

Answer — I fed and took care of them the most of the time myself The rest of the time Mr Foster Shaw and his boy took care of them.

9 Question 9th — State what kind of care and attention said sheep had during the time you were at said Ranch with what kind of food they were fed and in what manner they were fed?

Answer — They were herded on the prairie for a short time after I went there and they were then taken up and put in yards and fed. They were fed on hay and corn The hay was put in racks and the corn was scattered around in their yard

10 Question 10th — What was the quality of the pasture said sheep was herded upon from the time you went there until the time they were put up and fed?

Answer — It was a fine grass pasture and its quality was pretty good

11 Question 11th — What was the quality of the hay and corn ~~said~~ said sheep were fed upon during the feeding season while you were at said Ranch?

158

159

Answer

The hay was as good prairie hay and timothy hay as I were accustomed to handling and the corn was good and sound and would hold out in weight-

12 Question 12th- State whether the corn you speak of which was fed to said sheep was fed upon the stalk or husked out?

Answer

The most of said corn was fed on the stalk Some was fed in the ear The corn was cut up and hauled to the yard and fed

13 Question 13th- State whether any fodder was fed to said sheep in feeding them corn and if so how much and its quality?

Answer

The corn was cut up before the frost and in feeding it to the sheep there was fed every night and morning about enough to average an ear apiece for each sheep

14 Question 14th- State how much husked corn was fed to said sheep during the time you were at said Evans?

Answer

There were only about three feeds of husked corn fed to them during the whole winter as near as I can remember

15 Question 15th- State whether there was any oats fed to said sheep during the time you were at said Evans and if so how much and whether the same was fed in the sheaf or threshed out?

Answer

I cannot tell how much oats were fed to them but it appears to me some were fed in the sheaf

16 Question 16th- You speak in your answer to interrogatory 9, of putting said sheep into yards after taking them up State how many yards they were put into whether more than one and if so how you divided said sheep?

Answer

They were put into three yards: the strongest ones were put into one: the weakest into another and the lambs and spares into the third They remained in said yards

a while and they were then put into two yards

17 Question 17th State how you fed said sheep in the several yards you speak of?

Answer I fed them on hay which was put into racks; and corn which was strewn round the yards.

18 Question 18th State how said yards were located; and what kind of shelter said sheep had to protect them from the storms

Answer They were built in the edge of the brush with a stream of water running through them. The racks and brush were their shelter. To protect them from the north and west winds there was a grove of timber

19 Question 19th State whether said yards were dry or not at the time said sheep were kept there as you have before stated?

Answer They were dry except when it would rain and then they would be muddy for a short time; but the sheep all the time had dry ground to lie on

20 Question 20th State how often you filled up said racks with hay during the time you were feeding said sheep

Answer As near as I can remember on an average of about once a day.

21 Question 21st State whether said sheep eat all the hay out of said racks before you would fill them with fresh hay or whether there would be a portion of it that the sheep would not eat, left in the racks? and if so state what you did with that portion they refused to eat?

Answer Sometimes in the course of the night they would eat it all out; and at other times they would leave some which they would refuse to eat and I would take it out of the racks and throw it on the ground for them to tramp on: and fill them with fresh hay

160
161

161

22. Question 22nd State whether there was any portion of the time from the time you speak of you went to said Shores, until the time you left that said sheep needed any food or attention which they did not receive and if so state when and what they so needed

Answer There was no such time

23 Question 23d State whether there was any portion of time you was absent from said Shores from the time you first went to said Shores until you finally left as you before stated and if so state how long, and when you were so absent?

Answer I was away three nights and two afternoons All the rest of the time I was there

24 Question 24th State whether there was any day during the said time you were at said Shores except the time you speak of you were absent when you did not see said sheep and if so state when?

Answer There was no time except the time I mentioned but that I saw them night and morning that I remember of

25 Question 25th State whether said Shaw declared said sheep during the said time you were working for him and if so how he declared them and what medicines he used?

Answer He declared them some with tar and salt daubed round their mouths and what else he used I dont know he had other medicine which he put into the salt when he salted the sheep

26 Question 26th State whether it required any more labor, care or attention in wintering said sheep during the time you were at said Shores as spoken of by you above than it would if said sheep had been healthy and if so how much more and why did it require more? and what more?

Answer The sheep required considerable more care ! because their being diseased they had to be nursed to keep them alive ! they had to be sheltered from the storms and the diseased ones had to be kept to themselves from the others to keep the others from running over them and had to be fed meal or something they would eat. The extra care it required was I had to carry them over the fence and put them in the barn and feed them there until they would die or get well enough to go with the others

27 Question 27th You speak in your answer to interrogatory number five that a portion of said sheep died of disease will you please state what disease said sheep died of if you know?

Answer I dont know what the disease was. All I know is they had a cough and snuffy noses & they bloated and throwed their stiff about a good deal

28 Question 28th How many of said sheep died from the time you went to said Ranch until the time you left?

Answer I think there was near two hundred that died

29 Question 29th How much more was it worth to winter said sheep during said winter you were at said Ranch than it would have been if said sheep had have been healthy?

Answer It would require one third more labor. It would be impossible for me to tell what it would be worth in dollars & cents. The sheep would not eat as much feed when they were sick as when they were well It has been so long that I have forgotten much about it.

30 Question 30th What is your business and occupation and what has it been during your life?

Answer — At present I am running a threshing machine Before that I was working by the month on a farm most of the time since I came to this state Before I came here I worked for my father on a farm in Canada I have worked on a saw mill two months the balance of my time I have worked on a farm.

31 Question 31st — From your knowledge of farming will you state whether you consider yourself a good judge of hay and corn and fodder and what care, attention and food is required to winter such a flock of sheep as the said shares were during the said time while you were there?

Answer — I do not consider myself a good judge of hay and corn and fodder I consider myself a good judge of the care attention, and food it required to winter such sheep. I can tell good hay from bad hay and I consider I can tell good corn from bad corn

32 Question 32nd — Was that hay that was fed to said sheep during the time you were at said shares all good hay? If not all then what portion of it was not good

Answer — I consider to the best of my knowledge all good hay except once filling the racks which was a little damaged at that time the shares was at Chicago and I had to carry the hay with a fork as I had no team and took some damaged hay which was the handiest hay I could get at

33 Question 33rd — How long did said damaged hay remain in said rack?

Answer — I put it in, in the forenoon one day and took out what was left in the racks the next morning and filled them up with good hay

34 Question 34th — State whether there was any damaged hay on said shares premises during said time while you were with

said Moore and if so where it was and how it was situated and what disposition was made of it by the said Moore

Answer — There was some standing in the field that was damaged which he hauled in and stacked near the stable for the horses and there was a little left which we stacked near the sheep yard which was that which I took and put in the racks with my fork

35 Question 35th — State how far from the road leading from Milford to Middleport said stack of damaged hay which was stacked for said Moore's horses was situated and how far from said road was said stack of hay stacked at said sheep yard?

Answer — The stack for the horses was about three rods from the roads and the stack for the sheep was about ten feet to the best of my recollection

Cross Interrogatories

1. Interrogatory — State if you recollect in what month it was you first went to work for Ch. Gates Moore?

Answer — I think it was in October about the middle of the month

2 Question 2nd — How long did said sheep run out on pasture after you went there before they were taken up and put in the yards?

Answer — I think it was about a week.

3 Question 3d — State where the pasture was in which said sheep were herded and how large it was?

Answer — It was west of Aaron Hoels There was between fifty and seventy five acres in it

4 Question 4th — Who owned said pasture land?

Answer — I dont know

5 Question 5th — State whether said pasture was fenced up or not?

165

Answer — It was not; I believe it was laying open to the commons.

6 Question 6th — How large were each of the three yards in which said sheep were kept after they were taken up?

Answer — One was twelve rods long and eight rods wide; and the other two were about ~~two~~ ten rods long and eight rods wide

7 Question 7th — In which of the three yards were the stronger sheep kept?

Answer — In the one next to the road the largest one

8 Question 8th — Were there racks in each of the said yards suitable for the said sheep?

Answer — There were

9 Question 9th — State how said racks were built?

Answer — There were two of them made of rails and stakes crossed over them; and the other was made of logs and rails.

10 Question 10th — State at what particular time said sheep commenced dying after you went there?

Answer — I can't state any particular time It was a very short time after I went there.

11 Question 11th — State how many of said sheep died while they were running on said blue grass pasture if you recollect or as near as you recollect?

Answer — I do not remember of a certainty of but one.

12 Question 12th — Are you certain that many of said sheep died after the 1st of January of the year you were at Moore's

Answer — I am sure there were some but there were not so many as before it

13 Question 13th — About how many to the best of your recollection died after the 1st of February of that year?

Answer I think there must have been fifty?

14 Question 14th State what preparation of the hay that was fed to said sheep during that winter was Lame hay and what preparation was prairie hay?

Answer I do not remember for a certainty! but it seems to me there was about half and half.

15th Question 15th State if the hay which was fed to them that year was hauled and stacked at the time you went to there?

Answer I believe it was all but a little and that was standing on Mr Moore's field and it was hauled after I went there and the racks filled once out of it

16 Question 16th State how many stacks of Lame hay said Moore had that year?

Answer I can't tell about half his hay was Lame hay.

17 Question 17th State if the said Moore bought any hay that year and if so how much and who of?

Answer Yes bought two stacks of timothy hay of one of the Osbys and one stack of prairie hay of Elijah Sapp.

18 Question 18th State how much hay there was in the two stacks he got of Osby as near as you can recollect and what he paid for it

Answer There was about three or four tons as near as I can remember in each stack but I don't know what he paid for it

19 Question 19th What was done with said hay as it was hauled? State whether it was put in the racks for the sheep or into stacks or what?

Answer Part of it was put into the racks and part was stacked in the barn yard and remained there until they used empty the racks and it was filled into them again

167

20 Question 20th State whether said Moore bought any corn or oats during that winter and if so of whom and how much?

Answer He did not buy any to my knowledge

21 Question 21st At what time of the winter was the prairie hay fed to said sheep?

Answer I do not recollect + when we commenced on one stack we would feed it out and then commence on another and I dont remember which ones we fed out first

22 Question 22nd Do you recollect which kind of hay said sheep would eat best prairie or timothy?

Answer There was not much difference between their eating the fine prairie hay and the timothy If there was any coarse prairie hay they would not eat that so well

23 Question 23d Is there more than one kind of prairie hay

Answer There are two or three kinds of prairie hay the up-land grass slough grass and blue sage

24 Question 24th Which do you think is the best for sheep

Answer I dont know only from the way the sheep would eat it they would eat the up land or fine hay the best I dont know I have heard a great many say the up-land was the best

25 Question 25th Which of these three kinds was the greater part of said stack hay that year?

Answer The most was the up-land or sage

26 Question 26th Did not some of the hay that was fed to said sheep look black and mouldy?

Answer It did not except some in the joints of the stacks and that which I fed with a fork as I before stated in my direct examination And that which was in the joints of the stacks I threw away the most of it

27 Question 27 State how much oats if any was fed to said sheep the winter you was with Moore and how fed to them and what time of the year they were fed to them?

Answer I dont remember of but one feed: and that was fed in the straw put in the racks

28 Question 28th Who generally had the care of said sheep that winter

Answer I generally had it myself

29 Question 29th Did you ever have the managment and care of sheep before you went to Moores if so state what number, when and where, and how long

Answer I never took care of sheep but very little until then. When I was at home with my father I took care of his sheep about eight years He generally had about thirty head. He lived in Canada.

30 Question 30th Are you acquainted with the diseases and causes of disease of sheep?

Answer I am not

31 Question 31st Will not exposure to wet and cold and storms during the winter in your opinion produce diseases among sheep?

Answer I cannot say that it will. My father never bestowed any extra pains on his sheep and they were always well and hearty and ready for market any time of the year

31 Question 31st Will sheep do as well in a flock of one hundred

and fifty or two hundred as in a flock of thirty with the same kind of care and attention in proportion to the number?

Answer I dont know what they would do if they were all healthy. Those of Mr Moores did not do so well as small flocks which I have seen.

32 Question 32nd On what month of that year did said sheep die the most rapidly?

Answer I dont know exactly I think it was in December & January

33 Question 33d Did any of said sheep shed any of their wool before they died that year and if so how many

Answer There was some that shed their wool before they died: and some shed their wool that didnt die I think five or six that shed their wool died and about as many more that did not die

34 Question 34th Was all the corn that was fed to said sheep that year cut up when you went to Moores.

Answer The corn that was fed in the shock was There was about three feeds that were husked off of the stalk after I went there

35 Question 35th State if the sheep were confined in each of said yards during the winter?

Answer They were not confined all the time. They would be turned out every day when the racks were filled. On warm days part of them would be turned out in the forenoon and part in the afternoon

36 Question 36th Where were said sheep turned to when turned out?

Answer They turned into a pasture where they had the privileges of going on to timothy meadow

37 Question 37th How much timothy meadow ground had the Moore that year?

Answer I dont know for certain I think there was ten or fifteen acres of it

38 Question 38th How much tame pasture if any had Foster Moore that year?

Answer He had the timothy meadow I spoke of and about five acres of other pasture of his own besides the blue grass pasture he was herding the sheep on when I went there.

39 Question 39th On what month in the year were the lambs and weakest sheep turned together?

Answer I think it was the last of December.

40 Question 40th How near there yards was the grove of timber you speak of?

Answer They were adjoining on the north and west and two of them were built in the edge of it

41 Question 41st What more anuring did you give said sheep than all sheep need?

Answer I carried them over the fence and put them into the barn and carried them meal and bran

42 Question 42nd How much meal and bran do you suppose you fed to said sheep that winter

Answer I cant say I fed each sheep a pint a day I think I fed ten bushels or more during the winter

43 Question 43rd Where did said Moore keep his meal that year and what in, & where did he get it ground?

Answer He kept it in his house in bags and barrels He got the most of it ground at times Some was ground in Pine

44 Question 44th On what month and what time in the month

did said Moore grit & feeding said sheep and turn them out to grass?

Answer — It appears to me it was about the last days of April

46 Question 45th — State whether he had any hay or corn left when he turned said sheep out or whether he had fed it all out to them?

Answer — He had some hay I cant say how much and he had some four or five hundred bushels of corn left

46 Question 46th — What kind and how large a barn had said Moore that winter?

Answer — He had a log barn covered with clap boards about twenty five feet wide and forty feet long

47 Question 47th — Was it partitioned off, and what did he keep in each partition?

Answer — One corner was partitioned off with boxes and one corner with boxes and ahead the rest was not partitioned at all

48 Question 48th — What did he keep in the barn?

Answer — He asked in the boxes some oats after they were thrashed and the sick sheep.

49 Question 49th — Did any of said sheep have the scab

Answer — None to my knowledge I dont know what the scab is I think they had the "ands"

50 Question 50th — Did said Moore employ any one to doctor said sheep during the winter you were there if so whom?

Answer — He did not employ any one to my knowledge A number looked at the sheep but they were strangers to me and I dont know that they were employed to doctor them

51 Question 51st — Were you much acquainted in the neighborhood of Moore before you went there to work for him?

Answer — I was not.

52 Question 52d — Have you been much acquainted there since you left?

Answer — But very little. I was there once or twice during the summer following and not since till within ten days.

53 Question 53d — State whether any of said sheep were killed, destroyed or maimed, by dogs or wolves during the fall or winter you were there?

Answer — Have no knowledge

54 Question 54th — What effect had the salt and tar on said sheep clarbed on their mouths?

Answer — It stopped their running at the nose, and coughing in a measure.

55 Question 55th — At what time did he daub the tar on their mouths?

Answer — I can't tell exactly. It was in the last of December or the 1st of January.

Interrogatories by Moore resumed.

1 Question 1st — Was there any time during said winter you were with said Moore that said sheep needed any kind of food which was necessary to their well being which they did not get and if so state where and what

Answer — There was no such time when I was there to my knowledge.

1 Question 2nd — State if said Moore was at home during said winter and if so whether he declared said sheep and superintended the care, attention, and feeding said sheep?

Answer — He was at home the most of the time and he doctored them with the tar he put on their mouths and the medicine he put in their salt and he

173

kept a lookout that they were fed

Cross Interrogatories

1 Question Do not said Moores farm low wet land or is it high and dry?

Answer It is not the lowest land there is; nor is it the highest land there is

2 Question 2nd Which do you consider the best for raising sheep low flat land or high and rolling land

Answer I rather surprise from what I have heard sheep men say that high land is a little the best

3 Question 3d What was the state of Moores improvements while you were there good, bad, or indifferent?

Answer I think they were as good as his neighbors I thought his farm was under pretty good cultivation

4 Question 4th What kind of a farmer do you consider said Foster Moore? good or bad?

Answer I dont consider him the worst nor the best but about an average farmer

5 Question Did said Moore put the medicine in the salt for the sheep before, at the time, or after he dashed the Lye on their mouths?

Answer As near as I can remember he commenced it about the same time and continued it after

Henry A. Horrocks

Subscribed and sworn to before me this 15th day of January A. D. 1858.

C. F. McNeill (seal)

Justice of the Peace

And on the 15th day of January A. D. 1858 between the hours aforesaid came Foreman Moore witness produced on the part of the said Foster Moore who after being duly sworn deposes and says as follows in answer to the following interrogatories, to wit:

Interrogatory 1st on the part of Foster Moore.

1 Question 1st Are you acquainted with the parties to the above entitled suit?

Answer I have seen a man they call Mr. Milk I never saw Mr Howard to my knowledge I am acquainted with Foster Moore

2 Question 2nd State whether you were acquainted with Foster Moore in the summer fall and winter of 1851, and winter and spring of 1852?

Answer I were

3 Question 3d State if you were acquainted with a flock of sheep which the said Foster Moore got of William Howard & Co: and if so when you first saw said sheep?

Answer I saw a flock of sheep which Foster Moore told me he got of a Mr Howard & keep on the shares of a number said to be four hundred and twenty four.

4 Question 4th When did you first see said sheep and where

Answer Sometime in July or August of the year 1851, at Foster Moores

5 Question 5th State what kind of a flock of sheep the flock you saw at Foster Moores was when you first saw them? whether good or bad

Answer Some of said sheep were reasonably good

175

and some were very indifferent-

6 Question 6th- What-proportion of said sheep were good sheep and what-proportion were bad?

Answer There were about-one third tolerably fair sheep and the-others were rather indifferent-: I thought: The first-time I saw them they were driven past Foster-shears house and I was standing by the-gate-or fence.

7 Question 7th State-the general appearance and condition of that-portion which you speak of which looked indifferent-?

Answer The general appearance was very bad in my view The old sheep that-looked indifferent-looked as though they were diseased and a number of them were lame about-thirty I think I counted The lambs generally were small and poor for that-season of the year. The old sheep that-looked indifferent-were a considerable number of them very poor for that-season of the-year.

8 Question 8th Did any or all of said portion of said sheep you speak of that-looked indifferent-cough and if so explain the-nature of said cough?

Answer Quite-a number of the flock coughed as they were passing I don't-know whether all of them were the-diseased ones or not-some were

9 Question 9th- From the appearance of said sheep at-that-time which looked poor and indifferent-what-was the-cause of their looking as and bearing the appearance you speak of?

Answer I do not-know

10 Question 10th Did you ever see said sheep at-any time during the-summer fall, ~~&~~ winter of 1851 after the-time you first-saw said sheep and if so when and how often?

Answer

I seen them occasionally passing but not to notice them until the latter part of winter perhaps in February or March. Then I saw them at Foster Moores and staid there over night. Saw Henry Harris feeding them and saw a stack of dead sheep which looked like there at least fifty in the pile there might have been more or less Some had the wool pulled off and some had not. I asked him why he did not pull the wool off of them and he said they frequently froze before he could get the wool off

11 Question 11th State what is your occupation or business in life? and what has it been during your life

Answer

Farming and stock raising

12 Question 12th Have you ever been accustomed to any considerable extent to the raising and taking care of sheep?

Answer

I do not remember of but three winters since I have been large enough to work on a farm but that I have had the charge to some extent of a small number of sheep.

13 Question 13th State what is your age and where you reside?

Answer

I will be forty six the 24th day of February next I reside five miles south east of Middle Fort.

14 Question 14th State whether you have gained from the length of time you have been accustomed to sheep a good knowledge of sheep and the business of raising and tending them

Answer

I do not think my knowledge is as good as there are fellows raising sheep and farming now

exclusively but I think I have as good a knowledge as most of those who keep a small flock of sheep

15 Question 15th State how many sheep you have been in the habit of attending to at a time?

Answer Varying from three or four to forty and fifty

16 Question 16th State whether from your knowledge of sheep you can determine by seeing a flock of sheep whether the same is healthy or diseased

Answer I believe I can

17 Question 17th State whether from your knowledge of sheep and diseases among sheep whether said flock of sheep of said Foster Chaves was at the time you first saw them diseased in your judgement and if so state what said disease was in your opinion?

Answer I believe they were diseased. The disease was what we generally call the rot. Our family and the neighbors generally called the rot. They were smutty and had a cough.

18 Question State how the disease you are accustomed to call the rot generally makes its appearance how the disease progresses and what will be the appearance of the sheep while laboring under the disease and how long a sheep will usually live after taking that disease?

Answer The sheep become smutty and have a cough the first I notice and become poor &c and in a state of poor health and it frequently terminates in their death I do not know how long they usually live after taking the disease

19 Question 19th State from your knowledge of raising sheep what damage it was to said Foster during the

contract with the said William Howard & Co Wherein the said Yeates doare agreed to take four hundred and twenty four sheep for the said Wm Howard and Company for the term of three years and deliver to the said Wm Howard and Co one pound and a half of wool for each head of sheep each year for the term for which he took said sheep and deliver at the expiration of the third year back to the said Wm Howard & Co the same sheep or an equal number as good: or pay one dollar and a half per head for all that were not delivered back to the said Wm Howard & Co: provided one hundred and ninety seven of said sheep died during the first year before shearing time?

Answer — The damage for each sheep that died was one dollar and fifty cents; and one dollar and a half for the wool of each sheep that died: also fifty cents for the care and attention for each sheep that died The whole damage would be six hundred and eighty-nine dollars and fifty cents.

Cross Interrogatories

1 Question 1st — What relation are you to the said Yeates doare?

Answer — He is my brother.

2 Question 2nd — State how many sheep you have generally winters since you have been farming for yourself

Answer — Generally from fifteen to thirty and once I had about forty.

3 Question 3d — Did your sheep ever have a disease among them if so what disease was it?

Answer — They never did My fathers sheep had the rot and I have seen it among my neighbors sheep.

4 Question 4th- Where of your neighbors sheep have you seen that had the rot- and how long since?

Answer I saw it among Alexander Wilsons sheep in the spring of 1852 I believe I do not recollect of seeing any others recently. When I was a boy I saw it in Ohio.

5 Question 5th- How long is it since your fathers sheep had the rot among them and where was it?

Answer From twenty seven to thirty two years ago in Ohio

6 Question 6th- Do you know of your own knowledge that the sheep which you saw at Alexander Wilsons had the rot?

Answer I am satisfied that it was the disease that I have generally heard called the rot.

7 Question 7th- Have you ever seen any other disease among sheep these what you call the rot- if so state when and where and what it was

Answer I do not know that I have.

8 Question 8th- Who of your neighbors have been more extensively engaged in the raising of sheep than you have for the Objected to. last twenty years

Answer John Paul John Strean, and Hiram Vennum and Columbia Vennum also Daniel Kirkpatrick

9 Question 9th- Do you consider your opinion of the nature and Objected to. diseases of sheep and their management as good those of your neighbors you have mentioned above?

Answer I do not know as I do not know what their knowledge is

10 Question 10th. What is the cause in your opinion of the disease you call the rot-

Answer I do not know it may be from cold want of proper care or it may be from contagion

11 Question 11th How does the disease you call the rot first make

its appearance?

Answer — By coughing and snuffy at the nose

12 Question 12th — Do sheep usually lose their wool from the disease you call the rot?

Answer — Frequently but not always.

13 Question 13th — Do not sheep cough and become snuffy by other diseases from what you call the rot?

Answer — I do not know whether they do or not. I am not sufficiently acquainted with other diseases to tell. There might be several other diseases and I would call them all the rot.

14 Question — Do not sheep sometimes become snuffy and cough from exposure to the weather and starve and still get over it in a short time?

Answer — I think not very often. At least I have never noticed it.

15 Question 15th — Do large flocks of sheep require more care and attention during the winter than small ones in proportion to their number if so what more?

Answer — I do not know that they require any more care than small ones in proportion to the number.

16 Question 16th — Did you ever read any work on the nature and diseases of sheep if so what and when?

Answer — I have read the "Ohio Cultivator" the New York "Albany Cultivator" and the "Prairie Farmer: and they treat some upon the diseases of sheep.

17 Question objected to. — Did either of these periodicals which you have read contain an article upon the disease you call the rot? if so which, how long since you read it and what it said about the disease?

Answer — I do not know which one, when it was, or whether it said anything of the rot.

18 Question 18th — How many sheep will you lose if they keep from the first of November till the first of April?

180

Answer I do not know

19 Question 19th You say in your examination in chief about two thirds of said lot of sheep of said Foster drove the first time you saw them looked indifferent man stout how much less in your opinion they were worth if any than the other third which you say looked well?

Objected to.

Answer I could not say. From my observation I am not capable of judging.

20 Question 20th Were they worth one third less a head?

Answer I do not know I did not examine enough to tell

21 Question 21st How much wool does a common sheep usually yield yearly?

Answer An average of from two to three pounds per head generally

22 Question 22nd What is it worth per head to winter sheep generally

Answer I do not know

23 Question 23rd Do you think seventy five cents a large or small price?

Answer I do not know

24 Question 24th How much would it have required to have replaced the hundred and ninety seven sheep that died during the first winter at a dollar and a half a head

Answer It would take two hundred and ninety five dollars and fifty cents

25 Question 25th What other damage would said Foster have sustained than the two hundred and ninety five dollars and a half if he had replaced the said one hundred and ninety seven which died with other sheep as good immediately after they died

Answer He would have sustained fifty cents a head damage for that that died for feed and attention I consider the damage to him as I stated in my

direct- examination according to the- contract- between him and Howard

26 Question 26th Would the wintering of one sheep one half of the winter and another the- balance of the- winter been worth- more than wintering one sheep the- entire winter through?

Answer There might- be a little- but- there could not- be much difference if they were both- in the- same condition unless a strange sheep in the- flock might- make a little- difference

27 Question 27th What- would said Foster- have been damaged on the- contract- in your opinion had none of said sheep died?

Answer I do not- know

28 Question 28th- What- would said Howard and Milk furnished one hundred and ninety- seven sheep as good and in the- place of those that- died immediately after- they died?

Answer I dont- know

29 Question 29th Would said Foster have sustained any damage if said Milk and Howard had furnished the- sheep so asked in the- last- question: if so how much and what- for?

Answer If they would have furnished such sheep as those that- died of course he would have been damaged?

30 Question 30th. Would Foster have been damaged anything

I do not- know

31 Question 31st Would it- have cost- the- said Foster more anymore than it- would have cost- Howard and Milk to have furnished one hundred and ninety seven good sound and healthy sheep in the- place of those that died if so how much and why

32 Question 32nd Would it- have cost- more any more than it-

182

direct- examination according to the- contract- between him and Howard

26 Question 26th Would the wintering of one sheep one half of the winter and another the- balance of the winter been worth- more than wintering one sheep the- entire winter through?

Answer There might- be a little- but- there could not- be much difference if they were both- in the- same condition unless a strange sheep in the- flock might- make a little- difference

27 Question 27th What- would said Foster- have been damaged on the- contract- in your opinion had none of said sheep died?

Answer I do not- know

28 Question 28th What- would said have been damaged if anything in your opinion had the- said Howard and Milk furnished one hundred and ninety- seven sheep as good and in the- place of those that- died immediately after- they died?

Answer I dont- know

29 Question 29th Would said Foster have sustained any damage if said Milk and Howard had furnished the- sheep as asked in the- last- question; if so how much and what- for?

Answer If they would have furnished such sheep as those that- died of course he would have been damaged?

30 Question 30th. Would Foster have been damaged any thing had said Milk and Howard furnished sound and healthy good, sheep as asked in cross interrogatory twenty eight; if so, how much and what- for?

Answer I donot- know which one could have bought- them the- lowest- I do not- know which is the- best- trader

32 Question 32nd Would it- have cost- more any more than it-

183

would Howard and Milk if each could have bought them at the same price? and in the same place?

Answer — There might have been a trifle difference. His expenses might have been more

33 Question 33d — Would the expenses have been the only difference if not what other difference?

Answer — I know of no other difference

34 Question 34th — How then can you calculate the amount of damage that Foster Moore would sustain if he should replace the hundred and ninety seven sheep and cannot do it when the said Milk & Howard furnish them for the same price?

Answer — I considered his loss of one hundred and ninety seven head of sheep two hundred and ninety four dollars and fifty cents The rent of the sheep for the time of their contract the same. And ninety eight dollars and fifty cents for the keeping, care and attention of the sheep that did I cannot make any estimate of the damage about them furnishing the sheep.

35 Question 35th — What would have been Foster Moore's damage if Howard and Milk had furnished one hundred and ninety seven good sound and healthy sheep in the place of those that did immediately after they died?

Answer — I do not know that it would have been anything It may have been or it may have not.

36 Question 36th — If Foster Moore had furnished one hundred and ninety seven sheep in the place of those that did and good and sound ones would they not have furnished the rent?

Objected to.

Answer — I do not know whether they would or not

37 Question 37th — At what season of the year does not grow the pasture on sheep?

Answer — I do not know

38 Question 38th What is the usual shearing time of sheep?

Answer May and June.

39 Question 39th What is the usual quantity of wool that a sheep will yield per year, generally

Answer From two to three pounds

40 Question 40th Do that preparation what quantity of pulled wool can be taken from sheep in the month of December or January, generally

Answer I do not know

41 Question 41st Would they in your opinion yield one third of the amount, generally

Answer I do not know

42 Question 42nd Do you estimate of Peter Moore's damages did you make any allowance or estimate of the value of the pulled wool from the sheep that died?

Answer I did not

43 Question 43d Do you know any thing of the value of pulled wool or did you in the year of 1851 and 1852 if so state

Answer I do not; nor did not.

Examination in chief resumed

1 Question 1st Do estimating the damage which the said Peter Moore sustained in consequence of the loss of the said one hundred and ninety seven head of sheep did you take into consideration the value of the increase of the said sheep that died which would or might have been to the said Peter Moore if the same had been kind?

Answer I did not.

2 Question 2nd Do a flock of sheep of one hundred and ninety seven what preparation of that number would be ones as a generally thing?

185 Answer About half

? Question 6th Do you know how many of said one hundred and ninety seven head of sheep that died were ewes?

Answer I do not.

4 Question 4th From your knowledge of raising sheep do the ewes in a flock of sheep average a lamb to each ewe per year?

Answer They do sometimes but it is rather extra.

5 Question 5th Among a flock of ewes of ninety eight how many lambs would be a probable number for said ewes to raise each year?

Answer I suppose with the usual care they would raise sixty five.

6 Question 6th What would the increase of sheep from said ninety eight ewes at the rate of sixty five lambs per year have been worth to the said Peter Shaw at the expiration of said time for which he took said sheep of William Ramsay and company?

Answer At that rate of increase I suppose they would have been worth at least two hundred dollars.

7 Question 7th Now state by taking into consideration the value of the increase of sheep as spoken of by you above when added to the damage as estimated by you in your direct examination how much was the whole damage which the said Peter Shaw sustained in consequence of the loss of the one hundred and ninety seven head of sheep to the said Peter Shaw?

Answer The whole damage would be eight hundred and eighty nine dollars and fifty cents

Cross Interrogatories

1 Question 1st — Man state what that would be per head for the loss of one hundred and ninety seven head of sheep?

Answer — A fraction over four dollars and fifty one cents per head

2 Question 2nd — Which is worth the most the keeping of a flock of sheep one year, or their increase and their wool they yeild over and above one pound and a half per head as a general thing?

Answer — I do not know which is worth the most as I do not know what it is worth to keep sheep.

3 Question 3d — What is your opinion about the matter?

Answer — I do not think there is a great deal of difference

Freeman Moore

Subscribed and sworn to before me this 15th day of January A. D. 1858.

L. G. McNeill (seal)

Justice of the Peace

Adjourned by agreement of the parties until February 1st A. D. 1858

L. G. McNeill J. P.

February 1st 1858. Man comes the parties by their attorneys and also comes John Paul one of the witnesses for the said Foster Moore who after being duly sworn according to law deposes as follows to the following interrogatories to wit

1 Question — Are you acquainted with the parties to the above entitled suit?

Answer — I am acquainted with Foster Moore only

2 Question 2nd — State whether you were acquainted with

186

187

Foster Moore in the summer and fall of 1851?

Answer — I were

2 Question 3d — State how far you resided from Foster Moore in the summer and fall of 1851

Answer — About one mile

4 Question 4th — State whether you knew of Foster Moore getting a flock of sheep of the said complainants in the summer of 1851

Answer. — I did.

5 Question 5th — State whether you ever saw said sheep while in the possession of said Moore and if so state when was the first time you saw said sheep after said Moore got them?

Answer — I saw them within the first week after he got them

6 Question 6th — State how often you saw said sheep during the same summer and fall said Moore got them? and where you saw them?

Answer — I saw them as often as once a week between Moores place and Hoels

7 Question 7th — State where said sheep were the first time you saw them and whether you at that time particularly examined them and if so, state the number of said sheep in said flock and what kind of sheep they were whether good, bad, or indifferent?

Answer — They were in the lane near his house or else on the prairie between his farm and Hoels I am not positive which I looked freely particularly at them I judged there were about five hundred I guessed it at that. There were some very indifferent sheep among them and some good ones

8 Question 8th — How close were you to said sheep when you first saw them as spoken of by you in your answer to interrogatory seven?

Answer I think I was right among them as near as I could ride or walk without their being penned.

9 Question 9th You state in your answer to interrogatory seven that there were some of said sheep very indifferent and some of them good, will you state what proportion of said sheep were indifferent and what proportion good?

Answer There were one fifth of them I think very indifferent sheep and the balance was a fair average lot of sheep.

10 Question 10th Will you please describe that portion of said sheep which you speak of as being indifferent the first time you saw them as to their appearance and condition

Answer They appeared to be very poor and distressed

11 Question 11th State whether that portion of said sheep which you speak of as being poor and distressed the first time you saw them seemed to be in good health?

Answer I thought they were not

12 Question 12th Please give your reasons fully for thinking they were not in good health?

Answer The appearance of the sheep and their actions They were stupid From the knowledge I have had of sheep nearly all my life confirmed my belief They had a cough and a very few of the number I speak of had the wool shed off of them resembling what I was taught to believe was the scab and a portion of them were running at the nose.

13 Question 13th State whether the first time you saw said flock of sheep they were grazing or feeding or not

189

and if so whether that portion you speak of as being indifferent were feeding with the balance of said sheep?

Answer. If they were on the prairie they were feeding I am not positive whether they were on the prairie or in the lane.

14 Question 14th When did you next see said sheep and where were they?

Answer On the same range

15 Question 15th State if you know where Foster Moore herded said sheep during the summer and fall of 1851

Answer I do know. He herded them on the prairie between Moore's place and Hurd's on the east and west side of the road.

16 Question 16th How far east did said range extend of said road and how far west?

Answer About a half a mile on either side I think

17 Question 17th State how far east of said road the prairie was open?

Answer I guess it was forty miles

18 Question 18th State whether any of of said sheep of said Moores died during the summer or fall of 1851? and if so, how many, and how soon after he got them did the first ones die?

Answer There were some died I do not know how many I think they began to die within the first week he had them.

19 Question 19th State whether you saw any of said dead sheep after they had died and if so how many and where were they?

Answer I did see some I do not know how many I think they were on the prairie where they herded them

20 Question 20th — State whether there had a band with said sheep herding them, or whether he let them run at large without any one with them

Answer — He had a boy with them some times. Sometimes they were alone

21 Question 21st — State whether you were in the year 1851 acquainted with the people through out Easter Moore's neighborhood and if so state whether any of his neighbors kept sheep during that year and if so state how many there were and who they were as near as you can recollect?

Answer — I was acquainted in that neighborhood with every person that lived there. There were three or four of the neighbors that had sheep John Strain had about one hundred & fifty Hiram Vennum had some six or seven hundred; C. C. Vennum had about two hundred & had in the spring of 1851 about one hundred and seventy five.

22 Question 22nd — State where John Strain's Hiram Vennums, and C. C. Vennums sheep run during the summer of 1851 whether upon the prairie or tame pasture?

Answer — John Strain's run on the prairie. Hiram Vennums were on the prairie a portion of the time and I think they were in a large pasture part of the time on prairie grass not tame pasture I think C. C. Vennums were in a pasture of wild grass

23 Question 23d — State who were in the habit of keeping sheep in Easter Moore's neighborhood prior to and at the year 1851?

Answer — John Strain, Hiram Vennum, C. C. Vennum and myself

24 Question 24th — State whether those persons you speak of in your answer to interrogatory twenty three were in the habit of grazing their sheep on wild or tame pasture.

190

191 during the summer season if so which?

Answer They grazed on wild pasture through the summer season

Question 25th- State- whether it was customary for those persons you speak of in your answer to interrogatory No 23 to keep a person with their sheep during the summer season herding them?

Answer It was not-

Question 26th- State- whether Foster Moore did or did not during the summer season of 1851 give his sheep as good attention as those persons you speak of in your answer to interrogatory number 23 if you know?

Answer He did, I believe

Question 27th State what was the custom of those persons you speak of in your answer to interrogatory number 23 in regard to wintering their sheep, what kind of food they gave to their sheep and what kind of shelter they had during the winter season?

Answer They fed them on hay & oats I dont think they had sheds sufficient for all their sheep. As for myself I never shaded any.

Question 28th State whether you were acquainted with the sheds and enclosures of Foster Moore in which he kept his sheep during the first winter after he got them and state how they compared with the sheds and enclosures of those persons who kept sheep in Foster Moores neighborhood as spoken of by you above?

Answer The sheds were not quite as good as some of the rest of them and they were as good as some of them

Question 29th- State whether you know of your own knowledge how and Moore fed his sheep and what care and attention he gave them during the first winter after he got them? if so state how?

Answer I do. He fed them on prairie hay most of the time

There appeared to be plenty of hay in the racks when I would see them I dont recollect of his feeding any thing else I dont recollect about the care and attention - I never stayed there during that winter I only passed and repassed

30 Question 30th - State whether you know of said Moore feeding any corn to his sheep during the first winter after he got them?

Answer I dont recollect of his feeding them any

31 Question 31st - State what is your age, and what is your business and occupation in life and what it has been during the course of your life?

Answer My age is 38 years My occupation and business is farming and has been during my life.

32 Question 32nd - State whether you have been engaged in the raising and taking care of sheep during the course of your life and if so state fully how extensively you have been so engaged?

Answer I have been engaged in raising and taking care of sheep all my life up to the spring of 1851. I helped to take care of my fathers sheep from the time I was old enough to take care of sheep till I was 21 years of age - he had generally about two hundred he lived in Pennsylvania. From the summer of 1840 up to 1851 I kept sheep of my own I commenced in the fall of 1840 with seventy five head and they increased in the course of six or seven years to about three hundred. Then for about three years they decreased about one half and stood at that up to the spring of 1851 when I sold them all off.

33 Question 33rd - State how much of the time you were engaged in the sheep business as spoken of by you above were you so engaged in this country?

Answer About ten or eleven years

34 Question 34th - State what was the cause of your sheep decreasing

193

as your state in answer to interrogatory number thirty one?

Answer

I think a few of them died through neglect and a few were killed with lightning The greater portion that died the cause I could not account for from the fact of their dying through the summer season when there was plenty of grass and they were in good order.

35 Question 35th

State from your experience in the sheep business whether you became and was a judge of the diseases of sheep in 1851 and whether you are now a judge of the different diseases of sheep common to this country?

Answer

I believe I do not profess to be a judge of the diseases or their cause.

36 Question 36th

State from your experience in the sheep business whether you can determine by seeing a flock of sheep whether said flock is in good health or whether the same is diseased?

Answer

I think I can.

37 Question 37th

State from your knowledge of the sheep business and from what you saw of said Gentle Shared sheep during the summer of 1851 what was the matter of that portion of said sheep which you speak of as looking indifferent in your answer to interrogatory seven and what was the cause of said sheep dying during the summer and fall of 1851?

Answer

I think a small portion of them had rot I term the scab The balance I thought had the rot Which I think was the cause of their death.

38 Question 38th

From your knowledge of the sheep business could said sheep in your opinion have done anything when he first got said sheep to have prevented said sheep which you say was diseased or a portion of them from dying and if so state what

Answer I think he could not have done any thing for a portion of them

39 Question 39th State from what you know of the diseases of sheep among sheep what is the cause of said disease and how long sheep will have said disease before it can be discovered that they have it?

Answer The cause of it in my opinion is extreme exposure to rains in the spring of the year cold and poor nutritious and want of food & dont know how long they will have it before it can be discovered

40 Question 40th Did you ever see a flock of sheep before or since you saw said sheep of said Moores which had the rot and if so state fully when and where?

Answer I think I never did

41 Question 41st State if you ever saw said flock of sheep of said Moores before you saw them at said Moores as spoken of by you in your answer to interrogatory number four and if so state when and where?

Answer I believe I had seen them before from circumstances as a portion of them. If I ever did see them it was on the Middle Fork of Vermillion in Vermillion County Illinois about the first of April 1851.

42 Question 42nd State how you came to see said sheep on the Middle Fork of Vermillion as spoken of by you above and state fully whether you examined said sheep when you first saw them and if so what was their condition as it regards order and health at the time you so saw them?

Answer About the last days of March or the first of April of 1851. Thomas Van Meter and myself heard of a flock of sheep for sale on the Middle Fork & went to buy them. When we saw them they were in such bad condition so poor and apparently diseased that we would not buy them.

~~193~~ 195

43 Question 43d State why it is that you believe said sheep of said Moores to be a portion of that flock of sheep you saw on the Middle Fork of Vermillion?

Answer Vanmeter told me that Milk had bought those sheep that we went to buy and had let Foster Moore have them. I dont know anything further about it I could not recognise the sheep as being the same The flock I saw on the Vermillion were not sheared those at Moores were sheared.

44 Question 44th When you first saw said sheep on the Middle Fork of Vermillion was it shearing time of sheep?

Answer It was not.

45 Question 45th When you saw said sheep at Moores was it shearing time and if so had said sheep been sheared?

Answer It was shearing time or after and they were sheared.

46 Question 46th Does it make any difference in the appearance of sheep before they are sheared & after they are sheared. and would a person be very likely to recognise a flock of sheep after they were sheared as the same flock of sheep he had seen before they were sheared.

Answer I would not without I was very well acquainted with them

47 Question 47th Could you have determind whether said sheep you first saw at Foster Moores were the same sheep you saw on the Middle Fork of Vermillion if they had not been sheared when you so saw them at said Moores?

Answer I could not

48 Question 48th Is said Thomas Vanmeter now living or is he dead

Answer He is dead

49 Question 49th State whether you recollect of Hiram Vennums and John Streans sheep getting mixed with Foster Moores sheep any time during the time when said Moore had

said sheep and if so state what time?

Answer — I have a faint recollection of their being together it is my impression it was in the fall of 1852 I am not certain

50 Question 50th — State if you know how many sheep and if said flock died during the summer and fall and winter of 1851 and winter and spring of 1852

Answer — I dont know how many

51 Question 51st — Take the contract marked "A" and examine it and state what damage Foster Moore sustained or will sustain if he shall be compelled to comply with said contract provided one hundred and ninety six of said sheep which he got of said complainants died during the summer fall and winter of 1851 and winter & spring of 1852 and before shearing time of the spring of 1852?

Answer — About one dollar and a half per head for the sheep that died

52 Question 52nd — How much damage would said Moore sustain in consequence of the loss of the most of the said one hundred and ninety six sheep that died for the term of three years if any?

Answer — He would be damaged I think not anything.

53 Question 53rd — What amount of wool would one hundred & ninety six sheep such as those you saw at said Moores yield each year? during the years of 1852, 1853, & 1854

Answer — About two pounds and a half per head for each year or four hundred and ninety pounds making fourteen hundred and seventy pounds for the three years.

54 Question 54th — What was wool worth per pound during the years 1852, 1853 & 1854

Answer — I am not positive but believe it was worth

196

197

about thirty cents per pound as an average for these three seasons.

55 Question 55th. What would have been the probable increase of said one hundred and ninety six sheep of said Moore, from the summer of 1851 up to the summer of 1854 provided they had been all healthy.

Answer They probably would have increased one hundred.

56 Question 56th. What would said one hundred sheep which you speak of as being the increase have been worth on the eleventh day of June 1854?

Answer I dont know what sheep were worth that season but I presume they would have been worth one dollar and a quarter per head.

57 Question 57th You state in your answer to interrogatory number fifty two that said Moore would not have been damaged any thing in consequence of the loss of the wool of said one hundred and ninety six sheep which died will you please state how it is you come to this conclusion?

Answer I go upon the grounds of this contract as I understand it. If he had to replace the sheep.

58 Question 58th Will you state whether if said Moore paid the rent wool of said one hundred and ninety six sheep that died from other sheep would he not have been damaged something for the wool which he had to supply ~~from~~ other sheep?

Answer Not under the contract for he had the number to make up and he probably could have bought them as cheap at that time as when the contract was up

59 Question 59 Suppose in consequence of said One hundred and ninety six sheep having died in consequence of being diseased that said Moore will not be compelled to

make up said one hundred & ninety six sheep under the contract but has already paid the rent out of the whole number of said sheep which he got of said complainants then and in that case how much is said Moore damaged upon the loss of the wool for said three years of 1852, 1853 & 1854? of said one hundred and ninety six sheep the did?

Answer — We would have lost fourteen hundred and seventy pounds of wool which was worth about thirty cents per pound or four hundred and forty one dollars for the whole?

Cross Interrogatories

Question 1st — Do not sheep generally look dull and stupid from being driven in the dust and exposed to the rain and wind soon after shearing?

Answer — I presume they will to some extent.

Question 2nd — Are not sheep as liable to take cold and cough and run at the nose by exposure to the weather as a human being? & still get over it in a short time?

Answer — I think perhaps they are as liable as a human being is and frequent get over it

Question 3d — Do not sheep generally look worse for a while after shearing than any other part of the summer season?

Answer — If it is a wet cold season they do. I do not think they do always. It depends upon the season

Question 4th — Did these indifferent sheep which you speak of in your answer to interrogatory number seven look different from common sheep having colds and coughs in the spring of the year if so state in what respect they looked different?

Answer — They looked a little different they being poorer

than sheep with ordinary bad colds.

Question 8th Do you think that said sheep or a portion of them were diseased at the time you first saw them from the fact that so many of them died, or from their appearance when you first saw them or from other circumstances?

Answer I founded my belief from the appearance of the sheep in part.

Question 9th What other circumstance induced the belief that they were diseased when you first saw them?

Answer From the general conversation and opinion of a portion of the people in the neighborhood.

Question 10th Who in the neighborhood did you hear say the sheep were diseased when Moore got them at that time?

Answer Jeremiah Hoel & Aaron Hoel

Question 11th Did not the fact of Thomas Vanmeter telling you that Milk had bought Moore sheep you went to see on the Middle Fork of Vermillion you have testified about and the fact Moore have them, and that said sheep were diseased also induce the belief that they were diseased when you first saw them

Answer He is telling me so did strengthen my belief I had not seen Thomas Vanmeter when I first saw them.

Question 12th Are you sure or do you know from your own knowledge that over ten of said Moores sheep died the first summer and fall after he got them?

Answer There were not more than that or I do not know that there were that many died through the summer or the feeding time in the fall of my own knowledge.

Question 13th Was there any Blue grass pasture near of Hoels Farm open to the commons during the first fall after Moore got said sheep if so state how much in your opinion?

Answer There was about four acres I should think.

11 Question 11th How long would said blue grass pasture answered for said flock of sheep of said Moores after the frost had killed the prairie grass being open to the common as it was?

Answer Not more than three or four days.

12 Question 12th From your knowledge of sheep raising do you not consider it indispensable to have tame pasture to put sheep upon after the frost has killed the prairie grass and before feeding time? to have them do well?

Answer It is indespensable to have them do well.

13 Question 13th State from your knowledge of sheep raising what kind of a location is necessary to the raising of sheep advantageously high rolling or low flat land?

Answer High rolling land.

14 Question 14th What kind of land are Mr Moores premises located on, low flat land, or high rolling land?

Answer It is rather low flat land.

15 Question 15th What kind of grazing ground did said Moore usually keep his sheep upon during the first summer after he got them high rolling land or flat low land

Answer Most of it was flat low land.

16 Question 16th State if you often saw the pens in which said Moore usually kept his sheep during the first fall and winter if so were they not at times very wet and muddy?

Answer I saw them as often as once a week I dont recollect whether they were very muddy or not

17 Question 17th State if you know the difference in the manner of Moores feeding his sheep during the first winter after he got them and that of his neighbors who kept sheep & if they had better racks and feed troughs than he had?

200

201

Answer — Some of the neighbors had no racks and some of them had racks Mr Moore fed his sheep in racks I never saw any troughs at Mr Moores to feed sheep out of as I recollect of. One of the other neighbors had.

18 Question 18th — Do you know of one of your neighbors who has been in the habit of sheep raising whose conveniences for sheep raising were not much better than said Moores were during the first winter after he got said sheep if you do state who he is

Answer — They were all better situated I think than Moore was I think John Stream had not better conveniences but he had a better location I had no better conveniences but had a better location C. C. Vennum had about as much trouble to feed his sheep as Moore had.

19 Question 19th — What conveniences do you consider necessary for the raising of sheep advantageiously?

Answer — Where they have the hay so that they can put it right down in the racks.

20 Question 20 — State what kind of a farmer you consider Foster Moore good, bad or indifferent?

Answer — Not very good

21 Question 21st — Do you know of any more slovenly farmer in your neighborhood if so state who he is?

Answer — I do Henry J. Hemp and Wesley Longnacre

22 Question 22nd — Was there any more slovenly in the neighbhood in 1851, 1853. & 1853, if so who were they?

Answer — I think there was Liberty Hicks.

23 Question 23d — State if you ever saw a fair average crop of corn on said Foster Moores premises since the year 1850 if so how often & when

Answer — I have on a portion of about twenty acres, for

for the last five years

24 Question 24th Was it of Moores sairing or rented land?

Answer It was land rented by Moore to Elijah Sapp

25 Question 25th Have you since the year 1850 seen a fair average of a crop of corn on the farm where said Foster Moore lives? if so state when and how often?

Answer I do not think I have.

26 Question 26th State if you noticed the hay that said Moore had to feed to his sheep during the first winter after he got them if so state what was its quality whether good, bad or indifferent?

Answer I noticed it as I passed the road some two or three rods from it. It looked like rather indifferent hay to me from that distance.

27 Question 27th Did it look suitable to feed to sheep for them to do well upon from what you saw of it?

Answer It did not

28 Question 28th Is five head of sheep out of each hundred of a flock of sheep more than an average of the loss of flocks of sheep generally in this country from shearing up to feeding time?

Answer I think it is rather more than an average as a general thing

29 Question 29th State what in your opinion would be an average loss from shearing up to feeding time as a general thing per hundred head?

Answer About two or three in that neighborhood I think.

30 Question 30th From your knowledge of sheep raising. Will not a flock sheep of four or five hundred being confined in small pens on low wet land and improper food given to them in the fore part of winter be likely to take disease of some kind and die pretty rapidly?

202

203

Answer — I think they will

31 Question 31st — Do you know what kind of attention said Moore gave his sheep from the time the frost killed the prairie grass up to the time they commenced dying so rapidly in the fore part of winter if so, state fully?

Answer — I dont know that I do know particularly. He herded them on that blue grass pasture west of Hoels and he had some wood pasture and a little meadow

32 Question 32nd — How much fair tame pasture ought a man to have for a flock of four hundred and twenty-four sheep from the time the frost killed the prairie grass up to feeding time to have them do well?

Answer — Well I should think there ought to be from fifty to seventy five acres.

33 Question 33rd — Are not John Streans Hiram Vennums & John Axtels as good judges of the nature quality & condition of sheep as any of your neighbors if not, who are better judges?

Answer — I think they are

34 Question 34th — Are there any better judges in your neighborhood if so who are they?

Answer — There are not

35 Question 35th — State if in your opinion from your knowledge of sheep raising a low flat situation does not require much better improvements and conveniences than a high rolling situation for sheep skiring to have them do well?

Answer — There would have to be some extra improvements and care on low situations racks & troughs to feed them in where if on high dry situations those things may be dispensed with.

36 Question 36th — Do you consider the disease called the rot in this

country very fatal?

Answer — From the idea I have of it. it is.

37 Question 37th — Do you consider the disease called rot in sheep contagious or infectious?

Answer — I consider it an infectious disease.

38 Question 38th — Do you consider the disease called the scab in this country fatal

Answer — I do but it may be cured.

39 Question 39th — Do you consider the scab contagious or infectious?

Answer — I consider that a contagious disease.

40 Question 40th — How long will a sheep live which has the scab after you can perceive it has it unless it be cured as a general thing?

Answer — I dont know

41 Question 41st — What was it worth per head to keep sheep a year in 1851, 1852 & 1853?

Answer — I think about sixty cents

42 Question 42nd — Which do you consider worth the most as a general thing the keeping of a flock of sheep a year as their increase and what wool they will shear over and above a pound and a half per head?

Answer — The increase and what they would shear over and above a pound and a half per head would be worth a little the most I think.

43 Question 43rd — From your knowledge of sheep raising do you believe Foster Shore with the knowledge he had of sheep raising in the year 1851 could have taken a flock of four hundred and twenty four healthy sheep with the improvements he had in 1851 and done well with them

Answer — My opinion is he could not.

44 Question 44th — State what amount of hay of a good quality a man ought to have in winter four hundred and twenty four sheep well besides giving them an ear of corn a day

205

Answer About forty Tons

5 Question 4th Have Henry P. Kemp and Wesley Longanecre any farming lands of their own that you know of?

Answer They have not

Examination in chief resumed.

1 Question 1st Do or you opinion from the knowledge you have of sheep & sheep raising that any man could have taken said flock of sheep of said shores from what you saw of said sheep at the time said shore took them and have sell with them?

Answer I dont think any man could

Question 2nd Do you know how many of said sheep died through the summer of 1871?

Answer I do not.

Question 3d Will sheep that have been improperly wintered in the fore part of winter be more likely to die in the forepart of winter than the latter part of winter and spring or will they be most likely to live through the forepart of winter and die in the latter part of winter and spring? State fully?

Answer Where there is improper attention paid to sheep they will be likely to linger until the latter part of winter and spring.

4 Question 4th Would it provided the ground was frozen during the fore part of winter in 1871 have made any particular difference with said shores sheep whether they were fed on frozen ground or in troughs?

Answer It would not have made much difference I think if they were fed outside of the pens in which the sheep were kept. If they were fed inside of the pens the food would have to be thrown on the dung which would make some difference

Question 5th Would it make any difference between a high location

and a low one in regard to feeding said sheep without troughs provided the ground was froze in both locations?

Answer — It would be about the same thing

Question 6th — How much tame grass pasture did you usually keep for your sheep to pasture them on in the fall of the year while you kept sheep as spoken of you in your direct examination

Answer — I had not any

Question 7th — How much tame grass pasture did John Strean have while he kept sheep to pasture them on in the fall of the year while he kept sheep as spoken of by you above in your direct examination

Answer — I think he had about ten acres of timothy meadow

Question 8th — How much tame grass pasture did Hiram Vennum usually have to keep his sheep upon in the fall of the year while he kept sheep as spoken of by you in your direct examination?

Answer — At the time of 1851 and along there he had from twenty to thirty acres of timothy meadow.

Question 9th — How much did C. C. Vennum have about that time?

Answer — I think he had about twenty acres or more of timothy meadow

Question 10th — What kind of hay did you John Strean Hiram Vennum & C. C. Vennum usually feed your sheep in the winter season while you kept sheep whether tame hay or prairie hay?

Answer — I fed prairie hay altogether no other kind of hay I think the balance fed the greater part of prairie hay.

Question 11th — Were not yourself John Strean Hiram Vennum and C. C. Vennum considered among the neighbors experienced men in the sheep business and were you and they not worthy

to be patterned after in the management of sheep?

Answer — I believe we were considered to have some experience in sheep raising; and I consider the others to be worthy to be patterned after as to myself I dont say.

Cross Interrogatories

Question 1st — Did you ever know of a flock of sheep of three or four hundred to do well in a low flat situation in this country if so, state where

Answer — I think I never did

Question 2nd — Did you ever know of any man in this country to do very well in raising sheep except Hiram Vennum? take the time generally? if so, state who

Answer — I did know one that done tolerably well as a general thing D. D. Vennum. His sheep done very well for a term of years but finally a great portion of them died in one season Taking the whole into consideration I dont think he made much.

Question 3d — Will it not cure the rot in sheep to remove them from a low damp situation to a high and dry one & keeping them there?

Answer — In my opinion it might have a tendency to partially restore them

Question 4th — Did not you and your neighbors who kept sheep except those feed your sheep during feeding time in large yards instead of pens generally?

Answer — We did generally when it was muddy, and in a wet time Those of us who had sacks would feed in pens.

Question 5th — Did those of you who had sacks feed your grain to the sheep on the ground in the pens instead of out in the yard generally?

Answer — I think not generally

Question 6th — Where did you generally keep your sheep between

the time the frost killed the prairie grass and feeding time and was there not more or less blue grass through the range in which they run at that time?

Answer — Two season we put our sheep together (John Strear Hiram Vennum & myself) and hired a man to herd them on sugar creek about two miles east of Milford on a blue grass range there was there
There was generally more or less blue grass in the range in which they run outside of the fences on the prairie during that season of the year.

Examination in Chief resumed

Question 1st — State the character of the country in yours and Moores neighborhood as a general thing whether high & dry or low & flat

Answer — Some of it is low and flat but an average country

Question 2nd — Do a flock of sheep where one fifth of them are diseased do as well as if they were all healthy in any place

Answer — They will not

Question 3d — If said flock of sheep of Foster Moores had been all healthy when he got them would they not have been more likely to have done well than they did as it was?

Answer — I think they would

5 days

John Paul

Subscribed and sworn to before me
this 3d day of February A.D. 1858
E. F. McNeill J. P.

248

State of Illinois
Iroquois County

I E. F. McNeill a Justice of the Peace in and for said County and before whom the foregoing depositions were Taken do hereby certify that Henry A. Warnocks, Foreman choose and John Paul whose depositions are above respectively subscribed by them appeared before me in pursuance of the attached notice at the times respectively before stated and who were each and every of them first respectively by me sworn to testify the truth the whole truth and nothing but the truth in relation to the matter in controversy wherein Samuel Shilk and Franklin Howard survivors of William Howard Deceased are complainants and said Choate is defendant now pending in the Iroquois County Circuit Court in said State so far as he might be interrogated upon all such Interrogatories as might be directed to be put by either of said parties litigant and I then and there caused the Interrogatories aforesaid put by the said parties aforesaid together with the answers of the witnesses thereto to be reduced to writing by me in the order in which they were proposed and answered after which the said depositions of each and every of said witnesses was carefully read over to him after which he signed the same and was by me duly sworn thereto And that the deposition of each of said witnesses was Taken before me at my office in Middleport in said County and subscribed and sworn to before me at the times respectively aforesaid as stated by me above And further that the said defendant Foster Choate and the said complainants by George B. Gaines their attorney were present at the Taking thereof

Given under my hand and seal this third day

of February A. D. 1858

C. F. McNeill J. P. (seal)

Justices Fees

Two Subpoenas	$ .37½
Taking depositions (18.508 words)	32.12½
amt.	$32.50

Constable W. Shays Fees

Serving two subpoenas	$ 1.85

Witness Fees

Henry A. Horrocks, 7 days (non resident)	$11.50
Foreman Moore 3 days	$ 3.00
John Paul 5 days	$ 5.00
C. C. Vennum (1 day)	$ 1.00
	54.85

Whole costs on depositions

State of Illinois }
Iroquois County } ss I C. F. McNeill a Justice of the peace of said county do certify that the above are the costs taxed on the foregoing depositions taken before me.

Given under my hand & seal this 3d day of February A. D. 1858

C. F. McNeill J. P. (seal)

210

211

State of Illinois } ss
Vermilion County }

The depositions of D S Halbert, Wm Gossard Nelson Moore.

Witnesses subpeanead and sworn before me N L Griffing a Justice of the peace in and for the Township of Middle Fork and County of Vermilion state of Illinois at my office in said Township & County commencing on the eleventh day of March A D 1858 persuant to the notice which is taken on the part of the defendant in a certain suit in chancery now pending in the Circuit Court of Iroquis County in the state of Illinois wherein Samuel Milk and Franklin Howard survivors of William Howard deceased are complainants and Foster Moore is defendant. When to wit on the 11th day of March A D 1858 D. S. Halbert,

above named witnesses being of lawful age & being by me duly sworn according to law to testify the truth the whole truth and nothing but the truth in relation to the matter in controversy wherein the said Samuel Milk and Franklin Howard survivors of William Howard deed are complainants and Foster Moore is defendant deposes and says as follows to the following interrogatories to wit

Dft First, ——— Do you know the parties or either of them to the above entitled suit

Ans. ——— I do not I saw Mr Moore about two weeks ago for the first time to the best of my knowledge

Dft. Second, ——— Do you know whether Charels S Young of Vermilion County Illinois purchased sheep on the Middle fork of the Vermilion in the spring or summer of A D 1851, and if so state at what time he purchased, and of whom he purchased and how many sheep did he purchase

Ans. ——— I know he did some seven years ago this spring the last days of May or the first of June 1851 he purchased of Charles Drew as well as I recollect there was six or seven hund

Int. Third, ____ Where did Charles Drew reside at the time said Charles S Young purchased said sheep of him

Ans. ____ He boarded at my house he and his hands from the latter part of April puntill he left the first of June.

Int. Fourth, ____ Were you acquainted with said sheep that said Charles S Young purchased of said Charles Drew and if so how long had you been acquainted with said sheep before said purchase was made and when and where was the first time you ever saw said sheep.

Ans. ____ I was some acquainted with the sheep, to the best of my recolection the sheep came in to the neighborhood in which I reside on the Middle fork sometime in Febuary 1851

Int. Fifth, ____ How often did you see said sheep from the first time you saw them puntill you last saw them

Ans. ____ A great many times I saw them nearly every day from the time they came puntill they went away

Int. Sixth, ____ What time was said sheep taken away and by who was they taken away, and where was they taken to

Ans. ____ Some time between the first and tenth of June they was taken away by Charles S Youngs hands Mr Young was there either on the day or day before they was taken away. I understood by Mr C S Young that he had a lot of sheep on the north fork near Mr Joseph Kerns, and that they was taken there, and that they was going in to Trogues County and take a part of them to Chicago.

Int. Seventh, ____ Was all of said sheep sheard before they were taken away by said Charles S Youngs hands and if not what puportion were not sheared

Ans. ____ They were all sheared before they were taken away

Int. Eight, ____ How far did you reside from the place where said sheep were left that said Charles S Young purchased of said Charles Drew while you were acquainted

Ans. ____ when they first came there they was guarded

212

213

within fifty rods of my house, and the balance of the time about half a mile from my house

Ques. Ninth, ——— You state in your interrogatories no 5 that you saw said sheep nearly every day from the time they came until they went away, now state if you please whether at any time you examined said sheep particularly, and if so how often and what kind of a flock of sheep were they as it respects quality kind and soundness.

Ans. ——— I understood from Charles Drew that they was drove from Ohio that winter I saw them as I was passing by frequently I noticed them particularly as I passed and I helped to wash & shear them they were washed about the middle of May and finished shearing about the first days of June, the majority of the sheep were saxton the balance were common wooled sheep as for soundness. I do not think they were disordered there might been a few of them that had what is commonally called the rot a running at the nose.

Ques. Tenth, ——— State if you please if any of said flock of sheep died during the time you were acquainted with them, and if so how many

Ans. ——— There were a good number of them died, I could not say just how many.

Ques. Eleventh, ——— State at what time during your acquaintance with said sheep did they die.

Ans. ——— I think the majority of them sheep died about the time they quit feeding. they quit feeding to soon I think it was for the want of feed that a great many died

Ques. Twelfth, ——— state whether any of said sheep died during the time they were feeding them

Ans. ——— I am of the impression there was some died, it is common where there is so many together for some to die every few days but I cannot tell how many

Ques. Thirteenth, ——— How did said flock of sheep look when you first saw them as it regards order

Ans. _____ They looked rather hard the sheep was drove from ohio in the winter

Int Fourteenth, _____ how did said sheep look when they was sheared as it regards order

Ans. _____ There was a part of them that looked very well under the circumstances, a part of them was thin

Int Fifteenth, _____ Where did said sheep run and what did they feed on after they had exausted the feed as spoken of you above.

Ans. _____ The young man pretended to herde them on the prairie adjoinning to where I live, what little grass they could gather I suppose the grass, was short when they was turned on the Prairie.

Int. Sixteenth, _____ What was the character of the ground on which said sheep run during the time you knew them whether high and dry or low and wet

Ans. _____ The lot on which they were fed in when they first came there was a very nice dry blue grass lot entirely to small not more than large enough for 100 sheep the balance of the time during feeding they was in a dry like pasture after feeding they run on the prairie some of it high prairie some wet with ponds and sloughs common like prairie

Int Seventeenth, _____ How many sheep out of said flock according to the best of your recollection knowledge and belief died during the time you was acquainted with them

Ans. _____ To the best of my knowledge they brought something over seven hundred head there and when sold then I think they sold between six or seven hundred. I think there was between thirty and sixty died the number might overrun that number.

Int Eighteenth, _____ State wether Mr Charles Young bought the whole of the Dixon flock of sheep

214

215

Ans, ____ He bought all of them but one and that Mr Drew gave me (a sayton lamb)

Int. Nineteenth, ____ State whether you are acquainted with the different diseases of sheep, and if so can you determine what disease they have by seeing the flock that is diseased.

Ans. ____ There is some disease I am acquainted with but do not consider myself experianced in the different diseases of sheep

Cross examined by Lemuel Milk one of the complainants in said entitled cause

Int'g. First ____ Please state what the quality and quantity of wool sheared from the above named flock of sheep whether you know it was healthy or not

Ans. ____ There was one half tolerably good there was some that was injured by driving in the time of year they was drove in. I expect there was one half that he could get off as first quality as he was an experianced hand but it was not every man that could do it he kept his wool sorted and the good wool he put in the top of the sacks I heard him say that the wool was contracted and the man that the wool was contracted too would only take out only some six or seven fleces and that he would pull the wool over his eyes in that way as well as I recolect they ran from two and a half to six pounds there was some of the wool that looked well and some that as if it had come off poor sheep, I considered a part of the wool rather a poor article

Int. Second. ____ Please state what the average quantity of wool is from a good flock of stock sheep of six or seven hundred and an average from a poor flock of the same number that were diseased if any

Ans. ____ I do not know that I ever saw a good lot sheared I saw a few sheared last spring of an inferior quality I do not think they would average quite three pounds.

Int. Third, ____ You stated in interrogatory 11th that Mr Drew quit feeding to soon state what time he run out of feed

to the best of your recolection and how long he should have feed said sheep according to the season and what effect it would have upon a flock of sheep of the above No whether good or bad

Ans. —— As well as I recollect he ought to of feed ten days longer than he did feed or possibly a day or two longer, I do not recollect the time he quit feeding, it would not have a very good effect as a matter of course the sheep that was poor and weak and not a very good effect on the fat ones I think it was the cause of a good many of them dying

Int. Fourth, —— State what you experiance has been in raising of sheep.

Ans. —— My experiance has been limited I have been raising a few sheep for family use for the last twenty years.

Int. Fifth, —— Please state whether you are a good judge of the business and whether you consider your self a good judge of a large herd of sheep of six or seven hundred

Ans. —— I do not consider my self a competant judge I do consider my self competant to take six or seven hundred sheep and handle them nought especially if they were diseased any

Int. Sixth, —— Please state if you know where the said sheep went to or whose hands they fell into after Mr Young or his hands took them away from the Middle Fork.

Ans. —— I understood from Mr young that they was a going to meet his other sheep on the Chicago road at or near Mr Ayers and from there they was going to Iroquoi County and going to take a part of them to Chicago I know nothing further of them

Int. Seventh, —— State how many sheep you had if any in the year of 1850, 51, & 52

Ans. —— I suppose about 20

Int. Eight, —— Please state if you know by the outward appearance of a sheep or flock of sheep other ways than mutty mixed to know if they have the rot as he stated in interrogating 9th and whether

217

he knows by his own experiance that said disease is contagious
Ans. —— I always understood that a sheep that was running at the nose either had the rot or was running into the rot. I know of no other way to tell the disease. I do not know positively but I do not think it is although it may be

Int Ninth. —— You stated in interrogatory 7th that you kept about 20 sheep in the years 1850, 51, & 52, how many sheep did you generally lose each year during that time if any.
Ans. —— I do not know that I lost any but suppose I lost some

Int Tenth. —— Please state what kind of a season it was whether wet or dry
Ans. —— The latter part of May and the first of June was pretty wet

Int Eleventh. —— Please state to the best of your knowledge and experiance in raising sheep if a wet rainy cold season would not make a good sound flock of sheep mostly rotted
Ans. —— I do not think it would ~~altogether~~ although it might

The Examination in chief on the part of the defence resumed

Dft. First —— State whether you are well acquainted on the Middle Fork of the Vermilion River within the neighborhood of Blue Grass Grove in the latter part of the winter and during the spring of the year 1851 and if so state whether there was any other flock of sheep kept on the Middle Fork of the Vermilion at or near said Blue Grass Grove during that time than the said flock of sheep belonging to Charles Drew as spoken of you above
Ans. —— There was no other sheep in that vicinity except what sheep the farmers had for there own use. I have been living where I now live nine years last December. I presume I know every man within eight miles of my residance. I came on the Middle Fork on the last day of March 1836 seven miles north west of where I now live and lived there untill I moved where I now live

Int Second —— State whether many of said flock of sheep might not of died during feeding time while you were acquainted with

them and you not have known it

Ans. ____ There might have been a good many but I do not know whether there was or not it is possible there might have been a good number died but I do not recollect it has been so long

Cross examination resumed on the part of the complainants by Samuel Milk resumed

Int First; ____ Please state to the best of your judgement if there was any more sheep died than could be expected or usual from the care and feed of the above mentioned number of sheep had while feeding or grazing.

Ans. ____ It is my judgement that if the sheep had of had the care they ought to had being drove at that season of the year it is my impression there would not near the No died that died I wonder at not more dying than did from the care they had

D S Halbert

Subscribed and sworn to before me this 11th day of March AD 1858

N L Griffing J P

And also on the 12th day of March AD 1858 at my office in Middle Fork Township in said County and state, came Mr Nelson Moore being of lawful age and being by me duly sworn according to the law to testify the truth the whole truth and nothing but the truth, in relation to the mater in controversy wherein the said Samuel Milk and Franklin Howard survivors of William Howard deceased are complainants and Foster Moore is defendant deposes and says as follows to the following interrogatories to-wit

Int. First ____ State whether you are acquainted with the parties of the above entitled suit or any or either of them

Ans. ____ I am not acquainted with either of them except what little I have formed since I have been here, I have seen Mr Moore & Mr Milk since I have been here

Int Second. —— State where you resided in the latter part of the winter and spring of 1851

Ans. —— I ~~lived~~ lived then where I live now, between the Blue Grass Grove and the Middle Fork, Vermilion County Illinois

Int Third, —— State whether you were acquainted with a man by the name of Charles Drew in latter part of the winter and spring of 1851 and if so where he resided at that time

Ans. —— I was some little acquainted with the gentleman I never formed any great deal of acquaintance with him, he boarded with Mr D S Halbert the most of the time.

Int Fourth, —— What business did the said Drew follow while he was boarding with Mr D S Halbert during the latter part of the winter and the spring of 1851

Ans. —— In feeding time he generally tended to his sheep as for any other business he followed I do not know.

Int Fifth. —— You speak in your answer to interrogatory 4th in feeding time the said Drew generally tended to his sheep how many sheep did the said Drew have at that time and where were they kept

Ans. —— As for the exact number I cannot tell but the young man that was with the sheep told me there was between eight & nine hundred of them, they was kept for some time at Septimus Smiths and then moved to what was called the Foos Farm on the east of said Smiths farm and fed there till grazing time

Int Sixth, —— State whether you ever saw said sheep and if so how often you saw said sheep during the latter part of the winter and spring of 1851 and when you last saw them

Ans. —— It is a pretty hard question to answer, I did see them, some days I saw them three or four times a day as I done my drawing from the timber to my farm right past where they were fed some days I did not see them as I did not pass I think the last I saw of the sheep was the last week in

May it might of been the first two or three days of June but I think it was the last of May

Int Seventh, ____ State when was the first time you ever saw said sheep

Ans. ____ If my memory serves me right it was in Febuary 1851

Int Eight, ____ State how far you resided from the place where said sheep were kept as spoken of by you above during the latter part of the winter and spring of 1851

Ans. ____ I lived three quarters of a mile from Smiths and a little farther from where they was last kept

Int Ninth, ____ State whether you ever noticed and examined said sheep particularly during the time you was acquainted with them as spoken of you above and if so how often and what was there condition as regards condition health and soundness

Ans. ____ I never got over into the pound to examine them particularly I have frequently went to the fence and looked over at them I never caught any of them to examine them I saw them time and again Mr Smith and me were brothers-in-laws, and I was there frequently and we frequently went to look at the sheep together as for there condition there was some of them very, poor thin in order others again was fat I mean they were good fat wintering sheep not stall fed sheep there was a great many lame ones in the bunch of the poorest ones and as for soundness other ways the sheep had quite a running at the nose and as I thought quite a cough a considerable of a cough there was a part of those sheep that was the fat ones was a clean set of sheep as you will find as a general thing among sheep

Int Tenth, ____ What proportion of said sheep was poor and what proportion fat and in good order as spoken of by you as above

Ans. ____ I could not answer exactly but I think

220

221 the greatest portion was very thin in order as we had plenty of grain in this county and generally kept our sheep in good order I never saw as poor a set of sheep in order. I have saw some fifteen or twenty thousand sheep but I dont think I ever saw as thin a flock of sheep in order before. I have seen sheep in Indiana and Ohio and a great many out about Chicago some ten or twelve years ago

Int Eleventh, ____ Did said flock of sheep live and do well while you were acquainted with them in the year 1851 as spoken of you as above

Ans. ____ What died do well the ones that was in fine order I consider done very well but the thin ones the ones that were poor done very bad according to my notion. there was quite a number of them died during their stay at Smiths there was a great many died after they left Smiths quite a number died on the other farm. and also quite a number died after they were grazing on the Prairie they grazed near my house. I think there was seven died in one day from a quarter to three quarters of a mile off my house. a quarter of a mile was as close as I allowed the sheep to come to my house

Int. Twelfth. ____ How many sheep died out of said flock during feeding time in the latter part of Winter and Spring of 1851 and how many died while grazing on the prairies as spoken of by you above during your acquaintance with them. ____

Ans. ____ It is a pretty hard question to answer. during the time they stayed at Smiths was the time I noticed them the most particular as I would notice of mornings while passing that there was from three to four fresh sheep hung on the fence that had died during the night as they always hung on the fence in the morning what died in the night. I think they would average during the time they were at Smiths from three to four of a night. they would draw them off and throw them in the way as I passed from my house to Smiths. I could not

State the number that died while they were on the the farm
I saw several dead ones while grazing. some there on place
some another. while grazing there was several died. I could
not say how many except the day spoken of above, when
there was seven died after that I have no knowledge how
many died.

Dict Thirteenth. ——— How long was said sheep kept at said Smiths
and how long on the other farm as spoken of you as above
Ans. ——— As for what time they was kept at Smiths I cannot
say perhaps ten days or two weeks perhaps longer perhaps not as long
and they was fed and pounded on the other farm during their stay
on the Middle Fork to the best of my knowledge
Fourteenth. ——— From your knowledge of said sheep while
you were acquainted with them, were there as many sheep in your
opinion which died out of said flock each day after they were
taken away from said Smiths as died while they were at said
Smiths each day
Ans. ——— No sir I think not I think there was not as many
died each day after they left Smiths as there was while at Smiths
I think they did not die so fast
Dict Fifteenth. ——— From your knowledge of said flock of sheep
in your opinion how many of said sheep died during the whole
time you were acquainted with them
Ans. ——— I should think at the lowest calculation there
was from one hundred to one hundred and fifty died during
there stay on the Middle Fork there might of been more and
might of been some less. I could not say positively but I
know there was a great many
Dict Sixteenth. ——— You speak in your answer to interrogatory
11th that a quarter of a mile was as near as you allowed said
sheep to come to your house why was it you could not allow
said sheep to come nearer than a quarter of a mile to your house
Ans. ——— The first reason was I did not want them to die
any closer than a quarter of a mile of my house on account

223 of having the bad smell, and the next was I thought they was a disordered set of sheep and I had some few of my own and I did not want them near me, I did not want my sheep to run on the same ground, I would not of had them come within a mile of my house if I could of helpt it I told them if they brought them nearer than a quarter I should set the dogs on them and I should of done it, they might of come right up to my house if they would but I told them they should not

Int. Seventeenth, ——— From your knowledge of said flock of sheep while you were acquainted with them in your opinion what was the cause of so many of them dying

Ans. ——— Well I think one reason was hard driving and not being well taken care of when they come, and not having quite feed enough and I think they were not a healthy set of sheep, I think there was some bad complaint among them that killed quite a number of them

Int. Eighteenth. ——— You speak in your answer to interrogatory 17th that you think said flock of sheep was not a healthy flock of sheep and that there was some bad disorder among them will you please state in your opinion what was the matter with them.

Ans. ——— My opinion is that the disease was what is commonly called the rot in the head

Int. Nineteenth, ——— How long have you resided on the Middle Fork of the Vermilion and in the neighborhood of where you now reside and where said sheep was kept while you were acquainted with them

Ans. ——— I have been on the Middle Fork within five miles of where I now reside for twenty three or four years

Int. Twentyeth, ——— Was there any other flock of sheep kept within the neighborhood where said flock was kept while you were acquainted with them during the latter part

of the winter or spring of 1851

Ans. ——— None to the best of my knowledge except what few the neighbors kept for there own use so far as my knowledge extends.

Int — Twenty first. ——— How far did your acquaintance extend in the latter part of the winter and spring of 1851

Ans. ——— Well I think I knew nearly every person within six miles of where I live there might of been one or two men came in, in a short time that I did not know.

Cross examined by Samuel Milk one of the complainants in said entitled cause

Int — First. ——— You will please state what has been your occupation while living at the Blue Grass Grove on the Middle Fork of the Vermilion in said County and state

Ans. ——— Farming the most of the time, one year at a saw mill

Int — Second. ——— State what your experiance had been up to the latter part of winter and the fore part of spring in the year 1851 in the raising of sheep and whether you consider your self a good judge of a larg herd of fine wooled sheep of six or seven hundred enough to tell whether they were looking as they should look at that season of the year and to tell what was the cause of their looking so thin as you stated in the direct examination

Ans. ——— My experiance for raising sheep has been tolerable limited when I was a boy about seven years old my father had about 50 sheep or some where near that to the best of my recollection and I was the shepard boy, there was other boys but I had the sheep to tend to up till I was twelve years old I always took care of the sheep feeding and tending to them, I had no more to do with them only to feed them in the winter after that

225 I knew nothing more about sheep untill I was about eighteen there was a bunch of fine wooled sheep came in the neighborhood near my Fathers and I was frequnelty to see them to see how they took care of them and so on I do not know as I have experiance enough to tell the reason why they should look so bad as they did particularly. I could not tell exactly the cause of the sheep looking so bad because the sheep had been drove the sheep had been drove very hard whether it was in order to get them here before any word should come about them or not I could not tell I had six head and there increase for some three years previus to that time I never raised and of the finest wooled sheep.

2nd Third, ——— State what was the quality of the wool on those sheep that you saw of Charles Drews at Septimus Smiths and at the farm that was called the Foot Farm in the latter part of winter and the fore part of spring in the year 1851 as you stated in the direct-examination whether coarse or fine or what

Ans. ——— There was a part of them that was what I called the coarse or dinary wool the balance was fine wooled sheep not as good a quality as I had seen before coming off the bunch of sheep as spoken of above comming in the neighborhood. I helped shear them and helped tie up the wool of the said Drew sheep do not consider it as good as the other

2nd Fourth, ——— Did any of the above mentioned lot of sheep have lambs during the time you was acquainted with them if so how many to the best of your knowledge

Ans. — There was quite a number had lambs but I cannot tell how many I could not say nothing about how many there might of been one hundred there might of been two hundred most of them have lams after they was turned out on the common

Fifth. —— State if Charles Drew gave the above mentioned sheep proper care a sufficient quantity of feed to have a good flock of sheep do well of the above mentioned number in your opinion

Ans. —— I think he did not give them a sufficient quantity of feed for them to do well. I do not think they had proper care I think if they had been managed different they would have done better.

Sixth, —— Would not a good flock of sheep of six or seven hundred or more naturally look bad and thin when not having sufficient quantity of feed and not having proper care and at the same time having lambs when not diseased in your opinion.

Ans. —— Well I suppose they would I should think a bunch of sheep would naturally look bad

Seventh, —— You state on the direct examination in answer to interrogatory 15th you thought there was from one hundred to one hundred and fifty sheep died during their stay on the Middle Fork were not a portion of these dead sheep the off-spring of said sheep

Ans. —— I did not consider it so if I had been going to include lambs I should have said four or five hundred I should not think there was more than twenty five or thirty lambs taken away there might have been more I did not notice when they left exactly how many lambs there was my understanding from the young man was that the most of them was ewes.

Eight. —— State from your knowledge and experience in the raising of sheep up to the year 1851 if you know what the rot was and how it originates

Ans. —— Well it is what I call a melty nose and coughing I was taught so by my Father we had some few that was in that condition and we always

227

shifted them off I never studied enough about sheep to tell what it originates from. I could not tell what it originates from I think you will find but few men in this county that can

Direct Examination resumed on the part of the defence

Dft 1 First, ——— Are you related to the defendant in the above entitled suit and if so tell how

Ans, ——— I am not sir to the best of my knowledge this side of Adam

Nelson Moore

subscribed and sworn to befor me this 12th day of March A D, 1858 N L Griffing J P

State of Illinois } ss
Vermilion County }

I Nathan L Griffing a justice of the Peace in and for the Township of Middle Fork County of Vermilion and state of Illinois do hereby certify that the above named D S Halbert and Nelson Moore were by me first duly sworn according to law to testify the truth the whole truth and nothing but the truth in relation to the matter in controversy in the above entitled cause wherein Samuel Milk and Franklin Howard Survivors of William Howard Deceased are complainants and Foster Moore is defendant so far as they might be interrogated that is to say that the said D S Halbert was on the 11th day of March A D 1858 and the said Nelson Moore was on the 12th day of March 1858 duly sworn according to law to testify the truth the whole truth and nothing but the truth in relation to the matter in controversy in the above entitled cause wherein Samuel Milk and Franklin Howard survivors of William Howard Deceased and complainants and Foster Moore is defendant so far as he might be interrogated

And I further certify that I did on the 11th day of March AD 1858 after the said D. S. Halbert had been so sworn as aforesaid I did examine him upon all the interrogatories which were put to him, both on the part of the defendant and complainants and that I did reduce the said interrogatories together with the answers of the said D. S. Halbert thereto both on the part of the said defendant and complainants to writings as the same were put to the said witness D. S. Halbert and his answers thereto in the order in which they were proposed and answered and that after the said deposition was so reduced to writings as aforesaid, said deposition of the said D. S. Halbert was carefully read to him by me and after the same was so read to him by me the said deposition was sworn to before me by him and signed by the said D. S. Halbert and he then and there was in due form of law sworn thereto & in like manner I did on the 12th day of March AD 1858 after the said Nelson Moore had been so sworn as aforesaid I did examine him upon all the interrogatories which were put to him both on the part of the defendant and complainants and that I did reduce the said interrogatories together with the answers of the said Nelson Moore thereto both on the part of the said defendant and complainants to writings as the same were put to the said witness Nelson Moore and his answers thereto in the order in which they were proposed and answered and that after the said deposition was so reduced to writing as aforesaid, said deposition of the said Nelson Moore was carefully read to him by me and after the same was so read the said deposition was sworn to before me by him and signed by the said Nelson Moore and he then and there was in due form of the law sworn thereto and I further certify that the said depositions of the said witnesses and each of them was taken in manner and form as aforesaid at my office in the Township of Middle Fork County of Vermilion and State of Illinois on the 11th and 12th days of March 1858 as aforesaid between the hours of nine O'clock

228

229

in the forenoon and five O'clock in the afternoon of said days in pursuance of the attached notice and that the said defendant and Samuel Mills one of the said complainants were both present at the taking of the said depositions.

In testimony where of I have hereunto set my hand and seal at office this 12th day of March AD, 1858

Nathan. L. Griffing J P (seal)

And as rebutting Evedence the complainants read to the jury the following depositions to wit:

230

Bryants, fees
2 Sub 37 1/2
1 " 18 1/2
3 oaths to wits 18 3/4
Depositions
43.47
44.22

J Wilson
ser Sub 25
Serv ~~[illegible]~~
150

Rays fees
Ser Sub 50
Lem 1.35
Ser Sub 12 1/2
Lem 5

J Axtell 2,00
H Hudson 1,00
G Martin 2 00
J Strean 6.00
H Vennum 2,00
Alfred Becket
fee 1,00
the above fees.
paid by
B L Milk.

Deposition of Alfred Becket.

Hiram Vennum, George Martin.
John Strean, & John Axtell., on part of Comptainants

Witnesses subpoenaid and sworn before me a justice of the peace at my office in Middleport in Troquois County State of Illinois on the 23rd day of February 1857. pursuant to the enclosed notice. this deposition was taken on the part of the plaintiff in a certain action now pending in the circuit court of Troquois County in the state of Illinois. Wherein Lemuel Milk and Franklin Howard. Survivors of William Howard Decd is plaintiff. and Foster Moore defendent on the Chancery side thereof.

The said Alfred Becket. first witness being of lawful age. being duly sworn to testify the truth, the whole truth. and nothing but the truth, relating to the said cause. deposes as follows to the following interrogatories.

Int 1th Are you acquainted with the parties to the above entitled suit?

Ans Yes sir I am to some extent.

Int 2d State if you had a conversation with Foster Moore relative to the sheep which the said Foster Moore took of the said plaintiff during the Summer of 1851. if so state what that conversation was. and when it was?

Ans As to the date of the matter I have not a distinct recollection. I had a conversation with him soon after he took the sheep. He stat to me that he had taken a lot of sheep it occur

to my mind that there was over four hundred
he seemed to think from the way he spoke to
me that he was well pleased with the selection of
sheep that he had got from the drove. he stated
they were all young sheep no old sheep among
them, with the exception of a few that was
thrown in that was not counted. he seemed
especially pleased with a lot of young ewes
about two hundred. and he remarked that
there was not one among them that was
over two or three years old. I wont be certain
which. I dont recollect distinctly any thing
that was said in regard to the health or condition
of the sheep.

Int 3rd. State what he Foster Moore said about the
health or condition of said sheep during the
conversation aforesaid?

Ans I have nothing to state in that respect more
than I have stated. it does seem to me
he spoke of them being fine and thrifty

Int 4 State if you ever saw said sheep if so when
and where and how they looked as it regards
their condition and the care that had been
taken of them?

Ans I saw the same sheep I suppose it along
in dry dusty and hot time of the year.
I think along in August or September,
the same year he got them. they were
in the lane along south from Foster Moore
I dont recollect whether they was driven
along or not. they were going out to the
range I suppose. they were covered with
dust and looked bad. it was a dry season.

of the year. every thing was burnt up, any where along the road it was a very poor chance for any thing to live. From the looks of the grass at that time I noticed many among them at that time that was running at the nose I do not know what was the cause of it they did not look like healthy sheep.

Int 5 What effect would it have on a flock of sheep of the number you speak of over four hundred running in the range under the circumstances you saw them as to their health and condition?

Ans I should suppose from what knowledge I have of sheep. travelling through dust if they were under the necessity of doing much of it every day. that it would be very injurious I supposed they were going to their range. but did not know wher their range was.

Int 6 State what the chance was for sheep to do well on the open prarie or common beyond the mouth of the lane south of Foster Moores?

Ans Well sir I cant say as to that. from what I saw from the road it looked bad. dry thing burnt up. it might have been quite good or bad luck. I do not pretend to tell only from what I saw from the road.

Int 7 State what the difference is if any in the care of a flock of sheep of four hundred and a flock of fifty as to care herding feeding &c.

Ans Well sir I dont feel competent to answer that I should think the difference would be considerable. through the summer when

a man is not provided with pasture. I should suppose in this country that fifty sheep might run upon the range and require no more attention than salting. Four hundred sheep to do them justice through the summer would have to be followed up all the time.

Ant 8 What has been your occupation for the last ten years. and state if you have ever been in the sheep business. and to what extent?

Ans I have been upon a farm all of that length of time. I took one hundred head of sheep perhaps on the same terms as Mr Moore and of the same men. there was two or three names in the firm. I do not remember of any name except Howard. I dont know that Milk had any thing to do with it, it seems to me there was some other name in my contract but I am not certain.

Ant 9 State to whom you settled at the expiration of your contract and who you delivered the sheep to?

Ans My business after the first time was all with Mr Milk. I delivered the wool to him. I delivered them to Mr Milk.

To all of the above interrogatories the Defendant objects.

234

Cross interrogatories.

Int 1 How long was the lane where you saw those sheep in and how far would they have to travel until they came to the end of it. and when they came to the end of it was it prairie or timber?

Ans According to my recollection of it they were just south of Mr Moores. there was open prairie on the left about half a mile from Mr Moore's. it might not have been over a quarter of a mile from where the sheep were. I did suppose to guess at it that it was about a half mile from the commencement of Moore's lane to the other end ~~of it~~

Int 2 State whether from your knowledg of the business of raising sheep. you can determine by seeing a flock of sheep that is diseased what that disease is and what is the cause of it. and if so state what was the matter with those sheep you saw running at the nose?

Ans Well sir from my limited knowledge I could not determine what it was. there is an old saying I do not know how true it is that when a sheep runs at the nose that it had the Rot. my impression when I saw those sheep & I made the remark that they had the Rot.

Alfred, Beckett.

Hiram A Brannan second witness being of lawful age was duly sworn to testify the truth the whole truth and nothing but the truth relating to the said cause deposes as follows to the following interrogatories.

Int 1 Are you acquainted with the parties to the above entitled cause.

Ans I am. that is with Mr Moore. and Milk I am not with Mr Howard.

Int 2 State if you know any thing about Foster Moore getting sheep of Milk and Howard in the year 1851. if so state at what time you saw said sheep. and how many said Moore got of said Milk and Howard to the best of your recollection?

Ans Mr Moore came to my house the next day or two after he got the sheep of Milk and Howard. I think he told me he got four hundred and thirty or about that I saw them a short time after he got them. I saw them frequently as long as he had them.

Int 3 What was the condition of said sheep the first time you saw them as to health and order?

Ans The first time that I looked at the sheep anyway particular was when Moores Strains & mine got mixed. Strain and I went there to get ours. we talked he and I about the sheep when we went away we thought that some of them were very fine wool. that portion of the sheep that had fine wool looked

remarkably fine. I remarked that they had been well wintered. and I was anxious to know who wintered them. I considered the flock of sheep looked very fine. there was a few that looked rather scaly Moore I think Moore told me that they threw three or four in.

Int 4 What was there if any thing about said sheep the first time you saw them to indicate disease among them?

Ans There was nothing that I could see.

Int 5 State if you had a conversation with Foster Moore. about said sheep about the time that he got them. if so state what that conversation was?

Ans Yes I did, he came to my house he said that he had got a flock of sheep that he had a great mind to get on a horse and ride up to my house before he got them. he said he had always done his own business and always done well and he thought that he could do so again. Now said he I want to know what you think about it. that is about the sheep. I just said if you have got a good flock of sheep and take good care of them he might make a good job of it. and if he did not a very bad one. that sheep required more attention than any other stock. he said he had a good flock of sheep. that he had his pick of a number of hundreds he told me the number but I would not say positive what number he said

I was going to say about nine hundred.

Int. 6 What kind of location is Mr Moore's farm for keeping sheep. whether high and dry or low and flat.

Ans It is low and wet.

Int 7 On what kind of ground do sheep do best

Ans They do the best on high and dry Ground.

Int 8 State what kind of ground Mr Moor herded said sheep on.

Ans It is low wet ground the east of the road there is water on it when ther is on any ground.

Int 9 What kind of grass do sheep do best on during the summer season whether Sage grass or slough grass?

Ans On Sage grass they wont eat slough grass at all.

Int 10 What kind of grass grew on the ground that Foster Moore generally herded his sheep on during the summer of 1854?

Ans The largest part of the ground is a slough. but there is high places upon which the sheep useed to feed. Sage grass grew on these high places. it was good for sheep or any other kind of stock.

I 11 State whether there was sufficient quantity of upland or high ground where said Foster Moore generally herded said sheep for them to do well on during the

summer and fall of 1851.?

Ans There was. if he let them go far enough it was open there out to the Prarie I cant say where he herded them I do not know the bounds where he herded them.

Int 12 What time in the year is it generally necessary to take sheep up off the prarie and put them on tame pasture?

Ans As soon as the frost kill the grass about the last of September or the first of October

Int 13 State if you ever saw said sheep in a lot at Foster Moores, during the summer or fall of 1851. if so state. the under what circumstances and how said sheep looked and how the lot looked as to feed for said sheep

Ans Yes I saw them running in a field I saw them there I cant say more than twice the sheep were suffering for the want of something to eat they had eat it all up they looked bad they looked hollow. it was before feeding time before anything was fed. a good while too.

Int 14. State what tame grass pasturage Foster Moore had during the fall of 1851 in which he kept said sheep other than the field you saw said sheep in as you have above stated?

Ans He had no other to my knowledge he might had some at the back part of his place but I knew nothing about it.

Int 15 What effect does it have on a flock of sheep of four hundred to be herded on low wet ground & wintered in a low wet yard as to health and condition?

Ans It has a tendency to have a very bad effect on them I dont pretend to say that it does in every case. I never knew a flock of sheep kept very long in such a situation without being diseased.

Int 16 State if you was at Moore's during the fore part of the winter of 1851 & 52 and saw the hay that Moore had to winter pen sheep, if so state the quality and condition and kind and how it looked?

Ans Yes I was there and took particular notice of the hay. I did not consider that it was fit to winter sheep on. A portion of it was a kind of wire grass that grew on wettish land that sheep would not like to eat. I remarked to Stream when we went away that if them sheep had to eat that hay they would die before spring the reason that I thought that that hay was not fit for sheep was, there was a portion of it not fit for sheep let it be cut when it would. it all looked as tho' it had been cut too late or had got wet after cutting or stood too long in the Rick.

Int 17. What effect does hay have on sheep which is cut too late, or got wet or stood too long in the Rick as you have stated above?

Ans It has a tendency to bind the sheep

and in that conditions sheep cannot do well that is certain.

Int 18 What kind of improvements had and convenience had Foster Moore for keeping said sheep during the winter of 1854 & 55 as to sheds feeding troughs &c?

Ans He had no convenience for keeping sheep such as I think they ought to have such as sheds &c. I never saw any. he had a rack there to put hay in. the rack was not large enough for the number of sheep he had. the master sheep would get to it first and keep the rest away. I was past there a number of times never saw but one rack all the sheep could not get at it at once.

Int 19. State how said rack was made and how high it was where said sheep got the hay out at

Ans The first time that I noticed the rack. the sheep had pulled down a lot of the hay and trampled it under foot until they got quite a pile there. so that I think the sheep could get the hay out then. it was made of rails set up across something.

Int 20 What portion of said flock of sheep could get at that rack at once?

Ans I cant tell. there could a little more than half. I dont know whether they were all in that lot. dont know how long the rack was. I know of no other sheep then

Int. 21 State how well you are acquainted you ~~are~~ with Foster Moore and his premises when he kept said sheep how long you have been acquainted with them and how far you have lived from said premises for the last twenty years?

Ans I have been well acquainted with them. I have been there often across the premises. along the road. been acquainted with them this 20 years. live about three miles from him have lived there this 20 years.

Q 22. State what your occupation is and to what extent you have been engaged in the raising of sheep and how many is the most you generally kept at any one time while you were in the sheep business.

Ans I am a farmer. I think I was engaged in the sheep business about ten years up to the Spring of 1853. I commenced with one hundred and fifty. when I sold to Mr Milk. I had about nine hundred lambs and all.

Int 23 From your knowledge of sheep raising and the manner in which Foster Moore kept said sheep. and of his premises. State what would be the effect upon the health and condition of a healthy lot of sheep of four hundred kept under the circumstances said sheep of Foster Moores were.

Ans I do not think any flock of sheep would do well under the circumstances I have known instances where sheep was tried on

low wet ground with the best of care that did not do well. never knew them to do well on such ground.

Int 24, State what improvements and conveniences and what sort of a location are necessary for sheep in order that they may do well as to sheds feeding troughs and manner of feeding &c.

Ans My opinion is that it is very necessary to have sheds. feeding troughs are very necessary in muddy weather, in dry weather it is not. when it is froze they can get all that is given them, it ought to be high and dry where they are kept. it is necessary that sheep should be fed regularly. twice a day ~~they will not~~ if they are not fed regularly they will not do well.

Int 25 State what is the effect upon sheep if the rack is filled but once a week, or not filled daily?

Ans Sheep cannot do well fed in that way they will not eat well what they leave at another time.

Int 26. What effect does it have on sheep to drive them through the dust daily?

Ans It is an injury to sheep to drive them very far through the dust. tho. I always thought where sheep were drivers in the dust. that it was the hot weather. more than the dust. Sheep that have been drivers through the dust will cough to blow the dust out of their noses & mouths but they will not cough like a sheep that is diseased.

Int 27. How do sheep generally look soon after shearing

as to thier general appearence and as to healthe.

Ans A man that is not acquainted with sheep will say that is a fine lot of sheep to look at them before they are sheared and after they are sheared he would not know them. would say they looked bad would not know them nine times out of ten.

Int 28 What effect does it have to drive sheep soon after shearing as to looks and appearance

Ans It has a tendency to make them look bad it depends upon how they have been drive

Int 29 What kind of a farmer is Foster Moore generally, since you have known him and what kind of care does he take of his stock generally

Ans If I have to answer it I should say that he is rather a slovenly farmer, as to his stock they look bad in the spring of the year tho' I have seen cows that looked fine.

Int 30 State from your knowledg of said sheep and of the manner in which they were kept during of 1854 and 52. what was the cause of so many of them dying. whether from disease starvation want of care or what?

Ans I think it was for the want of the right kind of feed and the right kind of care and want of sheds and want of proper place to keep them

Int 31. How do you determine whether a flock of sheep is diseased or whether they are

going down for want of care and proper feed?

Ans Well when they are going down from disease they will droop their head and ears and show a sickly appearance. And if they are going down for the want of proper feed and attention they do not have the same appearance. they will holed up their head and ears at times.

Int 32 What is the appearance of sheep that have the Rot.

Ans Well it is running at the nose and drooping appearance.

Int 33 What are the symptoms of Cold and distemper in the dust?

Ans Snotty nose. they will be snotty just like a person and cough.

Int 34 What effect will it have upon sheep to be exposed to the storms and weather. without sheds and shelter to protect them?

Ans It will have a bad effect it produces colds and cough that disease might orginate from.

Cross Interrogatories.

To the above and foregoing interrogatories and answers the defendent objects.

Int 1 Did your sheep and the Shains ever mix with Foster Moons more than the one time that you speak of and if so state whether you have reference to the one time only or more than once.

Ans I dont know that they ever mixed but

once,

Int 2 State whether you ever traveled over the ground where ~~M~~ Foster Moore's sheep run during the summer and fall of 1854 and if so state how extensive their rang was.

Ans Yes I have traveled over the ground but I do not know how extensive their range was they ranged on the open prarie. I never saw them more than a mile and a half from the road,

Int 3 How extensive was that prarie where the sheep ranged.

Ans They ranged on the open prarie. they could go 60 miles before they would come to Tipecanoe ~~creek~~ river. South they would come to inclosures. north to the Troyuis 8 or 10 miles,

Int 4 What is the quality of the prarie in an easterly and northerly direction from the road where said sheep first entered after being driven on their feeding Ground;

Ans From a mile and a half. low & flat prarie. there they come to them sand ridges. high and dry. there are places between these ponds good dry ground. two thirds within the mile and a half is wet land and one third dry land.

Int 5 What time in the year was it you saw said sheep running in the field of Foster Moore apparently hungry;

Ans It was in the fall before feeding time

2/46

246

it was after oats had been hauled in I think in September. tho it might have been in August. they were running in the field where there had been oats, after they had been hauled in.

Int 6 What time of day was it you saw said sheep in said field?

Ans I saw them both in the morning and in the evening as I went and returned from Middleport. yet I am not positive as to seeing them in the morning.

Int 7. Do you know how much hay and what kind of hay Foster Moore fed said sheep during the winter of 1851.52. and if so state how you know it?

Ans Well I know he had a good deal of hay put up such as it was. as I stated before a portion of it was this wire ~~hay~~ grass that runs up with a little hard stem with seed on. I saw the hay for I was there and I saw it. as to saying that Foster Moore fed that hay to those sheep I dont know. the hay was missing along as any farmers hay would who was feeding it to his stock.

Int 8 Do you know whether Foster Moore during the winter of 1851.52. fed any timothy hay to said sheep and if so how much?

Ans I dont know that he did. and I dont know that he did not.

Int 9th Did you ever go to the racks in which Foster Moore fed said sheep. and examine particularly: the kind and quantity of hay he fed to the said sheep. if so state how often you examined said racks. during the winter of 1851 & 52.?

Ans I never went to the rack and examined as I was passing along the road I saw the hay in the rack as I stated before. I suppose this rack was two or three rods ~~road~~ it might have been, four rods from where I was.

Int 10th Did you ever have your attention called to examine said racks. particularly during the winter of 1851. & 52, or did you merely casually notice them as you passed along the road?

Ans I noticed as particularly as I could as I was passing along the road. never ~~stopped~~ to examine.

Int 11 Do you know how many racks was used by said Moore and if so state the number and length of each one to feed said sheep?

Ans I dont know how many he had. I dont remember of seeing but one rack he might have had more; but I do not remember of seeing but the one.

Int 12 State if you know whether said Moore

fed said sheep any corn or oats during the winter of 1851. & 52 if so state how much?

Ans I dont know that he fed them any. I never was there at feeding time & I dont know but he did. I should naturally suppose he did for if he ~~did~~ had not they would every one died.

Int 13th State if you know how many pen yards or enclosures said Moore used during the winter of 1851. & 52. to feed and keep said sheep in?

Ans I dont know that he had sheep in but one. I never saw but the one he might of had them in more lots and I not know it.

Int 14th State whether you know of any of said sheep dying during the summer of 1851 and if so how early in said summer did any of said sheep die to your knowledge?

Ans to 14. I dont know that they died. it does seem to me that I saw one or two dead but I would not say positive if there had I would not have been very likely to have seen them.

Int 15th What time in the year 1851. do you recollect of seeing the first dead sheep belonging to said flock?

Ans The first dead sheep of any account that I saw, was in the winter.

Int 16th From your knowledge of raising sheep and of diseases common to sheep in this country what disease is most common to sheep in this country?

Ans Well I never saw a flock of sheep in this country with any other disease than the scab and the rot or grub to my knowledge.

Int 17 Now state if there is any difference between the disease called the rot and the grub?

Ans I dont know that there is.

Int 18th State as fully as you can all the symptoms of the rot or grub. from the commencement of the disease until it has terminated fatally?

Ans That is something that I dont know anything about, I dont know that I have ever seen sheep with the rot or grub. I have seen a flock of sheep that they said had the rot, but I dont know from my own knowledge.

Int 19 From your knowledge of disease of sheep can you determine by looking at a flock of sheep diseased, whether they have the rot or Grub, or some other disease. and if so how do you distinguish?

Ans I think you can tell a difference in a disease in the head from a disease in the body those that they said had it discharged from the nose I cannot tell when a sheep has it no more than I can tell when a horse has the botts &c

250

more than. that I know something is the matter with the sheep.

Int 20' What appearance have those sheep which you have seen. which were reputed to have the rot or grub at the time, how did they act and what was the general appearance from the time they took the disease until they died?

Ans They were discharging from the nose and had a drooping appearance about the ears and countenance and a sickly appearance generally; they wont eat any while in that condition. will fall away as fast as they can. and die away in two or three days this was as far as my observation went this one flock of Columbus Vennum's.

Int 21, st So far as your knowledge extends in regard to grub or rot in sheep. do you consider it contagious. and if so. how long after a sheep catches that disease. will it be before the disease developes itself?

Ans I dont know that I ever saw sheep with it only from what others told me. I have seen sheep with what they said was the rot. but I supposed they got it from running on low wet land I know nothing about whether it is contagious. and I dont know how long it will be in a sheep before it will show itself.

Int 22. State if you know whether sheep have a disease at any time called the scab. if so

what is the appearance of that disease and how do you know it?

Ans I know they have a disease called the scab. the appearence of it is that the first indications you have of the disease is that they will bite themselves just like they had the itch. they will become a perfect sore on the back. the wool will come off. they sometimes bite themselves when they are lousy. but the wool will not come off this disease I belive to be contagious. it will generally go all through the flock and but very few will escape. Some say that the only way to cure it, is to dip them in a strong decoction of tobacco juice some put sulphur on it like they do for the itch.

Int 23rd State if you know where Milk and Howard got those sheep that they let Foster Moore have in the year 1854?

Ans I do not.

Int 24th What time in the year do people generally shear sheep?

Ans From the middle of May to the middle of June.

Int 25th You state you have been in the sheep bussiness about ten years. state whether any of the diseases of sheep spoken of by you above ever got among your sheep?

Ans There never did. there never was any disease among my sheep that I know of.

Direct examination resumed

Int 1st You state in your answer to cross interrogatory No 10. that you examined the rock and hay as you were passing along the road at Foster Moore's, State when it was. and what led you to look into the premises and examine said rock and what kind of hay was in said rock?

Ans It was the first winter that I took particular notice. that would be the winter of 1851 & 52, as I stated yesterday that it was in everybody's mouth that that flock of sheep would break Mr Moore up. and the fact of the sheep dying made me take more particular notice as I passed. All I can say it was a very poor hay in the rack it was a very dark colored hay.

Int 2. What was your object in looking about the premises. and why did you think it would break Mr Moore up?

Ans My object was to satisfy my own curiosity. I always thought so from the fact that Mr Moore's boys done the bigest part of the work on the farm and taking care of the stock. and there is no boys the age of his that I considered was capable of taking care of a flock of sheep of that size. and I did not think the sheep would be properly taken care of this was what led me in the winter to

take particular notice. to see if they were properly taken care of.

Int 3d — You state in your answer to cross interrogatory that your sheep and John Strains got mixed with Foster Moores. State what bad effect if any it had. getting mixed with pets Moores sheep at that time?

Ans — It had no bad effect at all on our sheep.

Int 4th — State if as many of pets sheep died the second winter. as there did the first winter, if not state what the reason was. whether it was on account of better care being taken of the sheep or a better year to keep them. or what?

Ans — I dont think there was as many died the second winter and I think they took better care of them the second winter, there was not so many of them and did not require so much care.

Int 5. — What care if any do a flock of sheep of four hundred and upwards require in the summer season. state fully?

Ans — They require watching to keep the wolves from killing them daily. they used to kill mine when I had a herder hired.

Int 6 — State how distructive wolves and snakes are upon sheep that are not watched?

Ans The wolves are very distructive on sheep up there. I never knew a snake to kill a sheep altho I have had sheep die that I thought was snake bit. in the neighborhood of Moores the wolves killed more sheep for me than I ever had die any other way.

To the above direct interrogatories the Defendent objects.

Int 1st State how far you live from said Moores and how often you passed by said Moore's during the winter of 1851-1852. and whether when you was passing you generally stoped. went into the yards where said Moore kept said sheep and examined them. and the feed that was given them and the care that was taken of them. if not generally then how often did you stop during this time?

Ans I live about three miles as nigh as I can guess. I dont know how often I passed, I passed a number of times during the winter I never stoped and got into the yard.

All the foregoing Cross and answers interrogatories the Plaintiffs objects,

Hiram Vennum.

George Martin third witness being of lawful age, was sworn according to law. to testify the truth in the above case.

Int 1 — Are you acquainted with the parties to the above suit if so state,

Ans — Yes sir. I am with Mr Milk & Mr Moore

Int 2 — State what you know about Milk and Howard letting. Foster Moore have sheep to keep, when it was said Moore got them. and how many sheep he got?

Ans — I know he got something over four hundred sheep. it was in 1851. if I am not mistaken.

Int 3rd — State how long after said Moore got said sheep before you first saw them?

Ans — I saw them in a few days after he got them.

Int 4. — State how said sheep looked when you first saw them. as to health and condition and what there was about them to indicate disease?

Ans — They looked a greater part of them to the best of my knowledge pretty well I am not acquainted with diseases of sheep I could not tell anything about that matter.

Int 5th — State how often you saw said sheep

during the summer and fall of 1851 and how far you lived from Moore's premises where he kept said sheep?

Ans. I could not tell to any certainty how often I saw them. I think I saw them once a month. I lived about one mile from Moore's.

Int 6 State if you know what kind of ground it was on which Moore herded said sheep during the year 1851, whether high & dry or low ~~and~~ flat wettish land?

Ans It was rather low flat land.

Int 7 & 8 State how well said sheep done during the summer of 1851 considering the ground on which they were herded and the care that was taken of them.

Ans I think some of them done tolerable well. I think generally well I cant say positive.

Int 8 State if you know what kind of hay said Moore had to feed said sheep on during the winter of 1851 & 52, and the quality and condition of said hay?

Ans It was rather indifferent prairie hay, to the best of my knowledge. I suppose it was damaged a good deal by rain from the stacks.

Int 9 State how much tame meadow said Moore had in the summer of 1851, in which to cut hay?

Ans Well I should suppose about five acres

as near as I can come to it,

Int 10 State what kind pasturage said Moore had during the Summer and fall of 1854 in which he kept said sheep?

Ans. I dont think he had more than his meadow and a little in his woods pasture he kept the sheep in his meadow in the fall.

Int 11 State what kind of a location Moore had for keeping Sheep whether low and wet - or high and dry from 1854 up?

Ans Rather low wetish land,

Int 12 State whether you helped shear the said sheep in the year 1852. if so state what there was about said sheep to indicate disease scab not &c,

Ans I cant tell positive that I did. I helped two years to shear the sheep but I could not say that it was the first year or not I did not see any thing,

Int 13 In what direction from Moores did the sheep generally herd during the summer of 1854.

Ans To the best of my knowledge I generally saw them out south East sometimes South West from his house.

Int 14 What time in the day was it generally that you saw Moore boys driving said sheep out to pasture the summer and fall of 1854,

Ans I could not say just what time frequently pretty late in the day.

Int 15 What kind of a farmer is Foster Moore generally, and what kind of care does he take of his stock generally?

Ans In my opinion he is rather a slovenly. Rather indifferent care.

Int 16 Who generally took care of said sheep when you saw them Foster Moore or his boys?

Ans His boys in my opinion. I have always seen his boys taking care of them never saw Moore feeding them.

Int 17. Did you ever see Moore's Boys taking care of them feeding them &c.

Ans I see them herding them. I dont know that I ever seen them feeding them.

Int 18. Where did you ever see said sheep running at large during the summer of 1854 without any person with them and how far from Moore's premises

Ans I could not say, I saw them past my house in the year 1854 it is more than likely that it was somewhere near a mile.

To the above and foregoing interrogatories and answers the dependent objects generally.

Cross interrogatories,

Int 1st What is your age, business and occupation in life?

Ans 24 years past. Farming.

Int 2 How long have you been a farmer and were you engaged in the farming business in the year 1854, and are you still engaged in that business?

Ans I have been in it ever since I was old

enough to work. Ans Yes sir, sir sir

Int 3 How extensive a farm have you generally had under your control?

Ans Generally not very large.

Int 4 Have you ever had a farm under your control exclusively, or have you generally worked under some other person who had the control of the farm?

Ans Well I have had the control of a farm about four years.

Int 5 State when you had a farm under your control for four years, when the time commenced and when it ended and whose farm it was.

Ans It has been the last four years. it was my fathers farm. I had an interest in it. I was one of the heirs and have been living on it since his death.

Int 6 How many children did your father leave at his death and are they all living?

Ans Ans. all living.

Int 7 How many boys and how many girls did he leave?

Ans Two boys and two girls.

Int 8 Do you occupy that farm alone and do all the business upon it or not who assists you

Ans Myself and my brother.

Int 9 How large is that farm how many acres under cultivation above referred to?

Ans I suppose about seventy acres under cultivation.

Int 10 State whether you keep any ~~any~~ hired hands on that farm if so state how many, or do you and your brother do all the work yourselves?

Ans I dont keep any hired hands, unless just a few days in harvest sometimes.

Int 11 Which farm is cultivated the best and has been in the last four years? Yours or Mr Moores?

Ans My opinion is mine was.

Int 12 In what respect was your farm cultivated better than Mr Moores?

Ans It was plowed better, corn tended better

Int 13 How deep do you usually plow your ground?

Ans ~~I cannot exactly tell.~~

~~Int 14 Ans~~ From four to five inches

Int 14 How deep does Mr Moore plow his ground?

Ans I cannot exactly tell.

Int 15 How well do you usually tend your Corn?

Ans I generally give it from three to four good plowings.

Int 16 How well does Mr Moore usually tend his corn?

Ans I know he dont tend it very well.

Int 17. How often does Mr Moore usually plow his corn?

Ans Some three or four times I suppose

Int 18 That is about as often as you plow your corn is it not?

Ans Yes sir.

Int 19 In what other respect do you and Mr Moore differ in farming?

Ans Running over and skipping places and not plowing at all, Moores boys—

Int 20. Do you ever run over and skip any places and not plow it at all, or do you plow every inch on your whole farm?

Ans I frequently do skip some small places.

Int 21 Did you ever see any places on Mr Moores farm not plowed at all, and if so when did you see it, and what part of the farm and how do you know that it was not plowed?

Ans I did I seen it last year there along by the road.

Int 22. How large was the places that was not plowed, and did you get over in the field and examine it and see that it was not plowed?

Ans. From one to two feet wide and a rod long in places. I never got over and examined. I could see plainly from the road. probably four or five and I do not know how many more.

Int 23 In plowing one whole season on your farm do you swear that you did not skip over four or five places?

261

262.

Ans I suppose I have that may small places.

Int 24 State whether you keep any sheep or have at any time on your farm. and if so how many?

Ans I have not had any on the farm since my father's death except one.

Int 25 Are you acquainted with the business of raising sheep. and if so when and where did you gain your knowledge?

Ans I am not very well acquainted with it.

Int 26 Do you know any thing about the diseases of sheep. and if so can you tell when you see a flock of sheep diseased. whether they are diseased. and what disease they have?

Ans No sir I do not. no more than just by their appearance. looking very poor and mopish like. No I do not know that I can.

Int 27 In your answer to interrogatory 2d above on the direct examination. you state that Foster Moore got over four hundred head of sheep in 1851. will you please state how you know the number he got?

Ans I heard him say he got four hundred and some more. I do not just remember the exact number.

Int 28. You state likewise above you saw said sheep in a few days after Mr Moore got them. state fully where you saw them

and how long it was after Moore got them?

Ans I saw them about Moores premises I could not tell to a certainty about a week afterwards.

Int 29. State how close you were to said sheep when you first saw them after Moore got them. and whether you then and there thoroughly examined them?

Ans I was passing along the road when I first saw them. they were along the road. I went along the road & they were grazing along by the side of the road probably a hundred yards. that is some of them the rest along close to the road I did not examine them very particular

Int 30 You state above that a great part of said sheep the first time you saw them looked pretty well. now will you state what part of them looked pretty well and what portion looked bad?

Ans There was a great many wethers and ewes looked pretty well. I suppose the rest of them was bad. some wethers and some ewes.

Int 31. Would you think there was one half of them well and the other half bad?

Ans I should think there was more than half of them looked pretty well some

two or three hundred.

Int 32 Will you now state fully the appearance of that portion that did not look well?

Ans They appeared rather stupid. did not feed round like the rest did. they appeared to to have their heads down.

Int 33. Now will your state whether you noticed that portion of the sheep that looked drooping and not feeding like the rest did. and if so. did they not have their ears drooped?

Ans No I cant say that they had. I cant say that they had not. that I know of. I did not notice them particularly.

Int 34. Will you plase state to the best of your recollection. how long after you saw said sheep as spoken of above. until you next saw them. and when you next saw them. did you examine them particularly?

Ans As near as I can recolect about a month or it may have been about a week. I did not examine them particularly.

Int 35 Did you during the summer and fall of 1856. to the best of your recollection see said sheep oftener than once a month after you saw them the first time. and if so. how much oftener. and did you at any time after the first time you saw them examine said sheep particularly during that summer and fall?

Ans To the best of my recollection I dont suppose I did. No sir I dont recollect. I did not examine them particularly.

Int 36. You state above that Moore herded his sheep on low flat land. will you state whether you was ever all over the land on which Moore herded said sheep.

Ans Yes sir I have been frequently.

Int 37 State if there was any of that land on which said sheep were herded. high dry land and if so what portion of it?

Ans There was a very small portion of it dry land and the rest of it was rather low.

Int 38 Do you know how far east said sheep ranged on the feeding ground?

Ans I could not tell to any certainty.

Int 39. Was there not high dry prarie ~~to the~~ east and north east where said sheep may have ranged?

Ans There might have been.

Int 40 Do you know how far east and north east said sheep ranged during the summer and fall of 1881?

Ans No sir I dont know that I do.

Int 41 How far east would the sheep have to go from the commencement of their feeding ground after leaving the premises

266 of Mr Moore. before they would come to the high prarie that you speak of?

Ans I dont know that I can tell exactly, about two miles.

Int 42 What is the quality and kind of grass that grows on this low flat land you speak of?

Ans In the low flat land it is mostly Slough grass.

Int 43 Was there not a large amount of sage grass interspersed throughout this prarie you speak of. on the elevated portions of said land between the sloughs?

Ans Yes sir there is considerable.

Int 44. State whether you ever examined the hay that Moore fed to his sheep during the winter of 1851 & 52. and if so was it timothy or Prarie hay?

Ans I never went into the field and examined it. I see it in hay stacks before it was hauled and stacked. it was mostly Prairie hay.

Int 45 Do you know of his feeding that hay that you saw in stacks to his sheep in the winter of 1851 & 52. and if so state how you know it?

Ans I could not say that he did feed it to my recollection.

Int 46 Do you know how much timothy hay Mr Moore fed to said sheep during the winter of 1851 & 52.?

Ans No sir I do not.

Int 47 Did you ever examine the racks that said Moore fed his Sheep in during the winter of 1851 & 52. and if so state how many racks there was. and what was the length of them ?

Ans I never examined them only as I was going along the road. I dont recollect of noticeing more than one. Guess it is 25 or 30 feet.

Int 48 Do you know of any of said sheep dying during the summer and fall of 1851. & 52. and if so how many?

Ans I dont mind of seeing any dead at that season of the year.

Int 49 Do you not know of some of those sheep dying before feeding time during the summer of 1851?

Ans No sir I dont know of any. I dont but they did.

George Martin.

And the said John Strean 4th Witness sworn to testify the truth. the whole truth. and nothing but the truth. relating to the said cause. deposes as follows.

Int 1st Are you acquainted with the parties to this suit?

Ans I am acquainted with Mr Moore. I never had any acquaintance with Mr Milk until I came here. I never saw Mr Howard that I know.

267

Int 2 State if you know of Foster Moore's getting sheep of Howard & Milk sometime in the month of June in the year 1856. if so state when you first saw said sheep and how many there was of them?

Ans I know of Foster Moore getting a lot of sheep of somebody. but I dont know who I could not state the time. I suppose it was about that time. I saw the sheep either the day he got them or the next day. I should judge from the looks that there was over four hundred.

Int 3 State when you saw said sheep the first time how they looked as to condition and health. and what there was about them if any thing to indicate disease?

Ans I thought the sheep looked very well in general. I did not think there was any thing about them to indicate disease.

Int 4 State if you now think there was any thing about them to indicate disease the first time you saw them?

Ans I dont think there was.

Int 5 State if you had a conversation with Foster Moore. about the quality and condition of said sheep about the time that he got them. if so state what that conversation was?

Ans I had a conversation with him. he came out of his house and spoke about the sheep. he said something about them looking well. I told him that I thought they looked well with some

exceptions. he said that he thought they did look well. that those that did not look well. I think was four that he said was thrown in and not accounted for. I could not say how many he selected them from.

Int 6 State if you know from Mr Moore's statement or otherwise whether he obtained all the sheep the man had in ~~that~~ his flock?

Ans He did not get all that the man was driving.

Int 7 What kind of a location is Mrs Moore's farm for keeping sheep. whether high & dry. low & flat.?

Ans I dont think his location is the best for keeping sheep it is low and flat land.

8 State what kinds of land Mr Moore generally herded his sheep on during the summer and fall of the first year that he got them?

Ans It was rather flat land. a portion of it is dry and sandy

Int 9 On what kind of ground do sheep do best on whether high and dry. or low and flat?

Ans As for pasture I do not think that it makes a great deal of difference. as for lodging at night I think it is very important to have a high dry and airy place. as to my experience. sheep when running at large will always

270

lodge on the highest ground they can find. I think they do best on a high place during winter.

Int 10 What time in the year is it generally necessary to take sheep up off the Prairie and put them on tame pasture?

Ans It is owing to the season. So soon as the frost kills the prairie grass. In September or the first of October. I think the first of October any season as the wild grass gets very dead against that time whether frost or not.

Int 11 State if you ever saw said sheep in a field at Foster Moore's during the summer or fall the first year he got them. If so state under what circumstances and how they looked and how the field looked as to feed?

Ans I saw them in a field at Foster Moores the first season he had them it was after harvest it was in a stubble field after the grain had been hauled off. perhaps in August, it might have been later. I thought there was not sufficient of keeping for them there. I thought they would have done a good deal better out on the prairie at that time. the sheep did not look bad, but seemed very uneasy. And I could not see any thing for them to eat there. I thought he was doing a great injury to the flock by keeping them there. that he would see the effects of it before spring

Int-12 State how many times during the first season you saw said sheep under the circumstances you related in your last answer, and state the real effect if any in your opinion it would have on said sheep?

Ans I could not say how many times two or three times at least perhaps more.
Whenever any stock begins to go down in the fall, it is nearly impossible to get them over it in the winter. My experience always taught me to have all my stock thriving in the fall. then it would be easy getting them through the winter. I think more particularly on sheep than anything else, as I think they are more tender than any other stock.

Int 13 State whether there was any meadow land in said field, or whether it was all cultivated and how much of it meadow land if any?

Ans There was some meadow land in the field I could not state how much, say from five to ten acres.

Int 14 State what other tame grass pasture Foster Moore had during the summer and fall of the first year, in which to keep said sheep?

Ans He had a pasture fenced in the barrens of perhaps twenty acres & I dont know but a good deal more. part of that was tame grass and part wild grass. a good deal of that was tame grass I think, could not say what portion was

tame grass. it had never been cultivated, the grass just come in of itself therefore I could not tell what portion of it was tame grass.

15 State how long said pasture would ~~last~~ answer for a flock of sheep of four hundred to do reasonably well on during the first fall after said shoes got said sheep?

Ans I could not answer that. as I do not know what portion of it was tame grass. I know that it was not all tame grass. a good portion of it was timber.

16 State so far as your knowledge goes how long in your opinion said pasture would answer for said sheep?

Ans I dont think I could give any other answer to that question than that I have no opinion on that question.

Int. 17. State what number of acres is reasonably required of tame grass pasture to keep a flock of sheep of four hundred. from the time that frost kills the prairie grass. say from the first of October up to the common feeding time in the fore part of winter.

Ans I think if it was good pasture as I have commonly seen in this country. that it would require one hundred acres.

Int 18 State whether there was any water for said sheep in said stubble fields where you saw them as you have above stated

Ans There is no water in that field in dry weather I believe.

19 State what effect it has upon a flock of sheep of four hundred to be wintered on low wet ground what effect it has on the health and condition?

Ans I think they will be very apt to have scotty noses. cough. than though they were on a high & airy situation.

20 State if you was at Moore's during the fore part of the first winter that Moore got paid sheep and saw the hay Moore had to winter said sheep on. if so state the quality condition and kind of said hay and how it looked?

Ans Mr Moore lives close to the side of a very public road. I pass along that road very frequently during that time I only saw the hay from the road. I think in the fall of the first season he had them I was in his yard. I saw some tame hay looked at it and thought it looked very good. And passing along after feeding time the first winter I saw hay in the rack and the sheep feeding around it. The rack I suppose was five. six or seven ~~roads~~ rods from the road. might of been ten. I did not think the hay that I saw in the rack looked very bright and good.

21. What kind of hay was ~~is~~ it you saw in the racks tame hay or Prairie hay?

274

Ans I could not tell.

Int-22 How long was that rock and could all the sheep get at ~~it~~ the rock at once and how high was it where the sheep had to get the hay out of it?

Ans I think the rock was thirty or forty feet. may be more. I dont think they could all get at it at once I always considered that it took one foot for a sheep of one side of the rock. as to the hight when the sheep got the hay out. it seemed pretty high for the sheep at first. but after some time. after the hay got trampled down I do not think it was too high.

23 What kind of improvements & conveniences had Foster Moore for keeping sheep during the first winter after he got them as to sheds feeding troughs &c?

Ans He had neither sheds nor troughs as I know of.

24 State what bad effect if any it has on a flock of sheep of four hundred to be wintered with no sheds or other shelter to protect them from the weather and other storms?

Ans I could not tell as I never saw a flock of sheep kept without it with the exception of those of Mr Moore's. If I should answer from that I should say it had a very bad one.

25 State how well you are acquainted with Foster Moore and his premises where he kept said sheep. How long you have been

acquainted with him and them. and how far you have lived from said Moore for the last ten years?

Ans I have lived within some two miles of him for the last twenty three years. I think. I have known him all that time I have been acquainted with the premises all that time too, was on the premises the year before when I was out looking at the country;

Int. 26. What is your occupation in life and to what extent have you been engaged in raising sheep. and how many is the most that you ever kept at any one time?

Ans I have been a farmer all my life. I was raised on a farm. I assisted in taking care of sheep from my youngest recollection I think at the age of 18 an older Brother and myself went on to a farm with I think about five hundred sheep. we had that number and more. on until I left for this country at which time we had about two thousand old sheep and four hundred lambs. I had not been here many years until I got on the shares I think 27 Sheep the next season I got some more. but dont recollect how many from them I increased until I think I had about one hundred and fifty. then I still kept selling off and raising. never had more than one hundred and fifty while in the state of Illinois,

this last October I sold all I had. a hundred and twenty six I think. since that I bought ten sheep. sold one and got two lambs

27 From your knowledge of sheep raising and the manner in which said Moore kept his sheep and of his premises. state what would be the effect upon the health and condition of a healthy flock of sheep of four hundred kept under the circumstances of said Moores were kept in during the first winter he got them whether good or bad state fully?

Ans Well I think it would have a bad effect on the health and condition of any flock of sheep to be kept where they were. and in the manner I thought they were. kept.

28 State from your knowledge of said flock of sheep of Foster Moores and in the manner in which they were kept during the first winter he got them what was the cause of so many of them dying that winter. want of care. want of feed or what cause. and state fully the ground of your opinion?

Ans Well as I stated before along in the fall they were kept in this dry stubble field too long as I thought. until I thought they were running down. and I thought then he would see the effect of it. before spring the ground of my opinion would be. being run down

in the fall. want of sheds and want of room in the lot they were kept in; for sometimes it was very muddy and I think to keep any stock in the mud is injurious to its health. Sheep in particular. Sheep will never go into the mud of their own accord. I believe. I think a sheep would not lie down in the mud of its own accord as long as it was able to stand up. And I think there is very few men that can take that number of sheep and do well with them that has never had any experience in raising sheep. My brother and myself in Pennsylvania used to let out sheep. we would never let any man have more than fifty sheep that never had been in the habit of raising sheep.
My brother was the most particular farmer in that State. When Foster Moore got the sheep knowing the man as I thought I did not to be a very particular farmer I thought a great many of those sheep would die before the next spring These I considered the causes that caused them to die.

29 State what improvements and conveniences. and what sort of location are necessary for the wintering of sheep. in order that they may do well and the manner of feeding them?

Gus 277 I think in Pennsylvania that my

Brother and myself had a little better
succes, the most of sheep raisers in that
country considered the dryest places we
could get for our sheds was indispensible
that sheds abundantly large for all the
sheep to lie under plenty of room racks
and troughs so they would not be crowded.
so the weakest sheep could get forward to
the food. Now I consider this country a
great deal more damp. and that there conveniences would be actually more necessary to
the successful & profitible raising of sheep,
Where we took care of sheep as I thought
sheep ought to be taken care of. we had a
broad trough made a wide pland and a rack
right in the center of it so as to form a troughs
each side of the rack. that would catch
all the fine stuff that fell out of the rack
or grain when we fed oats. which the
sheep would eat in preference to any other
portion of the food put before them. Sheds
large enough for all the sheep to lie down,
and a yard all around that shed of a yard
of an acre so that the sheep could walk
out and in.
We always feed our sheep twice a day
morning and evening about what we thought
they would eat up clean. if they left
any in the rack we would generally throw
it out. these things all nescessary to the
successful and profitable raising of sheep
the sheep that I have had in this Country
I did not take such care of I did not
have sheds for them. but I kept them

on a very high dry sandy piece of ground. but I did not get as well paid as some of my neighbors that did have sheds and took better care.

Int 30 What effect does it have upon sheep to put more hay into the rack than they will eat at one time?

Ans I believe that when you put food before sheep or any thing else. that they will select the best first then they dont like to eat the refuse. consequently they would not do so well.

31 What effect does it have on sheep to drive them throughs the dust?

Ans I dont know that. I never had any thing to do with sheep that had been driven. I drove over seventeen hundred once from Washington County Pennsylvania east some Two hundred miles. sold them and I dont know any more about them

32 State if your sheep and Hiram Kennedy's got mixed with Foster Moore's sheep after he got them of Howard. if so state what year it was

Ans There was a portion of Hiram Kennedys and mine got with Foster Moors I think it was the first fall that Foster Moore had those sheep. the reason why I think so was. there was a certain portion of Foster Moore's that was the same ear

280

mark that mine was. and some of them looked very much like my sheep he paint he had nothing to say if we could not find the Real mark or point out the sheep. some of them it could not be seen on without catching them and opening the wool we could find it could see the red Keel or paint down in the wool. I think that was the mark that was on the sheep when he got them and I think it was before so many of his sheep died. this is all the answer I have to that question.

33." State what bad effect if any it had upon your sheep by getting mixed with Foster Moores.

Ans I know of no bad effect it had on our sheep getting with Foster Moore's.

34. State what you discovered among Foster Moore's Sheep in catching them and examining them at that time to indicate disease? either foul or rot or any other disease

Ans I dont think I discovered anything at that time that would indicate any disease among Foster Moore Sheep I ~~dont~~ think they looked very well.

35. From your knowledge of sheep raising State how many acres of oats of the common yeild would reasonably be required to winter a flock of sheep of over four hundred well with prairie or wild hay.?

Ans I dont Know how much it would take if the prarie hay was good. I belive five dozen of oats would do for them per day.

36 How many oats generally grows upon an acre?

Ans Generally about 30 dozen. I have seen a heap more and much less.

37 State what kind of crops of corn and oats Moore generally raised on his farm?

Ans. I have seen Moore have some very good crops of oats. I dont think I ever saw a good field of corn on his place. near an average of the neighborhood.

Int 38 State if Moore's fences round his farm are sufficient to protect his crops from cattle and horses. from destroying them or injuring them?

Ans Foster Moore's fences are not as good as some peoples fences in our neighborhood, I do not remember of his having his crops badly injured by stock getting in at any time.

39 About how many month in the year does feeding time of sheep last in this country generally.

Ans Six months where there is no tame pasture. I think as a general thing it would take a little longer. more.

To all the above and foregoing interrogatories and answers the the defendent objects.

282

Cross examination

1 State when you first saw the sheep as spoken of above in the possession of Mr Moore. whether you examined the same and how close you were to them and how particularly you examined them?

Ans The first time I saw the sheep to speak of in foster moores posession I met them in a lane of some three rods wide. they were passing one way and me the other. I was riding along in the wagon. I looked over them as particularly as I could. expresly for the purpose of noticing the quality of the sheep.

2 How long was that after said Moore got them?

Ans I think it was on the next day after he got them.

3 ... What was the condition as it regards order of said sheep at that time

Ans 4th They were in very good stock order.

Was there any portion of said sheep in bad order at the time you first saw them. if so what portion. and how they looked. and whether you examined that portion particularly?

Ans There was as many as four and then might have been ten or a dozen that looked very badly. I considered them old cows that were just ready to die of age. when a sheep gets very old it looses its front teeth all and cant eat grass to do any good

and will dwindle away and die. I did not catch the sheep to see if this was actually the case, it was only my supposition at the time.

5th Might not those sheep that looked so bad spoken of by you above have been diseased, which was the reason of their looking so bad, and not from old age as you supposed?

Ans From the appearance of the sheep and my experience in sheep I could not come to any other conclusion than that I have stated above.

Int 6 Did you particularly examine said sheep spoken of above by you which looked so bad, for the purpose of determining whether they were diseased or not and if so, in what manner did you examine them?

Ans I examined them as particularly as a man could without taking hold of them I was looking at the sheep particularly to see what for a lot of sheep Foster Moore had got, and that was all.

7th Might not said few sheep that looked so bad have been diseased at that time and you not of known it?

Ans It is possible they might but it was not my opinion.

8 Might not you have been mistaken in regard to the age of those sheep?

Ans It is possible I might, but a man

284

that is acquainted with sheep will not often be mistaken as it regards the appearance of an old and a young sheep.

9 Are not old sheep as liable to have disease as young ones. and if so might not those few sheep you speak of that looked bad have been diseased notwithstanding their age?

Ans I have no doubt that old sheep are as liable to disease as young ones. But as to my own experience I know nothing about diseased sheep. I never saw a sheep that had the scab. as to the rot I have seen a flock of sheep running at the nose and looking very bad. and heard people say they had the rot. But we never had any diseases amongst sheep that I had any thing to do with. a fall or sprain. Cold rain on the sheep you would see a great many snotty sheep appeared to have bad colds. a few days of good weather. they would look nice and clean.

Int 10 Could you from your Knowledge of diseased determine whether a sheep had the rot or not?

Ans I could not. as I dont know that I ever saw a sheep that had it.

11 Could you from seeing sheep that had the scab. determine whether they had the scab.

Ans I think I could. not from my own experience but I have read of scab in sheep a discription of the disease. and I have

heard a great many individuals describe the disease. so that in some stages of it at least a man could not be mistaken.

Int 12 to From your knowledge of the disease of scab as spoken of above how long would it be ~~before~~ from the time that the sheep would take that disease. before the disease would develop itself so as to be perceptible?

Ans I could not tell. as I never saw any of it and I dont remember the discriptions that I read and heard of it.

Int 13 Please describe those sheep that looked bad. their size. order. their gate as they traveled along how they carried their heads and what position their ears was in.

Ans There was some of them I know was large framed. very poor and hollow looking they were travelling behind the others in the lot a kind of moping along. I know thier heads was before them that is all I know about that.

Int 14 You state in your answer to direct interrogatory No 6 that said Moore did not get all the sheep that the man of whom he got them had in his flock. state if you know who got the ballance.

Ans I do not know but I think it was Alexander Wilson.

Int 15 State what kind of land said Moore herded said sheep on during the first year that he got them. and also state what was the quality of the grass upon said land

286 whether good or bad for sheep in your opinion?

Ans The land upon which Moore herded the sheep a considerable portion of the time, and perhaps all the time the first season, was rather low flat land, some ponds, some very dry good land a considerable portion of it dry land a good deal of it produces what we call the blue joint grass I think the best grass that grows on the prairie. I think his herding place was a very good one.

Int 16 State if you know what time said Moore took said sheep from said herding ground on the prairie and turned them in tame pasture in the fall?

Ans I do not know exactly what time it was, but it was soon after harvest, just as soon as he got his oats hauled in.

Int 17th State if you know how many fields of tame pasture Foster Moore had the first year after he got them?

Ans. There was two fields that had some tame pasture in them. Then there was a stalk field, that they run in, in the winter, that had no tame grass in it I think, and that is all the fields of any kind that he had at that time.

18. State if you know how many acres were embraced in each of said fields spoken of above?

Ans There was forty acres in the stock field, that is east of the road. ~~Forty acres~~

the other two fields embraced forty more: except the house and barn. and orchard say 2 or 3 acres. I know so near where the lines are. that the fence is nearly on the line. they were aimed to be on the line of the 40 acre lots.

Int. 19 State if you know how soon in the first fall after said Moore got said sheep he commenced feeding them, and if so what kind of feed he gave them and how much?

Ans I do not know what time he commenced feeding them now. Until on in feeding season. I know that he fed them some hay and some corn fodder. I think with the corn on it; but I dont know that certain. And I have seen appearances in the yard as though there had been sheep oats fed.

20 You state in answer to interrogatory No 11 on your direct examination that you saw said sheep the first season said Moore got them, after harvest in a stubble field, will you state whether you then or ever at any time during said fall went over said field and examined the pasture therein. or did you make up your mind of the quality of said pasture. then in said field from merely looking over the field as you passed along the road?

Ans to that I was never in the field

287

that fall. I merely saw it from riding along the road.

21. State whether you at any time during the first fall after said Moore got said sheep, went over any of his pasture fields and examined the pasture there, or do you judge of the quality of his pasture by staying along the road?

Ans I was in his woods pasture once during that fall at the time our sheep was together Hiram Vennum and myself went after them the sheep wer in the woods pasture in gathering them up it caused me to be over a greater portion of it the pasture was very bare then.

22. State what time in the fall you went into said woods pasture as spoken of above?

Ans I could not tell. I think it was early in the fall. I know that it was yet while our sheep. Hiram Vennum and mine were running on the prairie.

23" State whether that was the first fall after said Moore got said sheep or whether you may not be mistaken in the time. And whether it might not have been the second fall after said Moore got said sheep instead of the first?

Ans It was the only time I ever went there after sheep. and I think I am not mistaken about its being the first fall, I feel very sure that Hiram Vennum Foster Moore. and myself had some conversa-

at that time that we were after those sheep about lambs. that were then that years lambs, and lambed when he got the sheep

24 State Do you swear positively that it was the first fall after said Moore got said sheep. when you was in said woods pasture at the time you and Kennamer went after your sheep as spoken of above, or might not it have been the second fall?

Ans I do not swear positively to anything I do not swear positively that it was the first fall; but ever since Mr Moore stated to me that it was the second fall. I have studied a good deal about it and every circumstance that I can call to mind confirms me that it was the first fall. I think that it is not impossible that I might be mistaken but I do not think it probable.

25 State whether you know there is any water in any of those pasture fields. if so state how you know it?

Ans There is water in the woods pasture, None in the stubble field in a dry time. In the woods pasture there is water I guess at all times. I have been in it and saw water there when it could hardly be got any where else in

290 the neighborhood. East of the house in the stock field I do not think there is any water except in a wet time.

Int. 26 Do you know how much and what kind of hay you have fed your sheep during the first fall and winter after he got them?

Ans I dont know how much nor what kind he fed them. I know that he had some prairie hay that was cut too late I thought it was too late, it was not a good quality any how. And I saw him have I thought some first rate timothy hay stacked up there by the stable. But I dont remember of seeing him give any hay of any discription to the sheep. I have seen hay in the rack that I thought rather dark looking for good hay. did not look bright - only saw it from the road. as I was riding along.

Int 27 State what kind of hay sheep do best on in this country. Prairie hay or timothy hay?

Ans I dont think I can state as to that matter. I dont recollect feeding my sheep much timothy hay in this country. I cut the best quality of Prairie hay that I could find on purpose for my sheep. I thought it was as good for them as timothy hay.

28 State whether you have always had sheds and shelters in this country. Such

as you had in Pennsylvania. as you have spoken of in your direct examination and if not state whether your sheep have died off in consequence of not having such sheds. and if they have not so died off. how have they done. well. bad. or indifferently?

Ans I have not had sheds in this country for my sheep. though I always had a stable to put my ewes in in lambing time. or a good shed. My sheep did not die off in consequence of it, tho' they did not do as well as some of my neighbors who had shelter. I had I reckon the best place to keep sheep out of doors. that could be got in the county.

29. State why your situation was the best in the county without sheds?

Ans It was a very high sandy piece of ground falling off every way from my pen. more than half surrounded with an uncommon thick growth of brush. and my stabling joined it right on the open side. and my hay and grain generally filled up the hole a space which completely sheltered it all round.

Int 30 Did you winter any sheep this first fall and winter after Moore got his and if so how many?

Ans I had sheep all the time that Foster Moore had those sheep. I think not less than a hundred. and not more that one hundred and fifty

31 Did not the same storms of rain that fell upon the sheds of said Moore during the fall and winter after he got them fall upon yours also-?

Ans. I suppose they did.

32. Were not Foster Moore's sheep shelters on the north and west by brush and timber?

Ans Yes Foster Moore's sheep were protected from storms on the north and west and stables and stacks on the south.

33. What time of the year do you generally put up your ewes in lambing time as spoken of by you above?

Ans That just depends, just upon the time they are going to have lambs.

34 What time in the next spring after Moore got said sheep did you put up yours?

Ans I could not tell what time that spring but perhaps in March early in March.

35 Do you know from your own knowledge or otherwise than mere supposition how much and what kind of hay or corn or oats the said Moore fed said sheep during the first fall and winter after he got them?

Ans I do not know how much of any thing he fed them. Nor actually the quality of it only as has been stated from seeing it from the road.

36. What road do you mean?

Ans Well it is the State road. that leads through Milford and on through Middleport. passing through Mr Moores farm. directly by his house and sheep pen.

37. About how often did you pass along that road during the first fall and winter after Moore got said sheep?

Ans I would say from one to four times a month. not less than that perhaps more.

38 Do you know what was the cause of said Moore's said sheep dying in the manner in which they did?

Ans I do not know

39 May not some of said sheep have been diseased at the time said Moore got them. or any thing that you know which might have been of a contagious character. which might have caused the death of a large portion of those sheep. or all of them. which died during the first fall and winter after Moore got them?

Ans I think not from the circumstance of our sheep being together without any bad effect. I know not how long a disease might be in sheep before it would develope itself.

40 Do you know from your own knowledge or from any other source than supposition whether said sheep

294

were or were not diseased. at the time that said Moore got them?

Ans. I do not.

41 Is it not very common with all stock of every description. when food is put before them. to select the best and eat it first. or whether this peculiarity belongs to sheep alone?

Ans I think it is common with every kind of stock. to eat the best that is put before them I dont think it is peculiar to sheep, more than any thing els.

42 How many of your sheep and Mr Kennons got mixed with Mr Moores. and how long were they with them?

Ans I dont now remember the number that we picked out of Moore's sheep. it may have been from fifty to one hundred I dont think it was more. and it may have been less. but I think not less than thirty or forty any how. I dont know the lenght of time they were together They were together from some time one day to some time next day. may have been together several days. I could not tell & I dont know that I knew then the time they were together.

43. You speak in answer to interrogatory 32 in your direct examination of discovering a mark on said sheep of said Moore's of red keel or paint. on what [illegible]

part of the bodies of said sheep, was said mark located?

Ans I think it was right on top of the rump.

44 Was said mark visibly seen on all said sheep alike, or was it brighter on some than on others?

Ans It was much plainer on some than on others. it could be seen by looking over the flock on a great portion of them. there were some that we could not discover it on until we caught them, and on close examination, we could discover that they had been marked.

45 What kind of a mark was placed on those sheep, please discribe it?

Ans I dont know how to describe the mark. I have seen a great many sheep marked and have assisted in marking a great many when sold to drovers. this I have always seen done with a chunck of keel wet and rubed on the wool, makes various sized marks. I think these on Moore's resembled the marks I have generally seen on drove. Say two or three inches wide, and considerable longer, lengthwise with the back. I dont pretend to say so that. that was the mark on those sheep but I know that it was a Keel mark on the rump.

46 Did all of said sheep of said Moore's seem to be marked with the same mark and in the same place?

Ans I dont Know as there was. there was a certain ~~portion~~ lot of fine sheep that was in ~~the same~~ the same Ear mark of my sheep. Those were all that I was interested in. they were all marked with red on the rump.

Direct examination resumed.

Int-1 In your answer to cross interrogatory No 9 you say as to the rot. I have seen flocks of sheep running at the nose and looking very bad. and heard people say they had the rot. Now state how those few sheep of Foster Moore's. which you say you looked upon the first time you saw them differed in appearance from those which you heard people say had the rot. as you speak of in your said answer.

Ans I do not Know that I could explain that to persons not acquainted with keeping sheep. any person acquainted with sheep I think can easily tell the difference between an old sheep run down from old age. from that of a diseased sheep. I dont feel capable of describing the difference

2 State how those few poor sheep looked about the nose. whether they were running at the nose any. and state in what respect they differed from ordinary sheep of old age:

Ans I do not remember about them

being running at the nose whether they were or were not I remember that their appearance brought me to ~~think~~ opinion that they were old sheep.

3 In your answer to cross interrogatory No 46 you state that you dont know that all of paid sheep of Moore's seemed to be marked with the same mark and same place. now state what Mr Moore said at that time about his sheep being marked with red lead or red paint?

Ans I dont remember anything said about it. only those sheep marked with my mark the ear mark. That lot of sheep and mine looked very much alike. he said that he could not tell only by the lead or paint mark whichever it was if we could not find that he had nothing to say.

Int 4 v State from your knowledg of sheep raising whether you could easily be mistaken in the health of a flock of sheep by riding through them and examining them as you state you did with these of Moore's?

Ans I think that I could not very handy be mistaken. But in a flock of sheep as I stated before I did not know how long it would take a disease to develope itself. A disease might be in a flock of sheep of perfect health. and after sometime make its appearance. I could

298

have no means of determining such a case as that.

5 In your answer to cross interrogatory you state that you think that Alexander Wilson got the ballance of said block of sheep. State your reason for thinking so?

Ans I think I heard so from some source or other I dont know what. it is rather my impression that Alexander Wilson told me so himself.

To all the above and foregoing interrogatories and answers the dependent objects.

Cross interrogatories,

1 How is your memory in regard to dates circumstances. and facts that have transpired. whether good or bad and explain fully your memory of facts that have transpired some years past?

Ans My memory is very poor as it respects dates. my memory is poor generally. particularly in regard to things I think dont concern me. I dont charge my memory with it.

Direct examination resumed.

1 State if you ~~know~~ mean by your last answer. that you are apt to forget dates and events. that have transpired or that you remember them erroneously

Ans As to dates of time past I dont pretend

to remember them without I have them wrote down. days. months or years.

2 State fully what you mean by that.

Ans I mean anything that transpires if it is months I could not tell. I would have a perfect recollection of such a thing taking place sometime about that time I would recollect that it was in the fall. spring. winter. I recollect now pretty well that Foster Moore got those sheep in the spring. and I am very sure that it was in the latter part of May. but I do not know the year. I know that it was some five or six years ago. might have been seven. I know very well the day he got them. I know positively that I pay them that day or the next day but I would not pretend to say what day of the month nor the year. any particular transaction that has transpired I can have a recollection of it. and I think could tell the time of the year. whether fall spring, winter or summer. But to a particular day of things transpired but a very short time I would not be positive at all. There is hardly a person died since I have been in the neighborhood. but I think I could tell the time of year they died. at least whether it was in the winter season or summer season But I could not go to the very day or

299

300 which is my very nearest friend dead.
now I believe that I could not positively
state the month nor the year.
But I could now tell I believe every
relation that I have that has died in
Allison's. whether it was Spring, Summer
Fall or winter. there has been circumstan-
ances of weather or some other causes
that make me recollect the season of
the year.

3 What is your age?

I suppose that I am 54 years old
the 29th day of next April. I recollect
perfectly well. of seeing it in an old book.
that I was born on the 29th day of
April 1804. and I dont think I have seen
that Book in thirty years.

John Strean.

By agreement of Parties adjourned
to the 25th March 1857. At which time
came John Axtell who was sworn
according to law, to testify in the
above cause.

Int 1 Are you acquainted with the parties to
this suit?

Ans I was acquainted with Mr Howard
he was at my house two days. I know Milk
when I see him. I am acquainted with Mr
Moore

2 State if you know of Foster & Moore
getting sheep of Howard and Milk.

sometime in the month of June. in the year 1854. State when was the first time you saw said sheep. and how many there was of them?

Ans Foster Moore told me he got four hundred sheep of Howard & Milk. it may be that I am mistaken but I think about that number. It was in June. prehaps about the middle. in the year 1854. The first time I saw them. was at my house. Mr Young brought them there.

2 How long were they at your house?

Ans They were there a part of three days.

4th State when you saw said sheep the first time. how they looked as to condition and health. and what there was about them if any thing to indicate disease?

Ans They looked well. I thought they looked the best for that number of sheep. that I had seen on the road. Nothing about them that I noticed to indicate disease. I got some of them and they done well.

Int 5th State how particularly you noticed said sheep. while at your house. whether you was frequently among them?

Ans I was with them. and helping them ~~build pens~~ all the time they were there. helping them build pens. to seperate them

302 and helping them seperate the ewes from the wethers.

6th State if you had a conversation with said Moore. about the quality and condition of said sheep. and of his getting them. about the time he got them. if so state what that conversation was?

Ans I had been here to town. I was going home. I think Mr Hoel was with me. and his boys were bringing the sheep in from the prairie. The sheep were driven along past Mr Moore and myself into a lot there. I observed to Mr Moore that the sheep looked extraordinaryly well except some eight or ten. He said he thought so too. that the five or six or ten had been thrown in.

7th What do you mean by being thrown in?

Ans Well given to him is what I mean that ~~few~~ few looked bad.

8th State if you saw said sheep during the fall of 1851 in the inclosure of Foster Moore. if so state under what circumstances, how the sheep looked and how the feed looked and about what time in the fall it was. State fully?

Ans I did see them in the inclosure late in the fall. they were dwindling down poor. that is a number of them. the field was bare. the weeds were trimed as high as they could reach. it was a stubble field. it was in october.

9 State at what other times. and under what circumstances you saw said sheep. during the fall of 1854. if any to show a want of care and attention. and that they were not doing well. and state the conversation you had with said Moore on the subject if any?

Ans It was in November that I was along there and told Mr Moore he was letting his sheep run down. that he ought to keep them up. that he should have tame pasture for them or feed them. He stated that he had no tame pasture for them. and that the Prairie grass was about done. also that he was feeding them some and that he intended to feed them stronger was the reply that he made me at that time. I told Mr Moore then that if he wanted those sheep to do well. that if he let them run down. that he would raise no lambs. and a great many of them would be likely to die. They looked bad. they were in the field East of the house I dont think they were all in the field. there was some fifteen or twenty down below the house that looked very bad.

10th State if you saw said sheep often during the herding season of 1854. if so. state upon what kind of ground he herded them on. whether high and dry or low and flat?

Ans Well I cant say I saw them very

often. I saw them a number of times through the summer. perhaps I saw them once a month. perhaps not that often. it is likely I did not.

Where I saw them it was on low ground I told Mr Moore. that I thought if he would herd them on higher land they would do better. Mr Moore replied that he did herd them on higher ground the greater part of the time. that it was on his farm on the Marie that he generally herded them.

11th Int. State at what time in the year 1854 you first saw said sheep in the inclosure of said Moore?

Ans Perhaps it was the last of August.

Int 12 State how said sheep had done. and how they looked as to health and condition prior to the last of August 1854.

Ans They looked well.

Int 13 State if you saw Foster Moore and his hands cutting or stacking hay for said sheep during the summer or fall of 1854 if so state how said hay looked and what kind of hay it was. and state all the conversation that was had on the subject at that time?

Ans I saw Mr Moore and boys stacking hay. it was late in the season in 1854 I told Mr Moore it was very poor hay and he said that he knew it was. but

that he had plenty of shock corn and sheaf oats. I told him he would have to have a good deal if he had enough for those sheep. It was little wire to grass hay and had been frost bitten before it was cut. it was not good for anything. I told Mr Moore that it would not do for sheep, that they would not live on it.

14th What kind of a location is Foster Moores farm for keeping sheep, whether high and dry or low and flat?

Ans I think it is low flat land. I call it so.

15th What kind of ground do sheep generally do best on during the fall and winter?

Ans They have always done the best for me on high land.

16 State what effect it has on sheep to let them get to running down in the forepart of feeding time. for want of feed

Ans What little experience I have had in the matter. to let them run down about half of them die.

17 State what number of acres is reasonably required of tame grass pasture to keep a flock of sheep of four hundred from the time the frost kills the prairie grass. say from the first of October up to the common feeding time. the forepart of winter to the

306 best of your Knowledge.

Ans I should not want any less than a hundred acres. and that would not do very well if you put them all upon it at one time. if it was in ten acre fields and change them from one field to the other every few days so as to give the grass a chance to grow less pasture would do.

18 State what effect it has upon the health and condition of a flock of sheep of four hundred. to be wintered on low flat wet ground?

Ans I do not know. I suppose if it was hard cold freezing weather. I dont suppose it would make much difference.

19. Supposing it should be wet mudy weather?

Ans Injurious to the health. you will see it in three days in a flock of sheep. You can see them looking bad. on account of their being on this low wet land. being in the mud.

20 State what kind of weather. during any winter. from the fore part of feeding time to the latter part of feeding whether it is all cold and dry and frozen or otherwise. state fully.

Ans I dont think we have it all dry and frozen. nor all wet. I think it is rather a mixture.

21 State what proportion of it is generally wet and mudely during feeding time if any. I never saw a winter but what was mudy

Ans About half and half

22 State if you recollect what proportion of the feeding time of the first winter after Foster Moore got said sheep, was wet and muddy if any

Ans I think the latter part of the season feeding time was wet and muddy. a portion of it was at any rate. I think the forepart was tolerably dry.

* 23 State if you was at said Moores during the forepart of the first winter after said Moore got said sheep. and saw the manner in which he took care of them. and fed them. and had a conversation with him on the subject. if so state and state what that conversation was.

Ans I do not think I had any conversation with him the first winter further than I have stated.

24 What kind of improvements and conveniences had Foster Moore for keeping sheep as to sheds feeding troughs, &c

Ans I dont think he had any sheds without it was in some little barns where he had a few of them. there was a log concern. but it would not hold a fourth of the sheep. I never saw any troughs.

25 State what effect it has on a flock of sheep of four hundred to be winter

without sheds or other shelter to protect them from the storms. upon the health and constitution.

Ans I do not think that I could do justice to any flock of sheep. without I had sheds to keep them under. I dont think any man can do justice to a flock of sheep without sheds in this country. I think a great many of them would die. they would for me. did use to at any rate.

26 State how well you are acquainted with Foster Moore and his premises where he kept said sheep. how long you have been acquainted with him. how far you have lived from the said Moore for the last twenty years.

Ans I have been acquainted with Mr Moore about twenty two years last fall. and with his premises for the same length of time. I have lived within four miles of him for the last twenty two years.

27 What is your occupation in life?

Ans Farming

28 To what extent have you been engaged in raising sheep. and how many is the most that you ever kept at any one time.

Ans I think the highest number of sheep I ever had was three hundred and fifty head in Pennsylvania. I have been working with sheep for about thirty five years.

29 State what is the highest number of sheep you ever had at one time in this country?

Ans About three hundred.

30 State how many years you have been engaged in the sheep business in this country. and how many you generally kept at a time?

Ans About seven years. I began with about ten sheep. bought at different times until I got up to three hundred. I think rising of that.

31 From your knowledge of sheep raising in this country. state the highest number of sheep should be kept in one lot to do well during the winter season

Ans Well one hundred head of sheep is the most that I want together. two hundred wethers will do to keep together. one hundred ewes will do to keep together. It will do very well to keep one hundred lambs together.

32 State what you mean about the lambs ewes. wethers. together in one enclosure or seperate enclosures?

Ans Seperate inclosures.

33 State what effect it would have by wintering a greater number together than you have stated above?

Ans You could not winter them as well on the same feed.

34 State from your knowledge of sheep raising and the manner in which said Moore kept his sheep. and of his premises

309

350 ~~400~~ state what would be the effect upon the health and condition of a healthy flock of sheep of four hundred. kept under the circumstances. in which said Moore kept his during the first winter he got them. whether good or bad. State fully. to the best of your knowledge and belief;

Ans Just a few words will answer that. I think they would not be healthy against spring. from the treatment I know they got.

35 State what bad treatment said sheep got during the fall and winter of 1851 to make them run down and unhealthy.

Ans By not giving them enough to eat that is my opinion. had not feed enough

36 State from your knowledge of said sheep of Foster Moore's and the manner in which they were kept during the first winter after he got them. what was the cause of so many of them dying that winter want of feed. want of care. or what?

Ans I think it was for the want of feed and care both.

To all the above and foregoing interrogatory and answers. (each and every one of them) the Defendent objects.

Cross interrogatories.

Int 1" When did you first see said sheep. said Moore got of Howard and Milk. and where were they when you first saw them?

Ans At my house. I first saw them. I

Suppose it was in May. so I paid before perhaps the 12th or 15th

2 When did you next see paid sheep and where were they when you next saw them?

Ans At Foster Moores. that was in June I next saw them at Mr Moore's.

3d About how long was it after you first saw paid sheep. until you saw them again

Ans Perhaps three or four weeks. I can't tell exactly how long.

4 How close were you to paid sheep. when you saw them the second time?

Ans They were in the lane and I was in the lane. the boys were bringing them in off the prairie.

5 How do you know them to be the same sheep you saw the first time?

Ans Mr Moore told me himself. that he got these sheep from Mr Howard.

6 Who drove the sheep to your house the time you first saw them?

Ans Charley Young. and some men brought them to my house. Young seemed to be boss of them.

7th What is the distance between your house and Foster Moore's

Ans About four miles.

8 Do you know from any other source whatever. that paid sheep that you saw at Mr Moore's. are the same sheep that Mr Young drove to your house as spoken of above by you.

Ans I don't know from any other source

11

312 than what I have stated.

9 State why it was that you so particularly examined said sheep which Mr Young drove to your house at the time he drove them there?

Ans Mr Young wanted me to take a portion of these sheep on the shares before Mrs Howard got there. I went and looked at these sheep particularly and I told Mr Young that if he would let me have them for half of the increase and half of the wool and half of the lambs. And if they died and got caught by the wolves they were his loss. And Mr Young told me that he could do better than that. & I told him to do it.

10 State whether you examined said sheep to see if they were diseased?

Ans I did

11 How come you to suspect that said sheep were diseased that caused you to examine them?

Ans I did not suspect they were diseased. I talked of taking some of them.

12 If you did not expect they were diseased. why did you look for disease among them?

Ans It is very natural for me to look for diseases among sheep. I don't think I ever went into a flock of sheep in my life but I looked to see if they were diseased.

13" Were all of said sheep that Mr Young

brought there. good healthy looking sheep. and in good order?

Ans There was ten or twelve may be 20 that was in rather thin order. they had not the scab nor the rot. The Balance looked well as I stated before. and a greater portion looked extraordinarily well.

14 Did you count said sheep that Young brought to your house as spoken of above, and if so how many were there?

Ans I dont know I only counted a portion of them. I tallyed for four hundred wethers that were taken out of the flock.

15 Were any of said sheep lame, or running at the nose. that Young brought to your house as stated aforesaid?

Ans None of them lame to the best of my knowledge. none running at the nose. there might have been some running a little at the nose. but none that I noticed.

16 State if you are acquainted with the different kinds of diseases common to sheep in this country. and if so state what those diseases are?

Ans Well I have seen sheep here with what I call the scab. and I have seen some with what some call the worm in the head. and some the rot. but I guess they

314 both work together. these are all the diseases that I know anything about

Qust 17." Will you please describe particularly the symptoms of disease of seab. that you spoke of before. the appearance of sheep that have that disease when they first take it and appearance the sheep have at the different stages of the disease. whether said disease is contagious among sheep. and if so how long it will be from the time a sheep catches that disease. until the disease begins to develope itself. and whether said disease is likely to prove fatal to sheep that have it. and if so how long will it be from the time they take it till they die?

Ans Well sir it generally begins right between the shoulders. that will run on a few days and spread all over the back a dry hard seab. at the commencement of the seal they will begin to fall away they do with me at any rate. in a few days. or a short time you will see thirty or forty of your sheep. or a considerable number get the seab. the first would begin do die. It will just take the wool off bodily. and part of the skin. When Sheep get the seal it will go all through them. without it is stopped. I think it is very poor sees. but if you dont look at your sheep you wont see it. A short time to prove fatal. if you dont check it. they wont last long.

18 Will you please describe particularly the symptoms of disease of grub or rot that you spoke of before. the appearance of sheep that have that disease. when they first take it. and the appearance the sheep have at the different stages of the disease. whether said disease is contagious among sheep and if so how long it will be from the time sheep take the disease. until the disease begins to develope itself. and whether said disease is likely to prove fatal to sheep that have it. and if so how long will it be from the time they take it till they die?

Ans I think a sheep will live a good while with the rot. the first ~~symp~~ appearance is they become very snotty. Sometimes sheep with the rot will apparently get better. seems like they were going to get over it. then it often takes a new start and makes distinction amongst sheep. Sheep that take the rot in the fall of the year always die. Sheep that take the rot in the spring of the year by working with tar &c. they will like ly get through the summer until fall. perhaps get well. As soon as sheep become snotty. they run down. I think it is contagious. it always proved so with me. I cant tell you how long it will be after a sheep takes the disease. until it develops itself. The first

316

you would know that they had it you could not tell how long it had been working on them.

19 Do you know any thing of a disease among sheep in this Country called the foot evil. and if so. how does it affect sheep. describe the disease generally

Ans I know nothing at all about it I have heard of it.

20 State how long it was after you saw those sheep you speak of in Mr Moore's possession until you saw them again and where you next saw them. and how close you were to them when you saw them?

Ans I cant tell how long it was between times every time I saw them it was in the lane or up in the prairie where they were herding. this was through the summer.

21 State now how often during the summer and fall of 1854 you saw said sheep. that you first saw in Mr Moores possession. as spoken of above?

Ans I suppose I saw them fifteen or twenty times. generally when I did see them I saw them twice a day.

22 State whether you ever particularly examined said sheep. that you first saw in possession of said Moore. and if so. how often did you so examine them. and what led you to examine them?

Ans I never caught any of those sheep to examine them in my life after they

left me.

23 What do you mean by "after they left me."

Ans I mean after they left me and went to Moore's.

24 What do you mean by the sheep that left your farm? do you mean the sheep that Young brought to your house?

Ans I do and the ones that Howard took away.

25 Where did you most frequently see said sheep, which you first saw in the possession of Mr Moore, during the summer and fall of 1851.

Ans Going out to the prairie or coming in.

26 How close were you generally to them when you saw them?

Ans Right in the lane with them meeting them as they went one way or the other.

Int 27 State whether you examined the pastures in which said Moore kept said sheep, during the fall of 1851. and if so, state how you examined them and what led you to make such examination?

Ans I never went through them. but I could see no pasture from the road. I thought the sheep were running down and looking bad. and I thought it was no wonder there was no pasture.

318 28 What caused you to take so much interest in Mr Moores sheep that year?

Ans Well fir myself and my neighbors supposed that it would break up Mr Moore and we were watching the sheep.

29. " Did not you and some of your neighbors predict about the time Mr Moore got said sheep. that said sheep would break him up?

Ans When he first got them there was nothing said about breaking him up if he took good care of them. after he had had them awhile and they began to run down. we talked about its breaking him up. in fact they had begun to die.

30 State if you know whether said Moore fed to said sheep the hay you speak of in your answer to interrogatory No 13 and if so how you know it?

Ans I saw Moore putting it in the racks.

31 How close were you to said racks when you saw Moore putting hay in them.

Ans About two or three rods.

32 How often did you see said Moore feeding said hay to said sheep.

Ans I cant tell you that. more than twice more than three times.

33 Did you ever see said Moore feeding them any timothy hay during said winter.

Ans I never saw him feeding them any.

34. Did you ever see said Moore feed any corn or oats to said sheep?

Ans I did not. I saw where I thought he had fed oats apparently.

35 Do you know how early said Moore commenced feeding said sheep in the fall of 1851.

Ans I dont know.

36 Do you know how much hay, corn or oats, or either of them, said Moore fed to said sheep during the next fall and winter after he got them?

Ans I do not sir.

37 State whether you were ever to the rack in which said ~~Mc~~Moore fed said sheep hay, or in the inclosure or pens, in which said Moore fed said sheep, corn and oats, during the next fall or winter after he got them?

Ans Well sir I never was in the yards or pens there was a fence between me and the pens.

38 State whether you were ever closer said rack or pens, than the ~~fen~~ road that passes along by Mr Moores

Ans I never was.

39. State whether you ever stopped and examined said racks and pens, or simply noticed them as you were passing along the road leading to Middleport.

Ans I never stopped and viewed them

pens. all the way that I ever noticed those pens was riding along the road

40 State if you know if any of said sheep died during the first summer fall and winter after Moore got them and if so how many?

Ans I saw dead sheep at Mr Moore's farm during that summer and fall. I saw stacks of them dead in the winter. I do not know the number.

41 State if you know what disease said sheep died with?

Ans I dont know what disease they died with.

42 State from your knowledge of diseases of sheep and of the remedies. What treatment is to be used in the treatment of scab. and in the treatment of the grub or rot?

Ans I have always used snuff and tobacco juice and wash them over the back I prefer keeping them in the dry. In the grub or rot I have always used tar. put it on their noses and part it on their boughs. I have given them rosin and I have given them sulphur

Int 43 State if you know what kind of treatment said Moore gave said sheep during the first fall and winter after Moore got them. and if so how you know?

Ans I do not know.

44th State whether you know from your own positive knowledge. or any other source than supposition. how much. and what kind of feed said Moore gave to said sheep. during the first fall and winter after he got them?

Ans I do not know.

45 State if you know whether said Moore doctored said sheep during the time they were diseased. and if so. if he doctored them correctly?

Ans I dont know that he doctored them at all.

Direct examination resumed.

1 In your answer to question fifth of cross interrogatories. that Mr. Moore told you himself that he got those sheep of Mr Howard. Now state fully when and where it was he told you so. and state all the conversation that was had on the subject at that time.

Ans I cant tell just when it was. perhaps three or four weeks after he got them. right at his wood yard he told me that. he got those sheep of Mr Howard. Mr Moore told me at that

3 1/2

322

time. that he had a great mind to come up to Strean's or Hirams Bennums or my house. to get our opinion on those sheep. in regard to taking them. He said he did not go. and finally concluded that he had went according to his own judgement and that he would in regard to those sheep. I told him I thought they were a fine lot of sheep and he stated that he thought they were too. I recollect very well telling him that I thought it was a pretty hard bargain I told him that if he could keep the wolves from among them that he might do very well. his reply was that he had boys that would take care of them.

2d What reason did said Moore give at that time for thinking or wishing to consult you Hiram Bennum & John Strean in regard to the taking of said sheep.

Ans Why that was because we had been in the habit of keeping sheep. and taking care of them.

3 Are what is called scabs a disease among sheep. or are they liable to get scabby from colds like a human being. and get over it again?

Ans Yes sir sheep are liable to take cold and be very scabby. and in a few days get over it and be nice and clean.

4th At what season of the year are they more liable to become so. whether soon after shearing

time. or through the summer and fall.

Ans I dont know that there is any difference between fall and spring. it depends on the weather.

5th In your answer to cross interogatory 18" you state. sometimes sheep with the rot will sometimes apparently get better seem like they were going to get over it then it often takes a new start and makes destruction among sheep. Now state how long it will be generally after sheep appear to get better before it will take a new start again. as you have said,

Ans It is but a few days. sometimes a week I do not know exactly how long. it is a good deal owing to the weather.

6 In your answer to cross interogatory No 39" You state all the way that you ever noticed those pens. was when riding along the road. Now state from the nearness of said pens to the road. and the plain and notorious appearence of things about Moores premises. the first fall and winter after he got said sheep. what was your conclusion and what must have been the conclusion of any common farmer in regard to the care of said sheep during the first fall and winter?

Ans Well the conclusion was that they were not fed as they ought to be. were not fed half enough. this was the conclusion of myself and some of my neighbors

324 7" In your answer to cross interrogatory #6 you state that you saw dead sheep at Mr Moore's farm during the summer and fall. Now state what part of the summer you saw said dead sheep at Moore's. whether the fore part. or middle or latter part.

Ans I think it was in August. the first that I noticed being dead at Mr Moores in a yard.

8 In your answer to cross interogatory No 12 you state. "I have always used snuff and tobacco juice. and wash them over the back. Now state what you washed them over the back with. and state what the result or good it would do to doctor sheep with these remidies. without shelter to protect them from the storm. and wet weather. from your experience in the matter?

Ans I took tobaco. plugs and boiled it, and washed them with it. If it was dry weather I dont think it would make much difference if wet weather better to have them in sheds. by all Means

9 In your answer to cross interogatory No 8 you state that you do not know what kind of treatment said Moore gave said sheep during the first fall and winter after he got them. Now state what you meant by paid answer. whether you meant medical treatment or general

treatment and management of said sheep about the farm that you did not know.

Ans I meant medical treatment. that is one thing I ment. the other was in regard to his feeding them.

10 In your answer to cross interrogatory No 9. you state that you dont know what kind of feed said Moore gave to said sheep during the first fall and winter after he got them. Now state from your knowledge of sheep raising and of the quality of the hay you saw Moore stacking for said sheep during the first season how many acres of oats said sheep would require to be well wintered. with the addition of ten acres of corn fodder in your opinion?

Ans With that bad hay and ten acres of corn fodder those sheep would require twenty dozen of sheaf oats a day. ten dozen at a feed. through feeding time I believe that lot would do where there was some grass.

11 About how many months in the year does feeding time of sheep last generally?

Ans As a general thing six months.

Int 12 How many bushels of oats are usually raised on an acre of land?

Ans Perhaps 25 bushels. I have seen when there was not any. And I have

326 seen where there was seventy bushels to the acre.

13" State how many dozen of oats are raised to the acre generally in your neighborhood

Ans Perhaps 30 dozen. they hardly ever make a bushel to the dozen.

14" From your knowledge and acquaintance of Mr Moore. and the manner in which he manages his farm. and has for the last ten years. state what kind of a farmer he is. whether good bad or indifferent. in your opinion.?

Ans I consider Mr Moore a poor farmer and the neighbors likewise say so.

15" State if you recollect what kinds of crops of corn and oats said Moore raised during the summer of 1854. whether good or poor?

Ans The crops of oats I know was poor. and the corn I cant say what it was that season.

16 State if you recollect whether you ever saw any dead sheep hanging in the rack at Foster Moore's during the first fall and winter after he got them if so state how many and at how many times?

Ans I saw two sheep hanging in that rack at Foster Moore's. one time as I was coming to Middleport. during the first winter. that same day as I went back there was two sheep mired in the mud there

by the rock. I came up to the house and told his boys to go down and take those two sheep out of the mud that there was two mired in the mud at the rocks. the reply the boys made was. "darn the sheep I wish they were all mired."

17 In your answer above you say. as you came back that same day there was two sheep mired in the mud there by the rocks Now state whose sheep they were. by whose rocks, and under what condition and circumstances they were. whether in such a condition that they could not extricate themselves or how. state fully?

Ans I suppose they were Mr Moores sheep by Mr Moore's rocks. on his place. Bad case. Bad ~~condition~~ situation, it was very muddy around the rock a piece from it. just at the rock it was filled up with litter The sheep was in poor condition. there was two mired there in the mud and could not get out. I went up to the house and told Mr Moor's boys that there was two sheep mired down in the mud there by the rock. they replied. darn the sheep I wish they were all mired I told them they had better go and take them out.

Int 18 State if you know of Hiram Penmans sheep John Straus's sheep and said Foster Moores said sheep. getting mixed during the first summer and fall after said

Moore got them. if so state fully. about what time in the year it was. and all you know about it.

Ans I came along there by Mr Moore the sheep was out at the mouth of the lane south. Mr Moore said there was some stray sheep got in with his. he showed them to me. some eight or ten. I told Mr Moore I thought they were Hiram Kemm's sheep. and he requested me to tell Hiram about them. and I did. He Hiram Kemmon went to see. and he told me they were his. Sometime along between the last of July and the first of fall of the first year. I think so I cant think any thing els.

To all the above direct examination interrogatories and answers the defendent objects.

Cross Examination.

Int 1st From your knowledg of sheep raising when the rot or ~~scab~~ grub a scab get a lot among sheep. will not a large portion of them die even with all the doctoring and care that may be bestowed upon them?

Ans Well they do sometimes. but if you notice the scab at the commencement of it you may check it. but if you let it run on until a great many get inoculated they will be hard to manage. A man ought to be well

acquainted with sheep raising. before he goes into it so largely. if a man will just go and throw feed to his sheep without looking at them until the wool begins to drop off. he will not notice it.

Q What time in the winter was it that you saw those two sheep stuck in the mud.

Ans Well I think it was the latter part of January.

Q What business was said Howard and Milk engaged in during the spring and summer of 1851. were they not engaged in buying and selling and trading in sheep generally

A I cant tell you sir.

John Axtell.

830

State of Illinois }
County of Troyois } ss

I H C Bryant a justice of the Peace within and for said County and state. Hereby certify that the above Alfred Beaket. Hiram Vennum. George Martin. John Stream. & John Axtell. were by me first duly sworn according to law. to testify the truth. the whole truth and nothing but the truth relating to said cause that their depositions were reduced to writing and afterwards read and sworn thereto by each of said witnesses. That the said Foster Moore. adverse party attended in person. and by his attorney and said depositions were taken at Middleport in Troyois County and State of Illinois. Commenced on the 23rd day of February 1857. and continued from time to time. by agreement of Parties until all were taken.

In testimony whereof I have hereunto set my hand and seal. this 18th day of April A.D. 1857.

H. C. Bryant, J.P. (Seal)

State of Illinois } ss
Iroquois County }

Iroquois Cir. Court
October Term A.D. 1857

Samuel Milk Ctal
vs
Foster Moore } In Chancery

The above named Foster Moore or James Fletcher Esq his attorney are hereby notified that on the 7th day of July next I shall proceed to take the depositions of Charles S Young, William Thurman, Valentine Wiggins, William Leonard, Joseph Herr James Davidson Darnes Duncan and others said depositions to be taken by and before Philip Leonard a justice of the peace in and for the county of Vermillion in State of Indiana at his office in said County of Vermillion between the hours of nine o clock A. M. & six o clock P. M. of said day & continue from day to day between the hours aforesaid until all are taken which said depositions when taken are to be read on my part as evidence in the trial of the above entitled cause now pending & undetermined in the said Iroquois circuit court June 17th 1857.

Samuel Milk
By Geo B. Joiner his att.

I do hereby acknowledge service of the within notice by copy June 15th 1857.

James Fletcher
Attorney for the within named Foster Moore

State of Illinois }
Vermillion County } ss

The depositions of Charles S. Young Wm Thurman.

Taken before me the undersigned Justice of the peace in and for the County of Vermillion in the

State of Illinois at my office in the said County of Vermillion commencing on the seventh day of July A.D. 1857 at the hour of nine oclock A.M. I continued from day to day as hereinafter expressed said depositions to be read as evidence in the case now pending & undetermined in the Iroquois Circuit Court in the State of Illinois where in Lemuel Milk and Franklin Howard Survivors of Wm Howard Deed are complainants & Foster Moore is defendant on the chancery side of said court and taken in pursuance of the foregoing notice when Charles S. Young being duly sworn deposeth & saith in answer to the following interrogations to wit:

Interrogatory 1st Are you acquainted with the parties to this suit

Answer I was acquainted with Lemuel Milk. Wm Howard and Foster Moore.

Interrogatory 2nd State if you know of Lemuel Milk, and Howard letting Foster Moore have a lot of sheep in the spring or summer of A.D. 1851 and if so state how many they let him have and all about it

Ans I understood by Mr Howard that he let Mr Moore have a lot of sheep in June in the month of June 1851 I understood Mr Moor to say that he got the sheep the report of both men was Four hundred and twenty some sheep. I think

Interrogatory 3d State where you last saw said sheep before Foster Moore received them

Ans I saw said sheep last at John Excls in Iroquois County Ills

Interrogatory 4th Who drove said sheep to John Excls

Ans I drove the sheep there myself with the assistance of John Wiat, Samuel Williams,

Interrogatory 5th State all you know about the purchase and driving of said sheep when, by whom, and for whom.

332

333 they were purchased.

Ans I bought said sheep myself for Milk and Howard employed by Howard in the month of May 1851 I collected said sheep at Joseph Kerr I then started them from Kerr's pasture and moved them to John Axtells I landed them there the 4. day in the afternoon after starting them from Kerr's pasture the distance of about 29 miles

Interrogatory 6th State how many there was of said flock of sheep old and young:

Ans There was between seventeen and eighteen hundred head all sheared sheep except about 300 head of old sheep and the lambs not sheared.

Interrogatory 7th State what was the condition of said sheep during the time you know them as to health and soundness?

Ans I bought those sheep of some thirty different persons I bought the top of the flocks I never bought but one flock clear through I bought nothing but sound good thrifty sheep free of that one lot of sheep. they were thirteen indifferent sheep that lot of sheep averaged that spring three lbs and 7 oz of wool per head they was thought to be about half grade of the fine wool stalk I delivered that lot of sheep to Wm Howard at John Axtell on the 9th day of June in the year 1851 a good sound healthy lot of sheep

Interrogatory 8th What do you mean by the top of the flocks.

Ans I mean when I say the top of the flocks I mean the choice of the flocks

Interrogatory 9th State how many different flocks of sheep you collected at J. Kerr's you collected for Howard and Milk during the year 1851

Ans None but one

Interrogatory 10 State if you saw said sheep after Foster Moore got them if so when and where and how the looked as to health and

conversation and what Mr Shaw said about them

Ans I saw the sheep twice after Mr Shaw got them in the year 1851 the first time was in the latter part of August I had some talk with Mr Shaw concerning the sheep they was no complaint. I rode in among those sheep when they was graying a little S. E. of Mr Shaws house and took a good look at them the graying was good and the sheep looked fine also in the fore part of the month of Oct 1851 I saw a portion of said sheep and Mr Shaw at the same time he was on search of sheep. I asked Mr Shaw how his sheep was doing and he answered they was doing well but his sheep had become very much scattered and he was under great fear that they would be driven among a lot of sheep near where we stood he believed some of his sheep was among them I got Mr Shaw a hand full of salt and he caught the sheep and examined and let it go saying it was not his sheep the sheep looked as well that I saw in the month of Oct.

Interrogatory 11th Said if you had a conversation with Said Shaw as heard any between Child and Shaw in the spring of 1852 as aforesaid as to his success with said sheep if so state when, and where, and what the conversation was

Ans In the latter part of March or the four part of April of the year 1854. Mr Shaw and Mr Child met and staid all night together at my house conversation took place concerning with the luck with said sheep Mr Shaw stated to Mr Child that his luck with these sheep the fall winter he had them was hard he lost a good many of them but he thought it a good deal owing to his feed through sickness or some other cause his feed was not good as early as he would have liked me and Mr Shaw had some conversation about the said sheep about the same time he reported to me

335

that- his luck had been pretty hard in that- sheep operation and if I could do him any good he would be glad that- I would do so that- ended that- conversation.

Interrogatory 12th State where Mr Moore said he was going and for what- object- at- the time he was at- your house as above stated with- Milk?

Ans Mr Moore stated at- the time they parted at- my house. Mr Moore said he was going down to Georgetown and positive point- to buy sheep that- he intended to have their sheep ready for him when due and they differed. Mr Moore said they were due in June. Mr Milk said they were not- due until July. Mr Milk said if they were he could not- see how he could be there but- if he could not- he would have a man there Mr Moore stated to Mr Milk he intended to have the- sheep ready to the day he did not- want- him to send an agent but- wanted him there personally to receive them himself.

Interrogatory 13th State what- objections Foster Moore made at- that time you speak of in your last- answer to delivering to the said Milk the whole number of sheep he had received of them if any should be any

Ans He made no objections at- the time.

Interrogatory 14th State how long this conversation took place between Foster Moore and Samuel Milk at- your house as above stated before said sheep became due

Ans About- two months and one week

Here the examination in chief was suspended

The Defendants Council objects to all the foregoing questions all except the first.

Cross interrogatories by Defendants Council

Int 1st State if you are the agent of Howard and Milk or

the purchase of the sheep above refered to on your direct examination

Ans I was employed by Mr Howard to purchase the sheep for him and Mr Milk using a portion of their means and a portion of my own at Mr Howards I received all my funds from Mr Howard and delivered the sheep up to Milk & Howard.

Question 2nd State if you are well acquainted with sheep their nature and habits in general as well as their diseases and also a judge of stalk and so reputed to be?

Ans For the term of the last ten years I have bought and sold upon an average a thousand sheep a year. Disease I have very little knowledge as to the different diseases that attend sheep we have not had in the last 12 years any diseased sheep in our county that I have any knowledge of until the last 18 months sheep have become vocalate with the scab. I think I am a tolerable judge of the stalk of sheep not the worst nor the best.

Question 3d Have you not been in the habit of acting as an agent for the purchase of stalk of all kinds for drovers and others in the stalk business. I mean for the purchase of horses, cattle, and sheep and hogs or any either of that class.

Ans I have been in the habit for the last ten years when called on by stalk dealers to assist them in buying and getting up horses, cattle, sheep and hogs.

Question 4th Are you not at this time in the employment of Mr Milk in purchasing some stalk of the above class innumerated and have you acted as the agent of Milk and Howard or either of them in purchasing stalk of any kind since the year 1851 and how often if so

Ans I am not at this time employed by Mr Milk to buy stalk of any kind but for the last month and a half taken a very active part in trying to sell some stalk to Mr Milk when called on to Mr Milk I have assisted

336

337 purchase stalk of any kind since the year 1851 until the spring 1856

Question 5th Will you state why you rode among the sheep in the month of Oct 1851 to examine them or if you were so instructed by either Mr Milk or Mr Howard and also how you came to examine the sheep in the year 1854

Ans I never rode out in the month of Oct year 1854 to examine Mr Moores sheep I never was instructed by Mr Milk or Mr Howard concerning Mr Moores sheep I never examined any sheep in 1854 [illegible] of about 300 hundred which he told me that he purchased near quaker point and benetts creek and on his return home with said sheep he staid all night with me I thought the majority was a good fair lot of coarse wool sheep in the month of Oct 1851 I examined a part of Mr Moores sheep a foot I walked out to where they were.

Examined in Chief.

Question 1st State whether your knowledge of sheep and their diseases is such as will enable you to determine whether they are in good health, or sound, or diseased by bearing with them and handling them

Ans My birth in the year 1809 the 16th day of Sept for the last 15 years I have handled more or less sheep every year which gives me good reason to say that I believe I am some what acquainted with the stock of sheep if I would go among a flock of sheep skale foot evil or rot. I could tell whether either of those diseases was among them or not

Question 16th State who assisted you during the time that you collected that lot of sheep at Herrs in the year 1851.

Ans Wm Thurman assisted me in trying a portion and collecting all of that lot of sheep at Joseph Herrs I considered him a good judge of sheep a good judge of the age of sheep

a good judge of the grade of sheep for he is a regular sheep shearer

Charles his S. Young
mark

Sworn to and subscribed and sworn to before me this 7th day of July A. D. 1857 at my office in the County aforesaid

And also at the same time and place came Wm Thurman and after being duly sworn Deposeth and say as follows to wit: in answer to the following question.

Question 1st State if you assisted C. S. Young in May or June 1857 in collecting a lot of sheep at Joseph Herr if so how many you collected and who they were for?

Ans Yes sir I did. I believe 11 or 12 hundred old sheep besides some lambs I do not recollect how many lambs the sheep belonged to Milk and Howard. Mr Howard told me they him and Mr Howard settled with me I mean my wages

Question 2d State the condition of said sheep as to health ~~and~~ and soundness during the time you knew them and all you know about purchase of the same

Ans I considered them a good hearty healthy sheep we thought them as first-qua. of sheep in the country.

Question 3d State if you know of any person in this neighborhood getting any sheep out of that lot of sheep collected at Herr if so who and how many did he get?

Ans Yes sir I do James Davidson Joseph Herr got some I did not know how many exactly they got.

Question 4th State how long since that time you have been acquainted with said Davidson and Herr sheep and how they have done and what disease if any they have had among them

Ans I have ~~never~~ known them, ever since we let them have them they have done well I saw them often I sheared my year No disease among any sheep or them in the County that time

338

339

Question 5th State if you are acquainted with each person those sheep was bought of 1857 and their respective flocks of sheep. If so state how long since that time you have been acquainted with them and each of them and those sheep?

Ans I know every man and woman they was bought of I have got all of their names in my day book at home I have been acquainted with them ever since we bought the sheep and with their flocks of sheep too I assisted C. S. Young in buying for Milk and Howard.

Question 6th State how each of the different lots of sheep from which this flock which was bought for Howard and Milk and collected at Joseph Herrs was selected have done since the purchase thereof of said flocks up to within two years to this date?

Ans I have not seen or heard of any difficulty among them they have done well as far as I have known anything about them

Question 7th Where was that lot of sheep of Howards and Milk bought

Ans They was brought in this County except one bunch of about 12 head of sheep which was bought in the State of Indiana Warren County 6 miles east of where I live

Question 8th State if you saw the sheep which had been bought by C. S. Young previous to your commencement with him for said flock if so state what was their condition as to health and soundness?

Ans I saw the sheep I considered them good and hearty.

Question 9th State what is your occupation and has been for the last 10 years and state how extensively during that time you have been engaged in the management of sheep.

Ans Trading and Trafficing more or less in sheep every year.

Question 10th State from your knowledge of sheep and your experience in the management of the same you consider yourself a good

judge of the age quality & soundness of sheep?

ans I have sheared from 400 to 1000 head of sheep every year for the last 10 years and consider myself as good a judge as the common run of men.

William Thurman

Subscribed and sworn to before me at my office in said County this 18th day of July A. D. 1857

The questions in the foregoing deposition objected to by defendand Counsel.

And also on the 8th day of July came Joseph Hearn and being duly sworn deposeth and says as follows to wit:

Question 1st State if you did get any of the sheep collected by L. L. Young and Thurman in the year of 1851 or about that time at your house for Howard and Milk if so state how many of them you got?

ans Yes I do not recollect I think as well as I recollect the sheep was for a man by the name of Howard my information was from Mr Young that they belonged to Howard I got some sheep out of that lot I think 10 lambs and 8 ewes I swaped sheep with Young.

Question 2nd State how many sheep and lambs you got of that flock have done since you got them

ans They have done very well the ewes I sheared some of them this Spring I do not recollect what increase the lambs I may have killed them or sold them they done well while I had them.

Question 3d State what kind of sheep you let Mr Young have as to health and soundness for those you got out of that flock?

ans I swaped him neat stock for them I got out of that flock I thought them to be sound sheep as far as I know of them.

Question 4th State whether you know of James Davison getting any sheep out of that flock if so state how many out

341

how they did after he got them?

Ans He got some sheep out of the same flock I do not recollect how many how they did I do not know I never heard any complaint I live $\frac{1}{2}$ mile from Davidson

Joseph Herr

Subscribed and sworn to before me at my office in said County this 8th day of July 1857.

The question in the foregoing deposition objected to by Defendants Councils

July the 9th A. D. 1857.

Also came William Leonard and being duly sworn deposeth and says as follows to wit: to the following question

Question 1st State if you know if C. S. Young and Wm Thurman collecting a lot of sheep at Joseph Herrs in the year 1851 if so who for and what month in the year collected?

Ans Six years ago last June C. S. Young Wm Thurman they went over on the Middlefork and bought a lot of sheep the day they went to bring them home I went out on the prairie I went to the road where they was bringing them to Joseph Herrs I helped C. S. Young to Herrs. Charles S. Young told me they were for Wm Howard.

Question 2nd State who marked said sheep at Herrs at that time

Ans I marked the sheep

Question 3d State what was the condition of said sheep at that time as to health and soundness?

Ans The sheep to my notion was in good health at that time

Question 4th State if you ever seen any of those sheep that you marked at that time at Joseph Herrs afterwards in Drayner's County if so when and at whose place and state how said sheep look as to health and soundness and order

Ans I suppose I saw a parcel of them as L. G. Young was driving some cattle to Chicago it was in October 1851 at a ridge East of a mans house they called Mr Shaw in Iroquois County these sheep were in fair plight

Question 5th State what Mr Shaw said his business was when he came out to you at the time you saw these sheep in October as above stated

Ans He came out to where we were with the cattle to see if we had any of his sheep in our gang we had a few sheep, he said his was scattered and that he saw we had sorted sheep to see if any of his was among them

Question 6th State how extensively you had been engaged in the management of sheep about that time

Ans About that time I helped Mr Young right smart perhaps 2 or 3 years

William J. Leonard

Subscribed and sworn to before me at my office in said County this 9th day of July A. D 1857.

July 9th A. D. 1857.

Came Valentine L Wiggans and being duly sworn deposeth and saith in answer to the following question to wit:

Question 1st Are you acquainted with the party to the above entitled suit?

Ans I was some acquainted with Mr Howard I heard them call him Wm I am acquainted with Mr Shaw and Mr Milk better acquainted with Mr Shaw than Mr Milk have seen him often.

Question 2nd State if you heard a conversation between Mr Shaw and Mr Howard in the year 1851 about the sheep said Howard he said Shaw have if so state what that conversation was?

Ans Howard asked Mr Shaw how the sheep were doing

Mr Moors answer was doing very well

Question 3d State how many Mr Moor said had died of said sheep?

Ans Mr Howard asked Mr Moor how many of the sheep he had given him was dead he had given him 5 or 6 he said two or three of them had died that is all I know about the sheep.

Interrogatory by defendants Council

Question 1st State if Mr Howard did not tell you that he expected all of the sheep he had let to Moor or a large portion of them would have died or something to that effect?

Ans He expected those he had given him were dead he did not say anything about them he had let

Valentine L. Wiggans

Subscribed and sworn to before me this 9th day of July 1857.

To all of the foregoing questions on the part of the plaintiff the defendants council objects to

State of Illinois }
Vermillion County }

Philip Leonard Justice of the Peace in and for said County of Vermillion do hereby certify that the deposition of Charles S. Young was taken before me and reduced to writing by me and subscribed and sworn unto before me on the seventh day of July A.D. 1857 and that the deposition of Wm Thurman was commenced on the seventh day of July and continued until the eighth taken reduced to writing by me and on the ninth day of July 1857 was subscribed and sworn to by said Thurman before me and that the deposition of Joseph Herr was taken and reduced to writing by me and subscribed and sworn to by said Herr before me on the eighth instant and that

the deposition of Wm Leonard and Valentine L. Wiggans was taken and reduced to writing by me and sworn to and subscribed by said Leonard and Wiggans respectively before me on the Ninth day of July A. D. 1857 that all of said, said depositions were taken before me and reduced to writing by me in the presence Samuel Milk and Foster Moor and their respective attorneys at my office in the said County of Vermillion in the state of Illinois in pursuance of the foregoing notice and that taken of said deposition was continued from the 7th day of July A. D. 1857 to the 8th instant and from the 8th to the 9th inst in presence of the said Milk and Moor and their respective attorney was that each of said witnesses were previous to the taking of said depositions duly sworn by me to testify the ~~whole~~ truth the whole truth and nothing but the truth in said case and that each deposition was carefully read over to the witness who subscribed thereto and afterwards sworn to and subscribed by them respectively and in the presence of the said Milk and Moore and their respective attorneys and that said depositions was taken between the hours of nine and six of the days aforesaid and that said defendants counsel entered his several objections to the question of the complainants at the foot of each deposition respectively as the same are entered therein

In witness whereunto set my hand and seal at my office in said county of Vermillion and State of Ills the 9th day of July A. D. 1857

Philip Leonard

Justice of the Peace

Con fees $2.65 Witness J. Herrs 1.00 Wm Leonard 1.00 $4.65
witness V. Wiggans 1.00 W. Thurman 1.00 C. S. Young 1.00 3.00
7.65
4.75
13.10

J. P. fees

Fees paid by S. Milk Philip Leonard J. P.

344

345

State of Illinois } Iroquois circuit Court
Iroquois County } ss April Term AD. 1858.

Lemuel Milk & Franklin Howard
Survivors of William Howard deceased,
vs } Bill to foreclose Mortgage
Foster Moore.

The above named defendant and James Fletcher Esq, his attorney will please take notice that on the 15th day of April inst, we will attend at the office of C. F. McNeill Esq, a justice of the said County of Iroquois, in the Town of Middleport ~~in~~ in said County, between the hours of nine o'clock A.M. & six o'clock P.M. of said day and continue from day to day, until all are taken, to take the depositions of Stephen S Amos, Ray W Andrews & Hibbard & C C Vennum, and others, Said depositions to be read as evidence on the trial of the above entitled cause now pending, ~~said undetermined~~ in the said Iroquois circuit court on the chancery side thereof, on the part of said complainants.

Lemuel Milk &
Franklin Howard,
By Geo. B Jones, Sol.

I do hereby acknowledge service of the foregoing notice & copy, this 4th day of April AD. 1858.

James Fletcher,
Attorney for F Moore.

State of Illinois }
Iroquois County } ss

Lemuel Milk, and Franklin Howard.
Survivors of William Howard. Deceased.

vs } Bill in Chancery
Foster Moore. } To foreclose Mortgage.

Depositions of C.C. Vennum. and
Ray W Andrews. Being of lawful age
and sound mind. Taken by and before
me the undersigned. Justice of the Peace.
in and for said County. on the 15th day of
April. A.D. 1858. between the hours of nine
O'clock in the forenoon, and six o'clock
in the afternoon. in pursuance of the
foregoing notice. Said depositions to be
read in the above entitled cause now
pending in the Iroquois County Circuit
Court, upon the trial of said cause on
part of the complainants. Said witness
being by me first duly sworn to
testify the truth. the whole truth, and
nothing but the truth. in relation to
the matter in controversy in the above
entitled cause. according to law. so far
as they may be interrogated. depose and
say in answer to the following interroga-
tories, to wit,

The said Christopher C. Vennum
being first duly sworn. deposeth and saith

Int 1st — Are you acquainted with the parties in
the above entitled suit?

Answer, I have no acquaintance with Howard, I am some acquainted with Milk. and am well acquainted with Foster Moore.

Int 2nd. How long have you been acquainted with Foster Moore? and how far have you lived from him during that time?

Ans I have been acquainted with him about twenty years. or a little over. and have lived about three miles from him.

Int 3d. State if you know of Foster Moore getting a flock of sheep of Howard & Milk in the spring or summer of 1856?

Ans I know of his getting a flock of them, but what year I don't know. I think it was about that time.

Int 4th State how long after said Moore got said sheep it was when you first saw them, to the best of your recollections?

Ans. I think it was about from two to three weeks.

Int 5th State how near you were to said sheep when you first saw them, and whether you took particular notice of them at that time?

Ans The flock were in the pasture about a mile east of Foster Moore's. I was close to some of them, and some distance from some.

They were scattered on the prarie, they had just been turned out it being early in the day, and they were ranging on the gross. I took as much notice as I could conveniently the way they were travelling.

Int 6th State how many there were of said sheep according to the best of your knowledge?

Ans From three to four hundred there looked to be.

Int 7th State how often you saw said sheep during the first summer after said Moore got them?

Ans I could not say how often, about half a dozen times.

Int 8th. State how said sheep looked the first time you saw them, as to condition and health?

Ans. A portion of said sheep looked fine. The ballance looked poor and hollow. and had been badly sheared which gave them a bad appearance.

Int 9th State how extensively you have been engaged in the business of raising and taking care of sheep?

Ans. My father kept a flock of sheep from

349

my earliest recollection. from two hundred to seven hundred. up to the time I left him. which was in the state of Pennsylvania. Since I become of age I began with about ten and from that up to one hundred and fifty while I was in Pennsylvania I come to this County about twenty - three years ago. About three years after I come here I commenced a flock of sheep on a small scale. and increased them by degrees until I had about three hundred and fifty. and kept them on, till about five years ago.

Int 10th What is your age and occupation in life?

Ans I was fifty three years old on the tenth of this month. My occupation has been farming all my life.

Int 11th From your knowledge of sheep and sheep raising. state your opinion as to whether the said flock of sheep of the said Foster Moore were diseased or not. at the time you saw them as above stated? and if so, state what disease. in your opinion they had. if any?

Ans I did not think they were diseased the first time I saw them.

Int 12th State if you are acquainted with Foster Moore's farm on which he lives and. on which he kept said sheep?

Ans. I am

Int 13th What kind of a location is it? Low and wet or high and dry?

Ans It is rather low & wet.

Int 14th. State what kind of a location said farm is in your opinion for sheep raising? Good or bad?

Ans Rather bad.

Int 15th State from your knowledge of sheep raising, and your knowledge of Foster Moore, and his habits of farming, what effect it would have on a healthy ~~flock~~ lot of sheep of four hundred to place them in the care of Foster Moore, and to be kept under the same circumstances that said flock of sheep were kept in the course of the year?

Ans It would have an effect to decrease the flock by death. I could not say how many would die.

Int 16th State whether under all the circumstances under which said flock of sheep were kept of the said Foster Moore's, it would not decrease their number one half in the course of a year, of a healthy flock of sheep of four hundred, in your opinion?

Ans Under all the circumstances I believe it would.

Int 17th What Kind of a farmer is Foster Moore, and has he been for the last ten years. a good farmer or a bad one?

Ans Rather rough & bad.

Int 18th State in what respect Foster Moore was not calculated to take a flock of sheep of four hundred to keep at the time he had said flock?

Ans His farm was too small; he had not the same grass necessary, and he was unacquainted with handling so many sheep himself. His location was too low and unprovided with shelter.

Int 19th State what you ever heard Foster Moore or any of his neighbors say, prior to the time of the commencement of this suit, about said flock of sheep being diseased at the time said Foster Moore got them?

Ans I never heard any person say they were diseased prior to the commencement of this suit, that I recollect of.

Int 20th State the conversation you had with Foster Moore about said sheep soon after he got them?

Ans I met with him and commenced talking with him about the flock of sheep he had taken, that if I had seen him at the time he got them, I would have put him out of the notion of it, that if he

wanted to experiment in sheep to begin with a less quantity or number. He said if he had any he wanted enough worth attention, or words to that amount.

Int 21st State what disease you now believe said sheep had, if any, when you first saw them?

Ans I don't believe they had any,

Objt To all of the above and foregoing interrogations and answers the defendent objects.

Cross interrogatories by the defendant.

Int 1st State whether you consider yourself a good judge of the different diseases of sheep. and state fully what has been your experience among diseased sheep?

Ans, I dont consider I am any judge of the diseases in sheep. I can tell when a sheep is sick, but cant tell the disease always. I have but little experience in ~~deses~~ diseases of sheep. I had a flock of sheep that commenced dying about the first of June, died all summer & fall, to the amount of about two hundred head; the ballance of the flock came out healthy the next spring without any medicine. I dont know what the matter was with them. The said flock of sheep was on the farm I now live on, about seven or eight years ago. I have had no other experience in the

353

diseases of sheep.

Int 2nd Is it your opinion that the various diseases of sheep in this country are contagious? and if so. state what are. and what are not?

Ans. I think the majority are. The scab. the rot. and the foot evil are contagious diseases in my opinion in sheep.

Int 3d State if you know any thing about the disease called the consumption in sheep?

Ans I do not,

Int 4th State if you know any thing about the disease called "Turnsick" in sheep?

Ans I do not,

Int 5th State if you know any thing of the diseases called the <u>sot</u>. inflamation. of the brain. Acute inflamation of the lungs. Acute dropsy. the bot or grub in the heads or any of them. and if so. state fully all you know of them?

Ans I split open the heads of some of my sheep that died. and some I found a worm or worms in. from a half to 3/4 of an inch long in the shape of a bot. Part of the sheep that died apparently with the same disease I could not find any worms in. I dont know any thing of them further than I have stated.

Int 6th State whether when you first saw said sheep of said Moore's you

examined them for the purpose of ascertaining whether they were diseased or not—?

Ans I did not.

Int 7th State whether when you first saw said sheep as spoken of by you above, you thought of any disease being among said sheep or not?

Ans I did not.

Int 8th You speak in your direct examination of a portion of said flock of sheep looking poor and hollow and bad. The first time you saw them. State if you please, what proportion of said sheep looked poor hollow and bad, as spoken of by you above?

Ans I think from my recollection about one third were fine sheep, one third just common average sheep of the country, and one third very indifferent sheep.

Int 9th State whether you know how much hay & grain of any kind, said Moore fed said sheep during the first winter after he got them; and if so, state what you know about it—?

Ans. I don't know any thing at all about what kind grain or hay he fed them.

Int 10th State if you know how much timothy hay and how much prarie hay, or how much of either, said Moore fed said sheep during the first winter after he got them?

Ans I do not.

Int 11th State if you were to see a flock of sheep of four hundred or more where one third of them looked fine, and one third of an average quality of sheep, and one third which looked very bad. grazing on the grass in the month of June or July. whether you could tell what was the matter with those sheep that looked bad. and whether they were diseased or not. & if so, what the disease was?

Ans. I could not tell. If they were badly diseased I think I could tell that they were diseased. What the disease was I dont know that I could tell.

Int 12th State whether you do know or do not know. whether that portion of said flock of sheep of said Moore's which looked bad. poor. and hollow, were or were not diseased the first time you saw said sheep as spoken of above?

Ans, I do not know. I did not think at the time. they were diseased. But dont know but that they were. My impression now is just as it was then.

Int 13th State what was the reason that one third of said flock of sheep. the first time you saw them looked poor hollow & bad as spoken of by you in your direct examination?

Ans I thought they had been badly wintered. badly grazed. and badly shorn.

Int 14th State if you recollect what kind of a spring it was in the spring of 1857. whether warm and early, or late. cold & wet?

Ans I dont recollect. My impression is that it was rather cold and wet.

Int 15th State whether from your own knowledge. what kind of treatment said Foster Moore gave said sheep during the first summer. fall and winter after he got them?

Ans I passed there late in the fall. thought the sheep were in a bad fix to commence the winter. Saw them in the winter. part of them dead and part were living. & thought some of those living would die.

Int 16th Is your answer to interrogatory No 15th all you know in regard to Foster Moore's treatment of said flock of sheep?

Ans It is.

Int 17th You state in answer to interrogatory No 16 in your direct examination that under all circumstances you believe that in the course of a year it would decrease a healthy flock of sheep of four hundred one half. State how you form such belief. wether from actual knowledge. or from a general

357

acquaintance with said Moore & your opinion formed from general acquaintance?

Ans

From my general opinion of said Moore, the condition of his farm, and the general condition of things around him.

Int 18th

State from your knowledge of Foster Moore's neighborhood how many good locations there are in said neighborhood for sheep?

Answer Int 19th

There is none.

State whether among your neighbors, and yourself, John Stream & Hiram Vennum, it was not talked of and generally and spoken of by and among them and yourself, when said Moore first got said sheep, that he would lose a large portion of them, and that they would break him up, or some such talk, and state fully what was said upon that subject at that time, so far as you can recollect?

Ans

In conversation with them at various times concerning Moore and his sheep operations, it was spoken of by them and myself that he would lose a large number before spring, and that it would eventually break him up, or words to that effect.

Interrogations in chief resumed.

Int 1st Now state fully why you and your neighbors came to the conclusion as stated in your answer to the last interogatory;

Ans In the first place no farmer could afford to pay the interest on in other words such a rent for sheep as he was paying in that investment. In the second place he was unprepared with feed and farm. to take so big a flock of sheep. In the third place he was unacquainted with the sheep business. In the fourth place his slovenly mode of farming would not do to keep sheep. These are the reasons why we came to that conclusion.

Int 2d State in coming to said conclusion, what allowance you made, if any, for disease being among said sheep at the time he got them?

Ans We did not make any.

C. C. Vernum.

Subscribed and sworn to before me this 15th day of April A.D. 1858.

C. F. McNeill. J.P. (Seal)

Also at the same time and place came Ray W. Andrews, who after being first duly sworn, deposeth and saith to the following interrogatories, to wit:

Interrogatories in chief.

Int 1st Are you acquainted with the business of raising sheep. their diseases and

358

management. if so state how extensively?

Ans Ever since I was old enought to carry a fork full of hay, for the last twenty years, up to five years ago. I have been in the habit of feeding, raising, buying, & selling sheep.

From boyhood up to the present day I have read all the works in regard to sheep management I could get hold of, and have cured, or tried to cure, all the diseased I have ever seen sheep afflicted with.

Int 2nd State what are the most common diseases among sheep that you have met with in this state?

Ans Braxy, Rot, and Foot ale.

Int 3d What is the cause symptoms and nature of the disease called the Braxy.

Ans. It is caused sometimes by hard driving and plunging into cold water, and very frequently by exposure to cold rains and storms at any time. It is also occasioned by lying on cold and wet ground. And sheep that are badly fed and unsheltered are very liable to that disease. A sheep with this disease will become dull & stupid, and will lag behind when driven with the flock.

Thier ears will lop and they will show a paleness about the lips and eyes;

frequently cough and have loss of appetite; and it is a common thing for their noses to be snotty, but it is not always the case. The Braxy in my opinion is a disease of the liver and lungs.

Int 4th — State how long a sheep will live after it has taken the disease of Braxy after the disease shows itself, and whether in your opinion it is contagious or infectious?

Ans — They will live from three to six weeks. Braxy is not contagious, but may be communicable, as I consider all diseases communicable to a certain extent.

Int 5th — State from your knowledge derived from your reading and experience, what is the cause, symptoms and nature, remedy and cure, of the disease called Rot, in this country?

Ans — The cause of Rot is from pasturing sheep on overflowed lands, or lands which are liable to become very wet and afterwards dry. I do not believe that a spring marsh which is constant, and not varying, would cause the disease. The first symptoms of Rot is a reddish yellow appearance about the eyes, a paleness of the lips and skin generally; if the sheep in the first stages of Rot will take on flesh faster than they will in health for about

six weeks; afterwards they fall off in flesh and go into a regular decline. And the next six weeks or two months generally finishes them. The disease is a disease of the system generally, and more particularly of the liver and lungs it is a kind of sheep consumption. I know of no remedy except removing the sheep to high and dry lands, protecting them from the storms, and giving them free access to salt and tar.

Int 6th Where does the foot rot affect sheep?

Ans In the feet only.

Int 7th From your knowledge and experience in sheep raising, what work do you consider the most approved, on sheep and this disease?

Ans My opinion is that Youatt is the most minute, and Mason's Coles and Allen's works are more practicable in this country.

Int 8th State what is the difference in the appearance of a sheep that is diseased so as to affect this general appearance and one that is run down poor, from bad keeping and want of care?

Ans, Well, a sheep that is diseased and in flesh will generally show that it is diseased by a yellow appearance of its eyes, paleness of the lips and skin, and also a slight dullness that is not apparent in a well sheep.

A diseased sheep that is running down. has a dull and leaden looking discolord glassy appearance of the eyes; the ears droop. loss of appetite. pale appearance of the skin. sometimes enlargement of the belly. drooping of the head. humping of the back &c.

A sheep that is lean but healthy will show activity and sprightliness. the eyes and skin will present a bright and healthy appearance; will have a ravenous appetite; and when you go into the lot hold up their heads and bleat for feed. In order for a sheep to have a snotty nose it must have a disease of the head or lungs; however. sheep exposed to the rain after shearing are liable to take cold and the snotty like the human family & get over it with careful treatment. in a short time.

Int 9th At what time in the year do you consider it the most critical time in the raising and management of sheep.

Ans In the spring, during the storms of March & April. and also immediately after shearing and in fall at the time of taking sheep from pasture to the yards. If a sheep is left out too late on pasture. the grass becomes frostbitten. tough & crude. indigestable & lacks nourishment. If taken up too early the change is too sudden from grass

to dry food.

Int 10th. From your knowledge, experience & observation of sheep & sheep raising, state what must be the inevitable and certain result for a man of no experience in the sheep business and raising, and no shelters to protect them from the storms of winter, and no feed troughs in which to feed them, but the grain fed to them on the ground in all kinds of weather, wet and dry, for a man to take a flock of ~~sheep~~ four hundred healthy sheep from the pasture and undertake to winter them in your opinion?

Ans The result must be the disease and death of a great number, in this climate

Int 11th What is your age, and what is, and has been your occupation in life?

Ans I am thirty three years old, and stock ~~raising~~ has been my occupation.

Cross Interrogatories.

Int 1st State from your knowledge and experience in the sheep business as spoken of you in your examination in chief, what would be the effect upon a flock of sheep, of from four hundred to a thousand, drove from the State of Ohio on to the middle fork of Vermillion river in Vermillion County ~~in~~ Illinois in this month of January or February

and when they arrived there a large portion of them looking poor, having a bad cough, and running at the nose, and poorly wintered from that time till grazing in the spring?

Ans I should suppose those sheep having a cough and running at the nose to be already diseased, and the balance liable speedily to become so, if kept together.

Int 2d What would you call that disease in that flock of sheep spoken of by you in your answer to cross interrogatory No 1, where said sheep commenced dying from the time they arrived on the Middle fork of Bernidion, and died from three to five every night until grazing time and died as high as seven of a day after they were turned out to graze, said coughs and running at the nose still continuing among them? in your opinion

Ans My opinion would be that the first of those sheep that died would die of Braxy or consumption, and those that died on pasture later in the season would die of consumption or not.

Int 3d Please give a statement of your knowledge of the disease of consumption from its incipiency through all its stages until its final termination? the cause of

365

said disease. and the length of time sheep will probably live from the time they take said disease until they die or get well?

Ans The consumption is generally caused by exposure to intense cold, severe storms, & is aided by scanty & bad feed. The incipiency of consumption is often mistaken for other diseases. is only detected by a slight cough & scarcely perceptible dull appearance. While in this condition a sheep may be readily put in condition for market, the flesh presenting a fair appearance. but the lungs always show more or less disease. But in an advanced stage of this disease the cough becomes more violent, the condition of the sheep becomes reduced, frequently by running at the nose, and a gradual decline till the animal dies. The consumption in its last stages, as well as in its first, frequently assumes a form that may be mistaken for other diseases. A sheep kindly cared for may live one or even two years after the first symptoms of consumption are manifest, But with bad management and much exposure will die in a very short time, or a very few weeks.

1st 4th At what season or seasons of the year are sheep the most liable to die with consumption?

Ans At the change of feed in the spring

Int 5th or fall.

With disease of consumption in a flock of sheep of four hundred where one third of that flock was very fine healthy sheep. one third of an average quality of sheep. and one third was very poor & hollow in the months of June and July; and where one hundred and ninety eight of that flock of sheep should die between that time and the next January with the disease of consumption which they had in the month of June. and in the condition of which I have just spoken, at what time between the months of June & July and the first day of the next January would the greatest number of those sheep die?

Ans There would more die in the first three or four weeks after going to the ~~grass~~ yards than in all the rest of the time mentioned.

Qu 6th What would you call the disease among a flock of sheep of four hundred & twenty four. among which about the 15 day of June. 1854. where one hundred of said flock at that time looked very bad and poor. had a bad cough. & many of them run at the nose and commenced dying about that time. died regularly along through the summer and fall. and continued to die until about the first of January the next following. when

there had between one hundred and eighty, and one hundred and ninety six of said flock of sheep died? where said flock of sheep together with a large number of other sheep had been driven the winter before from the State of Ohio in the month of January or February into the county of Vermillion in Illinois, and when they arrived there they had a bad cough, and a portion of them looked very poor, and run at the nose, and a large number of said flock died through the latter part of the winter and spring of 1854; and where said flock of sheep had been very poorly wintered after they arrived in said Vermillion County? in your opinion?

Ans As that was a wet cold spring and summer, I suppose that those which died early in the spring, died of Dysentery and inflamation of the lungs, and later in the season, probably of the Rot. particularly if they were pastured on low lands. This regularly dying in the summer would indicate that state of things.

Int 7th Did you ever see a flock of sheep that Foster Moore got of Milk and Howard, any time during the summer or fall of 1854?

Ans Never that I know of.

Int 8th Is a flock of sheep of four hundred and twenty four, where one third of

that number on the eleventh day of June should have the consumption, in your ~~opinion~~ opinion, might ~~that~~ that disease assume a different form and run into other diseases during the summer, fall & winter following or would it still continue in the same form of disease?

Ans It is a rare thing that one thirtieth of an entire flock of sheep would have the consumption at one time. I do not believe that the consumption ever runs into any other disease, but frequently assumes new and varied forms which causes it closely to resemble several other diseases, particularly the Rot in its last stages.

Interrogatories in chief resumed.

Int 1st State what proportion of a flock of sheep of four hundred & upwards being pastured together through the summer would die, in this climate on an average, take one year with another; up to breeding time?

Ans Assuming that that flock was a healthy one in the spring, and wisely managed, five per cent would be a heavy loss.

369

Int 2nd In your answer to cross interogatory three, you say that with bad management and much exposure, sheep with the disease of the consumption will die in a very short time or a very few weeks now state how many of a flock of 424 sheep with one third of them diseased on the 11th day of June and being pastured on low wet land, how many will be likely to live through a cold wet season up to common feeding time? in your opinion?

Ans I think at least one half of the whole flock would die by feeding time under such circumstances.

Int 3d How many in a flock of 424 sheep, with one third fine sheep, one third aveage sheep, one third of them poor and with no other disease except colds, being pastured on low wet lands, would be likely to die during a cold wet season up to feeding time in your opinion?

Ans I think one third would die, and a large number of the ballance would be diseased.

P W Andrews.

Subscribed and sworn to before me this 15th day of April AD 1858

C F McNiel, J S.

State of Illinois }
Iroquois County. } ss

I C. F. McNeill a Justice of the Peace in and for said County, and before whom the foregoing depositions were taken do hereby certify that Christopher C. Vennum and Ray W Andrews whose names are above respectively subscribed by them, appeared before me in pursuance of the foregoing notice, at the time before stated, and who were each of them first sworn by me to testify the truth, the whole truth and nothing but the truth, in relation to the matter in controversy, wherein Lemuel Milk, and Franklin Howard, survivors of William Howard Deceased, are complainants, and Foster Moore is defendant, now pending in the Iroquois County Circuit Court in said State, so far as he might be interrogated, upon all such interrogatories as might be directed to be put by either of said parties litigant.

And I then and there caused the interrogatories aforesaid, ~~together~~ put by the said parties aforesaid together with the answers of the witness thereto, to be reduced to writing by me in the order in which they were proposed and answered, after which the said depositions of each of said witnesses was carefully read over to

him, after which he signed the same, and was by me duly sworn thereto. And that the depositions of each of said witnesses was taken before me at my office in Middleport, in said County and subscribed and sworn to before me at the time aforesaid, as stated by me above. And further that the said complainants by George B Joines their attorney, and the said defendant by James Fletcher his attorney were present at the taking thereof.

Given under my hand and seal this 15th day of April. A.D. 1858.

C F McNiell, J.P. (Seal)

Justices fees,
Taking deposition (6. & 96 words) $ 11.25
Subpoena 18¾
Witnesses Fees.
C C Vernum (1 day) $ 1.00
R W Andrews (1 day) 1.00
Amt $ 13.25

C F McNiell, J.P.

372

State of Illinois }
Iroquois County } ss

Iroquois County Circuit Court
Of the January special Term, A. D. 1859.

Samuel Milk & Franklin Howard
Survivors of William Howard, Dec
as
Foster Moore

Bill
On Chancery to
foreclose Mortgage

Deposition of Stephen Amos being of lawful age and sound mind Taken by and before me the undersigned Justice of the Peace in and for said County on the 29th day of November A. D. 1858 between the hours of nine in the forenoon and six oclock in the afternoon in pursuance of an agreement between George B. Joiner attorney for the complainants and James Gletcher attorney for the defendant:

Said deposition to be read in the above entitled cause now pending in the Iroquois County Circuit Court upon the trial of said cause on the part of said complainants. Said witness being by me first duly sworn to testify the truth - the whole truth and nothing but the truth - in relation to the matter in controversy in the above entitled cause according to law so far as he may be interrogated deposes and says in answer to the following interrogatories to wit;

The said Stephen Amos being first duly sworn deposeth and saith:

1 Interrogatory. Are you acquainted with any of the parties to the above entitled suit if so which?

Answer to 1 Interrogatory. I am acquainted with Foster Moore.

2nd Interrogatory. State if you are acquainted with the premises or farm where Foster Moore has lived for the last ten years?

Answer It is only six years ago last winter since I first became acquainted with Foster Moore's farm I think and I have known that to be his place ever since.

3 Interrogatory 3d State if you saw said premises in the year 1851 and if so state at what time in that year?

Answer It was on the 22nd day of December in that year I think, I was at his premises

4 Interrogatory 4th State if you saw any sheep at Foster Moores at that time, if so, state where they were and what was their situation?

Answer I did see some sheep there - I dont know how many there were - about a hundred I suppose - there might have been two or three hundred or more - I just saw that there was a lot of sheep there as I came by. They were north of the house in a small lot. It was on a middling low piece of ground I thought for sheep. I considered them in a bad situation in consequence of their being on low wet ground. There was one or two racks there with straw and hay in, it looked like.

5 Interrogatory 5th State from your knowledge of sheep raising how many sheep of a flock of two hundred and upwards could be wintered in their situation with good care other than their location that is: what proportion would live through the winter and what proportion die?

Answer I would be afraid I couldnt get but very few through I would be afraid I couldnt get the half of them through at most. I told Foster Moore this last summer that I had said they would all die of the rot if they were kept there where I saw them that was my candid opinion at the time and I told old man Hoel so.

6 Interrogatory 6th State how old you now are and how extensively you

373

874 have been engaged in sheep raising?

Answer I am now forty six past I was ten years old when I first commenced taking charge of sheep for my step father and that was part of my business until I was about nineteen years old. No more then until I was near thirty years old. Then about ten years more from that time I had sheep of my own.
One hundred and forty was the most I ever had charge of to the best of my recollection. I generally had charge of from fifty to about one hundred and forty or there about.

7 Interrogatory 7th From your knowledge of sheep raising state how long it would be after taking a healthy lot of sheep of one hundred and putting them in a situation similar to that you saw at Moores before they would become diseased more or less and state what disease they would be most likely to have?

Answer I would be afraid they would not live there more than a month or two before they would become diseased more or less. They would be the most likely to take the rot.

8 Interrogatory 8th What kind of a situation or location is most preferable for sheep raising high and dry or low and wet

Answer It was generally my opinion that dry and high ground was the best.

Cross examination

1 Interrogatory 1st Which will do the best on a farm like Farted Moores a healthy flock of sheep or a diseased flock of sheep?

Answer A healthy flock of sheep would do the best any where.

2 Interrogatory 2nd Which will do the best a flock of sheep of four hundred and twenty four in a good state of health,

taken on to Foster Moore's on the 11th of June and kept there for three years or a diseased flock of sheep of the same number for the same length of time:

Answer Of course a healthy lot would do the best.

3 Interrogatory 3d State what would be the effect upon a flock of from four to seven hundred or upwards driven from the state of Ohio in the dead of winter to the Middle fork of Vermillion in Vermillion County in this State and when they arrived there a majority of them should be poor, lame, with a bad cough, and running at the nose from three to five of said flock dying daily and should so continue to die during the balance of the winter and spring with but little feed and turned out to graze without any feed but what little feed they could gather from the prairie ten days before the regular time of grazing in the spring of the year. Would said flock of sheep be apt to do well during the next summer, fall and winter or would they be more likely to run into disease than a healthy flock of sheep wintered well and turned out in the spring to graze at the usual time

Answer It is my opinion that they would not do well at all.

Subscribed and sworn to before me this 24th day of Nov A. D. 1858

C. F. McNeill J. P.

Stephen S. Amos

State of Illinois
Iroquois County } ss

I. C. F. McNeill a justice of the Peace in & for said County and before whom the foregoing deposition was taken do hereby certify that Stephen Amos whose name is above subscribed by him appeared before me in pursuance of an agreement

375

between the attorneys of the afore said parties litigant at the time before stated and who was first sworn by me to testify the truth, the whole truth, and nothing but the truth, in relation to the matter in controversy wherein Samuel Milk and Franklin Howard Executors of William Howard Deceased are complainants and Field Moss is defendant now pending in the Grayson County Circuit Court in said State so far as he might be interrogated upon all such interrogatories as might be directed to be put by either of said parties litigant and I then and there caused the interrogatories aforesaid put by the said parties aforesaid together with the answers of the witnesses thereto to be reduced to writing by me in the order in which they were propounded and answered: after which the said deposition of said witness was carefully read over to him after which he signed the same and was by me duly sworn thereto And that the deposition of said witness was taken before me at my office in Middleport in said County and subscribed & sworn to before me at the time aforesaid as stated by me above. And further that the said complainants by George B. Joiner their attorney and the said defendant by James Fletcher his attorney were present at the taking thereof.

Given under my hand and seal this 27th day of November A. D. 1858.

C. F. McNeill J. P. (Seal)

Justices Fees

Taking depositions (1760 words) $3.37½
3½
2 Subpoenas 3.75

Witness Fee - Stephen Ames (2 days) 2.00
Sheriff Fees. W. B. Ray 1.25
Amount 7.00

C. F. McNeill J. P.

377

State of Illinois } Livingston Co Court.
Livingston County } ss Term AD 1860.

Samuel Milk & Franklin Howard } In Chancery
Survivors of William Howard Deceasd.

vs

Foster Moore.

The above named deffendant and a James Fletcher his attorney will please take notice that on the 5th day of January AD 1860. we shall proceed to take the depositions of Rutledge H Enos & Henry H Cooly. before Rodney Ashley a Justice of the Peace in and for the County of Kankakee in the State of Illinois, at his office in the city of Kankakee and said county of Kankakee. which said depositions when taken are to be read as evidence on one part on the final of the above entitled cause now pending and undetermined in the circuit court of Livingston County in the state of Illinois. when and where you can attend and put cross interrogatories if you see proper.

Samuel Milk & Franklin Howard.
By Geo B Joiner. their Counsel.

I do hereby acknowledg service of the foregoing notice by copy this 15th day of December AD 1859.

James Fletcher. for
Foster Moore.

State of Illinois }
Kankakee County } ss

Depositions of Phillip H Enos, and Henry H Cooly of Kankakee County in the state of Illinois. being of lawful age produced and sworn and examined before Rodney Ashley Esqr a justice of the Peace in and for the county and state aforesaid on the fifth day of January A D 1860. at the office of the said Rodney Ashley esqr in the town of Kankakee in said county. in pursuance of the foregoing notice. which said depositions are to be read in evidence in the case wherein Lemuel Milk & Franklin Howard. survivors of William Howard deceased, are complainants and Foster Moore defendant and now pending in the circuit court of Livingston County in the State of Illinois.

The said Henry H Cooly. being first duly sworn. deposeth and saith to the following questions to wit.

Ques 1st: Are you acquainted with the parties to the said suit, and if so. how long have you been acquainted with them?

Ans: I am acquainted with the parties. have been acquainted with Foster Moore about five years. and a half, and with Lemuel Milk. and Franklin Howard all my life time.

378

Ques 2d When and where did you first see Foster Moore?

Ans On or about the 12th day of June A.D 1854. at his residence in Iroquois County Illinois.

Ques 3d At whose request and what was the occasion of your being at the residence of said Moore?

Ans At the request of Samuel Milk. I went there after some sheep that were then due Mr Milk. from said Foster Moore.

Ques 4th State whether you got any sheep at that time from Foster Moore. for said complainant if not why you did not. and what said Moore said about it?

Ans I did not get any sheep at that time. One reason why I did not was because they were not all sheared at that time. Another reason was because he (Moore) wanted the privilege of picking out the fat wethers and taking them to Chicago to sell them and buy store sheep to put in their places. and that he would have them all ready in the course of a month. he said

Ques 5th State what further said Foster Moore said about not having said sheep ready at that time. and his having them ready in one month from that time?

Ans He said that he had sheep enough to fill the contract. but that they were scattered about the neighborhood, and on the prairie and that he would get them to gether shear them pick out the wethers and take them

to Chicago and buy others and have them all ready in the course of a month at the time Mr Beckett & Hudson's were due.

Ques 6th State if you were at Foster Moore's after that time for said complainants to get sheep if so state how long afterwards?

Ans I was there about one month afterwards on or about the fourteenth of July.

Ques 7th State whether you got any sheep the second time of said Moore for said complainants if so about how many?

Ans I did between one hundred and one hundred and fifty.

Ques 8th State whether said Foster Moore was at home when you went there the second time, if not how long were you there before he came home?

Ans He was not at home, he came home in three or four days from the time I went there.

Ques 9th State where he said he had been when he came home?

Ans He said he had been to Chicago.

Ques 10th State what he said when he returned from Chicago about his not having the ballance of the sheep ready to fill the contract.

Ans He stated that he had not got them nor could not get them.

Ques 11th When did he say he could get them, state all he said about it at that time?

Ans He did not state any time then to me when he

would get them. He stated that he would see Mr Milk and arrange the matter with him as to the time.

Ques 12th State what reason he gave you for not purchasing sheep to fill the contract with the proceeds of those he took to Chicago?

Ans He stated that the reason was that the sheep were disposed of at a very low price, and that he had to use the proceeds to pay a bank note which was then due or part due.

Ques 13th State where you next saw said Foster Moore and when?

Ans At Samuel Milks farm in Iroquois County on or about the eighteenth of November of 1854.

Ques 14th State what said Foster Moore said at that time about not being able to fill said sheep contract?

Ans He stated that he was not able to fill it ~~at~~ that ~~time~~ year. and that if Mr Milk would extend the time one year from that date he would then pay the thing all up.

To the foregoing questions and answers the defendant by his counsel objects.

Cross interrogatories on the part of the defendant, Foster Moore.

Quit 1st State where you now reside. and where you have resided since the year 1854.?

Ans I now reside at Kankakee Illinois. Two years of the time I resided in Cayuga County New York. The balance of the time

in this State, in the town of Chebanse most of the time.

Ques 2d What is the distance from the Town of Chebanse to Milks Grove?

Ans Milks grove is in the Town of Chebanse and from the village of Chebanse seven miles.

Quest 3d How much and what portion of the time since the year 1851 have you lived in the town of Chebanse?

Ans About five years. About three months of 1853. and most of the time in the year 1854. and all the time during the years of 1855. and 1856. and the year. 1859.

Ques 4th Does three months of the year 1853. and most of the time of the year 1854. and the years 1855. and 1856. and. 1859. make all the you have lived in the town of Chebanse since the year 1851. ?

Ans It does not. the year of 1858. and a short time of 1857. I was in the village of Chebanse.

Quest 5th State where you have resided the balance of the time since the year 1851?

Ans At Detroit Michigan and Chicago Illinois.

Ques 6th What time and how long did you reside at Detroit Michigan since the year 1851?

Ans I was there in the winter of 1853 and 1854. about three months.

Ques 7th Where did you go when you left Detroit

383

Michigan, and where did you next reside?

Ans I went to Milks Grove Troyport County Illinois.

Question 8 Did you reside in the State of New York. any time since the year 1851 and if so what time and how long?

Answer I did reside in the State of New York in the years 1851 and 1852. and a short time of the year 1853.

Ques 9th At what time and how long did you reside Chicago Illinois since the year 1854?

Ans In the spring of 1854. about three months.

Question 10 At what time did you leave Detroit Michigan and what time did you arrive at Milks Grove as spoken of by you above?

Ans To the best of my recollection. I left Detroit about the first of March and arrived at Milks Grove about the first of April in the year 1854.

Question 11th How long did you continue to reside there

Ans The remainder of that year. and the two years following.

Ques 12th Who went with you the first time you went to Foster Moores as spoken of by you in your direct examination?

Ans Lemuel Milk.

Ques 13 What relation are you to Lemuel Milk?

Ans I am a nephew of his.

Ques 14th With whom did you live during your stay at Chebanse as spoken of by you above?

Ans During my stay at village of Chebance I lived a part of the time with Doct Allen and a part of the time with Almeron Losch and during the time I was at Milk Grove, with Lemuel Milk.

Ques 15th State what time you started and what time you arrived at Foster Moore's the first time you went there as spoken of by you in your direct examination?

Ans On or about the morning of the twelfth of June and arrived there the same evening.

Ques 16, How came the conversation which you speak of in your direct-examination which occured between Foster Moore and yourself the first time you went to Foster Moore's, to be between you and Foster Moore, instead of Milk and Foster Moore?

Ans It was not and I have not said that it was between me and Foster Moore.

Ques 17th If said conversation which you speak of in your direct-examination the first time you went to said Moore's was not between you and said Moore, then who was said conversation between?

Ans Between Mr Milk and Foster Moore.

Question 18th State the conversation as near as you can, word for word which took place between Mr Milk and said Moore at the time you first went to said Moore's as spoken of by you in your direct-examination?

Answer Mr Milk asked Mr Moore if he had those sheep ready for him, Mr Moore said that he had not quite. that the sheep had got scattered about the neighborhood, and that he had had not got them all sheared and that after shearing he wanted the privilege of doing as Mr Howard did, the man whom he took the sheep of. That was to take out the wethers to take them to Chicago and sell them and buy store sheep to replace them. He thought he could get a big price for his wethers so that he could buy the same number of store sheep for less money, and that if Mr Milk would give him a month longer he would have the wethers sold the store sheep bought and all ready for him at the time he come after Becketts and Hudsons. He said he thought he knew where he could buy the store sheep. Mr Milk extended the time a month longer for him to do it in; and said that he would then be after them or send for them.

Ques 19th Was there anything said in the same conversation by said Moore in regard to his losing a large number of the sheep which he got of Milk & Howard?

Ans Mr Moore stated that he had had bad luck with the sheep; that he had had a great many killed by dogs and wolves.

Ques 20 Did Moore say that he had lost any sheep in any other manner than what had been killed by dogs and wolves?

Ans He did not that I recollect of.

Ques 21st Who was present at the time the conversation you spoke of as having taken place the first time you went to said Moores, besides yourself Mr Milk and Mr Moore?

Ans There was no one.

Ques 22 Where did the conversation last spoken of take place, in Moores house or out of Moores house?

Ans Out of the house in front of the house on the porch.

Ques 23d State on what day and what time of the day did said conversation last spoken of take place?

Ans The next after we arrived there I think the thirteenth in the morning.

Ques 24th State how many sheep said Moore stated had been killed by the wolves in the conversation last referred to?

Ans He did not state the number.

Ques 25th State whether he said there had been more than one sheep killed by the wolves?

Ans I do not recollect that he did.

Ques 26 State whether Moore did not tell Milk in the conversation last referred to that he had had bad luck with the sheep he got of him and Howard, and that Milk had ought to make up the damage he had sustained or words to that effect?

Ans Not in my hearing.

386

Question 27. State whether Moore did not tell Milk in the conversation last refered to that he had been buying a large number of sheep which he intended to drive to Chicago and could not let him have any until he returned from Chicago. or words to that effect?

Ans He did not.

Ques 28 State whether Moore did not state in the conversation last refered to that he had been lately buying sheep?

Ans He did.

Ques 29. State whether Moore did not state in the conversation last refered to that he intended to drive the fat sheep ~~which~~ he had been lately buying to Chicago and sell them?

Ans He did.

Ques 30 State whether Milk did not then extend the time to Moore to deliver the sheep which you and Milk went after to one month from that time?

Ans He did or about a month.

Ques 31 State whether said Milk did not consent to let Moore take said sheep which he desired to take to Chicago and sell them?

Ans He did.

Ques 32. State whether said Moore in the conversation last refered to did not state to said Milk that ~~that~~ he could not deliver him the number of sheep which he had agreed to deliver under a contract made with Milk and Howard without buying other sheep or taking those which he

had already bought in consequence of his having had bad luck with the sheep which he got of Milk and Howard?

Ans He did not.

Ques 33. State whether Moore did not state in the conversation last referred to that he had lost a large number of the sheep which he had taken of Milk and Howard and could not replace them without buying other sheep or taking those that he had already bought or words to that effect?

Answer He said that he had lost some of the sheep and that he was not prepared to fill the contract without letting him have the sheep which he then had on hand or buying others.

Ques 34 State who went with you to said Moores the second time you went there as stated by you in your direct examination?

Ans A boy by the name of Robinson from Kane County Illinois.

Ques 35. State how many sheep you got and drove away from said Moores the second you went

Ans I think it was somewhere between one hundred and one hundred and fifty

Ques 36 When was it that you saw Moore the next time at Milk Grove?

Ans On or about the eighteenth of November 1853

Ques 37. How comes it that you recollect the dates so well, state whether Mr Milk has not been

showing you some papers lately by which you have refreshed your memory?

Ans He has not I recollect about the time of year. and then refered to the account book of expenses account for that year to refresh my memory.

Ques 38 State whether Mr Milk has not been talking to you recently respecting those sheep for the purpose of procuring you to become a witness?

Ans I cannot say what his purpose was but we have frequently had conversations in relations to those sheep.

Ques 39. State whether you were present when Milk gave Moore a receipt for sheep and wool which said Moore had delivered to Milk which was given on or about the eighteenth day of November 1854.?

Ans I was not.

Question 40 State whether you know of Moore delivering any cattle to Milk about the 18th day of November A.D. 1854. and if so how many?

Ans I do, he delivered nine head I think it was.

Ques 41 What were those nine head of cattle worth at the time of delivery by Moore to Milk?

Ans Somewhere from eighty to one hundred dollars.

Ques 42 State whether you were present at the conversation between Milk & Moore spoken

of by you in your direct examination which you say took place at Milks Grove?

Ans I was during a part of it.

Ques 43 State whether you heard the whole of the conversation which took place between Milk & Moore at that time?

Ans I did not.

Ques 44. State whether any receipt passed from Mr Milk to Mr Moore in your presence at the time of said conversation at Milks Grove.?

Ans There did not in my presence.

Ques 45 What time of day did the conversation take place at Milks Grove. between Mr Milk and Mr Moore as spoken of by you in your direct examination?

Ans To the best of my recollection it was about the middle of the afternoon.

Ques 46 Why were you not present at the whole of said conversation?

Ans I had work to see to about on the farm and they were in the house.

Ques 47 How much of the conversation took place before you left the parties?

Ans I heard Mr Moore say to Mr Milk that if he would give him a year longer. that he would then pay him the ballance due him. Mr Milk said he would do so if he could depend on having it in a year: it appeared that the arrangement had been made before I entered

391

the room; this each one stated over in my presence.

Ques 68 Did you then leave the parties in conversation respecting the matter of the sheep contract?

Ans I did then leave the parties but do not know what the conversation was after that.

The Complainants object to the foregoing cross interrogatories and this answers.

Direct examination resumed.

Ques 1 You state in your answer to cross interrogatory No 18. that Mr Milk extended the time one month longer for said Moore to fill the contract. Now state what consideration said Moore paid to, or was to pay to said Milk for extending the time one month more than to pay what was due him and the interest thereon?

Ans I do not recollect that there was any other considerations.

Ques 2 You state in your answer to cross interrogatories No 47 that you heard Mr Moore say to Mr Milk that if he would give him a year longer that he would then pay him the ballance due him, and that Mr Milk said he would do so if he could depend on having it in a year. Now state what consideration Moore paid, or was to pay to said Milk for extending the time one year more than to pay him what was due on said contract

and the interest thereon?

Ans No other consideration that I heard of.

So all of which interrogatories and answers the defendants counsel objects.

Ques 3 State if after having heard your answers read over to you, you desire now to make any correction to any of the answers to any of the foregoing interrogatories, and if so state what one or ones and in what respect you wish to correct it or them?

Ans I do wish to correct the answer to Quest. No 25 of cross examination, I wish to state that Foster Moore said that he had had a great many sheep killed by dogs and wolves,

Defendants Counsel objects.

Cross examination resumed.

Ques 1 State whether since giving your answer to cross interrogatory etc 25 you have not been talking with Mr Joiner or Mr Milk or both of them respecting the manner in which you answered said cross interrogatory No 25?

Ans I have with Mr Milk.

Subscribed and sworn to before me this 6th day of January A.D. 1860. } Henry H Cooly.

Rodney Dalby J.P.

392

393

The said Almiddy H. Enos, being duly sworn by me, deposeth and saith to the following questions as follows to wit.

Ques 1 Are you acquainted with the parties of the said suit?

Ans I am.

Ques 2 When did you become acquainted with them?

Ans With Franklin Howard ever since he was born, with Lemuel Milk ever since March of 1852. and with Foster Moore ever since June of 1852.

Ques 3 Are you acquainted with Alexander Wilson of Troyon's County Illinois, and if so when did you become acquainted with him?

Ans I am, and have been acquainted with him since the fall of 1851.

Ques 4 State if you know of the said Alexander Wilson's taking sheep to keep for said complainants and William Howard deceased in the year 1852. if so state how long said Wilson kept them?

Ans I do. and he kept them until the spring of 1852.

Ques 5 State who received said sheep from said Wilson for said Milk. & Howard, and what was done with them afterwards?

Ans I received them as agent for said Milk, and Howard. They were taken from Wilson's

to the farm of Howard and Milk in Troyers County and kept there until fall then some of the poorest were sold in November, and the wethers were stall fed until the spring following, and then sold

Ques 6 State what the condition of said sheep was at the time they were received by you as above stated?

Ans They were rather thin in flesh, some of them had shed their wool.

Ques 7 From your knowledge of said sheep before you received them and afterwards, state what was the cause of this being thin in flesh and shedding their wool, in your opinion?

Ans I think for the want of feed, proper care and management.

Ques 8 State if you saw said sheep while in the hands of Alexander Wilson, and before you received them, and if so state how many times and when?

Ans. I saw them in January & February of 1852, once.

Ques 9 State if you examined said sheep at that time, and if so, state what was their condition and how they appeared?

Ans I saw them and examined them, some of them looked decently well, and some of them were thin. They were all in one yard together and appeared to be uneasy and hungry.

394

395

Ques 10 State what kind of care said sheep received while you were at Wilson's in the winter of 1852 and state all you know about it?

Ans They were shut up in a yard and I did not see them receive any care at all while I was there. I arrived there at night about sundown and come away the next morning between ~~three~~ and eleven o'clock. it was on sunday. they were not fed while I was there to my knowledge and think they were not fed.

Ques 11 State how said sheep did after you received them for said milk and Howard. as above stated and what disease if any, had said sheep at the time you received them?

Ans They done well considering the condition they were in at the time I took them. They were not diseased to my knowledge they had no disease.

Ques 12 State what is your age and occupation and how extensively you have been engaged in the sheep business?

Ans I expect I was forty four years old last April. I was brought up a farmer and have followed it ever since. I have been acquainted with sheep in small flocks from a boy and have had the care of large flocks for about ten years.

The above and foregoing interrogatories and answers. the defendant by his counsel objects.

Cross interrogatories on the part of Foster Moore.

Ques 1 State if you know how many sheep Milk and Howard let Alexander Wilson have?

Ans I am not positive. but I think some four or five hundred.

Ques 2 How many sheep did you take away from said Alexander Wilson?

Ans I will not be positive as to that either but I think between three and four hundred.

Ques 3 How much money did Milk and Howard pay Alexander Wilson at the time you took said sheep away, if any. and what was said money paid for?

Ans If my memory serves me I think I paid him for Howard, and Milk, about thirty dollars. I paid it to him in consideration of its being in the spring of the year and the sheep had their fleeces on. and had not yet had their lambs.

Ques 4 Did Howard and Milk exact any thing from said Wilson for the sheep that had died while in his possesion?

Ans I considered that they were worth enough more with their fleeces on. and being with lamb to make up for those that were

lost and what I paid him.

Ques 5 State whether any of said sheep died after you took them away from said Wilson?

Ans They might some of them died but not many I think.

Ques 6 State what time in the day you arrived at said Wilson's? When you visited him in said winter of 1852.?

Ans About sundown or not far from sundown

Ques 7 State whether you examined said sheep the evening you arrived there?

Ans I went through the yard and looked at them that evening.

Ques 8 What time in the evening did you go through the yard and examine said sheep?

Ans Immediately after I arrived there about sundown.

Ques 9 What time next morning did you examine said Sheep?

Ans About ten o'clock. it might have been a little ~~later~~ after. it was when I got my horse to come away.

Ques 10 How many sheep did you sell the fall following the time you took said sheep away from said Wilson's which you denominate as the poorest of said sheep. and how many did you state fed?

Ans They were mixed up with other sheep and the poorest of the whole flock were sold and the ballance were still fed. so

I dont know the exact number

Ques 11 To whom were said sheep sold and where were they taken to?

Ans Those that were sold in the fall were sold to a man from the north part of this state or from Wisconsin, I do not know his name, and were driven away by him. I do not know where.

Adjourned to January 6th at 8 o'clock a.m. by consent of the parties.

January 6th 8 o'clock a.m. Cross examination resumed.

Ques 12 State to whom the ballance of said sheep were sold, and when were they sold, and where were they taken to?

Ans. We sold some of them to Degroff & Linsley and they took them away I do not know where The ballance were sold to Thompson after shearing I think and he took them away I do not know what he did ~~what~~ with them.

Ques 13 What proportion of the sheep sold in the fall as spoken of by you above were poor sheep?

Ans They were the poorest of the flock, There might have been between ten and one hundred, and there might have been one hundred and fifty They were the ewes and lighter sheep and as were not fit for stall feeding.

Ques 14 What kind of a farm is it where said sheep were taken to from said Alexander Wilson's

399 and kept until the following fall and spring as spoken of by you above. Is it high and dry, or low and flat and wet

Ans It is a very good stock farm with a variety of land, there is some high dry land and some that is low and flat; some seasons of the year ~~most of it is~~ dry the low land is wet and some seasons of the year most of it is dry, there is likewise a pond of water on the farm, of good stock water.

Ques 15 Do you call the farm last spoken of by you a good Stock farm for all kinds of stock for sheep as well as other kinds of stock?

Ans I do.

Ques 16 Who owned said farm at the time said Wilson sheep were taken to it?

Ans The two Howards and Milk.

Ques 17 Who took care of the ~~said~~ sheep you took from Wilsons from the time you took them until they were sold as spoken of by you above?

Ans I took care of them myself most of the time I had charge of them.

Ques 18 Were you then acting as the agent of Howard and Milk?

Ans I was.

Question 19 Are you acquainted with the different diseases that sheep are liable to, if so state what they are?

Ans I am acquainted with the diseases of sheep as I have learned from the study of books and from practical sheep men. But I have had no experience with diseased sheep. I have

seen diseased sheep but have never handled any. That is I have never had charge of any diseased sheep to my Knowledge.

Ques 20 State the different diseases of sheep as you have learned from books and learned from other persons as spoken of by you above?

Ans They are foot rot. and Rot. and Scab. and Grub in the head. these are all the diseases that I Know of.

Ques 21 Do you know any thing of the disease of consumption among sheep?

Ans I have never read or heard of any disease of that name among sheep. or known any thing about it.

Ques 22 Do you Know of any thing of the disease called Turnsick among sheep?

Ans No. I never heard of any disease of that name among sheep.

Ques 23 Do you know any thing of a disease termed Brockett among sheep?

Ans I have read of the term Brockett in sheep in an English work on Sheep Never studied into the matter as I supposed it was something that sheep were not liable to in this ~~Country~~ climate.

Ques 24 Describe the disease of Rot among sheep. its symptoms. the different stages of the disease from its commencement to its final termination, and how long will sheep live after they take said disease?

Ans As I have been informed it is a disease of the liver which becomes ulcerated and affected and sometimes live animals are found in

the liver which are sometimes called liver flakes and by some writers hydatids Its symtoms. the sheep often drop dead before you know any thing of it or before it is discovered that any thing is the matter with them, that is about the first symptom that shows its self. I know nothing of the different stages of it it is not generally known that any thing ails a flock of sheep that are effected with it until they begin to die. I know nothing of the length of time a sheep will live when effected with this disease except what I have learned from books which state that they will sometimes live for years and get over it or partially over it.

Ques 25. If you cannot discover any symptoms of the rot in sheep until they die with it. how can you tell whether they have the rot or not until after they are dead a dying?

Ans If sheep of the same flock have died with the rot and we have examined them and found it to be the rot we naturally suppose that others running and grazing with them in the same locality will be more or less effected.

To all of the foregoing cross interrogatories and answers the complainants object.

Direct examination resumed.

Ques 1 You state in your answer to cross interrogatory No 13. that there might have been between

ten and one hundred poor sheep and there might have been one hundred and fifty Now pate how large a flock paid poor sheep were selected from, and what did you mean by poor sheep?

Ans They were selected from a flock of five or six hundred. By poor sheep I mean ewes and young wethers such sheep as are not fit to stall feed.

Qus 2 State what proportion of there poorer sheep were of the Alexander Wilson sheep?

Ans Somewhere from ten to one hundred and fifty

Ques 3 Was this number really poor sheep or were they only of the younger and lighter quality?

Ans They were the lightest wethers and ewes and the poorest of the flock of Wilson sheep.

Defendant objects to the foregoing questions and answers.

Subscribed and sworn to before me this 6th day of January AD. 1860. } R. H. Enos.

Rodney Ashley. J.P.

State of Illinois }
Kankakee County } ss

I Rodney Ashley, a Justice of the peace in and for said County do hereby certify that the foregoing depositions of Henry H Cooly, and Ruthedy H Enos. were taken before me and reduced to writing by me on the fifth and sixth days of January A.D. 1860 at my office in Kankakee city in the County of Kankakee and State of Illinois and in the presence of Lemuel Milk, and George B Jones. his counsel, Also in the presence of James Fletcher counsel of said Foster Moore. that said witnesses were each first duly sworn according to law. by me to testify the truth, the whole truth and nothing but the truth so far as they should be interrogated in said cause. And after the said depositions were reduced to writing by me the same were by me carfully read over to said witness respectively. on the 6th day of January A.D 1860. after which said witnesses signed and swore to their respective depositions before me. and that the taking of said depositions was continued from the 5th day to the 6th day of January A.D. 1860 by agreement of said parties by their Counsel.

Given under my hand and seal this 6th day of January A.D 1860.

Rodney Ashley J.P. Seal

State of Illinois }
Bankake County } SS

I Rodney Ashley. a Justice of the peace in and for said county by and before whom the foregoing depositions were taken. do certify that the costs of taking the same were paid by Lemuel Milk. as follows to wit.

Justices Fees for five thousand eight hundred and thirty two words at 12½ cents for every seventy two words. $ 10. 12½.

Two witnesses two days each at one dollar per day 4. 00

14. 12½.

Given under my hand and seal this 6th day of January AD 1860.

Rodney Ashley J.P. (Seal)

405

~~Sixth day of September A D 1860~~

~~Come after~~

~~to wit on the 26th Sixth day of September A D 1860 it being also one of the regular days of the September Terms of the Livingston County Circuit Court the following proceedings were held and Entered of Record in said Court to wit:~~

~~In the Matter of Samuel Milk and Franklin Howard~~

Vs

Foster Moore

~~Bill to foreclose a Mortgage~~

~~This day came the parties Complainants and Respondent herein by their respective Solicitors with an Issue of fact joined in this Cause and for trial thereof put themselves upon the Country~~

~~And thereupon a Jury of twelve good and lawful men was Commanded to Come and try the issue joined herein to Wit:~~

~~Thomas McClelland, Charles Beaufort, E. C. Allen, J. P. Morgan, William R Tanner, Joseph Bare, Albin Jones, Thomas M Campbell, E H Snyder, J. B Samb, Willard B Tucker and James Day,~~

~~who being Chosen tried and sworn well and truly to try the issue joined herein and a true verdict thereon render according to the Evidence~~

#

After hearing the testimony adduced by the respective parties and the argument of Counsel thereon and being instructed by the Court touching the law of the case retired to consider of their Verdict

Which Instructions of the Court are indorsed and figures following to wit

The Jury are instructed by the Court that in making up their Verdict they are to Consider

1st What Amount if anything is due the Complainants according to the terms of the Mortgage and Contract

2d Whether the Complainants, or either of them practised fraud, & deceit upon the defendant and Sold or let him Diseased Sore & unsound Sheep. as Charged in the defendants Answer and Cross bill, knowing them to be such or with a warranty that they were Sound and they were not Sound

3d If you find that Complainants did Sell or let the defendant Sheep that were diseased at the time. and fraudulently Concealed that Condition from the defendant. So that he bought them for Sound Sheep. or if Complainants or either of them Warranted the Sheep to be Sound healthy Sheep then to find that Amount now the defendant damaged by such fraudulent Concealment or false Warranty

4th If you find for Complainant you will say to what Amount you find

5 If you find there is nothing due the Complainants all things Considered you will say you find for Cause of Action

6 If you find for defendant damages over and above the Complainants Claim then you will say what Amount you find for the defendant

7 In Coming to a determination

106

Case the jury are to consider all the facts and circumstances proved on both sides both at the time of the making of the Contract and that may have occured since between the parties and shall make up such a Verdict as shall seem just and equitable under the proof presented to them.

And at this same time the Court further instructs the jury both on the part of the Complainants and Defendant as follows

408 On part of the complainants the Court instructs the jury as follows

Milk & Howard
vs Compts
Foster Moore

Given The court will instruct the jury that if they believe from the evidence that the loss of said sheep was in consequence of the want of proper care and attention of said Moore the loss is Moores and not the complainants.

Given That fraud on the part of Howard in said contract must be affirmitively proved by said Moore & not inferred by the jury.

Given That unless the jury believe from the evidence that said Howard at the time of the making of said contract represented said sheep to be sound and healthy knowing them to be unsound & diseased or knowing the fact fraudulently concealed it from Moore the law is for the complainants.

And on part of the Defendant as follows Viz

"The court please instruct the jury for the defendant Moore"

"1st" "That this is a suit brought by the complainant Milk and Howard to foreclose a mortgage & under the state of pleadings in this cause the complainants must support this case if they support it all upon the mortgage and its consideration and not upon any subsequent agreement between the parties therefore if the Jury believe from the evidence that the mortgage was obtained by William Howard one of the complainants by fraud

Given

then the Law is for the defendant Moore in this respect

2nd That if the jury believe from the evidence that when William Howard one of the complainants in this cause let to the defendant Foster Moore the lot of sheep in controversy the said sheep were diseased and he knew it and yet concealed it from Moore and in consequence thereof the said Moore was damaged thereby then the Law is for the said defendant Moore and he will be entitled to such damages and if such damages shall equal the balance due upon said mortgage the jury should find for the defendant no cause of action and if the jury shall find that said damages shall exceed the balance due upon said mortgage that the Law is for said defendant Moore for such amount of damages as shall be found

3d Instruction for Defendant Moore

That if the jury believe from the evidence that said William Howard one of the partners of Child & Howard Warranted the sheep in controversy to be sound and healthy and thereby obtained said Mortgage in controversy by such representations through fraud upon the said Moore then the Law is for said Defendant Moore and he is entitled to recover such damages as he has proved that he has sustained

4th If the jury believe from the evidence that the said defendant Moore was induced from the representations of the said William Howard a partner of said complainants that the said sheep in controversy were sound and not diseased and thereby obtained said Mortgage and it turned out that said sheep

1409

were diseased when he made such representations and thereby deceived the said defendant Moor, and the said Moor thereby sustained damage then the Jury have a right to give him the said Moor such damage as he has proved himself entitled to.

Given

5th Of the Jury believe from the evidence that said mortgage was obtained by fraud and misrepresentation then the said mortgage is void and the said Foster Moor is entitled to recover whatever damage he has proved himself entitled to.

5+ Given

6th The [illegible] and principles of equity obtain fraud and therefore if the Jury believe from the evidence that the said defendant Moore was induced to take said sheep in controversy by fraudulent misrepresentation of the said William Howard that said sheep was sound when in fact said sheep were diseased and in consequence of said disease a large number died & thereby the said Moore sustained damage then the said Moor has a right to recover such damage as he has proved to the Jury that he has sustained

6 Given

7th For defd If the Jury believe from the evidence that Howard knew that there were any diseased sheep amongst the lot he let Moore have & suppressed such knowledge from him selling or letting them to him as sound sheep then independant of any warranted he may have made the law is for the defendant Moore in this behalf and he is entitled to recover any damage that may have been proven to have resulted therefrom

7 Given

8th The court instructs the Jury for the defendant that in passing upon any given deposition that may be in evidence before them that they have a right to take into consideration

the mode and manner of the witnesses answers to both the direct & cross interrogations the circumstances that appear from his Deposition or other evidence in the case under which he testifies the fact of whether he is contradicted by other deposition and if from the witnesses answers as well as from other facts & circumstances which they believe to have been proven they shall believe that the witness has sworn false as to any one material fact or they believe from the deposition itself that it is not entitled to any weight they have the right to wholly discard the same and if the Jury believe from the deposition of John Astel that he has made false statements in answer to material interrogations or if they believe from all that he has said in his deposition that it is not entitled to any weight as evidence they are at liberty to wholly disregard the same

Given

For deft the court Instructs

Although William Howard one of the original firm of which Franklin Howard and Samuel Milk the complainants in this suit are the survivors died before the commencement of this suit yet any warranted or misrepresentation he may have made in regard to the sheep in question, is binding, if proven, upon the complainants herein whether they personally knew anything about it or not & the fact that they deny any knowledge of said warranted or deceit if proved against William Howard deceased is not to prejudice the defendant herein and the law in this behalf is for the defendant.

9th

Given

10th

In order for one man to practice a fraud by misrepresentation in the sale or bailment of property upon another no particular words are necessary to be used but any words which practises an imposition and induces the other to take the property is sufficient. Therefore if the Jury believe from the evidence that said [illegible] induced

10

411

412

to take said sheep by the said warranty of the said William Howard that said sheep were not diseased when in fact & in fact said sheep were diseased and by said disease the said Shaw lost a large portion of said sheep then the said defendant has a right to recover such sum as the jury may believe from the evidence he is entitled to for such fraudulent representations

Given

11th

That if the Jury believe from the evidence that said Mortgage was obtained by a fraudulent warranty then the mortgage is void although said warranty is not embraced in said contract as attached to the mortgage

Given

12th

The said Mortgage in controversy is not an absolute warranted Deed but the same is a mortgage and if the Jury believe from the evidence that said Mortgage was obtained by the said William Howard from the said Mortgagor by fraudulent representations then the same is void and of no binding force or effect.

Given

13th 14th

If the Jury believe from the evidence that Howard warranted the sheep to be sound and they were unsound or diseased at the time then the Defft is not liable for them if they died of that complaint when all the care was used to cure them

13 +

14th 2nd

If the jury believe from the evidence that the sheep was diseased at the time of taking of the sheep & died without the fault of Shaw and the disease was known to Howard and he represented them to be sound the Plff is not entitled to a verdict

Given

3d If they believe from the evidence that Pltff Howard knew when the sheep were delivered that the sheep were diseased at the time of taking them and he represented them to be sound or fraudulently concealed their consit the Law is for the Deft & the Pltff cannot recover.

15th Given

4th The Jury may give the Deft damages if they believe that these sheep were diseased at the time delivered and Howard knew it and yet concealed it from Moore & the Deft was put to damages in keeping the diseased sheep and they are the judges of the amount of damages.

16th Given

And afterwards to wit on the 28th day of September AD 1860 it being also one of the regular days of the September Term of the Livingston County Circuit Court the following proceedings were had and Entered of Record in said Court to

In the matter of Samuel Milk and Franklin Howard vs Foster Moore } Bill to foreclose a Mortgage

And now on this day the jurors of the Jury [illegible] is [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] into Open Court and upon their oaths do say We of the Jury find no cause for the complainants action against the respondent And thereupon the said complainants by their Solicitor Entered their [illegible] [illegible] for a new trial of this cause [illegible]

413

to wit on the 27th day of March AD 1862 it being one of the regular days of the March Term of the Livingston County Circuit Court the following proceedings were had and Entered of Record in said Court to wit

Samuel Milk and Franklin Howard vs Foster Moore — Bill to foreclose a Mortgage

And now on this day came as well the said Complainants by John M Scott their Attorney and the said Defendant by James Fletcher his Attorney and this Cause now coming on to be heard on the Complainants Motion made herein at a former term of this Court and the Court being Suficiently advised therein It is therefore Ordered by the Court, that the Complainants Said Motion to resubmit this Cause to a Jury be and the same is hereby Overruled

Whereupon the Complainants Enter their motion for a decree in favor of said Complainants on the evidence

And after hearing said motion argued by the Counsel and being suficiently advised thereto

It is Ordered by the Court that said motion be and the same is hereby overruled

It is therefore ordered adjudged decreed by the Court that said Complainants Bill of Complaint be and the same is hereby dismissed

Whereupon the said Complainants Attorney

Excepts and prays an appeal which said motion is heard by the Court and an Appeal granted on the said Complainant filing Bond in the sum of Five hundred dollars with George B Jonner as security within ninety day from this date

And afterwards to wit on the Fifth day of May A D 1862 the said Complainant filed in the office of the Clerk of the Circuit Court of Livingston County & State of Illinois their certain bond which is in words and figures following to wit

415

416

Know all men by these presents that we Samuel Milk and George C. Jones and held and firmly bound unto Foster Moore in the penal sum of Six Hundred dollars for the payment of which well & truly to be made & done we bind ourselves our heirs, executors, and administrators jointly and severally by these presents signed with our hands and sealed with our seals this first day of April A. D. 1892.

The condition of this obligation is such that whereas the said Foster Moore did at the March Term A. D. 1892 recover a judgement or decree against said Samuel Milk for the sum of [illegible] dollars cost of suit in the Livingston Circuit Court from which said judgement the said Milk has this day taken an appeal to the Supreme Court of the State of Illinois.

Now if the said Milk shall prosecute his said appeal to effect and pay whatever judgement costs damages & interests may be rendered against him in case of the said judgement shall be affirmed then this obligation to be void, otherwise to remain in full force

Samuel Milk (Seal)
Geo. C. Jones (Seal)

417 Samuel Milk & Franklin Howard
Survivors of William Howard dec^d
vs
Foster Moore

And now comes on to be heard by a Jury of twelve good and Lawful men to wit: E. C. Allen, J. P. Morgan, William R. Tanner, Joseph Barr, Albion Jones, Thomas M. Campbell, E. H. Snyden, J. P. Lamb, Thomas McClelland, Charles Crawford, Willard P. Tucker, and James Day. the questions submitted to them by the court which questions and points of submission are as follows to wit:

[illegible] Jury [illegible] by the Court that in making up their verdict they are to consider

1st What amount if anything is due the complainants according to the terms of the mortgage and Contract

2nd Whether the complainant or either of them practised fraud & deceit upon the defendant and sold or let him diseased, lame & unsound sheep as charged in the defendant answer and cross Bill knowing them to be such or with a warranty that they were sound and they were not sound.

3d If you find that complainants did so sell or let the defendants sheep that were diseased at the time and fraudulently concealed their condition from defendant so that he bought them for sound sheep or if complainants or either of them warranted the sheep to be sound healthy sheep and they were not sound healthy sheep then to what amount was the defendant damaged by such fraudulent concealment or false warranty.

4th If you find for complainants you will say to what amount you find

5th If you find there is nothing due the complainants all things considered you will say you find no cause of action

6th If you find for defendant damages over and above the complainants claim then you will say what amount you find for the defendant

7th Incoming to a determination in the case the Jury are to consider all the facts and circumstances proved on both sides both at the time of the making of the contract and that may have occured since between the parties and shall make up such a verdict as shall seem just and equitable under the proof presented to them.

Whereupon the Jury after being duly sworn and instructed as aforesaid and after having the bill cross bill answers and replications thereto and the evidence aforesaid offered by the parties therein retired to consider of the verdict. Whereupon said Jury returned with the following [illegible] "the Jury find no cause of action"

Whereupon the said complainants move the court to be submit this cause to a Jury which motion is overruled by the court and thereupon the said complainants move the court to render a decree in their favor and the court being well satisfied of the justice of said verdict of said Jury does overrule said motion of said complainants and does order a judge and decree that said complainants do take nothing by their said Suit against said defendant and that the same be dismissed and that said defendant do have and recover his costs and charges in said suit suit out and expended against said complainants

To which decision of said court in the [illegible]

418

419

said motions and the rendering of said decree the said complainants do except and pray an appeal to the Supreme Court of this State which appeal is by order of the court granted on filing bond in the sum of five hundred dollars with George B. Joiner as security in thirty days from this date

C. R. Starr

Judge of the 20 Judicial Circuit

420

In the Livingston County Circuit Court.

March TERM, 1869

Wilk & Howard

vs.

Foster Moore

COSTS OF ~~PLAINTIFF~~ Complainants

Bill to foreclose Mortgage = Change of Venue from Iroquois County

Dock suit 10 Ent. App. & Atty. 15 Sub. to Court 20 Ord	45		
Dock 25 file 35 papers 1.75 [illegible] Prep. Papers 20 Bill of	220		
Costs 30 Ord tax & Record Costs 30 Ent. Ext. 15	75	3	40
Costs in Iroquois Circuit Court		115	50
Resp. Cost			
Ent app & atty 15 Ent Mo & Ord Cost 40 Ord tax & Record fees 30	85		
Bill of Costs 30 Ent [illegible] 15	45	1	30
[illegible] Compts. [illegible]		107	70
Dock suit 10 Ent App & Atty. 15 Sss Sub & file 40 Ord Call Jury 20	85		
Call & swear Jury 15 Ent Verdict of Jury 10 Ent final judg. 25	50	1	35
Sheriffs fees on Sub. (Russell)		1	35
Jury fee		3	00
		225	70
Cost of this Record 122400 words		122	40
Certificate & Stamp			45
		$348	55

I, JAMES W. REMICK, Clerk of the Circuit Court of the said County of Livingston, do hereby certify, that the above is a true copy from my Fee Book of Plaintiff's & Dept costs.

Given under my hand and the seal of said Court.

Jas W Remick Clerk.

Deputy.

STATE OF ILLINOIS, } ss.
LIVINGSTON COUNTY, }

The People of the State of Illinois, to the Sheriff of..... County, GREETING:

We command you, that if the within Fee Bill, amounting to..... .....Dollars and.....Cents, shall not be paid within thirty days after being by you demanded, you cause the same to be levied on the goods and chattels, lands and tenements of the said..... in your County, according to the Statute in such case made and provided. And make return of this Writ within ninety days, as the law directs, with an endorsement hereon, in what manner you have executed the same.

WITNESS, JAMES W. REMICK, Clerk of the Circuit Court of said County, and the Seal thereof, at Pontiac, in said County, this..... day of.....A. D. 186

.....CLERK.

421 State of Illinois
Livingston County } ss I James W Remick
Clerk of the Circuit Court
in and for the County and State aforesaid
do hereby Certify that the foregoing is a
true and Correct Copy of the bill Mortgage
and Exhibits filed in a Certain Cause wherein
Lemuel Milk and Franklin Howard Survivors
of William Howard Deceased are Complainants
and Foster Moore is Defendant, also a true
Copy of the Summons & Subpoena issued in said
Cause Allso of all Motions and orders filed ~~made~~ and Entered of
Record in the above cause in the Iroquois County Circuit Court as
Certified to this Court, by the Clerk of said
Iroquois County Circuit Court, also a true
Copy of the answer to said bill, Receipts,
Exceptions, Replications, Notices to take deposit
both on part of Complainants, and defendant
Notice to sue out of said Iroquois Circuit Court
a Dedimus protestatum, also the Dedimus
protestatum, Sued out of said Court in accordance
with said Notice, together with the interrogatories
filed therein both on part of Complainants
as well as on part of Respondent, also
a true Copy of the Cross bill and answer thereto
filed in said Cause, together with the agreement
between the parties hereto to take Depositions
in this Cause, prayer of Defendant to have
this Cause tried by a jury, also the petition
of Complainants for a Change of the Venue
of said Cause with the affidavit thereto,
Copy of Cost bills sent up to this Court Clerk
Certificate to the record of said Iroquois Circuit
Court also all Motions filed and Entered

[illegible] James Hitchin atty for Defendant

of Record in this Court The subpoena issued therefrom also a true copy of all depositions filed and read in evidence in said Cause both on part of Complainant and on part of Respondant ~~Except the Deposition of S. A. Washington~~ also a true copy of all papers filed in this Cause and not mentioned in this Certificate, together with all instructions to the jury on part of Complainant & Respondant Verdict of the jury in this Cause, All Orders and final Decree Entered of Record in this Court, in the said Cause also Copy of the Bond and Cost bill. I further certify that the above is all pertaining to the above Cause shown by the records and papers filed in this office in the above Cause

Given under my hand and seal of said Court at Pontiac this 25th day of March A.D. 1863

James W. Remick
Clerk

422

State of Illinois
Supreme Court
Third Grand Grand
Division

Lemuel Milk & Franklin Howard
vs
Foster Moore

It is hereby stipulated by and between the above named parties that the foregoing is a true copy of all the documents papers exhibits and depositions read and submitted to the jury on the trial of the above entitled cause. Towit the bill answer ~~thereto~~ & replication. Cross bill answer & replication: the mortgage and agreement attached thereto and which was a part of said mortgage, and the depositions contained in the foregoing record were the only other evidence read to said jury and which were all read that all the instructions asked for and given on part of court & Deft in said record were read to the jury, under objects & submitted to said jury, and further all the orders & proceedings specified in said record are correct from the commencement of said suit up to the trial and decree, except the exceptions to the depositions which exceptions were overruled by the court though not noted by the clerk at the time that the second and last decree is the decree entered in the case the first being copied by the clerk through mistake

Geo B Jaime Atty for Complaint
James Fletcher Atty for Defendants

Supreme Court
State of Illinois

April Term AD 1864

Lemuel Milk & Franklin Howard

vs

Foster Moore.

And now at this time come the said complainants by Joinn their solicitor and assigns the following errors of said decree and proceedings.

1st The verdict of the jury is not supported by the evidence

2d. The verdict of the jury did not determine the issues submitted to them

3d. The court below gave improper instructions to the jury on the part of defendants as also of its own accord

4th The court below admitted improper evidence to the jury on part of defendants

5th The court below erred in overruling exceptions to defendants depositions

6th The court erred in overruling motion for new trial

7th The court erred in not rendering a decree for the complaints on the evidence

8th The court erred in giving a decree in favor of defendants against ~~defendants~~ complaints and dismissing the bill

Geo B Joinn Sol for complt

State of Illinois
Third Grand Division } ss

In Supreme Court
To April Term AD 1864

Foster Moore
appellee
vs
Lemuel Milk & Franklin Howard
Survivors of William Howard
deceased — Appellants

Joinder in Error
Appeal from Iroquois

And the said Foster Moore defendant in Error, now comes and says there is no error, either in Record and proceedings aforesaid, or in giving judgment and decree aforesaid in manner and form as above assigned; and therefore he prays that the said judgment and decree may be affirmed, and that his costs may be adjudged to him &c

James S Fletcher
Chester Sidney
Attorneys for defendant in Error

192

Filed Apr 20. 1864
L Selma M