

Manx Notes 334 (2018)

COMMON LAW COURT
1848

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COMMON LAW COURT

CASTLETOWN, TUESDAY, JULY 4, 1848.
(*Before Deemster Heywood and a Special Jury.*)
JOHN CLUCAS *v.* JOHN STEVENSON MOORE.

[4b] This was an action brought to recover £300 damages for the loss by disease of ten head of cattle sustained by the plaintiff, and occasioned by the introduction of a bull, a cow, and a heifer, purchased at a public auction on the defendant's farm, on the 21th of August last.

Messrs. Dumbell and Gell for the plaintiff, and Corlett and Stephen for the defendant.

Mr. Gell read the declaration, and then proceeded to examine the witnesses.

Hugh Clucas deposed to having served the defendant with notices to produce certain papers. In his cross-examination said he purchased a heifer at the auction in question, which he believed is free from disease.

Thomas Kelly, of Douglas, said he drew up the advertisement of the auction, by the defendant's directions, and caused it to be inserted in the *Mona's Herald* newspaper. Cross-examined: He frequently called on the plaintiff for payment for the cattle; the plaintiff on those occasions made no complaints.

Robert Fargher, printer, proved the insertion of the advertisement at the expense of the defendant; it was headed "Extensive and valuable sale of farm stock, growing crops, implements, &c.," and mentioned particularly "6 capital farm horses, 10 excellent milch cows, 8 acres of wheat, 12 acres of barley, 45 acres of oats, 16 acres of turnips and potatoes, 2 acres of beans, ½ an acre of carrots." The land was also to have been let.

Thomas Corlett, of German, brother-in-law of the defendant, proved the existence of the disease amongst the defendant's [4c] cattle previous to the auction. It was introduced by a bull which had been brought from England, and purchased by John Corlett, deponent's brother, for the defendant. Then were but one horse, some sheep, and some oils sold at the auction, besides the cattle. Some of the land was let, but never given possession of to the lessor. The disease first appeared about the month of May previous to the auction. The young cattle were kept separate from the cows, to prevent their taking the disease.

Thomas Clague, of Rushen, was at the auction; beard the conditions declared; there was nothing said about disease.

Emmerson Dawson was at the auction; heard the conditions declared, but nothing concerning the disease. Deponent purchased two cows, and a calf; the calf died about a fortnight ago.

David Stephen opened the last mentioned calf; found the heart enlarged and the lungs black and blue.

Thomas Clucas, the plaintiff's cowman, described the introduction and spread of the disease amongst the plaintiff's cattle; that the bull purchased was lent to a man named Clugstone; the cattle of Thomas Turnbull, who adjoins the plaintiff, took the disease.

Thomas Watterson opened the plaintiff's cattle which had died; the lungs were decayed and sticking to the ribs; the heart was swelled.

Thomas Kegg gave a similar description of the inside of a cow purchased from the defendant, by one Philip Quirk, which had died of the disease.

Philip Quirk, of German, purchased a cow from the defendant; it soon began to run at the nose and mouth, cough, and refused to eat; others of deponent's cattle caught the disease and died. In his cross-examination it appeared that, in accordance with a common superstition, deponent had burned the carcase of one of his cows at cross roads, and scattered the ashes!

James Clugstone had borrowed the bull from the plaintiff his cattle had caught the disease, and exhibited the same symptoms as described by the former witnesses.

Matthew Dawson was present at the commencement of the auction; heard the conditions of sale declared, but nothing was said about the disease. Deponent purchased two cattle; they were taken ill, but have since recovered.

Thomas Turnbull had lost some cattle by the disease; it made its appearance after a cow had been with the plaintiff's bull at Clugstone's.

James Cowin deposed his lands adjoin the defendant's the defendant's cattle had suffered from the disease, and deponent's had caught it. Deponent saw the defendant kindling a fire on the carcase of one of his cattle which had died.

Thomas Cubbon was appointed inspector for a company which effected insurances on the lives of cattle from disease or accident. Deponent was frequently applied to by defendant to inspect his cattle, for the purpose of insuring them, but declined doing so.

Robert C. Quirk purchased a cow and calf at the auction, but did not hear disease mentioned when the conditions were declared; when the cow came home deponent observed she was not well; complained to defendant, who refused to take her back; defendant said it was very wrong for a man professing to be a preacher of the gospel to act in such a way; defendant remarked there had never been anything the matter with the cow, except the usual sickness of calving. Deponent threatened to bring the cow and let her die on the defendant's street; the defendant then agreed to sign a bond of indemnity, but subsequently refused; defendant's wife said she was sorry deponent had got the cow, as the defendant had tried all he could before, and it was

of no use; that it was a very unaccountable disease. The defendant at last agreed to take back the cow.

John Gell was present at the commencement of the auction; heard the conditions declared, but nothing was said concerning the disease.

James Piling had met with the disease in England: it is called the "tick." Deponent had paid particular attention to the disease; it soon carried the cattle off; but deponent knows a cow which has been labouring under it for five months, but is still in a very penurious (!) state.

John Corlett, sen., (on the part of the defendant) deposed that he was present at the auction; the defendant stated to the people that the disease had been amongst the cattle, but he hoped they were clear of it. The auctioneer said, "Do you hear that, gentlemen?" and then repeated it. Deponent had instructions from the defendant to bid his cattle up to their value; deponent had not to take what he bid for; deponent thought the health of the defendant's cattle was impaired by their being kept in an ill ventilated house. Being cross-examined, said he was not there altogether as a sweetener; it is not likely he would accuse himself of dishonesty. Both defendant and deponent are Methodist preachers.

R.C. Quirk and *John Gell* were here recalled to confront the witness Corlett as to the notice given by the defendant: they stated it must have been given in a very low tone of voice, otherwise they must have heard it.

His Honor the DEEMSTER, addressing the witness John Corlett, said he should not feel justified in letting him (Corlett) go from the Court under the impression that he had acted legally or honestly, in bidding up the articles (*puffing*). His Honor quoted some law on the subject.

John Armstrong was auctioneer at the auction; the notice concerning the disease mentioned by John Corlett was given before the young cattle were sold.

William Boyde was at the auction bidding up the cattle; he is a local preacher.

John Corlett, jun., heard the defendant state before the young cattle were sold that the milch cows had bad the disease; but the young cattle were quite free. Deponent bought some cattle.

John Kermode was present when the defendant gave notice of the disease; it was not at the commencement of the auction; it was given in a loud manner that every one must have heard it who was standing near; there were a good many standing round, but a good many scattered about.

Wm. Sayle, a servant of the defendant's, deposed there was nothing the matter with the cattle at the time of the auction.

William Robert Holt served the plaintiff with the account for the cattle he had bought. He made no complaints concerning them.

John Cubbon purchased cattle at the auction; they were much the same as other cattle.

Samuel Turner had attended the defendant's cattle as farrier; the disease was very rapid in its effects; a beast could not live more than four months.

By consent of all parties the case was adjourned until Thursday, the 13th instant.

THURSDAY, JULY 13.

The case was ably argued the foregoing evidence, and summed up by his Honor the DEEMSTER in a clear and lucid manner. The Jury, after a long consultation, dismissed the action, each party paying his own costs.

The plaintiff has since entered a traverse to the House of Keys.

STEPHEN MILLER, 2018

