

1878.
NEW ZEALAND.

CASE AGAINST MR. JOLLY OF HAMILTON, WAIKATO

(DEPOSITIONS AND CORRESPONDENCE IN THE, FOR ALLEGED BREACH OF SCAB ACT).

Laid on the table by the Hon. Mr. Sheehan, with leave of the House.

DEPOSITIONS taken at the Police Court, Auckland, before ROBERT CLAPHAM BARSTOW, Esq., Resident Magistrate, and BENJAMIN MACLEAN, Esq., Justice of the Peace, in the case of FRANCIS CHARLES LEWIS, Inspector of Sheep, Auckland District, *versus* THOMAS JOLLY, of Hamilton, Waikato, for a breach of "The Sheep Act, 1875."

18th MAY, 1878.

George Calwell, sworn :—Am Station Master at Hamilton. On 27th of April sheep were sent by defendant to Remuera Station. There were sixty-six sheep consigned by him to Hunter & Nolan. His were the only sheep sent that day, I believe.

Robert Cleave, sworn :—On the 27th ult. I was Station Master at Remuera. There was a truck of sheep consigned to Messrs. Hunter and Nolan. I delivered them to Messrs. Hunter and Nolan's man Olney. No other sheep arrived that day; Olney took them away.

Richard Olney, sworn :—On the 27th ult. I received sixty-six sheep at the Remuera station from defendant, for my employers Messrs. Hunter and Nolan. I drove them to the foot of Farmer's hill on Saturday. The 30th was Tuesday, Hunter & Nolan's sale day. On that day I drove those sheep to Hunter & Nolan's yard, along the Great South Road, and penned them in the yard by myself. Inspector Lewis was there that day. I put the sheep in two or three pens for sale. Then Inspector Lewis told me to shift them on account of scab, and I put them all into one pen. They were carted away next morning.

Examined by Mr. Hesketh :—Defendant was not with me, nor any one, when I drove the sheep. I put them in one pen in the same yard, not on the road. They were carted away, not driven. I was told not to drive them. I was drafting sheep when the Inspector came to me. Sixty-four were carted away. No one was with me when I drove them. I was in the employ of Messrs. Hunter & Nolan.

Re-examined by Mr. Brookfield :—I got my instructions from Messrs. Hunter & Nolan—W. J. Hunter.

David Nolan, sworn :—I am one of the firm of Hunter & Nolan. On the 27th ult. sheep were sent to us by the defendant for sale. We have been selling for some time for him. Olney gets general instructions to meet the sheep when they are coming. I saw these sheep in one pen, and was told that Mr. Lewis had condemned them.

Examined by Mr. Hesketh :—Four or five weeks before, I had been selling sheep for the defendant—six sales, this would have been the seventh—60 to 80 per week. They came down exactly the same way. Eventually these sheep were sold by us on account of defendant to Clayton for Hulme, the butcher. I attended the six previous sales. I did not see Mr. Lewis in the yard: he visits the yard each sale day. We sold the sheep subject to their being carted away.

Francis Charles Lewis, sworn :—I am Inspector of Sheep, Auckland District. It is my duty to inspect sheep. On the 30th ult. I was at Hunter & Nolan's yards. I saw some sheep there, said to be defendants. Olney told me so. The sheep were being drafted into three lots. Saw the sheep in the lane, they looked suspicious, and I followed them. I afterwards told Olney to put them in one pen as they were scabby. Those were the only sheep so located there. One of these sheep had a patch of scab on the shoulder as large as the palm of my hand. I shewed it to Trotter and Ferguson: they examined it and agreed with me. Trotter had seen it before. Schmiedle (Mr. Buckland's man) had no doubt about it. There was a small patch on the hinder part of the same sheep. One sheep infects a flock. The Great South Road at Epsom is in the Auckland Sheep District. Hunter's yards are also in the district.

Examined by Mr. Hesketh :—I examined only one sheep of the lot. I did not examine any more. There was a red mark on back, and illegible brand on rump of the sheep I examined. I believe a scab the size of a five shilling piece had been on the sheep some months, and had been insufficiently dressed, not cured, and broke out again. If shewn to me that these sheep had not been dressed, it would not alter my opinion as to its being scab. If not dressed might have come to that state in a month, might have taken three months. In summer and winter the disease spreads more slowly than in spring and autumn. Scab spreads more quickly on a sheep that is not folded with others. I certainly expect that the flock had been affected if undressed. With spot undressed think infection must have spread to others. For certificate, examine both sides of each sheep. I don't handle any unless I see any indication of scab.

I told defendant on Thursday that the sheep were scabby. I went to his farm. I saw five sheep there at a distance. Mrs. Jolly said a man in the field would give me information. I declined to see him. I might have said that when dipped, that part of the sheep had not been touched there. On Thursday, Mr. Jolly told me that he had written to the Inspector (Mr. Runciman) to see his sheep, and that the Inspector would be at his farm on the following day (Friday). I said to Mr. Jolly if he (Inspector) can't find scab, send me a telegram at once, and I will go up next day and find it. I did not receive a telegram. but on the following Wednesday night I received a letter. Too long time had elapsed for me to go to examine them, any scabby sheep might have been removed in the interval, but scab could not have been eradicated. I have no doubt I might have found insects in the skin. Insects may be found in the wool. I did not see any; some would be embedded. I can find insects without a glass; I sometimes use one. Insects would die in cold skin after death of animal. The diseased skin was hard like a thin board or tin, under the skin, it was stiff. I am sure this was not from the bite of a dog. When I looked a second time I said scab could be seen on hind leg. Mr. Short said dogs had been amongst Mr. Jolly's sheep, and this was an injury by a dog. I saw Mr. Short handle some sheep, but not this one. There is no disease but scab that a sheep will turn its head round and bite at you for touching. If scratched enough it might not do so. I did not see Mr. Short press it. This is not a serious, but an ordinary case. I would expect to find scab on some of the 65 or 340 running with it if folded together. There is generally a greenish look in a case of scab unlike scars. There was some wool on the old scab, but none on the new patch around it. Have seen a skin I was told was that of this sheep, on Monday. I would expect to find the insect then, but did not look for it. There is no room for doubt as to scab in this case. I never made such a mistake. Many years ago, before I had studied the disease scientifically, I mistook a discolouration in the skin for incipient scab. I can detect scab insect without a glass; need one at times. Clayton was with me and saw the skin. I left the yards on Mr. Hunter's word that the sheep would be taken away and dipped. Mr. Jolly told me at Pokeno Railway Station, that the sheep were being carted away. The piece of old scab was as large as a crown, and when I opened it, I could see scab half an inch thick upon it; the skin underneath was diseased. Around this patch the wool had, apparently, been rubbed off by the animal, and the skin there had a stiff feel. When I pinched the diseased part of the animal, the sheep turned round as if to bite my hand. This is an unmistakable sign of scab. I went to see Mr. Jolly's sheep, wishing to see them at once, before any one had manipulated them. When Mr. Jolly was not at home, I would not go amongst his sheep, out of my own district. I was appointed Inspector in the year 1862, and Mr. Runciman in 1866. I am sure there is no room for mistake in this case.

Re-examined by Mr. Brookfield.—I have no feeling in this case, only in my public capacity. The young of the insects are very small. Female buries herself in the skin. On poor feed disease will lie dormant during the heat of the summer, young ones, perhaps, being burnt up. Moisture is required for the insect to develop itself. I have seen skin heal, and wool grow over diseased patch, but the disease not eradicated without dipping. I went to Hamilton on Wednesday, and crossed Mr. Jolly on the road. The bite of a dog would leave a bluish look and scar.

William Ferguson, sworn.—I have had 40 years experience in sheep. I know scab when I see it. On the 30th ultimo, Mr. Lewis pointed out some sheep in Mr. Hunter's yard, ruddle on back. Mr. Lewis asked me to hold one while he examined it. The sheep was scabby, no doubt, on near fore shoulder. I think it had been dressed, but not perfectly done, but was coming out all around. Wool was off a broad piece two inches square. One on hind leg on same side had been scab, but was cured. I only examined one sheep. I am satisfied, in my mind, it was scab.

Re-examined by Mr. Hesketh.—Never mistook any disease for scab, it is quite different from any other disease. Hind leg had been cured by dressing. I have no doubt the shoulder had been dressed by some person; it was of a month or six weeks' standing, dry, no wool on centre, had been scabbed. All around edges insect alive. I think dead in the centre. Living part about a month old. I think the centre had been dressed. I have known judges of scab mistaken. Not good ones. Injury by dog or instrument quite different; not being insect. I found insect round verge of wool. Mr. Lewis, I think, used his finger nail. I saw a living insect moving. I only examined that time. I would not believe that the sheep had never been dipped. A man who knows anything about sheep, knows an undipped one from a dipped one. I looked at no other sheep. Scab generally commences on the fore shoulder. This was under the shoulder. I did not search the sheep all over. I cannot say it was a bite of a dog on the hind leg.

Re-examined by Mr. Brookfield.—No similarity between the bite of a dog and scab.

Alexander Trotter, sworn.—I am a farmer living at Matakana. I have been amongst sheep for 15 years, at home and here. I know scab, and can detect it. On the 30th ultimo I was at Hunter & Nolan's sale yard's. I carefully examined one sheep, Mr. Lewis pointed out to me; I have not the least hesitation it was scab. One was on a hind-quarter, and one on fore-quarter; on shoulder the size of my hand. Short said it was a dog tear, and I said it was not. I could not mistake between them. I did not see a live insect.

Cross-examined by Mr. Hesketh.—Saw two patches. I believe that on hind leg was alive. That on fore-quarter was similar. I did not like to go among them, as I had sheep of my own. I saw the scab was eating in under the wool—much fresher—it looked as if carbolic acid had been put on it, it looked a pale red. I saw Mr. Lewis handle it, but did not see the wound open. There was a little short wool on some part of the scab. I cannot say whether the sheep was a wether or ewe. The scab might have been there for six months, as I think it had been patched up. It could have run among other sheep six months, without affecting the other sheep.

Herman Schmiedle, sworn.—I am employed by Mr. Buckland. I have had twenty years' experience of sheep. I know scab. On the 30th ult. Mr. Lewis pointed out a sheep to me. Mr. Lewis marked the ear. I saw the sheep and said it was scabby. I handled it. The sheep was scabby on lower part of near shoulder. I only looked at one sheep. Mr. Frederick Howard came in and examined the same sheep.

Cross-examined by Mr. Hesketh.—I think this sheep had scab for some time : had been scabby, dressed, and broken out again. It would have shewn more in other sheep if more than a month old. A wound could not have the same effect. It could not have been by a dog.

Frederick Howard, sworn.—I have thirty years' experience of sheep in New Zealand. I know scab. On the 30th of April Schmiedle showed me some sheep. Early in the day I had seen some sheep in another part of Hunter & Nolan's yards. I saw symptoms that were suspicious ; there were some pluck ; and I saw a sheep I thought a scabby one. I after examined one. It was suffering from scab, I have no doubt. I handled it so as to know it was scab : near fore-leg below shoulder. It was scab of long standing. I think the sheep had had blue ointment or something killing part of the scab ; but outside was a ring of live scab. I touched the scab with my fingers. The sheep turned and bit at me. I know no other disease for which sheep will turn and bite. The scab part was bare. I looked no farther at the sheep.

Cross-examined by Mr. Hesketh.—The mark was below the shoulder. I do not know if it was the same wound I saw. Red louse is nearest to scab. I do not know any disease could be taken for scab. The sheep was not rendered unfit for food. It might have taken months to come to this stage. I did not find an insect. I do not think I have ever been mistaken in scab. Some people have been mistaken. Some good judges may, to my knowledge, have made mistakes. I think insect could now be found on skin. I might find one with good light and good glasses in five minutes. As far gone as that sheep, I could find scab in the dark. This could not be mistaken for a wound. I think I have known wounds taken for scab, three times. My own sheep have had scab. No room for mistake in this case. It would not alter my opinion as to scab, if this sheep had never been dipped. I will not swear the centre was scab, it was reddish brown when I saw it—ripe scab. I did not lift the wool and look underneath. Might have been greenish there. I did not care to examine another sheep. This is not a very bad case—an ordinary case—bad enough to infect other sheep. If one sheep in a flock is affected as bad as this one, others would be scabbed, and if put in fresh pasture, the scab would shew. There were 50 or 60 sheep in the pen. A sheep might run some time with others, before scab on any other is developed. I said, it is possible twelve months after, you might find the insects in the skin—in the wool part of the skin.

DEFENCE.

Objection.—Mr. Hesketh asked that, the case should be dismissed on the ground that it was not proved the Defendant had knowledge that the sheep were infected.

Ruled.—That under Section 23 of "The Sheep Act, 1875," it was not necessary that knowledge should be proved.

Arthur Carter, sworn.—I am employed by Mr. Clayton. I produce a sheep skin. Mr. Lewis asked me to keep the skin on a Monday morning. The sheep was dead and the meat gone. Mr. Lewis picked out the skin, ear marked. Cut in near ear. Positive this is the same skin. The skins were all in the slaughterhouse. I was there when Mr. Lewis said this was not the skin. Did not hear Mr. Howard say this was not the skin. Heard Mr. Lewis say it was not. I cannot say I killed this sheep. Did not myself take away any sheep from Hunter & Nolan's.

Cross-examined by Mr. Brookfield.—I only slaughter. The sheep was killed a fortnight come Monday, the 6th of May. I took the sheep out of the pen, for it came out of the pen. I know nothing more. A score of sheep, likely, were killed there that day. Mr. Lewis came to me about one o'clock on that same day. This skin was then amongst the others. Mr. Lewis asked if I killed a sheep with an ear brand. This was the only one so marked, it was a fresh mark. I sent the skin in for Mr. Lewis to Clayton. I don't know where it has been since Hunter's man gave it to me now. I sent it to Mr. Clayton to be kept for Mr. Lewis. I got it to-day from Hunter's man, the man who was shewing it during the adjournment.

Frederick George Clayton, sworn.—I remember Mr. Lewis seeing a sheepskin last Monday week at my place. I got it from the slaughterhouse. I believe this to be the skin now here. Picked this skin out of a lot more sent to my yard, and told me to take care of it. I kept it in my stable till this afternoon, and gave it to Mr. Hunter. Saw Mr. Howard and Mr. Lewis look at this skin in this Court. Mr. Lewis said, after looking at it, this is not the skin. Mr. Howard did not say anything. I knew nothing of sheep myself. I bought some sheep supposed to be scabby, at Hunter & Nolan's yard on the 30th of April. I did not examine them, but they did not look like scabby sheep. I did not buy them for myself. I exercise my own judgment in buying. I thought if infected, it was only slightly. Many mistakes have been made lately. To my own knowledge mistakes have been made by competent people. There was a mistake last year.

Cross-examined by Mr. Brookfield.—Lately sheep have not been condemned by mistake. Lambs some years ago. I did not examine these sheep myself. This is the skin Mr. Lewis gave me custody of.

Re-examined by Mr. Hesketh.—I never examined the skin, nor do I know scab.

William Hunter, Auctioneer, sworn.—I got a sheepskin from Clayton this morning, and gave it to my man Olney.

Cross-examined by Mr. Brookfield.—My son was salesman on the 30th of April. Mr. Lewis told me he thought they were infected. I looked at one. He said the sheep had not been thoroughly dipped. I told my man to cut the sheep's ear, and he did so. I can't say I handled it.

20th MAY, 1878.

Thomas Jolly, Defendant, sworn.—I sent down sheep to Messrs. Hunter & Nolan on the 29th of April. I had done so on seven previous times weekly, by train. I mustered them in the yard. I had 800. I have sent down 560 ; sent down lambs first and then fat ewes, sending fattest, did so the last

time. I helped to put them in truck. J in circle is my brand, and we ruddled them. Brand is an old tar brand at shearing time. Sixty-six were put in truck. Nothing said about scab previously. Fetched good prices previously; lambs sold high. On Tuesday evening I received Mr. Hunter's telegram that the sheep were condemned for scab. Before receiving that telegram, I had no knowledge or idea that my sheep were scabby or infected. Had never treated them for scab. Scab had never been suggested to me by any one. Never dipped or bottled for scab. I applied stuff last August for bites. Several worries had taken place, but this time 18 were killed, and from 20 to 25 were dressed with Ellman's Embrocation; some were wounded in the leg, some in the throat, &c.; bad wounds. The last lot I sent down were 50 ewes, 6 wethers and 2 lambs. It is more than two years since I bought sheep, except 25 lambs I bought at Hammond's sale two months ago. Two years since I bought any ewes. Never dressed any wounds except for bites or foot rot. No dressing such as described by witnesses, had taken place on my farm. Never saw scab or helped to dress for scab. I have lived on my farm for the last six months. No dressing done in that time. I cannot account for any peculiarity on this sheep. I believe the skin is here. I don't know that Mr. Joe May has seen it. I could not swear to this as the skin of one of my sheep. I understand this skin is said to be mine.

Cross-examined by Mr. Brookfield.—Mr. May saw the skin on Saturday evening. I never examined my sheep for scab. Only know scab from hearsay. Never saw my sheep rubbing or scratching. Have been getting them up every week lately. I have 680 acres fenced in and sub-divided. My sheep have always been all together. I cannot say that I know of any sheep having strayed into my field. Sometimes some of Mr Cox's sheep come to mine and some of mine go to his. I think two or three of his were amongst mine when I last drafted. One has been two or three years amongst mine. A triangle is his brand. I do not know the nature of Ellman's Embrocation. It has a milky look and aromatic smell. It causes a smarting pain. Sheep winced when dressed. I cannot tell if any worried sheep were sent down on the 29th April. I came to Auckland on the 30th of April from telegram. Sheep were then in Hunter & Nolan's yard about noon. I did not examine the sheep or have them examined. Two men were having them carted away. The men knew nothing more than that they were condemned. I went then to Papakura to see Mr. Hunter at the sale there. I did not know anyone to ask to examine the sheep.

Re-examined by Mr. Hesketh.—I saw Lewis at Pokeno only for an instant. I never heard of Mr. Cox's sheep being scabby. Heard of no scab within three miles of Hamilton. I have used Ellman's Embrocation for horses as well. Twenty-five lambs from Hammond's were put among my sheep.

John Short, Orakau, sworn:—I was at Hunter and Nolan's saleyards when Mr. Lewis was looking at some sheep. I had seen Mr. Jolly before that, and just spoke to him, but am not intimate. I heard Mr. Lewis condemn the sheep of Mr. Jolly's, as scabby. I went and had a look at them. I could not see they were scabby. I could not see anything of the sort at all. Mr. Lewis then shewed one particular sheep to somebody. I went too, and saw him turn the sheep up and shew the places just behind the shoulder and hind leg. I think it was Trotter to whom he was shewing it. It appeared to me more like the bite of a dog. I have often seen such a place when sheep, getting through a fence, tear the skin; the flies get at it and maggots. This was not scab, had been done two months or more. Short wool was growing over the place again. I have seen plenty of scab in sheep in all stages, from beginning till in a great patch. My own sheep have had it three or four times. My father's sheep have had it. I have been amongst sheep all my life. Always had sheep for twenty years in New Zealand. I examined the place; it was about the size of my hand. Neither place was scab. I can swear it was not. I examined the parts. The sheep took no notice as if it was scab. I pinched it up and looked at it. The skin was too soft for scab. The sheep took no notice; if it was scab, they would have done. I told Mr. Lewis, at the time, it was more like the bite of a dog. I said so to Hunter and others. I had some cattle in the sale, and took a look through the sheep. Assuming that it was scab, it would be visible on the skin now, had the sheep been killed that day. It would have taken two months to have developed so much scab. I did not go into the pen, but the sheep was turned over, and I left it. I looked at all the sheep, they were in three pens then. I saw Mr. Lewis make no observation, but with his eye. I felt and looked about the sheep, but saw nothing.

Cross-examined by Mr. Brookfield:—I handled this one sheep. I did not use a glass at all. I had looked at the sheep before, and looked at them again when I heard they had the scab. Sheep rubbing about a post may communicate scab. Live three or four weeks or a month on a post. I don't know a book by Bruce, Chief Inspector of New South Wales. The growth of wool seemed two months old. Wound had not been done ten months ago. This had been done fresher than that. I drove some sheep in February that got into Mr. Jolly's farm, it was rough getting them out. I had not examined my sheep for some time before this. I drove along main road. I have heard say scab is caught by driving on a road after a scabby flock. I never knew it myself. I should think, in a fortnight from time of insect in wool, it would cause irritation in the skin.

Re-examined by Mr. Hesketh:—My sheep were sold at Buckland's, in February. They were free from scab. I never heard they were scabby. Soon seen by wool; it first turns white, and then pulls off.

John Runciman, sworn: Inspector of Sheep for Waikato, since 1866. I know Mr. Jolly's farm. I inspected his sheep on the 4th of May, at his request. I saw about 250. I found no disease. No indication of scab. I gave a clear certificate. I found one sheep with a hard crust on the back of the neck, and two scratches. The sheep had the appearance of being two or three days dead, and a lot of maggots in it half an inch long. The skin was greenish blue. I traced the scar in the wool; it was a scratch that had been struck by flies. I only found this on one sheep. I saw a skin at Newmarket, Messrs. Clayton, and Jolly were present. I found no indication of scab on that skin. It is possible to be mistaken in a skin, so long after it has been taken from a sheep. I think, if it was scab, it would be found underneath the skin. I would expect to find it under the skin after six or eight weeks. I found nothing under the skin only bare near the tail. I saw it last Friday. I have never called anything else scab. Never saw scab in sheep and called it anything else. I have known old wounds and sunburns exactly like indications of scab.

Cross-examined by Mr. Brookfield :—I looked through Mr. Jolly's sheep on the 4th of May. I handled seven or eight carefully. Scab is spread by contagion. The mark on the sheep I saw was as large as my hand, the sore was greenish blue where the maggots were. I examined it carefully ; maggots were running on the skin. I have seen a person with maggots under skin. The wound in this sheep was quite dry. I carefully examined the skin. I found no bad place near the shoulder ; the wool seemed all the same length. Maggots were then in it. I had not inspected Jolly's sheep for twelve months previous to this time.

To Court.—The wound on the sheep I saw at Mr. Jolly's, was of such a kind as dogs would make not less than three or four weeks before, it did not look as if it had been treated, nor did any of the others I examined. I am often in the habit of examining sheep. A good many times have examined for scab. Not often seen it there, I have seen it elsewhere. In market here several times, and at Waiwera.

Joseph May, sworn :—I know a little about sheep. I saw this skin on Saturday. I have seen scab amongst sheep. I paid £100 for it once. I see no indication of scab on this skin ; it is possible to have been slightly affected and not visible now. I expect it was not a bad case, or the wool on the shoulder would be more gone. I ought to have seen signs of it if such a scab as witnesses have described. I see no sign of injury to the skin.

A. G. Howard, sworn :—Inspector of Sheep and Slaughterhouses. I have not seen this skin before. I am not Inspector of Panmuri Slaughterhouse, where this was killed. I have had thirty years experience in sheep. Seven as Inspector. I am not aware I have made a mistake about scab. May make a mistake in early stage, but don't know of its being done.

Cross-examined by Mr. Brookfield :—Once under the skin, there can be no mistake as to scab. I don't consider Ferguson a competent judge. I don't think a hardish skin in middle, surrounded by a bluish green mark, would be anything else but scab. Imperfectly dressed scab would break out again, the whole animal should be dipped. The portion dressed might die. If improperly dressed would lie dormant, and might break out again. One dip is not enough. I would expect to find a mark on a live animal, and on a fresh skin. I should not expect to find any indication in a skin of this condition.

Thomas Jolly, re-called :—Mr. May has seen this skin, and Mr. Runciman also saw it at Clayton's ; this one now here. It has been in my possession, at Hunter's yards, since Saturday.

Charles Roskruge, sworn :—I know Mr. Jolly, he called at my house with a sheepskin, on Saturday evening. I am summoned here. I examined a small portion of the skin, and then declined going on as I was a Government officer. I looked at a piece twice the size of my hand, near shoulder, I saw nothing there. No one drew my attention to any particular portion. I used a glass. I did not see any insect. I am an Inspector. I had experience from boyhood and here. I should not expect to find marks on the inside of the skin in such a case.

[CORRESPONDENCE.—NIL.]
