

The compromise was ratified by the court. The government was soon after notified through its law officers of the compromise, and has made no objection, but through its said officers has expressed approval of it. I refer to the records of the court so far as named in connection herewith. I am unable to state from the testimony whether or not the court was unintentionally misled as to the value of the property which was the subject of the compromise. The chief justice, after asking whether the compromise had been agreed to and receiving an answer from one of the defendant's attorneys that the defendants had made no objection, further inquired to the effect whether the compromise was considered fair and reasonable. One of defendant's counsel answered that it was in substance turning over the property. Mr. Marshall, of special counsel for the receiver, rose and said in substance that it was not a surrender of the property, but of the proceeds or sums the defendants represented had been paid on the last transfers. There was no statement of the actual value made. The Chief Justice got the impression that there was something yielded by the receiver for the compromise, but that the sum named was an approximation to real value, and had he known the real value was very much more, would have awaited or called for further investigation.

As an inference of fact I think this impression of the Chief Justice was derived from the strong statements of the petition (too strong when compared with the facts shown in evidence) that it was the property of the United States, and from the information of what the defendants represented had been paid on the last sales, and not knowing or considering there had been an appreciation of forty per cent. since those sales. One Associate Justice assented to it, because the parties and counsel had agreed to it and considered it fair, without any distinct impression of relative values. The view of the other Associate Justice can only be inferred from the brevity of the consultation, the almost immediate assent, and the absence of inquiry by him. This may tend to show he regarded it essentially as a consent order, and assented to it as such. I think the evidence shows no further report of the compromise was made, but in all the receiver's reports, and in later proceedings, this sum was reported and treated as cash in the receiver's hands. This sum was less than half of the value of the whole land embraced in the compromise, on the 8th day of July, 1888, but the figures given show the relation it bore to the lands hoped to be recovered.

SECOND.

About August 25, 1888, the receiver got orders from an officer of the Church, on holders of over fifty leases of Church sheep, for the surrender of 30,158 sheep. They were held by these lessees in flocks of from 8 to 3000 in various parts of the Territory, and some were ranging in Wyoming. Agents of the receiver collected into larger flocks about half of

this number and at the time of the lease to Pickard, the remainder were still in the hands of the lessees of the Church and in the hands of persons from whom the Church got sheep to fill the deficiency arising out of the failure of its lessees to fill the orders. To make up this deficiency, the Church procured from T. K. Armstrong 3,500, and got back from a former vendee of the Church some 3,000, more or less. In collecting, the receiver's agents in some instances got sheep of a poor quality, especially where they were held in small numbers intermingled with other sheep, as the agents had no means of determining which were Church sheep, and had to take what was offered as such, or get none, and as a rule the sheep they collected were of inferior quality to the common grade of sheep of the Territory. The Armstrong sheep were of fully an average quality, and some of the larger flocks received were about an average.

The whole number considered together, were somewhat below an average, and no bucks were received with the flock. The receiver got 30,000 and let 4450 to five persons as follows: 3450 at 25 cents per head; 121 at 25 cents, 341 for two pounds of wool per head and 10 lambs per hundred, and 507 for 1½ pounds and 6 lambs. The remaining 25,550 he leased to W. L. Pickard for 20 cents per head. All the leases were for one year, and with the usual agreement to keep the flocks good in number and quality. It is claimed the leases to Pickard fail to embrace this last provision, or are at least ambiguous. It is probable the universal custom would aid in construing the leases and curing any ambiguity, but if the leases are defective in this respect it is the mistake of the receiver's counsel, to whom the form was submitted. The sheep and wool industry was much depressed in the summer and fall of 1888. Wool during the season brought from 8 to 13 cents per pound, a reduction of at least ½ from the price of 1887; a scarcity of ranges was anticipated and a reduction of the tariff on wool feared. Large numbers of sheep were for sale at low prices and in some districts were almost unmarketable. These sheep, at the market price, were worth about \$1.50 per head. Many engaged in the sheep business had met losses, and some lessees were refusing to renew or continue leases at former rates. The knowledge that the receiver had a large number of sheep to let encouraged the idea that they might be got from him at low rates, and he was given discouraging views, and he had no practical knowledge of the business. Pickard was a business friend, and one of the receiver's bondsmen. In prior years, the average rental of sheep was on terms that would be equal to from 40 to 50 cents, though cash rentals were not usual. The testimony of cash rental value in 1888, omitting the very extremes, is from 20 to 45 cents per head. The greater number of witnesses say from 20 to 25 cents, and those same witnesses describe the sheep as very poor in quality,

while witnesses who give the higher figures saw some of the sheep and considered them a fair average as a rule. It is shown that Mr. Pickard re-let these sheep to some ten or more persons at the same average rates that were usual in prior years, and his lettings make an average of two pounds of wool per head and over eleven and nearly twelve lambs per hundred.

This testimony is valuable as a practical construction of the other testimony, and shows the price of wool and sheep was a more important factor in this case than the quality of the sheep. In taking and making his leases he estimated wool in 1889 at 11 cents per pound, and his lambs at 60 cents, and thought he could make about 8 cents per head profit. In prior years this same royalty would have brought 40 to 50 cents. The testimony therefore shows that the fair rental for 1888 was wholly a matter of business calculation, and of weighing the probabilities for prices. The same witness testifies 20 cents cash was a fair rental for the whole. With more time and attention to the business, and by dealing with a number of persons, the receiver could have rented the sheep in parcels on terms which would probably have yielded 29 or 30 cents, and more if wool should be higher in 1889, and the value of the lambs would also follow the price of wool, or perhaps he could have obtained 25 cents per head on a cash rental.

The proof shows the letting to Pickard was in entire good faith, and in the belief that he was doing the best he could do, and he understood Pickard to be amply responsible financially. Considering the rule with a receiver is to provide for absolute safety so far as he can, rather than to make profits, that he is debarred from ordinary business risks not forced upon him, and the circumstances that surrounded him at the time, as disclosed by the testimony, the transaction does not afford any evidence of bad faith or dishonest intent.

THIRD.

On motion for the appointment of a receiver, it appeared that seventeen or more Stake Corporations had been organized in Utah prior to March 3, 1887, and that on February 28, 1887, the Church had assigned to these local corporations, personal property to the amount of about \$260,000, and the gross value of the property assigned to each Stake was set forth, but there was no inventory or disclosure to show of what the property consisted. In April, 1888, in proceedings in the main case, these inventories were disclosed, and it appeared they were taken shortly before February 28, 1887, for the purpose of the transfers. The property consisted of hay, grain, merchandise, tithing house supplies, office furniture and fixtures, and a great variety of property in the various Stakes, including \$65,736 in cattle; \$18,869 in horses, and \$14,514 in sheep. In some Stakes the property was in more than one place, and in as many places as there were tithing houses. At these places