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Basic Assumption*

(a poem based on *Sherwood v. Walker*)

Alan E. Garfield**

This poem was inspired by *Sherwood v. Walker*,¹ the “barren cow” case that is a staple of first-year Contracts. The cow in *Sherwood*, Rose 2d of Aberlone, had been sold for her beef value on the assumption that she was barren. In fact, the cow was “with calf” and worth almost ten times her value as beef. The Michigan Supreme Court held that the seller could rescind the contract if the cow was sold “upon the understanding of both parties that she was barren, . . . and that in fact she was not barren, but capable of breeding.”²

I'll tell you how a man with a cow had a cow
because his cow had a cow.

Here's how.

The man with a cow had a cow
because he sold his cow for just chow.

How now?

He sold his cow for just chow
because he didn't know his cow had a cow.
Had his cow had a cow it would have been worth a thou
and would not have sold for just chow.

What now?

Well, the buyer said “Wow!”
The seller said “Yeow!”
And the Court finally said “Come now!”
How can a cow with a cow worth a thou
sell like a cow for just chow.
Not never, and not now!”

So now you know how a man with a cow had a cow
because his cow had a cow.

* RESTATEMENT (SECOND) OF CONTRACTS § 152 (1981) provides: “Where a mistake of both parties at the time a contract was made as to a *basic assumption* on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of the mistake” (emphasis added).

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1. 33 N.W. 919 (Mich. 1887).

2. *Id.* at 924.

