

14460

No. \_\_\_\_\_

# Supreme Court of Illinois

James

---

vs.

Stratton

---

71641  7

72  
STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

204  
No.

4

James  
1863

5  
Stratton

Printed By BEACH & BARNARD, 14 South Clark St.

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }  
APRIL TERM, A. D. 1863. }

---

WILLIAM JAMES Coroner, who sues for the use of  
George Smith and Elisha W. Willard,  
*Plaintiff in Error,*

vs.

OSCAR STRATTON, JOHN B. LYON & ALBERT  
MORSE, Impleaded with James T. Hoyt.  
*Defendants in Error.*

---

## ABSTRACT OF RECORD.

THIS WAS AN ACTION on a replevin bond. The defendant, Oscar Stratton, and one Samuel W. Woodward, were engaged in buying cattle; about the first of September, 1859, said Stratton shipped thirty-three head of cattle to Chicago, to said Woodward, for him to sell on joint account of Stratton and Woodward. When the cattle reached Chicago, said George Smith and Willard, who had recovered a judgment against said Woodward, caused an execution to be levied against said cattle, as the property of said Woodward; said Stratton then took said cattle out of the possession of the sheriff, by a writ of replevin issued out of the Circuit Court of Cook County, at his suit. The replevin suit in the Cir-

cuit Court was dismissed for want of prosecution. The said Smith and Willard then instituted a suit in the Superior Court of Chicago, in the name of the coroner, for their use, on the replevin bond. The declaration was the usual one on a replevin bond.

The defendants filed four pleas :

FIRST, *Non est factum.*

SECOND and THIRD, That the merits of the replevin suit were not tried, and that the said cattle were the property of said Stratton and not of Woodward.

FOURTH, That the merits of the replevin suit were not tried, and that the said cattle were the joint property of said Stratton and Woodward, but that Woodward had only a nominal interest, on account of advances that said Stratton had made on account of Woodward, for which he, Stratton, claimed a lien on Woodward's interest in the thirty-three head of cattle.

The plaintiff took issue on the first three pleas, denying that the said thirty-three head of cattle were the property of said Stratton ; to the fourth plea the plaintiff filed a demurrer, which the Court sustained.

27

**Bill of Exceptions.**

At the trial, plaintiff introduced replevin bond in the original replevin suit. *Then*, the affidavit of said Stratton in said replevin suit, in which said Stratton swears that he was entitled to the possession of said 33 head of cattle, and that they were worth \$900. *Then*, the replevin writ, with the return of coroner, that he had given the property to Stratton. *Then*, the *retorno habendo*, with the coroner's return, that said Stratton refused to return the said cattle. The plaintiff then rested.

35

The defendant then offered one

**Nicholas Baker**, as a Witness who testified as follows :

Have known the defendant Stratton for four years. I knew him in

36 the summer of 1859; he was then trading in hogs and cattle. I do not know personally anything about the 33 head of cattle being levied on here—nothing except hearsay. There were 34 head of cattle sent by Chicago, Burlington and Quincy Railroad, to Samuel Woodward, about the 1st of September, 1859. The defendant, Stratton, and I, bought them in Iowa, and shipped them to Samuel Woodward, in Chicago, from Wapulo county, Iowa; the last day of August, or the first of September, they were shipped; Stratton went with them as far as Burlington. Stratton paid for part of them, and I paid for part; Stratton gave me the money to pay for them I bought; some of them were paid for after Stratton returned. Stratton said he drew \$600 from the agent of the railroad to pay for part of them. I staid at the town of Agency and did not go to Burlington. The agent told me that Stratton got \$600 from him. Agency is 70 miles from the river. A few days after the cattle came to Chicago, Stratton went to Chicago. After he returned from Burlington he paid for the cattle. I don't know who paid the freight. Stratton rather had the direction of the shipping. I was acting for Stratton & Woodward in buying the cattle. I don't know where Stratton got the money. We expected Woodward to send money there. He did not send it. The agent guaranteed the men that they should be paid for the cattle. Stratton gave me the directions about buying—there were 84 head of cattle bought at the same time with the 33 head; they were a part of the 80 head. I don't know whether Stratton got any money from Woodward, nor where he got his money. I bought some more for Woodward afterwards.

37

**Cross Examination** *by Counsel for Plaintiff—*

There was a partnership contract between Woodward and Stratton, in 1859, for buying cattle. I heard them say so in June, 1859, in my presence. Stratton introduced me to Samuel Woodward. Woodward proposed to furnish the money. I never had any interest in the 34 head of cattle. I purchased what cattle, of the 34 head I bought, on the joint account of Stratton and Woodward. I understood from the defendant, Stratton, that he was buying the 34 cattle for joint account of himself and Woodward. Stratton told me this. They (Stratton and Woodward) were to have equal property and equal profits in the said 34 cattle.

Woodman sent \$1,280, that I know of. It came through me. Between \$400 and \$600. I know Stratton paid—

Defendants re-call

**Witness Baker**, *who, on Re-direct Examination,*

28       Testified : That Woodward had agreed to send money to Agency City to pay for the cattle to be delivered there; that he failed so to do. Witness and Stratton waited there several days for the money to come. It did not come. The owners of the cattle had driven them to Agency City, where they were to be paid for, and would not deliver them until paid for; under these circumstances, Stratton and I went to the agent of the railroad, and he guaranteed the payment of the cattle on Stratton's account, and agreed to advance Stratton \$600, to pay for the cattle with; on these terms, the owners of the cattle let them go. Stratton got on the train, went to the river, got the \$600, returned the next day, and paid for the cattle. The money was advanced at Agency City, or agreed to be, on the personal credit of Stratton. The agent knew him and did not know Woodward. The man at Agency City was the agent of the Chicago, Burlington and Quincy Railroad.

Defendants next called

**William Martin**,

Freight Agent of the C. B. & Q. R. R., who produced the following receipt :

39

FREIGHT OFFICE C. B. & Q. R. R.

*East Burlington, Aug. 26th, 1859.*

“ Received of O. Stratton, two cars of cattle, (34 head more or less)  
“ to be delivered at Chicago station, at special rates, being \$55 per car  
“ from Agency City, and charges, \$600. In consideration of which, and  
“ for other valuable considerations, it is hereby mutually agreed that said  
“ Company shall not be liable for loss by jumping from the cars, delay  
“ of trains, or any damage said property may sustain, except such as  
“ may result from a collision of the train, or when cars are thrown from

“ the track ; in course of transportation, to be fed and taken care of by  
“ owners.

( Signed ( “ R. F. HAWFORD, for C. B. & Q. R. R.  
“ O. STRATTON.”

And who testified that the cattle were consigned to Oscar Stratton in Chicago, and that said Stratton paid the freight on said cattle, amounting to \$110, and the \$600 advanced by the railroad agent at Agency City.

The defendant then rested his case.

40 The plaintiff by his counsel then offered

**Samuel Woodward,**

The defendant, at the execution, as a rebutting witness, to prove the ownership of the said 34 cattle, taken in execution against said Woodward, at the suit of Smith & Willard. (The defendants' counsel objected to the witness testifying on the ground of interest ; which objection the Court sustained, and refused to let Woodward testify, to which ruling of the Court excluding the said Woodward from testifying, the plaintiff, by his counsel, then and there excepted.)

This was all the testimony in the case.

**Jury** rendered a verdict for plaintiff for nominal damages. The plaintiff moved for a new trial on following grounds :

1. The verdict is against the evidence.
2. The Court erred in refusing to let Woodward be sworn and testify on the part of the plaintiff.

41 The Court overruled the plaintiff's motion for a new trial, and plaintiff then and there excepted.

**Stipulation** as to filing Bill of Exceptions.

42 **Certificate** of Clerk.

43 **Assignment** of Errors.

HERVEY, ANTHONY & GALT,  
*Attorneys for Plaintiff in Error.*

204

James et als  
vs

Stratton et als

---

Abstract

Filed Apr. 23-1863

L. Leland  
Clerk

IN THE  
Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION,  
APRIL TERM, A. D. 1863.

WILLIAM JAMES, Coroner, who sues for  
the use of George Smith and Elisha W.  
Willard,

*Plaintiff in Error,*  
*versus*

OSCAR STRATTON, JOHN B. LYON,  
AND ALBERT MORSE, impleaded with  
James T. Hoyt,

*Defendants in Error.*

BRIEF AND POINTS OF PLAINTIFF IN ERROR.

This was an action on a replevin bond. The defendant, Oscar Stratton, and one Samuel W. Woodward, were engaged in buying cattle. About the first of September, 1859, said Stratton shipped thirty-three head of cattle to Chicago, to said Woodward, for him to sell on joint account of Stratton and Woodward. When the cattle reached Chicago, said George Smith and Willard, who had recovered a judgment against said Woodward, caused an execution to be levied on the interest of said Woodward in said cattle; said Stratton then took said cattle out of the possession of the sheriff, by a writ of replevin issued out of the Circuit Court of Cook county, at his suit. The replevin suit in the Circuit Court was dismissed for want of prosecution. The said Smith and Willard then instituted a suit in the Superior Court of Chicago, in the name of the coroner, for their use, on the replevin bond. The declaration was the usual one on a replevin bond.

## I.

The judgment ought to be reversed because Woodward and Stratton, having a joint interest in the said cattle, when the sheriff levied the said execution, at the suit of Smith and Willard, on the interest of Woodward in said cattle in the possession of Woodward, Stratton had no right to replevy the cattle from the sheriff, and could not have maintained his replevin suit. In the suit on the replevin bond, he could not make any defense which he could not introduce in evidence to sustain his action of replevin.

If he had shown in the action of replevin, as he did in the suit on the replevin bond, that the cattle, at the time of the levy of the execution and the service of the replevin writ, were the joint property of Woodward and himself, the court would have instructed the jury that he could not maintain his replevin suit.

The defendants' chief witness, Baker, testified that "*he and Stratton bought these cattle in Iowa, and shipped them to Woodward at Chicago; that he acted for Woodward and Stratton in buying the cattle; that there was a partnership contract between Woodward and Stratton, in 1859, for buying cattle. I heard them say so in June, 1859, in my presence. Stratton introduced me to Woodward. That he purchased what cattle of the thirty-four head he bought, on the joint account of Stratton and Woodward. I understood from the defendant, Stratton, that he was buying the thirty-four cattle for joint account of himself and Woodward. Stratton told me this. They (Stratton and Woodward) were to have equal property and equal profits in the said thirty-four cattle.*" (See page 3 of Abstract.)

Smith and Willard had a right to direct the sheriff to levy their execution on the interest of Woodward in the said thirty-four head of cattle, and sell it, and Stratton had no right to take them out of the possession of the sheriff by a replevin writ, but might have enjoined the sheriff from selling the cattle until an account could be taken between himself and Woodward to ascertain the quantity of interest which Woodward had in the cattle.

*In Scrugham and Mackie v. Carter and Labagh, 12 Wendell, 131, the Court say, replevin does not lie against a sheriff, who, by virtue of an execution against one of several partners, takes the partnership prop-*

*erty* and *removes* it to a place of safe deposit, at the suit of the other partners, or those standing in their stead.

*Mersereau v. Norton*, 15 Johns. 179.

*Burrall v. Ackey*, 23 Wend. 606.

In the case of *Phillips v. Cook*, 24 Wend. 389, Cowen, J., discusses the case very fully, and holds that the other partners cannot maintain replevin, trover or trespass against the sheriff for levying upon and selling the interest of one partner in the partnership property, but that their remedy is in equity. The books are full of other cases which might be cited if it were necessary.

## II.

*The judgment ought to be reversed, because it is against evidence.*

If Stratton could have maintained his replevin suit, and the defendants make a defense in the suit on the replevin bond such as they did, then the plaintiff was entitled to a verdict for \$450.

In his affidavit for the writ of replevin, the defendant Stratton swore that the thirty-four cattle were worth \$900, (which was introduced in evidence in this suit to prove the value of the cattle) and the whole evidence of the defendants shows that the cattle were the joint property of Stratton & Woodward, (*see Baker's testimony above.*) And in all cases, where it does not appear what is the precise amount of the respective interest of the partners, the presumption is that they are entitled equally.

Collyer on Partnership, page 153.

3 Kent Com., 5th ed. 28.

*Farrar v. Beswick*, 1 M. & Rob. 527.

*Gould v. Gould*, 6 Wend. 263.

But we are not left alone to the presumption of law to determine the quantity of Woodward's interest in the said thirty-four head of cattle. Baker, defendant's witness, testifies "*that they (Stratton and Woodward) were to have equal property and equal profits in the said thirty-four cattle.*" (See page 3 of Abstract.)

## III.

The judgment ought to be reversed, because the court erred in refusing to let Woodward be sworn, and testify on the part of the plaintiff.

Woodward, *the defendant in the execution at the suit of Smith and Willard*, would have been a competent witness in the replevin suit, and was a competent witness, in the suit on the replevin bond, to prove the ownership of the cattle.

*Miller v. Dobson*, 1 Gilm. 573.

In *Gray v. Morey*, 26 Ill. 414, the Court say, in the case of *Miller v. Dobson*, 1 Gilm. 573, it was held that a defendant in execution was a competent witness in replevin, and approve of that decision.

The case at bar is precisely analogous to the one in *Gray v. Morey*, 26 Ill. 414, which was an action on a replevin bond, and *plaintiff* offered Johnson Misner, as a witness, who was *defendant in the execution*, and the court held, that the court below erred in excluding the said Johnson Misner from testifying.

HERVEY, ANTHONY & GALT,  
*Attorneys for Plaintiff in Error.*

Mr James C. H.  
vs  
Oscar Stratton

~~Abstract~~  
Briefs + Points

Filed 4/23/1863

S. L. Cabell  
Clerk

IN THE  
Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION,  
APRIL TERM, A. D. 1863.

WILLIAM JAMES, Coroner, who sues for  
the use of George Smith and Elisha W.  
Willard,

*Plaintiff in Error,*

*versus*

OSCAR STRATTON, JOHN B. LYON,  
AND ALBERT MORSE, impleaded with  
James T. Hoyt,

*Defendants in Error.*

BRIEF AND POINTS OF PLAINTIFF IN ERROR.

This was an action on a replevin bond. The defendant, Oscar Stratton, and one Samuel W. Woodward, were engaged in buying cattle. About the first of September, 1859, said Stratton shipped thirty-three head of cattle to Chicago, to said Woodward, for him to sell on joint account of Stratton and Woodward. When the cattle reached Chicago, said George Smith and Willard, who had recovered a judgment against said Woodward, caused an execution to be levied on the interest of said Woodward in said cattle; said Stratton then took said cattle out of the possession of the sheriff, by a writ of replevin issued out of the Circuit Court of Cook county, at his suit. The replevin suit in the Circuit Court was dismissed for want of prosecution. The said Smith and Willard then instituted a suit in the Superior Court of Chicago, in the name of the coroner, for their use, on the replevin bond. The declaration was the usual one on a replevin bond.

## I.

The judgment ought to be reversed because Woodward and Stratton, having a joint interest in the said cattle, when the sheriff levied the said execution, at the suit of Smith and Willard, on the interest of Woodward in said cattle in the possession of Woodward, Stratton had no right to replevy the cattle from the sheriff, and could not have maintained his replevin suit. In the suit on the replevin bond, he could not make any defense which he could not introduce in evidence to sustain his action of replevin.

If he had shown in the action of replevin, as he did in the suit on the replevin bond, that the cattle, at the time of the levy of the execution and the service of the replevin writ, were the joint property of Woodward and himself, the court would have instructed the jury that he could not maintain his replevin suit.

The defendants' chief witness, Baker, testified that "*he and Stratton bought these cattle in Iowa, and shipped them to Woodward at Chicago; that he acted for Woodward and Stratton in buying the cattle; that there was a partnership contract between Woodward and Stratton, in 1859, for buying cattle. I heard them say so in June, 1859, in my presence. Stratton introduced me to Woodward. That he purchased what cattle of the thirty-four head he bought, on the joint account of Stratton and Woodward. I understood from the defendant, Stratton, that he was buying the thirty-four cattle for joint account of himself and Woodward. Stratton told me this. They (Stratton and Woodward) were to have equal property and equal profits in the said thirty-four cattle.*" (See page 3 of Abstract.)

Smith and Willard had a right to direct the sheriff to levy their execution on the interest of Woodward in the said thirty-four head of cattle, and sell it, and Stratton had no right to take them out of the possession of the sheriff by a replevin writ, but might have enjoined the sheriff from selling the cattle until an account could be taken between himself and Woodward to ascertain the quantity of interest which Woodward had in the cattle.

*In Scrugham and Mackie v. Carter and Labagh, 12 Wendell, 131, the Court say, replevin does not lie against a sheriff, who, by virtue of an execution against one of several partners, takes the partnership prop-*

erty and removes it to a place of safe deposit, at the suit of the other partners, or those standing in their stead.

*Mersereau v. Norton*, 15 Johns. 179.

*Burrall v. Ackey*, 23 Wend. 606.

In the case of *Phillips v. Cook*, 24 Wend. 389, Cowen, J., discusses the case very fully, and holds that the other partners cannot maintain replevin, trover or trespass against the sheriff for levying upon and selling the interest of one partner in the partnership property, but that their remedy is in equity. The books are full of other cases which might be cited if it were necessary.

## II.

*The judgment ought to be reversed, because it is against evidence.*

If Stratton could have maintained his replevin suit, and the defendants make a defense in the suit on the replevin bond such as they did, then the plaintiff was entitled to a verdict for \$450.

In his affidavit for the writ of replevin, the defendant Stratton swore that the thirty-four cattle were worth \$900, (which was introduced in evidence in this suit to prove the value of the cattle) and the whole evidence of the defendants shows that the cattle were the joint property of Stratton & Woodward, (see *Baker's testimony above*.) And in all cases, where it does not appear what is the precise amount of the respective interest of the partners, the presumption is that they are entitled equally.

Collyer on Partnership, page 153.

3 Kent Com., 5th ed. 28.

*Farrar v. Beswick*, 1 M. & Rob. 527.

*Gould v. Gould*, 6 Wend. 263.

But we are not left alone to the presumption of law to determine the quantity of Woodward's interest in the said thirty-four head of cattle. Baker, defendant's witness, testifies "that they (*Stratton and Woodward*) were to have equal property and equal profits in the said thirty-four cattle." (See page 3 of Abstract.)

## III.

The judgment ought to be reversed, because the court erred in refusing to let Woodward be sworn, and testify on the part of the plaintiff.

Woodward, *the defendant in the execution at the suit of Smith and Willard*, would have been a competent witness in the replevin suit, and was a competent witness, in the suit on the replevin bond, to prove the ownership of the cattle.

*Miller v. Dobson*, 1 Gilm. 573.

In *Gray v. Morey*, 26 Ill. 414, the Court say, in the case of *Miller v. Dobson*, 1 Gilm. 573, it was held that a defendant in execution was a competent witness in replevin, and approve of that decision.

The case at bar is precisely analogous to the one in *Gray v. Morey*, 26 Ill. 414, which was an action on a replevin bond, and *plaintiff* offered Johnson Misner, as a witness, who was *defendant in the execution*, and the court held, that the court below erred in excluding the said Johnson Misner from testifying.

HERVEY, ANTHONY & GALT,

*Attorneys for Plaintiff in Error.*

IN THE  
Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION,  
APRIL TERM, A. D. 1863.

WILLIAM JAMES, Coroner, who sues for  
the use of George Smith and Elisha W.  
Willard,

*Plaintiff in Error,*  
*versus*

OSCAR STRATTON, JOHN B. LYON,  
AND ALBERT MORSE, impleaded with  
James T. Hoyt,

*Defendants in Error.*

BRIEF AND POINTS OF PLAINTIFF IN ERROR.

This was an action on a replevin bond. The defendant, Oscar Stratton, and one Samuel W. Woodward, were engaged in buying cattle. About the first of September, 1859, said Stratton shipped thirty-three head of cattle to Chicago, to said Woodward, for him to sell on joint account of Stratton and Woodward. When the cattle reached Chicago, said George Smith and Willard, who had recovered a judgment against said Woodward, caused an execution to be levied on the interest of said Woodward in said cattle; said Stratton then took said cattle out of the possession of the sheriff, by a writ of replevin issued out of the Circuit Court of Cook county, at his suit. The replevin suit in the Circuit Court was dismissed for want of prosecution. The said Smith and Willard then instituted a suit in the Superior Court of Chicago, in the name of the coroner, for their use, on the replevin bond. The declaration was the usual one on a replevin bond.

## I.

The judgment ought to be reversed because Woodward and Stratton, having a joint interest in the said cattle, when the sheriff levied the said execution, at the suit of Smith and Willard, on the interest of Woodward in said cattle in the possession of Woodward, Stratton had no right to replevy the cattle from the sheriff, and could not have maintained his replevin suit. In the suit on the replevin bond, he could not make any defense which he could not introduce in evidence to sustain his action of replevin.

If he had shown in the action of replevin, as he did in the suit on the replevin bond, that the cattle, at the time of the levy of the execution and the service of the replevin writ, were the joint property of Woodward and himself, the court would have instructed the jury that he could not maintain his replevin suit.

The defendants' chief witness, Baker, testified that "*he and Stratton bought these cattle in Iowa, and shipped them to Woodward at Chicago; that he acted for Woodward and Stratton in buying the cattle; that there was a partnership contract between Woodward and Stratton, in 1859, for buying cattle. I heard them say so in June, 1859, in my presence. Stratton introduced me to Woodward. That he purchased what cattle of the thirty-four head he bought, on the joint account of Stratton and Woodward. I understood from the defendant, Stratton, that he was buying the thirty-four cattle for joint account of himself and Woodward. Stratton told me this. They (Stratton and Woodward) were to have equal property and equal profits in the said thirty-four cattle.*" (See page 3 of Abstract.)

Smith and Willard had a right to direct the sheriff to levy their execution on the interest of Woodward in the said thirty-four head of cattle, and sell it, and Stratton had no right to take them out of the possession of the sheriff by a replevin writ, but might have enjoined the sheriff from selling the cattle until an account could be taken between himself and Woodward to ascertain the quantity of interest which Woodward had in the cattle.

*In Scrugham and Mackie v. Carter and Labagh, 12 Wendell, 131, the Court say, replevin does not lie against a sheriff, who, by virtue of an execution against one of several partners, takes the partnership prop-*

*erty* and *removes* it to a place of safe deposit, at the suit of the other partners, or those standing in their stead.

*Mersereau v. Norton*, 15 Johns. 179.

*Burrall v. Ackey*, 23 Wend. 606.

In the case of *Phillips v. Cook*, 24 Wend. 389, Cowen, J., discusses the case very fully, and holds that the other partners cannot maintain replevin, trover or trespass against the sheriff for levying upon and selling the interest of one partner in the partnership property, but that their remedy is in equity. The books are full of other cases which might be cited if it were necessary.

## II.

*The judgment ought to be reversed, because it is against evidence.*

If Stratton could have maintained his replevin suit, and the defendants make a defense in the suit on the replevin bond such as they did, then the plaintiff was entitled to a verdict for \$450.

In his affidavit for the writ of replevin, the defendant Stratton swore that the thirty-four cattle were worth \$900, (which was introduced in evidence in this suit to prove the value of the cattle) and the whole evidence of the defendants shows that the cattle were the joint property of Stratton & Woodward, (*see Baker's testimony above.*) And in all cases, where it does not appear what is the precise amount of the respective interest of the partners, the presumption is that they are entitled equally.

Collyer on Partnership, page 153.

3 Kent Com., 5th ed. 28.

*Farrar v. Beswick*, 1 M. & Rob. 527.

*Gould v. Gould*, 6 Wend. 263.

But we are not left alone to the presumption of law to determine the quantity of Woodward's interest in the said thirty-four head of cattle. Baker, defendant's witness, testifies "*that they (Stratton and Woodward) were to have equal property and equal profits in the said thirty-four cattle.*" (See page 3 of Abstract.)

## III.

The judgment ought to be reversed, because the court erred in refusing to let Woodward be sworn, and testify on the part of the plaintiff.

Woodward, *the defendant in the execution at the suit of Smith and Willard*, would have been a competent witness in the replevin suit, and was a competent witness, in the suit on the replevin bond, to prove the ownership of the cattle.

*Miller v. Dobson*, 1 Gilm. 573.

In *Gray v. Morey*, 26 Ill. 414, the Court say, in the case of *Miller v. Dobson*, 1 Gilm. 573, it was held that a defendant in execution was a competent witness in replevin, and approve of that decision.

The case at bar is precisely analogous to the one in *Gray v. Morey*, 26 Ill. 414, which was an action on a replevin bond, and *plaintiff* offered Johnson Misner, as a witness, who was *defendant in the execution*, and the court held, that the court below erred in excluding the said Johnson Misner from testifying.

HERVEY, ANTHONY & GALT,  
*Attorneys for Plaintiff in Error.*

204

M<sup>r</sup> James Co. & Co

As

Oscar Stratten & Co.

~~Abstract~~

Receipts & Points

Filed Apr 23. 1863

J. L. Leland  
Att

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }  
APRIL TERM, A. D. 1863. }

---

WILLIAM JAMES Coroner, who sues for the use of  
George Smith and Elisha W. Willard,  
*Plaintiff in Error,*

vs.

OSCAR STRATTON, JOHN B. LYON & ALBERT  
MORSE, Impleaded with James T. Hoyt.  
*Defendants in Error.*

---

## ABSTRACT OF RECORD.

THIS WAS AN ACTION on a replevin bond. The defendant, Oscar Stratton, and one Samuel W. Woodward, were engaged in buying cattle; about the first of September, 1859, said Stratton shipped thirty-three head of cattle to Chicago, to said Woodward, for him to sell on joint account of Stratton and Woodward. When the cattle reached Chicago, said George Smith and Willard, who had recovered a judgment against said Woodward, caused an execution to be levied against said cattle, as the property of said Woodward; said Stratton then took said cattle out of the possession of the sheriff, by a writ of replevin issued out of the Circuit Court of Cook County, at his suit. The replevin suit in the Cir-

cuit Court was dismissed for want of prosecution. The said Smith and Willard then instituted a suit in the Superior Court of Chicago, in the name of the coroner, for their use, on the replevin bond. The declaration was the usual one on a replevin bond.

The defendants filed four pleas :

FIRST, *Non est factum*.

SECOND and THIRD, That the merits of the replevin suit were not tried, and that the said cattle were the property of said Stratton and not of Woodward.

FOURTH, That the merits of the replevin suit were not tried, and that the said cattle were the joint property of said Stratton and Woodward, but that Woodward had only a nominal interest, on account of advances that said Stratton had made on account of Woodward, for which he, Stratton, claimed a lien on Woodward's interest in the thirty-three head of cattle.

The plaintiff took issue on the first three pleas, denying that the said thirty-three head of cattle were the property of said Stratton ; to the fourth plea the plaintiff filed a demurrer, which the Court sustained.

27 **Bill of Exceptions.**

At the trial, plaintiff introduced replevin bond in the original replevin suit. *Then*, the affidavit of said Stratton in said replevin suit, in which said Stratton swears that he was entitled to the possession of said 33 head of cattle, and that they were worth \$900. *Then*, the replevin writ, with the return of coroner, that he had given the property to Stratton. *Then*, the *retorno habendo*, with the coroner's return, that said Stratton refused to return the said cattle. The plaintiff then rested.

35 The defendant then offered one

**Nicholas Baker**, as a *Witness who testified as follows* :

Have known the defendant Stratton for four years. I knew him in

36 the summer of 1859 ; he was then trading in hogs and cattle. I do not know personally anything about the 33 head of cattle being levied on here—nothing except hearsay. There were 34 head of cattle sent by Chicago, Burlington and Quincy Railroad, to Samuel Woodward, about the 1st of September, 1859. The defendant, Stratton, and I, bought them in Iowa, and shipped them to Samuel Woodward, in Chicago, from Wapulo county, Iowa ; the last day of August, or the first of September, they were shipped ; Stratton went with them as far as Burlington. Stratton paid for part of them, and I paid for part ; Stratton gave me the money to pay for them I bought ; some of them were paid for after Stratton returned. Stratton said he drew \$600 from the agent of the railroad to pay for part of them. I staid at the town of Agency and did not go to Burlington. The agent told me that Stratton got \$600 from him. Agency is 70 miles from the river. A few days after the cattle came to Chicago, Stratton went to Chicago. After he returned from Burlington he paid for the cattle. I don't know who paid the freight. Stratton rather had the direction of the shipping. I was acting for Stratton & Woodward in buying the cattle. I don't know where Stratton got the money. We expected Woodward to send money there. He did not send it. The agent guaranteed the men that they should be paid for the cattle. Stratton gave me the directions about buying—there were 84 head of cattle bought at the same time with the 33 head ; they were a part of the 80 head. I don't know whether Stratton got any money from Woodward, nor where he got his money. I bought some more for Woodward afterwards.

37

**Cross Examination** by Counsel for Plaintiff—

There was a partnership contract between Woodward and Stratton, in 1859, for buying cattle. I heard them say so in June, 1859, in my presence. Stratton introduced me to Samuel Woodward. Woodward proposed to furnish the money. I never had any interest in the 34 head of cattle. I purchased what cattle, of the 34 head I bought, on the joint account of Stratton and Woodward. I understood from the defendant, Stratton, that he was buying the 34 cattle for joint account of himself and Woodward. Stratton told me this. They (Stratton and Woodward) were to have equal property and equal profits in the said 34 cattle.

Woodman sent \$1,280, that I know of. It came through me. Between \$400 and \$600. I know Stratton paid—

Defendants re-call

**Witness Baker,** *who, on Re-direct Examination,*

28

Testified : That Woodward had agreed to send money to Agency City to pay for the cattle to be delivered there; that he failed so to do. Witness and Stratton waited there several days for the money to come. It did not come. The owners of the cattle had driven them to Agency City, where they were to be paid for, and would not deliver them until paid for; under these circumstances, Stratton and I went to the agent of the railroad, and he guaranteed the payment of the cattle on Stratton's account, and agreed to advance Stratton \$600, to pay for the cattle with; on these terms, the owners of the cattle let them go. Stratton got on the train, went to the river, got the \$600, returned the next day, and paid for the cattle. The money was advanced at Agency City, or agreed to be, on the personal credit of Stratton. The agent knew him and did not know Woodward. The man at Agency City was the agent of the Chicago, Burlington and Quincy Railroad.

Defendants next called

**William Martin,**

Freight Agent of the C. B. & Q. R. R., who produced the following receipt :

39

FREIGHT OFFICE C. B. & Q. R. R.

*East Burlington, Aug. 26th, 1859.*

“ Received of O. Stratton, two cars of cattle, (34 head more or less)  
“ to be delivered at Chicago station, at special rates, being \$55 per car  
“ from Agency City, and charges, \$600. In consideration of which, and  
“ for other valuable considerations, it is hereby mutually agreed that said  
“ Company shall not be liable for loss by jumping from the cars, delay  
“ of trains, or any damage said property may sustain, except such as  
“ may result from a collision of the train, or when cars are thrown from

“ the track ; in course of transportation, to be fed and taken care of by  
“ owners.

( Signed ( “ R. F. HAWFORD, for C. B. & Q. R. R.  
“ O. STRATTON.”

And who testified that the cattle were consigned to Oscar Stratton in Chicago, and that said Stratton paid the freight on said cattle, amounting to \$110, and the \$600 advanced by the railroad agent at Agency City.

The defendant then rested his case.

40 The plaintiff by his counsel then offered

**Samuel Woodward,**

The defendant in the execution, as a rebutting witness, to prove the ownership of the said 34 cattle, taken in execution against said Woodward, at the suit of Smith & Willard. (The defendants' counsel objected to the witness testifying on the ground of interest ; which objection the Court sustained, and refused to let Woodward testify, to which ruling of the Court excluding the said Woodward from testifying, the plaintiff, by his counsel, then and there excepted.)

This was all the testimony in the case.

**Jury** rendered a verdict for plaintiff for nominal damages. The plaintiff moved for a new trial on following grounds:

1. The verdict is against the evidence.
2. The Court erred in refusing to let Woodward be sworn and testify on the part of the plaintiff.

41 The Court overruled the plaintiff's motion for a new trial, and plaintiff then and there excepted.

**Stipulation** as to filing Bill of Exceptions.

42 **Certificate** of Clerk.

43 **Assignment** of Errors.

HERVEY, ANTHONY & GALT,  
*Attorneys for Plaintiff in Error.*

204

William James et als  
vs

Oscar Stratton et als

---

Abstract of Record

Filed April 23-1863

L. Leland

Clark

---

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }  
APRIL TERM, A. D. 1863. }

---

WILLIAM JAMES Coroner, who sues for the use of  
George Smith and Elisha W. Willard,  
*Plaintiff in Error,*

vs.

OSCAR STRATTON, JOHN B. LYON & ALBERT  
MORSE, Impleaded with James T. Hoyt.  
*Defendants in Error.*

---

## ABSTRACT OF RECORD.

THIS WAS AN ACTION on a replevin bond. The defendant, Oscar Stratton, and one Samuel W. Woodward, were engaged in buying cattle; about the first of September, 1859, said Stratton shipped thirty-three head of cattle to Chicago, to said Woodward, for him to sell on joint account of Stratton and Woodward. When the cattle reached Chicago, said George Smith and Willard, who had recovered a judgment against said Woodward, caused an execution to be levied against said cattle, as the property of said Woodward; said Stratton then took said cattle out of the possession of the sheriff, by a writ of replevin issued out of the Circuit Court of Cook County, at his suit. The replevin suit in the Cir-

( 2 )

cuit Court was dismissed for want of prosecution. The said Smith and Willard then instituted a suit in the Superior Court of Chicago, in the name of the coroner, for their use, on the replevin bond. The declaration was the usual one on a replevin bond.

The defendants filed four pleas :

FIRST, *Non, est factum.*

SECOND and THIRD, That the merits of the replevin suit were not tried, and that the said cattle were the property of said Stratton and not of Woodward.

FOURTH, That the merits of the replevin suit were not tried, and that the said cattle were the joint property of said Stratton and Woodward, but that Woodward had only a nominal interest, on account of advances that said Stratton had made on account of Woodward, for which he, Stratton, claimed a lien on Woodward's interest in the thirty-three head of cattle.

The plaintiff took issue on the first three pleas, denying that the said thirty-three head of cattle were the property of said Stratton ; to the fourth plea the plaintiff filed a demurrer, which the Court sustained.

27

#### **Bill of Exceptions.**

At the trial, plaintiff introduced replevin bond in the original replevin suit. *Then*, the affidavit of said Stratton in said replevin suit, in which said Stratton swears that he was entitled to the possession of said 33 head of cattle, and that they were worth \$900. *Then*, the replevin writ, with the return of coroner, that he had given the property to Stratton. *Then*, the *retorno habendo*, with the coroner's return, that said Stratton refused to return the said cattle. The plaintiff then rested.

35

The defendant then offered one

**Nicholas Baker**, as a Witness who testified as follows :

Have known the defendant Stratton for four years. I knew him in

36 the summer of 1859 ; he was then trading in hogs and cattle. I do not know personally anything about the 33 head of cattle being levied on here—nothing except hearsay. There were 34 head of cattle sent by Chicago, Burlington and Quincy Railroad, to Samuel Woodward, about the 1st of September, 1859. The defendant, Stratton, and I, bought them in Iowa, and shipped them to Samuel Woodward, in Chicago, from Wapulo county, Iowa ; the last day of August, or the first of September, they were shipped ; Stratton went with them as far as Burlington. Stratton paid for part of them, and I paid for part ; Stratton gave me the money to pay for them I bought ; some of them were paid for after Stratton returned. Stratton said he drew \$600 from the agent of the railroad to pay for part of them. I staid at the town of Agency and did not go to Burlington. The agent told me that Stratton got \$600 from him. Agency is 70 miles from the river. A few days after the cattle came to Chicago, Stratton went to Chicago. After he returned from Burlington he paid for the cattle. I don't know who paid the freight. Stratton rather had the direction of the shipping. I was acting for Stratton & Woodward in buying the cattle. I don't know where Stratton got the money. We expected Woodward to send money there. He did not send it. The agent guaranteed the men that they should be paid for the cattle. Stratton gave me the directions about buying—there were 84 head of cattle bought at the same time with the 33 head ; they were a part of the 80 head. I don't know whether Stratton got any money from Woodward, nor where he got his money. I bought some more for Woodward afterwards.

37

**Cross Examination** *by Counsel for Plaintiff—*

There was a partnership contract between Woodward and Stratton, in 1859, for buying cattle. I heard them say so in June, 1859, in my presence. Stratton introduced me to Samuel Woodward. Woodward proposed to furnish the money. I never had any interest in the 34 head of cattle. I purchased what cattle, of the 34 head I bought, on the joint account of Stratton and Woodward. I understood from the defendant, Stratton, that he was buying the 34 cattle for joint account of himself and Woodward. Stratton told me this. They (Stratton and Woodward) were to have equal property and equal profits in the said 34 cattle.

Woodman sent \$1,280, that I know of. It came through me. Between \$400 and \$600. I know Stratton paid—

Defendants re-call

**Witness Baker**, *who, on Re-direct Examination,*

28

Testified : That Woodward had agreed to send money to Agency City to pay for the cattle to be delivered there; that he failed so to do. Witness and Stratton waited there several days for the money to come. It did not come. The owners of the cattle had driven them to Agency City, where they were to be paid for, and would not deliver them until paid for; under these circumstances, Stratton and I went to the agent of the railroad, and he guaranteed the payment of the cattle on Stratton's account, and agreed to advance Stratton \$600, to pay for the cattle with; on these terms, the owners of the cattle let them go. Stratton got on the train, went to the river, got the \$600, returned the next day, and paid for the cattle. The money was advanced at Agency City, or agreed to be, on the personal credit of Stratton. The agent knew him and did not know Woodward. The man at Agency City was the agent of the Chicago, Burlington and Quincy Railroad.

Defendants next called

**William Martin**,

Freight Agent of the C. B. & Q. R. R., who produced the following receipt:

39

FREIGHT OFFICE C. B. & Q. R. R.

*East Burlington, Aug. 26th, 1859.*

“ Received of O. Stratton, two cars of cattle, (34 head more or less)  
“ to be delivered at Chicago station, at special rates, being \$55 per car  
“ from Agency City, and charges, \$600. In consideration of which, and  
“ for other valuable considerations, it is hereby mutually agreed that said  
“ Company shall not be liable for loss by jumping from the cars, delay  
“ of trains, or any damage said property may sustain, except such as  
“ may result from a collision of the train, or when cars are thrown from

“ the track ; in course of transportation, to be fed and taken care of by  
“ owners.

( Signed ( “ R. F. HAWFORD, for C. B. & Q. R. R.  
“ O. STRATTON.”

And who testified that the cattle were consigned to Oscar Stratton in Chicago, and that said Stratton paid the freight on said cattle, amounting to \$110, and the \$600 advanced by the railroad agent at Agency City.

The defendant then rested his case.

40 The plaintiff by his counsel then offered

**Samuel Woodward,**

The defendant in the execution, as a rebutting witness, to prove the ownership of the said 34 cattle, taken in execution against said Woodward, at the suit of Smith & Willard. (The defendants' counsel objected to the witness testifying on the ground of interest ; which objection the Court sustained, and refused to let Woodward testify, to which ruling of the Court excluding the said Woodward from testifying, the plaintiff, by his counsel, then and there excepted.)

This, was all the testimony in the case.

**Jury** rendered a verdict for plaintiff for nominal damages. The plaintiff moved for a new trial on following grounds :

1. The verdict is against the evidence.

2. The Court erred in refusing to let Woodward be sworn and testify on the part of the plaintiff.

41 The Court overruled the plaintiff's motion for a new trial, and plaintiff then and there excepted.

**Stipulation** as to filing Bill of Exceptions.

42 **Certificate** of Clerk.

43 **Assignment** of Errors.

HERVEY, ANTHONY & GALT,  
*Attorneys for Plaintiff in Error.*

204

W. James et als  
vs  
Oscar Stratton et als

---

Abstract

Filed April 23-1863

L. Leland

Clark

IN THE  
Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION,  
APRIL TERM, A. D. 1863.

WILLIAM JAMES, Coroner, who sues for  
the use of George Smith and Elisha W.  
Willard,

*Plaintiff in Error,*

*versus*

OSCAR STRATTON, JOHN B. LYON,  
AND ALBERT MORSE, impleaded with  
James T. Hoyt,

*Defendants in Error.*

BRIEF AND POINTS OF PLAINTIFF IN ERROR.

This was an action on a replevin bond. The defendant, Oscar Stratton, and one Samuel W. Woodward, were engaged in buying cattle. About the first of September, 1859, said Stratton shipped thirty-three head of cattle to Chicago, to said Woodward, for him to sell on joint account of Stratton and Woodward. When the cattle reached Chicago, said George Smith and Willard, who had recovered a judgment against said Woodward, caused an execution to be levied on the interest of said Woodward in said cattle; said Stratton then took said cattle out of the possession of the sheriff, by a writ of replevin issued out of the Circuit Court of Cook county, at his suit. The replevin suit in the Circuit Court was dismissed for want of prosecution. The said Smith and Willard then instituted a suit in the Superior Court of Chicago, in the name of the coroner, for their use, on the replevin bond. The declaration was the usual one on a replevin bond.

## I.

The judgment ought to be reversed because Woodward and Stratton, having a joint interest in the said cattle, when the sheriff levied the said execution, at the suit of Smith and Willard, on the interest of Woodward in said cattle in the possession of Woodward, Stratton had no right to replevy the cattle from the sheriff, and could not have maintained his replevin suit. In the suit on the replevin bond, he could not make any defense which he could not introduce in evidence to sustain his action of replevin.

If he had shown in the action of replevin, as he did in the suit on the replevin bond, that the cattle, at the time of the levy of the execution and the service of the replevin writ, were the joint property of Woodward and himself, the court would have instructed the jury that he could not maintain his replevin suit.

The defendants' chief witness, Baker, testified that "*he and Stratton bought these cattle in Iowa, and shipped them to Woodward at Chicago; that he acted for Woodward and Stratton in buying the cattle; that there was a partnership contract between Woodward and Stratton, in 1859, for buying cattle. I heard them say so in June, 1859, in my presence. Stratton introduced me to Woodward. That he purchased what cattle of the thirty-four head he bought, on the joint account of Stratton and Woodward. I understood from the defendant, Stratton, that he was buying the thirty-four cattle for joint account of himself and Woodward. Stratton told me this. They (Stratton and Woodward) were to have equal property and equal profits in the said thirty-four cattle.*" (See page 3 of Abstract.)

Smith and Willard had a right to direct the sheriff to levy their execution on the interest of Woodward in the said thirty-four head of cattle, and sell it, and Stratton had no right to take them out of the possession of the sheriff by a replevin writ, but might have enjoined the sheriff from selling the cattle until an account could be taken between himself and Woodward to ascertain the quantity of interest which Woodward had in the cattle.

*In Serugham and Mackie v. Carter and Labagh, 12 Wendell, 131, the Court say, replevin does not lie against a sheriff, who, by virtue of an execution against one of several partners, takes the partnership prop-*

erty and removes it to a place of safe deposit, at the suit of the other partners, or those standing in their stead.

*Mersereau v. Norton*, 15 Johns. 179.

*Burrall v. Ackey*, 23 Wend. 606.

In the case of *Phillips v. Cook*, 24 Wend. 389, Cowen, J., discusses the case very fully, and holds that the other partners cannot maintain replevin, trover or trespass against the sheriff for levying upon and selling the interest of one partner in the partnership property, but that their remedy is in equity. The books are full of other cases which might be cited if it were necessary.

#### II.

*The judgment ought to be reversed, because it is against evidence.*

If Stratton could have maintained his replevin suit, and the defendants make a defense in the suit on the replevin bond such as they did, then the plaintiff was entitled to a verdict for \$450.

In his affidavit for the writ of replevin, the defendant Stratton swore that the thirty-four cattle were worth \$900, (which was introduced in evidence in this suit to prove the value of the cattle) and the whole evidence of the defendants shows that the cattle were the joint property of Stratton & Woodward, (see *Baker's testimony above*.) And in all cases, where it does not appear what is the precise amount of the respective interest of the partners, the presumption is that they are entitled equally.

Collyer on Partnership, page 153.

3 Kent Com., 5th ed. 28.

*Farrar v. Beswick*, 1 M. & Rob. 527.

*Gould v. Gould*, 6 Wend. 263.

But we are not left alone to the presumption of law to determine the quantity of Woodward's interest in the said thirty-four head of cattle. Baker, defendant's witness, testifies "that they (*Stratton and Woodward*) were to have equal property and equal profits in the said thirty-four cattle." (See page 3 of Abstract.)

## III.

The judgment ought to be reversed, because the court erred in refusing to let Woodward be sworn, and testify on the part of the plaintiff.

Woodward, *the defendant in the execution at the suit of Smith and Willard*, would have been a competent witness in the replevin suit, and was a competent witness, in the suit on the replevin bond, to prove the ownership of the cattle.

*Miller v. Dobson*, 1 Gilm. 573.

In *Gray v. Morey*, 26 Ill. 414, the Court say, in the case of *Miller v. Dobson*, 1 Gilm. 573, it was held that a defendant in execution was a competent witness in replevin, and approve of that decision.

The case at bar is precisely analogous to the one in *Gray v. Morey*, 26 Ill. 414, which was an action on a replevin bond, and *plaintiff* offered Johnson Misner, as a witness, who was *defendant in the execution*, and the court held, that the court below erred in excluding the said Johnson Misner from testifying.

HERVEY, ANTHONY & GALT,  
*Attorneys for Plaintiff in Error.*

204-72

Mrs James C. H.

vs

Oscar Stratton

~~Abstract~~  
Briefs & Points

Filed Apr 23, 1863

J. L. Leland  
clerk

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }  
APRIL TERM, A. D. 1863. }

---

WILLIAM JAMES Coroner, who sues for the use of  
George Smith and Elisha W. Willard,  
*Plaintiff in Error,*

vs.

OSCAR STRATTON, JOHN B. LYON & ALBERT  
MORSE, Impleaded with James T. Hoyt.  
*Defendants in Error.*

---

## ABSTRACT OF RECORD.

---

THIS WAS AN ACTION on a replevin bond. The defendant, Oscar Stratton, and one Samuel W. Woodward, were engaged in buying cattle; about the first of September, 1859, said Stratton shipped thirty-three head of cattle to Chicago, to said Woodward, for him to sell on joint account of Stratton and Woodward. When the cattle reached Chicago, said George Smith and Willard, who had recovered a judgment against said Woodward, caused an execution to be levied against said cattle, as the property of said Woodward; said Stratton then took said cattle out of the possession of the sheriff, by a writ of replevin issued out of the Circuit Court of Cook County, at his suit. The replevin suit in the Cir-

( 2 )

cuit Court was dismissed for want of prosecution. The said Smith and Willard then instituted a suit in the Superior Court of Chicago, in the name of the coroner, for their use, on the replevin bond. The declaration was the usual one on a replevin bond.

The defendants filed four pleas :

FIRST, *Non est factum.*

SECOND and THIRD, That the merits of the replevin suit were not tried, and that the said cattle were the property of said Stratton and not of Woodward.

FOURTH, That the merits of the replevin suit were not tried, and that the said cattle were the joint property of said Stratton and Woodward, but that Woodward had only a nominal interest, on account of advances that said Stratton had made on account of Woodward, for which he, Stratton, claimed a lien on Woodward's interest in the thirty-three head of cattle.

The plaintiff took issue on the first three pleas, denying that the said thirty-three head of cattle were the property of said Stratton ; to the fourth plea the plaintiff filed a demurrer, which the Court sustained.

27

#### **Bill of Exceptions.**

At the trial, plaintiff introduced replevin bond in the original replevin suit. *Then*, the affidavit of said Stratton in said replevin suit, in which said Stratton swears that he was entitled to the possession of said 33 head of cattle, and that they were worth \$900. *Then*, the replevin writ, with the return of coroner, that he had given the property to Stratton. *Then*, the *retorno habendo*, with the coroner's return, that said Stratton refused to return the said cattle. The plaintiff then rested.

35

The defendant then offered one

**Nicholas Baker**, as a Witness who testified as follows :

Have known the defendant Stratton for four years. I knew him in

36 the summer of 1859 ; he was then trading in hogs and cattle. I do not know personally anything about the 33 head of cattle being levied on here—nothing except hearsay. There were 34 head of cattle sent by Chicago, Burlington and Quincy Railroad, to Samuel Woodward, about the 1st of September, 1859. The defendant, Stratton, and I, bought them in Iowa, and shipped them to Samuel Woodward, in Chicago, from Wapulo county, Iowa ; the last day of August, or the first of September, they were shipped ; Stratton went with them as far as Burlington. Stratton paid for part of them, and I paid for part ; Stratton gave me the money to pay for them I bought ; some of them were paid for after Stratton returned. Stratton said he drew \$600 from the agent of the railroad to pay for part of them. I staid at the town of Agency and did not go to Burlington. The agent told me that Stratton got \$600 from him. Agency is 70 miles from the river. A few days after the cattle came to Chicago, Stratton went to Chicago. After he returned from Burlington he paid for the cattle. I don't know who paid the freight. Stratton rather had the direction of the shipping. I was acting for Stratton & Woodward in buying the cattle. I don't know where Stratton got the money. We expected Woodward to send money there. He did not send it. The agent guaranteed the men that they should be paid for the cattle. 37 Stratton gave me the directions about buying—there were 84 head of cattle bought at the same time with the 33 head ; they were a part of the 80 head. I don't know whether Stratton got any money from Woodward, nor where he got his money. I bought some more for Woodward afterwards.

**Cross Examination** *by Counsel for Plaintiff—*

There was a partnership contract between Woodward and Stratton, in 1859, for buying cattle. I heard them say so in June, 1859, in my presence. Stratton introduced me to Samuel Woodward. Woodward proposed to furnish the money. I never had any interest in the 34 head of cattle. I purchased what cattle, of the 34 head I bought, on the joint account of Stratton and Woodward. I understood from the defendant, Stratton, that he was buying the 34 cattle for joint account of himself and Woodward. Stratton told me this. They (Stratton and Woodward) were to have equal property and equal profits in the said 34 cattle.

Woodman sent \$1,280, that I know of. It came through me. Between \$400 and \$600. I know Stratton paid—

Defendants re-call

**Witness Baker**, *who, on Re-direct Examination,*

28

Testified : That Woodward had agreed to send money to Agency City to pay for the cattle to be delivered there ; that he failed so to do. Witness and Stratton waited there several days for the money to come. It did not come. The owners of the cattle had driven them to Agency City, where they were to be paid for, and would not deliver them until paid for ; under these circumstances, Stratton and I went to the agent of the railroad, and he guaranteed the payment of the cattle on Stratton's account, and agreed to advance Stratton \$600, to pay for the cattle with ; on these terms, the owners of the cattle let them go. Stratton got on the train, went to the river, got the \$600, returned the next day, and paid for the cattle. The money was advanced at Agency City, or agreed to be, on the personal credit of Stratton. The agent knew him and did not know Woodward. The man at Agency City was the agent of the Chicago, Burlington and Quincy Railroad.

Defendants next called

**William Martin**,

Freight Agent of the C. B. & Q. R. R., who produced the following receipt :

39

FREIGHT OFFICE C. B. & Q. R. R.

*East Burlington, Aug. 26th, 1859.*

“ Received of O. Stratton, two cars of cattle, (34 head more or less)  
“ to be delivered at Chicago station, at special rates, being \$55 per car  
“ from Agency City, and charges, \$600. In consideration of which, and  
“ for other valuable considerations, it is hereby mutually agreed that said  
“ Company shall not be liable for loss by jumping from the cars, delay  
“ of trains, or any damage said property may sustain, except such as  
“ may result from a collision of the train, or when cars are thrown from

“ the track ; in course of transportation, to be fed and taken care of by  
“ owners.

( Signed ( “ R. F. HAWFORD, for C. B. & Q. R. R.  
“ O. STRATTON.”

And who testified that the cattle were consigned to Oscar Stratton in Chicago, and that said Stratton paid the freight on said cattle, amounting to \$110, and the \$600 advanced by the railroad agent at Agency City.

The defendant then rested his case.

40 The plaintiff by his counsel then offered

**Samuel Woodward,**

The defendant in the execution, as a rebutting witness, to prove the ownership of the said 34 cattle, taken in execution against said Woodward, at the suit of Smith & Willard. (The defendants' counsel objected to the witness testifying on the ground of interest ; which objection the Court sustained, and refused to let Woodward testify, to which ruling of the Court excluding the said Woodward from testifying, the plaintiff, by his counsel, then and there excepted.)

This was all the testimony in the case.

**Jury** rendered a verdict for plaintiff for nominal damages. The plaintiff moved for a new trial on following grounds :

1. The verdict is against the evidence.
2. The Court erred in refusing to let Woodward be sworn and testify on the part of the plaintiff.

41 The Court overruled the plaintiff's motion for a new trial, and plaintiff then and there excepted.

**Stipulation** as to filing Bill of Exceptions.

42 **Certificate** of Clerk.

43 **Assignment** of Errors.

HERVEY, ANTHONY & GALT,  
*Attorneys for Plaintiff in Error.*

204-72

James et al  
vs

● Stratton et al

Abstract

Filed apr. 23-1863

L. Land

Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Ninth day of May in the year of our Lord One Thousand Eight Hundred and Sixty Two and of the Independence of the United States of America the Eighth day of Sept

Present, The Honorable John M. Wilson Chief Justice of the }  
Superior Court of Chicago. }

Van H. Higgins }  
Grant Goodrich } Judges.

Prosecuting Attorney.

Anthony Henry Sheriff of Cook County.

Thomas D. Carter Clerk.

Be it remembered that hereunto is set on the  
Ninth day of May in the year of our Lord One  
Thousand Eight Hundred and Sixty one three issued  
out of the Office of the Clerk of the Superior Court of  
Chicago the Proper Writ of Summons which said  
Writ with the Sheriff returns thereof entered are  
return and figures following

2

State of Illinois }  
Cook County } ss.

The People of the State of  
Illinois, to the Sheriff of said County Greeting.  
We command you that you summon  
Oscar Strattan, James T Hoyt, John B. Lyon  
and Albert Morse, if they shall be found  
in your County, personally to be and appear  
before the Superior Court of Chicago, of said  
County, on the first day of the next Term thereof  
to be holden at the Court House in Chicago  
in said County on the first Monday of March  
next, to answer unto William James Coroner  
of Cook County in the State of Illinois who sues  
for the use of George Smith and Elisha W  
Willard, of a plea that they render to the said  
plaintiff Eighteen Hundred dollars and  
cents which they owe to and unjustly detain from  
him to the damage of the said Plaintiff as is  
said in the sum of Fifteen Hundred Dollars  
And have you then and there this writ  
with an endorsement hereon, in what  
manner you shall <sup>have</sup> executed the same  
in witness whereof, Walter Kimball, clerk of  
our said Court and the seal  
thereof at Chicago aforesaid this  
9<sup>th</sup> day of February A.D. 1861  
Walter Kimball  
Clerk

Served by reading to the within named  
 John B. Lyon and Albert Morse the 22<sup>nd</sup>  
 day of March 1861 the other defendants not  
 found in my County this 2<sup>nd</sup> day of March  
 1861.

A. G. Hession, Sheriff.  
 by W<sup>m</sup> P. Gray Deputy.

~~And afterwards I wit on the Seven<sup>th</sup> day of  
 March in the Year aforesaid the defendant E. Crown  
 Stratten, John B. Lyon and Albert Morse by  
 E. W. Crown this Attorney filed herein this Certain  
 Plea in Words and figures following to wit;~~

4

And afterwards to wit on the Fifth day of June  
in the year aforesaid the defendants as  
aforesaid by E. W. Evans their Attorney  
filed herein their certain ~~other~~ Pleas in  
words and figures following: to wit:

5  
State of Illinois  
Cook County

In the Superior Court of Chicago  
Of June Term 1861.

Oscar Strattan  
John B. Lyon and  
Albert Morse  
impleaded with  
James T. Hoyt

ads  
William James  
Coroner &c)

And the said Defendants  
Oscar Strattan John B  
Lyon and Albert Morse  
impleaded as aforesaid  
by E. W. Evans their

Attorney come and defend the wrong and  
injury when &c, and say that the said  
supposed writing obligatory is not their deed  
And of this they put themselves upon the  
Country &c.

And for a further plea in this  
behalf the said defendants Oscar Strattan  
John B. Lyon and Albert Morse by  
leave of the Court here for this purpose  
first had and obtained according to the  
form of the Statute in such case made and  
provided come and defend the wrong  
and injury when &c and say that the  
plaintiff ought not to recover more than  
nominal damage in this case because they

6

say that the said 33 Head of Cattle which were replevied in the original action of replevin in the said declaration mentioned, in which said bond or writing obligatory in said declaration mentioned was given, were at the time of the rendition of judgment in the said cause the property of the Plaintiff therein, the said Oscar Strattan to wit at said County of Cook. and that the merits of the case were not heard and were not determined in the said cause. And as the reason why the merits were not determined in the said cause, the said defendants say that the said action was brought to recover the possession of said 33 Head of Cattle particularly described in said declaration filed in said cause; that said declaration averred said cattle to be the property of the plaintiff therein, the said Oscar Strattan, and charged that the same were wrongfully detained by the defendants in said cause, as by the declaration remaining in said Circuit Court of Cook County in the state aforesaid more fully and at large appears; that to said declaration the defendants George Smith and Elisha W. Willard filed their four pleas, the first of which was non cepit, the second

non detinct, the third averred property  
in one Samuel W. Woodward, and the  
fourth plea alledged that said Smith and  
Willard had recovered a Judgement—  
against said Woodward and that exe-  
-cution thereon was delivered to the Sheriff  
of Cook County aforesaid that said  
Woodward had an interest in said battle  
and that his said interest was liable to  
execution, And that said Execution was  
levied on the interest of said Woodward  
in said battle, as by the pleas of said  
George Smith and Elisha W. Willard  
remaining in the said Circuit Court  
of Cook County more fully and at large  
appears; that the plaintiff in said cause  
the said Oscar Strattan joined issue on  
the first and second pleas, and replied  
to the third and fourth pleas, denying  
that said Woodward had any interest  
in said battle on which issue was joined  
as by the said replications and proceeding,  
remaining in said Circuit Court more  
fully and at large appears; And that  
to the said declaration in said cause  
the defendants John Gray and George  
Anderson filed their three pleas, the  
first of which alledged property in one

Samuel W. Woodward, the second stated the delivery of the before mentioned execution to the defendant Gray as Sheriff of Cook County and that the same was levied by said defendant Anderson as Deputy Sheriff of said County of Cook on the said Cattle and that said Cattle were the property of said Woodward, and liable to said execution and the third plea, alleged said delivery of the said execution and the levy thereof on said Cattle, and that said Woodward had some property in the said Cattle, and that his interest therein was liable to said execution, as by the pleas of the said John Gray and George Anderson remaining in said Circuit Court of Cook County more fully and at large appears: And that the plaintiff in said suit, the said Oscar Strattan replied to the said three pleas denying that said Woodward had any interest in the said Cattle on which issue was joined as by the said last replications and proceedings remaining in said Circuit Court more fully and at large appears: And the said defendants say that at the time when said cause was called for trial the plaintiff therein the said Oscar Strattan was not prepared

9

for the trial thereof being unable to have his witnesses in attendance as they were now residents of the said State of Illinois And the said defendants say that the said replevin suit was thereupon dismissed by said Circuit Court for want of prosecution and judgment rendered against the plaintiff therein the said Oscar Strattan, And that for the reasons above stated the merits of the case were not enquired into and were not determined and the right of property in the said cattle was not determined in said suit, And this the said defendants are ready to verify-

And for a further plea in this behalf the said defendants Oscar Strattan John B. Lyon, and Albert Morsby leave of the Court here for this purpose first had and obtained according to the form of the Statute in such case made and provided say that the said plaintiff ought not to have or maintain his aforesaid action thereof against the said defendants except for nominal damage because they say that the said 33 Head of Cattle which were replevied in the original action of replevin in said declaration mentioned in which said bond or

writing obligatory in said declaration mentioned was given were the property of the said Oscar Strattan to wit, at said County of Cook and not of Samuel W. Woodward as by the pleas of the defendants in the said action of replevin is supposed. And the said defendants say that the said suit was dismissed and judgment rendered against the plaintiff therein the said Oscar Strattan for want of prosecution by the Circuit Court of Cook County and that the merits of the case in the said action of replevin were not determined therein because the said Oscar Strattan the plaintiff therein could not and did not have his witnesses in attendance for the trial of the said cause and this the said defendants are ready to verify.

And for a further plea in this behalf the said defendants Oscar Strattan, John B. Lyon and Albert Morse, by leave of the Court here for this purpose first had and obtained according to the form of the Statute in such case made and provided come and defend the wrong and injury whereof and say that the said plaintiff ought not to recover more than nominal damages in this suit.

11  
because they say that the 33 Head of  
Cattle replevied in the original action  
of replevin in said declaration, mentioned  
in which said bond or writing obligatory  
in said declaration mentioned was given  
were at the time when the said 33 Head  
of Cattle were replevied by said Oscar  
Strattan And also at the time when the  
said action was dismissed and judgment  
rendered for the defendants therein by the  
Circuit Court of said County of Cook, the  
property of the said Oscar Strattan and  
one Samuel W. Woodward as Copartners  
Copartnership Owners thereof, And that  
before the said 33 Head of Cattle were  
replevied by the said Oscar Strattan wit  
on the 31<sup>st</sup> day of August A D 1859 the  
said Cattle had been levied upon and  
seized by George Anderson as Deputy Sheriff  
of the said County of Cook by virtue of  
a certain writ of fieri facias issued out  
of the Superior Court of Chicago on a  
certain judgment therein pending and  
unpaid in favor of George Smith and  
Edward W. Willard as plaintiffs and against  
said Samuel W. Woodward defendant as  
the property of said Woodward by which  
said writ of fieri facias the Sheriff of

Cook County aforesaid was commanded to make of the lands and tenements and forwert thereof of the goods and chattels of said Samuel W. Woodward the sum of money therein named &c and to make due return thereof &c And that by virtue of the said writ of fieri facias the said 33 Head of Cattle were taken into the possession of the said Sheriff of Cook County and that the said Oscar Strattan's interest therein was wholly disregarded. And the said defendants say that the said Woodward's interest in and to the said 33 Head of Cattle was merely nominal and was subject to the Copartnership claim and ownership of the said Oscar Strattan and to a full and final settlement of all of said Copartnership business and all claims against said Copartnership, And that the said Oscar Strattan as such Copartner of the said Woodward had at the time of such levy on the said Cattle as aforesaid a lien upon the said Cattle as such Copartner to the full value thereof And the said defendants say that the merits of the case in the said original action of replevin were not determined because the said Oscar Strattan the plaintiff

therein could not and did not have his  
 witnesses ready and in attendance upon  
 said Court for the trial of the said cause  
 And the same was thereupon dismissed  
 by said Circuit Court of Cook County for  
 want of prosecution and judgment rendered  
 against the plaintiff therein the said Oscar  
 Strattan, to wit at the County of Cook aforesaid  
 And this the said defendants are ready to  
 verify.

E. W. Evans  
 Attorney for said Defendants  
 Strattan Lyonard Morse

And afterwards to wit on the Thirtieth day of  
 August in the Year aforesaid. The Compliments in  
 this Cause by Henry Anthony & Galt his Attorneys,  
 filed herein, this Antonio Replication and Demurrer in  
 words and figures following to wit;

The Superior Court of Chicago.  
Of the August Term 1861.

William James, Coroner,  
for the use of &c.

vs

Oscar Strattan  
John B. Lyon and  
Albert Morse impleaded with  
James T. Hoyt.

And the said Plaintiff as to the plea of the  
said Defendants by them first above pleaded  
and whereof they have put themselves upon  
the Country doth she like

Hervey, Anthony and Galt  
Attorneys for Plaintiff

And the said Plaintiff as to the said pleas  
of the Defendants, by them, secondly, thirdly,  
and fourthly, above pleaded and set forth,  
saith that the same, and the matters therein  
contained, in manner and form as the  
same are above pleaded and set forth are  
not sufficient in law to bar or preclude him  
the said Plaintiff from having or maintaining  
his aforesaid action thereof against the said  
defendants and that he the said Plaintiff is  
not bound by law to answer the same.

And this, he the said Plaintiff is ready to verify. Wherefore by reason of the insufficiency of the said second, third, and fourth pleas in this behalf the said Plaintiff prays judgment and his debt aforesaid together with his damages by him sustained on occasion of the detention thereof to be adjudged to him.

And the said plaintiff according to the form of the statute in such case made and provided, states and shows to the Court here the following causes of demurrer to the said second, third and fourth pleas - that is to say. The said pleas all commence as pleas in bar, while in the body of each of them, they show that the Plaintiff is at least entitled to nominal damages.

The said pleas are in other respects uncertain informal and insufficient,

Hervey, Anthony, and Galt  
Attorneys for Plaintiff

And afterwards to wit, on the Twenty Second day  
of October in the Year last aforesaid Said day being  
one of the days of the October Term of Said Court the  
following Among other proceedings was had in Said  
Court and entered of Record to wit

William James Corner &  
versus George Smith and Elisha W Willard

Debt

Ocean Stratton James T Hoyt  
John D Lyon and Albert Moore

This day Comes the  
Said plaintiff who sues for the use of George Smith  
and Elisha W Willard by Henry Anthony & Galt his  
Attorneys and the Said Defendants by E W Evans  
their Attorneys also Come and this Cause being brought  
on now to be heard upon plaintiff's demand to the second  
third and fourth pleas of the Said defendants herein  
pleaded, and Counsel being heard, and the Court being  
well advised in the premises is of the Opinion that the  
defendants Said several pleas and the Matter therein  
Contained are not sufficient in law. the demand is  
therefore sustained as to defendant 2<sup>nd</sup> 3<sup>rd</sup> & 4<sup>th</sup> pleas  
with leave to Amend said pleas by 1<sup>st</sup> day of the next  
Term of the Court

And afterwards, Admit on the Eleventh day of  
November in the Year aforesaid, the Complainant,  
Messrs. Harvey, Anthony & Galt their Attorneys  
filed in this Cause two Certain Replications in words  
and figures following, Admit

18

The Superior Court of Chicago.  
Of the November Term 1861.

William James Coroner,  
who sues for the use of  
George Smith, and Olisha  
W. Willard. —

vs

Oscar Strattan, John B. Lyon,  
and Albert Morse, impleaded  
with James T. Hoyt. —

And the said Plaintiff as to the said amended pleas of the said Defendants by them secondly and thirdly above pleaded, saith that the said plaintiff by reason anything by the said defendants in the said second and third amended pleas alledged, ought not to be barred from recovering more than nominal damages in his aforesaid action thereof against the said defendants, — because he says that the said thirty three head of Cattle in the said pleas mentioned at the time when &c., were not the property of the said defendant Oscar Strattan, as in the said pleas alledged. And this the said Plaintiff prays, may be inquired of by the Country.  
Hervey, Anthony, and Gull.  
Attorneys for Plaintiff.

And the said Plaintiff as to the said amended plea of the said defendants by them fourthly above pleaded, saith, that the same and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude him the said plaintiff from having more than nominal damages in his aforesaid action thereof against the said defendants and that he the said Plaintiff is not bound by law to answer the same; And this, he the said Plaintiff is ready to verify:

Wherefore by reason of the insufficiency of the said plea in this behalf, the said Plaintiff prays judgment and his debt aforesaid, together with his damages by him sustained, on occasion of the detention thereof to be adjudged to him &c.

Hervey, Anthony, and Galt  
Attorneys for Plaintiff.

And afterwards to wit on the Fifteenth day of November in the Year aforesaid, said day being one of the days of the November Term of said Court the following Assize of the preceding was had in said Court and entered of record to wit

William James Coroner of the  
County of Cook in the State of Illinois  
Who sue for the use of George Smith  
and Elisha W. Willard

Debt

vs  
Oscar Stratton James T Hoyt  
John B Lyon, and Albert Morse

This day againe Comes  
the Said Plaintiff who sue for the use of George Smith  
and Elisha W Willard by Henry Custumy Esq. his  
attorney and the Said Oscar Stratton John B Lyon  
and Albert Morse thro of the defendants in the above  
entitled Cause severally impleaded with the said James  
T Hoyt the other defendant herein, by E W Evans  
their Attorney also Come, and the Cause coming on to  
be heard on the plaintiffs demurrer to the fourth plea  
of the Said defendant herein pleaded to plaintiffs de-  
claration and Counsel being heard and the Court  
being fully advised in the premises is of the opinion  
that the said fourth plea is not sufficient in law, the  
demurrer is therefore sustained to the said fourth plea,  
and it is considered that a jury Come to try the  
issues joined herein on plea of the Said defendant  
Oscar Stratton John B Lyon and Albert Morse impleaded  
with the said James T Hoyt as aforesaid, Wherefore  
Come the jury of good and lawful men to wit Tho  
Pruitt Tho Cook, J. A. Stone, Wm Finis J B Dismar, Lott  
Chapman, E Robinson, Charles Gercker John Battman  
H. P. Williams J V Cut and David Miller who being

truly elected trial and sworn to try the issue joined  
as aforesaid, and the hour of adjournment having arrived  
it is ordered that the jury separate and meet the  
Court tomorrow morning

And afterwards to wit on the fifteenth day of  
November in the year aforesaid. Said day being one  
of the days of the November Term of Said Court the  
following among other proceedings was had in Said  
Court and entered of record to wit

William James Corner of the County of  
Cook in the State of Illinois who Sues for  
the use of George Smith and Eliza W Willard

vs Debt  
Cecile Stratton, James T Hoyt  
John B Lyon and Albert Moore

This day again  
comes the Said plaintiffs who sue as aforesaid by  
Henry Anthony Galt his Attorney, and the Said  
defendants Cecile Stratton John B Lyon and Albert  
Moore impleaded as aforesaid by E W Evans their  
Attorney also comes and the jury empanelled herein  
on yesterday for the trial of Said Cause also come and  
after hearing evidence, Argument of Counsel and in-  
struction of the Court, retire to Consider of their Verdict  
and afterwards return into Court Submit their Verdict  
and say, We the jury find issue for Said plaintiffs

And that the said defendants Oscar Stratton John B Lyon and Albert Moore impleaded with said James T Hoyt are indebted to the said Plaintiff as alleged in the declaration to the sum of Eight hundred dollars debt and are assess Plaintiff damages for are aforesaid & for detention of said debt to the sum of one Cent

And therefore the said Plaintiff Submits motion herein for a new trial in said Cause

And afterwards to wit on the Seventh day of May in the Year of our Lord One Thousand Eight Hundred and Sixty two said day being one of the days of the May Term of said Court the following among other proceedings was had in said Court and to wit

Willeige James Corner of the County of Cook in the State of Illinois who sues for the use of George Smith and Elisha W Willard

Debt

Oscar Stratton James T Hoyt John B Lyon and Albert Moore

This day again comes said Plaintiff who sues for the use of George Smith and Elisha W Willard by Henry Anthony Esq his Attorneys and the said Oscar Stratton John B Lyon and Albert Moore

Three of the defendants in above entitled Cause appeared  
to by E W Evans their Attorney also came and the  
Cause coming on was to be heard upon the Motion of Said  
Plaintiff heretofore submitted herein at the November Term  
of this Court but put A D W C for a new trial in Said  
Cause, and Counsel being heard and the Court being fully  
advised in the premises and of the Opinion that the reasons  
filed by Said Plaintiff in support of his Said Motion are  
not sufficient to maintain the same, it is therefore Consid-  
ered that the Plaintiff Said Motion be and is hereby overruled  
Wherefore Said Plaintiff ought to have judgment  
entered for his debt and Damages upon the Verdict of the  
jury rendered herein as aforesaid

Therefore, ~~Said Plaintiff ought to have judgment~~  
it is Considered that Said Plaintiff Coroner of the County  
of Cook in the State of Illinois do have and recover of and  
from Said Defendants Oscar Stanton John P Lyon and  
Abel Moore in pleaded with James T Hoyt and for  
the use and benefit of George Smith and Elisha W  
Willard his debt of Eighteen Hundred Dollars, and also  
his Damages of one Cent in fine as aforesaid found and  
assessed by the jury, and also his Costs and Charges in  
his behalf expended and have execution therefor

And therefore Said Plaintiff by Counsel enter exceptions  
herein to the decision of the Court, whereupon it is ordered that  
Said Plaintiff have ten days time in which to file bills of  
exceptions

Executed by  
T D Conroy  
clerk

24

And afterwards do wit on the Twenty Seventh day  
of May in the Year last aforesaid. Said day being  
one of the days of the May Term of Said Court the  
following Among other proceedings were had in Said  
Court and entered of record do wit

William James Coroner of the County  
of Cook in the State of Illinois  
who Saw for the use of George Smith  
and Eliza W Willard

Debt

<sup>vs</sup>  
Oscar Stratton James F Hoyt  
John B Lyon and Albert Morse

This day again Comes Said plaintiff by Henry Anthony  
& Galt his Attorneys and Said defendants Oscar Stratton  
John B Lyon and Albert Morse impleaded with James  
F Hoyt by E W Evans their Attorney also Comes and  
upon Agreement of parties as Shown by Stipulation  
filed it is ordered that time for Said plaintiff to file  
bill of Exception have be and is hereby extended  
Twenty days from this day

And afterwards to wit on the Twenty fifth day  
of March in the Year last aforesaid the Parties  
herein by their Attorneys filed in this Cause a Certain  
Stipulation in word and figures following to wit

The Superior Court of Chicago  
William James Corner use of &c }  
vs  
Oscar Stanton et al }

We do hereby stipulate that  
the record in the above Cause may be made up and  
Certified without a Copy of the declaration. The  
same having been produced in Court & cannot be found  
after diligent search. The said declaration being  
on the Replevin Bond and there was no print raised  
in the declaration; The declaration being the ordinary  
declaration on Replevin Bond in usual form & no  
objection was made to same. This Stipulation is to  
Supply the loss of same

Chicago March 25 }  
A.D. 1863 }

E W Evans

Atty for Deft  
Herry Anthony & Galt  
Atty for Plff

And afterwards to wit on the Third day of March  
in the Year of our Lord One thousand Eight  
hundred and Sixty three, the Plaintiff in this  
Suit by Murray Anthony Anthony & Galt his  
Attorney filed herein this Certain Bill of Expon-  
dite in words and figures following to wit -

## The Superior Court of Chicago.

William James use of }  
George Smith et al }

vs  
Oscar Stratton et al }

Be it remembered that on this                      day  
of                      the same being one of the  
days of the                      Term                      of said  
Court, this cause coming on to be heard  
upon the issues joined and the same being  
submitted to a jury.

The Plaintiff to maintain and prove the issue  
on his part offered and read to the  
jury the Replevin Bond which is in the  
words and figures following to wit;

Know all men by these presents that we  
Oscar Stratton, James T. Hoyt, John B Lyon  
Albert Morse, are held and firmly bound  
unto William James Coroner of the County  
of Cook in the State of Illinois and to  
his successors in office executors adminis-  
trators and assigns in the penal sum. of  
Eighteen hundred dollars lawful money of  
the United States for the payment of which  
sum we do hereby jointly and severally bind  
ourselves our heirs executors and administrators

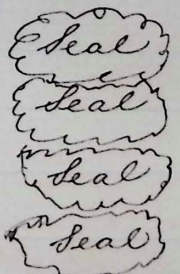
28  
The condition of this obligation is such, that  
whereas on the first day of September in  
the year of our Lord one thousand eight  
hundred and fifty nine the said Oscar Strattan  
sued out of Circuit Court of Cook County  
a writ of Replevin against George Smith, Elihu  
W. Willard, John Gray, and George Anderson,  
defendants, for the recovery of the following  
described goods and chattels, property to wit:  
Thirty three head of cattle, of the age of  
three years and upwards all of said cattle  
being Steers, and Red, dun, black and white  
colored,

Now if the said Oscar Strattan Plaintiff  
shall prosecute his said suit to effect and  
without delay, and make return of the said  
property, if return thereof shall be awarded and  
save and keep harmless the said Coroner in  
replevying the said property, then this  
obligation to be void otherwise to remain in  
full force and effect,

Witnes our hands and seals this first  
day of September A. D. 1859.

Witnes

O. Strattan  
Jas. J. Hoyt  
John B. Lyon  
Albert Marse



29

The Plaintiff then offered and read to the Jury the affidavit and writ in the original Replevin suit

which are in the words and figures following:

State of Illinois  
Cook County sp.

Oscar Strattan being duly sworn doth depose and say, that he is now lawfully entitled to the possession of the following personal property viz:

Thirty three head of cattle of the age of three years and upwards, all of said cattle being steers and red dun black and white colored, of the value of Nine hundred dollars and that George Smith, Elisha W. Willard, John Gray and George Anderson, have unlawfully and wrongfully taken and now wrongfully detain the same, from him at the County and State aforesaid against warranties, and pledges And that the same have not been taken for any tax, assessment or fine, levied by virtue of any law of this State nor seized under any execution or attachment against the goods and chattels of this deponent liable to execution or attachment

and that this deponant is about to replevy  
 the same from said George Smith, Elisha  
 W. Willard, John Gray, and George Anderson  
 and makes this Affidavit for the purpose  
 of obtaining a writ of Replevin for said  
 Cattle out of the Circuit Court of said  
 County of Cook and State of Illinois  
 wherein this deponant will be plaintiff  
 and said George Smith Elisha W. Willard,  
 John Gray and George Anderson  
 defendants, which writ he prays may  
 issue in form of law, deponant further  
 says that said Gray is Sheriff of Cook  
 County and said Anderson is his deputy and  
 that they are interested as defendants in the  
 said suit he is about to bring

O. Strattan

Subscribed and sworn to  
 before me the 1<sup>st</sup> day of  
 September A.D. 1859

W. L. Church

Clerk.

State of Illinois }  
 Cook County } s.

The People of the State of  
 Illinois to the Coroner of said County  
 Greeting =

Plaintiff complained that George Smith  
 Whereas Oscar Strattan, Elisha W.

Willard, John Gray, and George Anderson  
Defendants, unlawfully and wrongfully  
have taken and do detain the following  
described goods and chattels to wit:

Thirty three head of cattle of the age  
of three years and upwards all of said cattle  
being Steers and red dun, black and white  
colored, of the value of Nine hundred dollars.

Therefore We Command you, That if said  
Plaintiff shall give you bond with good  
and sufficient security in double the value  
of the said goods and chattels as required  
by law, to prosecute his suit in this behalf  
to effect and without delay and to make  
return of the said goods and chattels, if  
return thereof shall be awarded, and to  
save and keep you harmless in replevying  
said goods and chattels, you cause the  
said goods and chattels to be replevied  
and delivered to the said plaintiff without  
delay: and also that you summon the  
said defendants to be and appear before  
the Circuit Court of Cook County on the  
first day of the next term thereof to be  
holden at the Court House in the City  
of Chicago in said County on the 1<sup>st</sup>  
Monday of September instant, to answer  
said plaintiff in the premises. And here

you then and there this writ, with an endorsement thereon in what manner you shall have executed the same, together with the bond which you shall have taken from the said plaintiff as before commanded before executing this writ.

Witness William L. Church  
Clerk of our said Court and  
the Seal thereof, at Chicago  
in said County the first day of  
September 1859.

W.<sup>m</sup> L. Church  
Clerk

Received from William James, Coroner  
of Cook County all the property described  
in the within writ, this 1<sup>st</sup> day of September  
A. D. 1859.

O. Stratton.

The Plaintiff having given Bond as  
hereunto annexed I have taken the  
within described property and delivered  
it to him, as per his receipt hereon en-  
dorsed, also served by reading to the within  
named defendants (George Smith excepted)  
this 2<sup>nd</sup> day of September A. D. 1859.

William James  
Coroner.

The Plaintiff then offered and read to the jury the writ of Returno Habendo with the Coroner's return endorsed thereon which are in the words and figures following to wit:

State of Illinois }  
 County of Cook } p.

The People of the State of Illinois  
 to the Coroner of said County Greeting:

Whereas George Smith, Olisha W. Willard, John Gray, and George Anderson Defendants were summoned to appear before our Circuit Court of said County, to answer Oscar Strattan Plaintiff of a Plea, wherefore the said defendants on the thirty first day of August A. D. 1859 at the County and Circuit aforesaid took the goods and chattels of him, the said Plaintiff to wit:

Thirty three head of Cattle of the age of three years and upwards all of said Cattle being Steers, and red, dun, black and white colored, and unjustly detained the same against gages and pledges, until etc., as it was said; whereupon such proceedings were had thereon in our said Circuit Court, as that the right of the said property was adjudged to be in the said defendants and a return thereof awarded

to them; together with the sum of eleven dollars and twenty cents for their costs and charges about their defence in that behalf expended, as appears to us of record. We Therefore command You, That you, without delay, cause the goods and chattels aforesaid to be returned to the said Defendants to hold to them irrefragable in form aforesaid.

We Also command You, That of the goods and chattels, lands and tenements of the said Oscar Strattan Plaintiff aforesaid; in your County, you cause to be made the sum of Eleven dollars and twenty cents for the costs aforesaid; and that you have that money in ninety days from the date hereof, to render unto the said Defendants for their costs and charges aforesaid, and make due return of this writ with an endorsement thereon in what manner you shall have executed the same, within ninety days from the date hereof.

Witness William L. Church Clerk  
of our said Court and the seal  
thereof at Chicago in said Court  
this seventeenth day of January  
A. D. 1861.

W. L. Church, Clerk.

35

Received of Coroner James the sum of six dollars and twenty cents, the Defendants clerks costs in the within case.

\$6.20.

Hervey, Anthony and Galt.  
Attorneys for Defendants

Served this writ, by collecting the costs and paying the same to defendants Attorneys and the Clerk of the Circuit Court as upon their receipts hereon endorsed, also by demanding a return of the within described property which the Plaintiff refused to do, I therefore return this writ no property found, this 6<sup>th</sup> day of February 1861.

William James, Coroner.

The Plaintiff then rested,

The defendants to prove the issue on their part introduced one Nicholas Baker, who being sworn testified as follows: I have known the defendant Strattan for four years. I knew him in the summer of 1859, he was then trading in hogs and cattle. I do not know personally anything about the thirty three head of cattle being levied on here, nothing except hearsay, there were thirty four head of cattle sent by Chicago Burlington and Quincy Railroad

to Samuel Woodward about the first of September 1859. The defendant<sup>Strattan</sup> and I bought them in Iowa and shipped them to Samuel Woodward in Chicago<sup>from</sup> Wapulo County Iowa: the last day of August or 1<sup>st</sup> of September they were shipped, Strattan went with them as far as Burlington. Strattan paid for part of them and I paid for part. Strattan gave me the money to pay for them I bought. Some of them were paid for after Strattan returned. Strattan said he drew \$600 from the agent of the Rail Road to pay for part of them. I staid at the town of Agency and did not go to Burlington. The agent told me that Strattan got \$600 from him Agency is 70 miles from the river. A few days after the cattle came to Chicago — Strattan went to Chicago. After he returned from Burlington he paid for the cattle I don't know who paid the freight — Strattan rather had the direction of the shipping I was acting for Strattan and Woodward in buying the cattle. I don't know where Strattan got the money We expected ~ Woodward to send money There. He did not send it. The agent guaranteed the men that they should be paid for the cattle. Strattan gave me the directions