No. 14842

Supreme Court of Illinois

Gordon

vs.

Bankard et al.

71641

STATE OF ILLINOI

SUPREME COURT,

THIRD GRAND DIVISION.

No. 61

J. W. Middleton & Co., Stationers, 196 Lake St.

Gordon

vs

1866

Barker

STATE OF ILLINOIS.

SUPREME COURT.

GODFREY GORDON ET AL.,
Plaintiffs in Error,

vs.

J. J. BANKARD ET AL.,
Defendants in Error.

ARGUMENT FOR DEFENDANTS IN ERROR,

By WALKER & DEXTER,

Att'ys for Defendants in Error.

CHICAGO:
JAMESON & MORSE, PRINTERS.
1864.

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Filed May 10 1864
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SUPREME COURT.

APRIL TERM, A. D. 1864.

GODFREY GORDON ET AL.,
Plaintiffs in Error,
vs.
J. J. BANKARD ET AL.,
Defendants in Error.

ABSTRACT OF PLEADINGS.

The declaration alleges, in the 1st count, that on the 24th of June, 1863, the defendants in error, "*J. J. Bankard, G. M. Bastable and Asbury F. Fawcett, were co-partners in the business of buying and selling cattle, and ever since have been, and now are such co-partners, doing business under the name and style of J. J. Bankard.*"

That on the said 24th of June, the defendants bought of the plaintiffs, 2,000 head of cattle, at $5 70-100 per hundred lbs., for the first eight hundred, and $5 60-100, per hundred lbs., for the balance.

That said cattle were to be delivered in Baltimore, in numbers proportionate to the time as required by an agreement, which the defendant, Bankard, had with the government, and were to be inspected by the government Inspector, and paid for on delivery; that the plaintiffs were to have the benefit of any extension of time given by the government to said Bankard; that on the 13th of June, 1863, the defendants requested the cattle to be delivered at

Philadelphia, which was agreed to by the plaintiffs; that on the 11th of July, the plaintiffs tendered the cattle to the defendants, 981 of which the defendants received, and refused to receive the balance; that the plaintiffs were obliged to sell such balance at a loss of $14 per head, making an aggregate loss of $13,000.

The plaintiffs allege in their 2d count, that defendants, on the 24th of June, 1863, under the name, style and firm of J. J. Bankard, made their contract in writing, (a copy of which is given below,) setting forth the same in substance, and then alleges, that on the 28th of June, they were ready to deliver in Baltimore, the 2,000 head; that on the 30th of June, defendants directed them to deliver in Philadelphia, and that on the 7th of July, they were ready at Philadelphia to deliver, and tendered the 2,000 head, of which the defendants received 981, and refused the balance, and that they were obliged to sell the balance at the loss stated in the first count.

3d. The third count is substantially like the first.

4th. The fourth is in the form of the common counts, for cattle and stock sold by the plaintiffs to the defendants.

To this declaration, the defendant Bankard, filed a plea denying the co-partnership, "as follows," and the said defendant, J. J. Bankard, by Walker & Dexter, his attorneys, comes and defends the wrong and injury, when, &c., and prays judgment of the said writ and declaration, because he says that the said several supposed promises and undertakings in said declaration mentioned, if any such were made, were made by him, the said J. J. Bankard, alone, and not by him "jointly with the said defendants, G. M. Bastable and Asbury F. Fawcett; and this he," &c., in the usual form, and also a plea of the general issue, both which pleas were verified in due form. and under oath.

The defendant, Bastable, also filed two pleas, which were duly sworn to; one the general issue, and the other denying the copartnership; (omitting the formal part) in these words, "that at the time when, &c., he was not a partner of the said defendants, Asbury F. Fawcett and J. J. Bankard, and this he, &c."

The defendant, Fawcett, filed a plea of the general issue, and a plea denying the copartnership in this language, and says, "that at the said time, when, &c., he was not in partnership with the said defendants, G. M. Bastable and J. J. Bankard, or either of them, and avers that the said several supposed promises and undertakings in said declaration mentioned, if any such were made, were made and each of them was made by the said J. J. Bankard alone, or by him jointly with the said defendant, G. M. Bastable, and not by the said J. J. Bankard and G. M. Bastable, jointly with him, the said Asbury F. Fawcett, and this he, &c., both which pleas were sworn to by said Fawcett in due form.

The plaintiffs filed a *similiter* to the several pleas of the general issue, but in no manner replied to the plea denying the copartnership, till the cause came on for trial, and a jury had been impanelled, after which the court allowed replications to be filed as follows: to each of said pleas in abatement

~~Each of said pleas in~~ abatement, in which the plaintiffs allege in substance, that at the time of making the contract the defendants were partners under the name and style of "J. J. Bankard," and as such copartners, in said copartnership name, made and signed the contract declared on, concluding to the country. To which said several replications &c., *similiters* were added by the defendants. The contract declared upon, a copy of which is attached to the declaration, is as follows:

"Article of agreement between Hook & Gordon, of Pennsylvania, of the one part, and J. J. Bankard, Baltimore, Maryland, of the other part, *Witnesseth:* The said Hook & Gordon agree to furnish two thousand head of cattle to the said J. J. Bankard, to be delivered at the Maryland live stock scales, and in numbers proportionate to the time as required by the terms of agreement between the said Bankard and the Government of the United States, said cattle to be subject to inspection by the Government Agent. The said J. J. Bankard agrees to pay to the said Hook & Gordon, for the first eight hundred head, the sum of five and seventy-hundredth dollars per hundred lbs. gross weight, and for the balance of the two thou-

The balance of the testimony of this witness shows clearly that he did not know that the defendants were partners, or what the character of the interest was which the defendants had in the Bankard contract; and that his whole testimony on the subject of co-partnership was the merest supposition, without any actual knowledge whatever.

II.

The next inquiry relates to the instructions given to the jury by the court.

Only three of the instructions given on behalf of the defendants were objected to, or exceptions reserved by the plaintiffs in error; all the others are conceded to be good. Those to which exception has been taken are the 9th, 10th and 12th; and all these relate to the proof of the co-partnership.

The ninth instruction is in these words:

"Although the jury may find from the evidence, that the defendants were partners at the time of the execution of the agreement declared upon, yet they must find for the defendants, unless they shall also find, from the evidence, that they were doing business under the firm name of J. J. Bankard, at that time, and under such name, executed the contract sued on in this cause."

The tenth instruction is as follows:

"The contract declared upon is in the individual name of J. J. Bankard, and the presumption of law is, that it is the contract of J. J. Bankard alone, and not the contract of the defendants as partners, and the jury must find for the defendants, unless they shall find, from the evidence, not only that J. J. Bankard executed said contract, but that the defendants were associated together at the time of, and in the making of the contract, as partners under the firm name of J. J. Bankard."

That part of the tenth instruction which relates to the presumption of law arising from the fact that the contract was signed by the defendant Bankard, in his individual name, is certainly not objectionable, and if it were, the plaintiffs could not avail themselves of it, for the reason that it is in substance the same statement made and admitted to be good law in the second instruction requested and given on their behalf in the court below. That portion of the plaintiff s' instruction referred to, reads as follows: "that although the contract declared upon, is signed by J. J. Bankard alone, and that signature is *prima facia* evidence, that no one else was interested therein," &c. This quotation therefore, disposes of any objection to that part of the tenth instruction above referred to, if by possibility any shall be made.

Let us inquire now whether the ninth instruction, and the balance of the tenth, state correctly the law.

The court in the ninth instruction directs the jury that they must find for the defendants, unless they shall find that the defendants at the time of making the contract, were doing business under the firm name of "J. J. Bankard," and under such name executed the contract.

In the tenth instruction the jury are told to find for the defendants, unless they shall find that they (the defendants) were at the time of the making of the contract and in making the same, associated together under the firm name of "J. J. Bankard."

The two instructions, as will now be seen by comparison, are precisely the same in substance, and if either be good, both must be, and they may be spoken of as the same.

It will be recollected that this suit was brought by the plaintiffs upon a written contract, signed by "J. J. Bankard," in his individual name. We have before given a copy of this contract, taken from the copy in the record attached to the declaration.

It is admitted that the presumption of law arising upon a contract executed as this is, by one party, and in his individual name,

is that it is the sole and individual contract of the party executing the same. The authorities are uniform on this point.

Logan vs. Bond, 13 *Geo.*, 192.
Holmer vs. Barton, 5 *Verm't*, 253.
Mead vs. Tomlinson, 1 *Day*, 148.
Sifkin vs. Walker, 2 *Camp.*, 308.
Everly vs. Lye, 15 *East.*, 7.

It was therefore incumbent on the plaintiffs, to make out their case, to show affirmatively that the contract was in fact executed by all three of the defendants in some form. *Ethridge vs. Bumly*, 9 *Pick.*, 272. The contract was signed by Bankard. The plaintiffs must show then that Bankard was the duly authorized agent of the other defendants to bind them in the contract which he executed.

This the plaintiffs ~~undertook~~ undertook, and attempted to do, not by alleging an appointment and agency in the simple form, but by alleging the association of the defendants together, as partners under the firm name of "J. J. Bankard," and thus clothing each with authority to bind the others by the use of that name. The plaintiffs have not alleged that the defendants were partners simply and without more. This would not have been enough. The declaration, if it contains a copy of the contract, would have been obnoxious to a demurrer, for the presumption of law would still have been that it was the individual contract of Bankard alone. They did not allege that the plaintiffs were partners under some other name, such as "Fawcett & Co.," or "Bankard, Fawcett & Bastable." This would not have been sufficient, for the presumption would have been more violent than ever, that it was the individual contract of Bankard, but they did allege *that on the 24th day of June*, 1863, (*date of contract,*) *J. J. Bankard, G. M. Bastable and Asbury F. Fawcett, were co-partners, doing business under the name and style of J. J. Bankard.* This was sufficient, and made the declaration good, and nothing less than this would have answered.

Story on Part., *Sec.* 102.
Cranch vs. Bowman, 3 *Humph.*, 209.
Palmer vs. Stevens, 1 *Denio*, 471.

Leroy vs. Johnson, 2 *Peters*, 186.
Bank vs. Binney, 5 *Mason*, 176.
Winship vs. Bush, 5 *Peters*, 529.

Now, if it was necessary to the plaintiffs' recovery on this contract that they should allege that the defendants were partners under the name and style of "J. J. Bankard," of which under the authorities referred to there is no doubt, it was just as necessary that they should support this allegation by proof upon the trial, for the obvious reason that the plaintiffs must support the material allegations of their declaration. This allegation was most material. In fact it was an issue and the main issue to be tried. The plaintiffs allege that the defendants at the time of making the contract, were partners under the name and style of "J. J. Bankard." This allegation, as we have seen, was denied by each of the defendants, pleading in abatement, and denying this identical allegation of the declaration; could the plaintiff recover without proving it?

If, then, to recover upon this contract it was necessary for the plaintiffs to allege in their declaration and prove upon the trial that the defendants at the time of, and in the making of the contract declared upon, were partners under the name of "J. J. Bankard" (the only name signed to the contract), it certainly was not only not error, but it was the duty of the court below, when requested to instruct the jury that they should find for the defendants, unless they should find that the plaintiffs had established this allegation, and the fact of the copartnership of the defendants under said firm name of J. J. Bankard. This is precisely what the court did instruct the jury in the ninth and tenth instruction, neither more nor less, and in them, *therefore, there is no error.*

We are next to consider whether there is error in the twelfth instruction. That instruction is as follows:

"The acts, admissions or declarations of one or more of the defendants, are not evidence of the existence of a copartnership between the defendants, so as to bind the other defendants as partners,

unless the jury shall find from the evidence that such acts, admissions or declarations, were made in the presence and hearing of such other defendants, or were subsequently brought home to the knowledge of such other defendants and assented to by them."

It is admitted that the existence of a copartnership may be proved by the acts, admissions or declarations of each of the defendants. If each of the defendants has admitted, declared or shown by his acts, that he is a member of a given firm, then all of the defendants have admitted, declared or shown by their acts, that they are members of such firm, and the partnership between the defendants is of course established. In other words, each of the defendants by his individual acts, admissions or declarations, may bind himself as a partner, and when all of them have thus individually bound themselves, the copartnership liability between the defendants is proved. Such is the law, undoubtedly.

Welch vs. Speakman, 8 *Watts & S.* 257.
Haughey vs. Strickler, 2 *Watts & S.*, 411.
1 *Parsons on Cont.*, 152, *note S.*

On the other hand, it is equally well settled that where the existence of a copartnership is disputed, the admission, act or declaration of one that he is a copartner with the others, binds *him alone*, and is not evidence to bind the others, unless such admission, act or declaration, after being brought to the knowledge of the other defendants, is assented to or adopted by them.

1 *Parsons on Contracts*, 152.
Taylor vs. Henderson, 17 *S. & Rawle*, 452.
McPherson vs. Rathbone, 7 *Wend.* 216.
Jewett vs. Stevens, 6 *N. H.*, 82.
Mitchell vs. Boalstone, 2 *Hale*, 551.
Nelson vs. Lloyd, 9 *Watts*, 22.
Cottrell vs. Vanduzen, 22 *Vent.*, 511.
Gelpen vs. Temple, 4 *Harring*, 190.
9 *Metc.*, 454, 5 *Pick*, 414.
9 *Cush.*, 223.
15 *Maine*, 472. 16 *Maine*, 323.
Col. on Part., *Sec.* 774–776.

These are the only principles of law involved in the present inquiry. Did the Court below in the twelfth instruction violate either of them?

This instruction, as we understand it, is in strict accordance with the principles established by the authorities referred to. The court tells the jury, in substance, that the admissions, acts, or declarations of one of the defendants, or any number of them less than the whole, will not bind the other or remaining defendants, unless such acts, admissions, or declarations are brought to the knowledge of the other and remaining defendants, and assented to by them. If this be the meaning of the twelfth instruction, it is certainly unobjectionable, and it is a fact admitted that if such be its construction, it is good law. It is claimed, however, by the counsel for the plaintiffs in error, that the instruction is not clear, and that it may be so construed as to direct the jury that even if all the defendants individually had admitted that they were partners, that this would not be competent to establish the copartnership.

How this construction is to be maintained, what words or parts are to be omitted, or what introduced, we are not advised, but certain it is, that if the words are to have their ordinary signification, and the language be construed by the established rules, the instruction cannot be made to convey any such idea, but on the contrary the jury in it are, by implication, at least, told that directly the reverse is true.

In ascertaining the meaning of this instruction, we must take it as it is, retaining the whole of it, and giving to every word its ordinary signification.

Let us read the essential part of the instruction, with the adjuncts of the sentence in brackets, and we shall more clearly see its meaning.

"The acts, admissions, or declaration of *one or more of the defendants* is not evidence [of the existence of a copartnership between the defendants] so as to bind the *other defendants*, unless [the jury shall find from the evidence that] such acts, admissions, or declarations were made in the presence and hearing of *such oth-*

er defendants, or were subsequently brought home to the knowledge of *such other defendants*, and assented to by *them*."

Reading the instruction in this manner, and it must be so read, can there be any doubt as to what it means? Does not the court in the commonest, simplest language, tell the jury that a part of the defendants cannot, by their admissions, bind the remainder of the defendants, unless such admissions are brought to the knowledge of, and assented to, by the latter. The term "*defendants*," when used in this instruction, is certainly used as a whole, and means all the defendants to the suit. The terms "*one or more*," are used in a partitive sense, and distinguish certain of the defendants from the remaining portion, designated as "*other*," and "*such other*," which latter words are also used in a partitive sense, and are designed to, and do, exclude those defendants who have not made admissions, from those included in the terms "*one or more*," who have made admissions. The terms "*one or more of the defendants*," in contrast with "*other defendants*," and "*such other defendants*," as used in this instruction, as clearly and as certainly divide the defendants into two classes, as any language possibly can. There is no uncertainty or ambiguity about it. The language used means this, or it means nothing.

The Court then says to the jury in and by their instruction, that the declarations, admissions or acts of the one part of these defendants will not bind the remainder of them, unless brought home and assented to by such remainder, and in this view of the law the court is sustained by all the authorities upon the subject.

We stated that in this instruction, the court told the jury, by implication at least, that the admission of each of the defendants will bind the one making the admission, and thus by an admission from each all may be bound.

The Court instructs the jury that the admissions of one of the defendants will not bind the others, unless brought to the knowledge of the others, and assented to by them, thereby implying as clearly as though the fact had been stated, that if such admissions be brought home and assented to by the other defendants, they will

also be bound. Why? Because when brought to their knowledge and assented to by them, the admission becomes their own, and by the law a man shall be bound by his own admissions.

How, then, is it possible to find fault with this instruction? In it the jury are first clearly and distinctly told that the admissions or declarations of a part, will not bind the remainder of the defendants, unless such admissions or declarations be brought home to the latter, and assented to by them. And in the second place, they are just as distinctly given to understand, that if all of the defendants have admitted the copartnership, or have assented to an admission of it, then they would have competent proof of the existence of a copartnership. This is certainly good law. And the twelfth instruction is not obnoxious to the objection made to it.

But if the instructions were, to some extent, obscure and uncertain, which we deny, yet, unless the court can see that injustice has been done, they will not disturb the verdict. If substantial justice has been done, and the jury have found as the justice of the case requires, then a new trial will not be granted.

Newkirk vs. Cone, 18 *Ill.*, 454.
Dishon vs. Schorr, 19 *Ill.*, 59.
Elam vs. Badger, 23 *Ill.*, 502.
Schwartz vs. Schwartz, 26 *Ill.*, 81.

Now, it will appear, when we come to examine the next allegation of error, that not only has justice been done between the parties, but that it was utterly and absolutely impossible for the jury to have found otherwise than for the defendant, and this brings us to enquire,

III.

Whether or not the Circuit Court erred in overruling the motion for a new trial.

We shall consume very little of the time of this court in discussing this point. Before the plaintiffs in error can ask this court to set aside a judgment, and grant a new trial, either for errors of

law committed by the court, or for error in fact made by the jury, they must bring into this court a record and bill of exceptions, which will show not only that the errors complained of have been committed, but also, that substantial justice has not been done, and that the real merits of the case require that the jury should have found a different verdict. In addition to the authorities last cited upon this point, see,

Gillett vs. Sweat, 1 *Gilm.*, 475.
Gramp vs. Stoker, 3 *Gilm.*, 202.
Smith vs. Shults, 1 *Scam.*, 491.
Leigh vs. Hodges, 3 *Scam.*, 17.
Young vs. Selkwood, 11 *Ill.*, 36.

This the plaintiffs in error have not done. This record exhibits no errors on the part of the court, as we have already shown, and so far from showing that substantial justice has not been done, it would seem utterly impossible that the jury should have found otherwise than they have done.

The action, as we have seen by the pleadings, was brought on what purports to be a written contract, signed by, and in the individual name of the defendant, Bankard; a copy of that contract, as taken from the copy filed with the declaration, we have given above. The cause was tried by a jury, and a bill of exceptions taken, which we suppose was designed to present all the evidence produced at the trial.

If the record and bill of exceptions do present to this court all the evidence given to the jury at the trial, then we say the jury could but have found a verdict for the defendants as they did, for the reasons: 1st, The contract declared upon, was not produced or proved, or given in evidence to the jury on trial of the cause. Its loss or absence was not accounted for, and no attempt made to prove it, so far as this record shows; nor was there any evidence of any kind given to the jury of the making or existence of any contract or agreement whatsoever, between the plaintiffs and the defendants, or any of them. The record is entirely silent, so far as any proof of any contract is concerned.

There was a copy of the contract relied upon endorsed upon the declaration, but this is now no part of the record, for it is not preserved by the bill of exceptions, and of course cannot be noticed.

Franney vs. True, 26 *Ill.*, 182.

But if this copy could be considered, it could not avail the plaintiffs, for it is but a copy, and the record must show that there was an original, and that such original was produced and proved, or loss shown, and its contents given to the jury at the trial. The record wholly fails to show a single word on this most ~~natural~~ material and fundamental part of the plaintiffs' case.

2d, It appears from the declaration, that cattle were to be furnished and delivered to the plaintiffs before the first day of July, but that the plaintiffs were to have the benefit of any extension which the defendant Bankard, might obtain upon his contract with the government.

Now the record shows that all the cattle offered before the first day of July were received by the defendants, and that the cattle, for alleged refusal to receive which this suit is brought, were not offered or tendered till the 11th of July, ten days after the time had expired within which the cattle were to be delivered, and without an extension of time, the plaintiffs of course, had no case; and yet there is not one word of proof in the record that the defendant, Bankard, obtained any extension of time on his contract with the government, or that the plaintiffs obtained from the defendants any extension after the first of July, of their contract, by an agreement or otherwise; and, so far as appears from this record, the plaintiffs' time for delivery of cattle was at an end on the first day of July, 1864.

3. It does not appear from the record that the defendants ever at any time, either before or after the first day of July, refused to receive any cattle offered by the plaintiffs or either of them.

4. There is no evidence ~~elicited~~ exhibited by the record that there was any decline in the market value from the contract price of cattle, at any time after the day of the alleged execution of the contract.

5. The declaration alleges that the cattle offered and refused, were tendered in Philadelphia instead of Baltimore, the place of delivery named in the contract, and there is no evidence appearing of record, that the place of delivery was ever changed by any agreement with the defendants, or with their knowledge or consent.

6. There is no evidence in the record to establish, or which even in any manner tends to establish, a copartnership between the defendants, under the name and style of "J. J. Bankard."

7. There are no admissions or declarations of the defendant Fawcett, that he had any interest of any kind with Bankard, in his, Bankard's, contract with the Government, or in the contract declared upon.

For these reasons, if this record has presented all the evidence given to the jury on the trial of said cause in the Court below, it is quite clear that justice has been done, and that no new trial should be awarded.

On the other hand, if the record does not contain all the evidence, (and here there is no statement in the bill of exceptions that it does,) then the plaintiffs have brought into this court a record, and upon it prayed for relief, to which they are clearly not entitled in any event; for by ———— the record, as we have seen, full justice has been done, and the plaintiffs can take nothing by their writ of error, and aside from the record, which does not contain the whole evidence in the case, this court will presume that the verdict of the jury was authorised by the evidence, and therefore that no injustice has been done the plaintiffs by the verdict and judgment.

Trustees vs. Lefler, 23 *Ill.*, 90.
Warner vs. Caselton, 22 *Ill.*, 415.

We conclude, then, that there was no error by the court below, in overruling the motion for a new trial.

It appearing then that the court below did not err in rejecting evidence on the trial of the cause, or in instructing the jury, or in denying the motion for a new trial, the judgment of the Circuit Court ought to be affirmed.

April 5th, 1864.

WALKER & DEXTER,
Counsel for Defendants in Error.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable ..... Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the ..... Monday, (being the ..... day) of ..... in the year of our Lord One Thousand Eight Hundred and ..... and of the Independence of the said United States the Eighty .....

Present, Honorable ..... Judge of the 7th Judicial Circuit of the State of Illinois.

..... States Attorney.

..... Sheriff of Cook County.

Attest, ... Clerk.

Be it Remembered. that heretofore. to wit: on the 20th. day of July A.D. 1863. Godfrey Gordon & Jesse Stook by Bates and Lowrey their attorneys filed in the Office of the Clerk of the Court aforesaid a certain bond for Costs affidavit & Attachment Bond in the words & figures following Viz.

Bond for Costs.

Godfrey Gordon
Jesse Stook
Vs
I I Bullard
& Wm Bostwick
Asbury F Bennett

Cook County Circuit Court

I do hereby enter myself Security for Costs in this Cause. and acknow

bedge myself bound to pay or Cause to be
paid all Costs which may accrue in this
Action either to the opposite party or to any
of the Officers of this Court in pursuance of
the Laws of this State.

Dated this 20 day of July A.D. 1863. J W B Gordon

Affidavit
State of Illinois
Cook County ss

Godfrey Gordon of Pennsylvania being duly Sworn Says. that this affiant and one Jesse Hook of the State of Pennsylvania are Copartners in the business of buying and selling Cattle under the Copartnership name of Hook & Gordon. that S.S. Bankard & M Bastable & Asbery & Fawsett defendants in the Suit of attachment to be commenced were on the twenty fourth day of June 1863. Copartners in the business of buying and Selling Cattle. that Said business of Said Copartnership of Said Bankard Bastable & Fawsett was done and transacted under the name of S S Bankard that Said S S Bankard & M Bastable & Asbery & Fawsett as Said Copartners are indebted to Said Hook & Gordon in the Sum of thirteen thousand dollars for damages for the non performance of a certain written Contract. heretofore.

2.

3

to wit: on the 24th day of June 1863. made executed & delivered by the said Bankard Bastable & Fawsett. under the name Style & description of J J Bankard with the said Hook & Gordon that in and by said Contract the said Hook & Gordon agreed to furnish & deliver to said Bankard Bastable & Fawsett two thousand dollars head of Cattle at the Maryland Live Stock Sales in numbers proportionate to the time as required by the terms of a Certain agreement between said Bankard and the Government of the United States of America that said Cattle were to be subject to inspection by the agent of the Government of the United States upon such delivery. that said Bankard Bastable & Fawsett agreed & Contracted with the said Hook & Gordon in & by Virtue of said written Contract to pay to the said Hook & Gordon for the said Cattle mentioned in said Contract as follows for the first Eight hundred head of Cattle the Sum of Five dollars and Seventy Cents per One hundred Pounds gross weight. and for the balance of the said two thousand head of Cattle mentioned in said Contract the said Bankard Bastable & Fawsett agreed with said Hook & Gordon to pay them the Sum of five dollars & Sixty Cents per One hundred Pounds the payments for said Cattle were to be made to said Hook & Gordon as the said Cattle were

delivered by said Hook & Gordon and in par funds and it was further agreed in said Contract that said Hook & Gordon should have the benefit of any Extension of time agreed upon between the Government of the United States and the said Bankard. And this affiant further says that the said Hook & Gordon were ready & willing to deliver said two thousand Head of Cattle mentioned in said Contract on the 30 day of June 1863. to the said Bankard Bastable & Fawsett at the Maryland Live Stock Scales under an inspection of an Agent of the Government of the United States according to the terms & Stipulations of the said Contract hereinbefore mentioned of which the said Bankard Bastable & Fawsett had notice. that afterwards, to wit: on the said 30th. day of June 1863 the said Bankard Bastable & Fawsett requested the said Hook & Gordon to deliver the said two thousand Head of Cattle mentioned in said Contract aforesaid to them the said Bankard Bastable and Fawsett at the City of Philadelphia in the State of Pennsylvania instead of at the place mentioned in said Contract. that said Hook & Gordon afterwards according to such request delivered to said Bankard Bastable & Fawsett on or about the Eleventh day of July 1863. at Philadelphia & at Baltimore in Maryland Nine Hundred and

3.

Eighty one head of Cattle part of said two thousand
head of Cattle mentioned in said Contract which
were accepted by said Bankard Bastable &
Fawcett the same first having been inspected
as required by said Contract that on the same
11th day of July 1863. at Philadelphia in said
State of Pennsylvania the said Hook & Gordon
tendered to the said Bankard Bastable & Fawcett
& offered to deliver to them ten Hundred & Nineteen
head of Cattle. the balance of the Cattle mentioned
in said Contract then undelivered and to have
the same then & there inspected by an Agent of
the government of the United States as required
by said Contract and this affiant further says
that the said Bankard Bastable & Fawcett then
& there knew on the said 11th day of July 1863.
at Philadelphia aforesaid refused to accept &
receive said ten Hundred and Nineteen head
of Cattle balance of the Cattle undelivered
under & by virtue of said Contract aforesaid.
that the said Hook & Gordon are damaged in
the sum of Fifteen thousand. by the refusal
by said Bankard Bastable & Fawcett to accept
the delivery of the said ten hundred & Nineteen
head of Cattle aforesaid offered & tendered to them
by said Hook & Gordon as before mentioned under
said Contract. and for the damage the said
Hook & Gordon have sustained by the non-fulfil-

ance of the said Contract by the said Bunkard Bastable & Bausett hereinbefore mentioned as they in said Contract had agreed to do & perform and this affiant further says that said I J Bunkard and G W Bastable and Asberry F Bausett are not nor are either of them residents of the State of Illinois.

Godfrey Gordon

Subscribed & Sworn to before me this 20 July 1863.

Wm L Church Clerk

5 Cents Revenue Stamps

Attachment Bond

Know all men by these presents. That we Godfrey Gordon & Joseph McPherson are held and firmly bound unto I J Bunkard G W Bastable and Asberry F Bausett in the penal Sum of Twenty Six Thousand Dollars ($26000.00) Cents lawful money of the United States. for the payment of which said Sum. well and truly to be made we bind ourselves our heirs Executors and administrators jointly and severally by these presents.

Sealed with our Seals and dated this 20th day of July A. D. 1863. The Condition of the above obligation is such. That Whereas the above bounden Godfrey Gordon has on the day of the date hereof. prayed an attachment out of the Circuit Court of Cook County at

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the Suit of Godfrey Gordon and Jesse Hoosk against the Estate of the above named J Bankard G W Bastable and A G Fawsatt for the Sum of Thirteen Thousand dollars — Cents, and the Same being about to be Sued out of Said Court returnable on the first Monday of September next to the term of Said Court. Now if the Said Godfrey Gordon and J McPherson Shall prosecute their Said Suit with Effect or in Case of failure therein. Shall well and truly pay and Satisfy the Said Bankard Bastable & Fawsatt all Such Costs in Said Suit and Such damages as Shall be awarded against the Said G Gordon and J Hoosk. their Executors or administrators in any Suit or Suits which may hereafter be brought for wrongfully Suing out the Said attachment. Then the above obligation to be Void; otherwise to remain in full force & Effect.

Signed Sealed and delivered in presence of

Godfrey Gordon (Seal)
Joseph McPherson (Seal)

State of Illinois
Cook County } ss.

Joseph McPherson being first duly Sworn deposeth and Sayth that he is the owner of Real Estate Situate in the County of Cook. State of Illinois to the value of the Sum of Twenty thousand Dollars and of lands in Said State outside of Said

County to the value of Twenty thousand Dollars
Subscribed & Sworn to
before me this 20th day
of July 1863. } Joseph McPherson

Wm L Church, Clerk

And thereupon afterwards, to wit: on the day and year last aforesaid there was issued out of the office of Clerk of said Court & under the Seal of said Court, directed to the Sheriff of said County to execute and clothed in the words & figures following, to wit:

Attachment Writ

State of Illinois
Cook County } Ss.

The people of the State of Illinois to the Sheriff of said County, Greeting: Whereas, Godfrey Gordon and Jesse Hook have complained on oath to William L Church, Clerk of the Circuit Court of Cook County, that J J Bankard, G W Bastable, Asbery G Farwell are justly indebted to the said Godfrey Gordon and Jesse Hook in the sum of Thirteen Thousand Dollars and — Cents and oath having also been made that the said J J Bankard G W Bastable & Asbery G Farwell reside out of this State. So that the ordinary process of law cannot be served upon them but have property

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and effects within this State liable to attachment. And the said Godfrey Gordon having given bond and security according to the act in such Cases made and provided: We therefore Command you, that you attach so much of the Estate Real and personal of the said J J Bankard G W Bastable & Asbery G Fawsett to be found in your County, as shall be of Value sufficient to satisfy the said debt and Costs according to the said Complaint, and such Estate so attached, in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon, according to Law, at a term of the Circuit Court, to be holden at Chicago within and for the County of Cook on the first Monday of September next, so as to Compel the said J J Bankard G W Bastable & Asbery G Fawsett to appear and answer the Complaint of the said Godfrey Gordon and Jesse Stark, taken and where you shall make Return how you have executed this writ, and have you then and there this writ.

Witness William L Church Clerk of our said Court, and the Seal thereof at Chicago this 20th day of July in the year of our Lord One thousand Eight Hundred & Sixty three.

Seal

Fifty Cents Revenue Stamp

Wm L Church, Clerk

And afterwards. to wit: on the 22d day of July in the year last aforesaid said Sheriff returned said writ into the Court aforesaid Endorsed as follows. to wit:

Sheriffs Return

By Virtue of this writ I have this 20th day of July A.D. 1863 attached and levyed upon all the right title and interest of the within named defendants in and to the following described property to wit: Four hundred Eighty Eight (488) Head of fat Cattle now at the Cattle Yards of the Pittsburg and Fort Wayne Rail Road Company in the City of Chicago also Served by Reading this writ to the within named defendant Asbery F Sawyer this 21st day of July 1863. the other within named defendants not found in my County.

Fees	
Levy	50
Mile	20
Serves	50
Cats	10
	$1.30

David S Hammond Sheriff
By John A Nelson, Deputy

The Sheriff will please deliver the Cattle attached on this writ to defendants without any bond or Receipt being given

22 July 1863.

Bates & Gouse
Attys for Plffs.

I Return this writ the property attached delivered to the defendants as per order of Plaintiffs

6.

11.

Attorneys hereto endorsed this 23rd day of July 1863 David J Hammond Sheriff By John A Nelson Deputy

And afterwards. to wit: on the 7th day of August in the year last aforesaid said plaintiffs. by their said attorneys filed in the Court aforesaid in said Cause, their certain declaration in the words & figures following. to wit:

Declaration

State of Illinois } Circuit Court County of
Cook County } ss. Cook. September Term AD. 1863

Godfrey Gordon & Jesse Hook who owen that on the twenty fourth day of June 1863. they were Copartners in the business of buying and selling Cattle and ever since have been and are now such Copartners doing business under their firm name of Hook and Gordon plaintiffs in this Suit by Bates & Fowler their Attorneys Comp. of J I Bankard & Wm Beattable & Cooley & Sawyer defendants. whom the plaintiffs owen were on the 24 day of June 1863. Copartners in the business of buying and selling Cattle and ever since have been and now are such Copartners doing business under the name & style of J I Bankard in a plea of trespass on the Case on promises.

For that whereas heretofore. to wit: on the 24

day of June A.D. 1863. at Baltimore in the State of Maryland to wit at Chicago in the State of Illinois, the said defendants bargained for and bought of the said plaintiffs & the said plaintiffs at the special instance & request of the said defendants, then and there Contracted & agreed to sell to the said Defendants two thousand head of Cattle, at the rate or price of four dollars and seventy Cents for each One hundred Pounds gross weight of said Cattle for the first Eight hundred head of said Cattle to be delivered, and for the remainder and balance of said two thousand head of Cattle aforesaid, at the rate or price of four dollars and Sixty Cents for each hundred Pounds weight of said balance or remainder of said Cattle, to wit: the number of 1200 head of said Cattle. That said Cattle were to be delivered by said plaintiffs to the said defendants at the Maryland Live Stock Scales, which said Scales were located at Baltimore in the State of Maryland in numbers proportionate to a certain time stipulated by the terms of an agreement between the said S.I. Bankard one of the defendants above named & the Government of the United States. That said Cattle aforesaid to be subject to inspection by the Government Agent, to wit: an Agent of the Government of the United States appointed as inspector of Cattle, And it was then & there & at the place aforesaid agreed & Contracted by &

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between the said plaintiffs & said defendants. that the said plaintiffs should have the benefit of any Extension of time (meaning any Extension of time given by the Government of the United States to said J.I Bankard) agreed upon between the Government of the United States and the said Bankard. and the said Cattle to be paid for at the Rate or price above set forth. by the said defendants to the said Plaintiffs. upon the delivery of said Cattle as aforesaid. And in Consideration thereof. and that the said plaintiffs at the like Special instance and Request of the said Defendants. had then and there undertaken & faithfully promised the said defendants to deliver the said Cattle to the said defendants in the time & at the place aforesaid they the said defendants undertook and then and there faithfully promised the said Plaintiffs to accept the said Cattle of & from them the said plaintiffs & to pay them for the same on the delivery thereof to them the said defendants as aforesaid. And the said plaintiffs aver that after the making of the said Contract & agreement hereinbefore set forth. between the said plaintiffs & the said defendants: at Baltimore in the State of Maryland on the thirtieth day of June 1863. the said defendants requested & directed said plaintiffs to deliver the said Cattle above mentioned at Philadelphia in the State of Pennsylvania. instead of at

the place hereinbefore mentioned to which request of said defendants said plaintiffs agreed and consented — And the said plaintiffs further aver that afterwards to wit: at Philadelphia in the State of Pennsylvania on the 11 day of July 1863. & within the time agreed upon between the Government of the United States and the said J I Bankard & after the making of the said promise & undertaking of the defendants, they the said plaintiffs were ready & willing & then & there tendered and offered to deliver the said Cattle to the said defendants, & to have said Cattle inspected by an Agent of the Government of the United States and then & there requested the said defendant to accept the same, & to pay them for the same as aforesaid. And the said plaintiffs do further aver that the said defendants did then & there & at the place last aforesaid, accept and receive from said plaintiffs to the number of 981 head of Cattle parcel of said 2000 head of Cattle aforesaid. And the plaintiffs further say that the said defendants not regarding their said promise & undertaking but contriving & craftily & subtly intending to deceive & defraud the said plaintiffs in this behalf, did not nor would at the said time when they were so requested, accept the balance & remaining number of said Cattle, to wit: ten hundred

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15.

and nineteen head of Cattle, parcel of said 2000 head of Cattle or any part thereof, of & from the said plaintiffs, or pay them for the same as aforesaid, but then & there wholly neglected & refused so to do, to wit: at Philadelphia, to wit: at Chicago, aforesaid, Whereby the said plaintiffs have not only lost & been deprived of the benefit of the said Sale, but have been forced & obliged to sell said Cattle at a great sacrifice and loss, to wit: to the Amount of fourteen dollars for each head of Cattle so refused to be accepted & received by said defendants of & from said Plaintiffs as aforesaid, to wit: at Philadelphia, to wit: at Chicago, aforesaid Amounting in all to the Sum of thirteen thousand dollars. And also for that whereas heretofore, to wit: on the 24 day of June 1863. at Baltimore in the State of Maryland to wit: at Chicago in the State of Illinois, the said defendants made a certain other bargain for & bought of the said Plaintiffs. & the said plaintiffs at the special instance & request of the said defendants then & there by their certain Contract in writing Signed by the said Plaintiffs and by the said defendants under the name Style & firm of J J Bouldard. agreed to furnish (Meaning thereby to sell) to the said defendants certain other 2000 head of Cattle to be delivered

at the Md. Live Stock Scales (meaning at the Maryland Live Stock Scales) which said Scales, plaintiffs aver were at Baltimore in the State of Maryland. that said Cattle last above mentioned were to be delivered in numbers proportionate to the time as required by the terms of agreement between the said I I Bansard & the Government of the United States. and said Cattle last above mentioned to be subject to inspection by the Government agents meaning that said Cattle were to be subject to inspection by an Agent of the Government of the United States appointed for that purpose, and the said defendants agreed to pay said plaintiffs for said Cattle last above mentioned as follows. to wit: for the first Eight hundred head of Cattle at the rate or price of five dollars and Seventy ($5 70/100) meaning five dollars & Seventy Cents per 100 pounds gross weight (meaning One hundred pounds gross weight of said Cattle) and for the balance of the said last mentioned two thousand head of Cattle (meaning balance of the said last mentioned two thousand head of Cattle) to wit. Twelve hundred head of Cattle. the sum of five and Sixty Cents. per 100 pounds. meaning the sum of five dollars and Sixty Cents for each one hundred pounds weight of said balance of said two thousand head of Cattle. to wit: to the number of twelve hundred head of Cattle. and that said payments were

to be made by said defendants to said Plaintiffs for said last mentioned Cattle in par funds And it was then & there at the time & place last aforesaid agreed & Contracted by & between said Defendants and the said Plaintiffs, that the said plaintiffs should have the benefit of any & reasonable time agreed upon between the Government of the U.S. (meaning the United States) and the said Bankard (meaning said I.I Bankard one of the Defendants in this suit) and the said last mentioned Cattle to be paid for by the said defendants to the said plaintiffs on the delivery thereof as aforesaid. In Consideration thereof, and that the said plaintiffs at the like Special instance & request of the said Defendants had then & there undertaken & faithfully promised the said Defendants to furnish & deliver the said 2000 head of Cattle, to the said defendants in the time and at the place aforesaid, they the said defendants undertook and then & there faithfully promised to accept the said last mentioned 2000 head of Cattle, of and from them the said plaintiffs and to pay them for the same on the delivery thereof to them, the said defendants as aforesaid, and the said plaintiffs aver that after the making of the said Contract & agreement hereinbefore set forth, between the said plaintiffs and the said defendants, to wit: at the Maryland

17.

live Stock Scales, to wit: at the City of Baltimore in the State of Maryland on the 25th day of June 1863. & within the time contracted for between the Government of the United States and the said Bankard, the said Plaintiffs were ready and willing and then & there had said last mentioned two thousand head of Cattle to deliver to said defendants, and have the same Cattle inspected by the Agent of the Government of the United States of which the said defendants then and there and at the place last aforesaid had notice. And the said Plaintiffs further aver that afterwards, to wit: at the City of Baltimore in the State of Maryland on the thirtieth day of June 1863. the said defendants directed and requested the said Plaintiffs to deliver the said last mentioned 2000 head of Cattle at Philadelphia in the State of Pennsylvania And the said plaintiffs further aver that afterwards, to wit: on the Eleventh day of July 1863. at Philadelphia in the State of Pennsylvania at the special instance and request of the said defendants as aforesaid, and after the making of the said promise & undertaking of the said defendants, and within the time and upon between the Government of the United States and the said J J Bankard, they the said plaintiffs were ready & willing, & then &

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there tendered and offered to deliver the said last mentioned Cattle to the said defendants & to leave the same there & there inspected by an Agent of the Government of the United States, and then and there requested the said defendants to accept the same, and to pay them for the same as aforesaid. And said plaintiffs further aver that the said defendants then & there at the time & the place last aforesaid accept & receive from said plaintiffs to the number of 981 head of said last mentioned Cattle parcel of said last mentioned two thousand head of Cattle aforesaid. And the plaintiffs further aver that said defendants not regarding their said promise and undertaking, but contriving and craftily and subtly intending to deceive and defraud the said plaintiffs in this behalf, did not, nor would at the said time when they were so requested, accept the balance and remaining number of said Cattle, to wit: One hundred and nineteen head of cattle, parcel of said last mentioned two thousand head of Cattle, or any part thereof, of and from the said plaintiffs, or pay them for the same as aforesaid, but then and there wholly neglected & refused so to do, to wit: at Philadelphia, to wit: at Chicago aforesaid.

19.

Whereby the said plaintiffs have not only lost and been deprived of the benefits of the said last mentioned Sale, but have been forced and obliged to sell said last mentioned Cattle at a great Sacrifice and loss, to wit: to the Amount of 14 dollars for each head of Cattle so refused to be accepted and received by said defendants of and from said plaintiffs as aforesaid, to wit: at Philadelphia to wit at Chicago aforesaid, amounting in all to the Sum of Thirteen Thousand Dollars.

Also for that whereas, heretofore, to wit: on the 24 day of June A.D. 1863. at Baltimore in the State of Maryland to wit: at County of York aforesaid, in Consideration that the said plaintiffs at the special instance and request of the said defendants would furnish to said defendants Certain other two thousand head of Cattle, at and for a Certain price to wit for the first eight hundred head of Cattle, the Sum of five dollars and Seventy Cents, per hundred pounds gross weight of said Cattle and for the balance of said last mentioned two thousand head of cattle, the Sum of five Dollars & Sixty Cents per hundred pounds weight of said Cattle: And said plaintiffs agreed to deliver said Cattle at the Maryland live Stock Scales and in numbers proportionate to

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21.

the time as required by the terms of an agreement between the said Bankard one of the defendants above mentioned & the government of the United States, and said Cattle were to be subject to inspection by the Government Agent meaning that said Cattle were to be subject to an inspection by an agent of the Government of the United States appointed for that purpose they the said defendants undertook & then and there faithfully promised the said plaintiffs to accept the said last mentioned two thousand head of Cattle of the said plaintiffs when so furnished & delivered as aforesaid, and to pay said plaintiffs for the same the price aforesaid on the delivery thereof and the said plaintiffs further say that afterwards, to wit, at Baltimore in the State of Maryland ~~to wit~~: on the 3rd day of June 1863. the said defendants requested & desired the said plaintiffs to deliver said last mentioned two thousand head of Cattle to them the said defendants at Philadelphia in the State of Pennsylvania thereby meaning that said plaintiffs should deliver said last mentioned Cattle at Philadelphia instead of at the Maryland live Stock Scales as hereinbefore mentioned in said agreement, and the said plaintiffs avers that they confiding in the said

promise and undertaking of the said defendants did afterwards, to wit: on the 11th of July 1863. at Philadelphia in said State of Pennsylvania to wit: at Chicago in the County aforesaid, furnish at Philadelphia the said last mentioned two thousand head of Cattle, at & for the price above mentioned to wit: for the first Eight hundred head of said Cattle, the sum of four dollars and seventy cents per hundred pounds gross weight of said Cattle, at & for the sum of five dollars & sixty cents per hundred pounds weight for the balance of said Cattle, to wit: the number of twelve hundred head of said Cattle, subject to an inspection of an Agent of the Government of the United States and within the said time mentioned in the agreement between the said Bank and the Government of the United States, and afterwards to wit: on the day & year last aforesaid at Philadelphia to wit at Cook County aforesaid were ready & willing & then & there offered to deliver the said last mentioned 2000 head of cattle to the said defendants & requested them to accept the same of which the said defendants then & there had notice, and the said defendants did then & there accept & receive from the said plaintiffs upon said offer to deliver said Cattle to the number of three hundred & Eighty one head of cattle, parcel of said last

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mentioned 2000 head of Cattle. and said plain=tiffs further aver that said defendants not regarding their said promises and undertak=ings but contriving & intending to injure the said plaintiffs in this behalf did not nor would then or at any other time accept the balance of said last mentioned 2000 head of Cattle. to wit: to the number of ten hundred & nine=teen head of Cattle or pay them the said price thereof. for the balance of said Cattle. to wit: ten hundred & nineteen head of Cattle or any part thereof. but they so to do have hitherto wholly neglected and refused & still neglect & refuse. Whereby said plaintiffs have sustained a damage & loss upon said last mentioned ten hundred & nineteen head of Cattle. parcel of said last mentioned two thousand head of Cattle to the sum of Thirteen Thousand Dollars.

And also for that whereas the said defend=ants afterwards. to wit: on the same day and year last aforesaid at the place last aforesaid in the County aforesaid. were indebted to the said plaintiffs in the further sum of Thirteen Thousand dollars for divers other horses, bulls, Cows oxen sheep Cattle goods & Chattels by the said plaintiffs. before that time. bargained and sold to the said defendants. and undertook by virtue of that bargain & Sale tendered & delivered to said

defendants at the Special instance & Request of the said defendants, and being so indebted they the said defendants in Consideration thereof afterwards, to wit: on the day and year last aforesaid at Philadelphia to wit: at the County aforesaid undertook and then & there faithfully promised the said plaintiffs to pay them the said last mentioned Sum of Money when they the said Defendants should be thereunto afterwards Requested.

Yet the said defendants not Regarding their said Several promises Undertakings above mentioned, but Contriving and fraudulently intending to deceive and defraud the said plaintiffs have not as yet paid the said several Sums of Money above mentioned or any or either of them, or any part thereof to the said plaintiffs, although often Requested so to do, but the said defendants to pay the same or any part thereof to the said Plaintiffs have hitherto wholly Neglected & Refused & still do neglect & Refuse to the damage of the plaintiffs of Twenty Thousand Dollars and therefore they bring Suit.

Bates & Townsend
Plffs Attys

Copy of Agreement.

13.

25.

5 Cents Revenue Stamp

Article of Agreement between Stook & Gordon of Pennsylvania, of the one part and I. I. Bankard of Baltimore Maryland of the other part — Witnesseth — The said Stook and Gordon agree to furnish two thousand head of Cattle to the said I I Bankard, to be delivered at the Md. Live Stock Scales. and in numbers proportionate to the time as required by the terms of agreement between the said Bankard, and the Government of the United States, Said Cattle to be subject to inspection by the Government Agent.

The said I I Bankard agrees to pay to the said Stook and Gordon for the first Eight hundred head. the sum of five dollars and seventy (5 70/100) per 100 pounds gross weight. and for the balance of the two thousand head, the Sum of five dollars and Sixty Cents per 100 pounds. the said payments to be made as delivered. and in par funds. And it is hereby agreed by the parties above that the said Stook & Gordon shall have the benefit of any Extension of time agreed upon between the government of the U.S. and the said Bankard.

Stook & Gordon

June 24 1865.

I I Bankard

Attest

I A Spicer.

J J Bankard
G W Bastable
Asbery G Sawyer

To Cash &c.

1863 To price & Value of 1019 head of Cattle sold to you for agreement $ 30.000

To difference in Value & price of 1019 head of Cattle sold to you upon Real Sale 13.000

To balance due for Sale of 1019 head of Cattle sold to you as per Contract upon receipt of same — 13.000

And afterwards to wit: on the 7th day of November in the year last aforesaid said defendants by Walker & Chester their Attorneys filed in the Court aforesaid in said Cause their several respective pleas to said plaintiffs declaration in the words & figures following. Viz.

Pleas of Defendant Bankard

In the Circuit Court of Cook County
September Term 1863.

State of Illinois
Cook County } ss.

J J Bankard
G W Bastable
Asbery G Sawyer
as
Godfrey Gordon
& Co. Cook

Attachment

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27.

And the said defendant J J Bankard by Walker & Dexter his attorneys comes and defends the wrong and injury, when &c. and prays judgment of the said writ and declaration. because he says, that the said several supposed premises & undertakings in said declaration mentioned, if any such were made, were made by him the said J J Bankard alone and not by him jointly with the said defendants G M Bastable and Asberry F Fawsett, and this he the said J J Bankard is ready to verify. Wherefore inasmuch as the said G M Bastable and Asberry F Fawsett are named in said writ and declaration together with him the said J J Bankard he the said J J Bankard prays judgment of the said writ & declaration and that the same may be quashed &c.

Walker & Dexter
Attorneys for Deft.
J J Bankard

J J Bankard.

State of Maryland }
Baltimore City } ss.

The said defendant J J Bankard being duly sworn, on oath says, that the plea by him above pleaded is true in substance and fact.

J J Bankard.

E Curtis Perkins
Notary
Seal

Subscribed & Sworn
to before me this 30th
day of October AD 1863.
W H Hayward. Justice of the Peace.

Circuit Court of Cook County
September Term 1863.

State of Illinois }
Cook County } ss.
J J Bankard
& Wm Bastable &
Asbery F Hawseth
Ads.
Godfrey Gordon
& Jesse Hoot

Attachment.

And the said defendant J J Bankard. by Walker & Dexter his Attorneys. Comes and defends the wrong and injury &c. and says that he did not undertake or promise in manner and form as the said plaintiffs have above thereof Complained against him & of this he the said defendant J J Bankard puts himself upon the Country &c.

Walker & Dexter Attys for Deft
J J Bankard

State of Maryland }
Baltimore City } ss.

The said defendant J Bankard being duly sworn on oath says that the

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plea by him above pleaded is true in substance
and fact —
Subscribed & Sworn
to before me this 30th
day of October A.D. 1863
W. H. Hayward

I I Bankard

State of Maryland
Baltimore City } Ss.

I I Bankard being first
duly Sworn deposes and says that he is one
of the defendants named in the above entitled
Cause and that he has a good defence to said
Cause upon the merits —
Subscribed & Sworn to
before me this 30th day
of October A.D. 1863.
W H Hayward Justice of the Peace

I I Bankard

Clerks Office Circuit Court

State of Maryland
Baltimore City } Sct.

I hereby Certify that William
H Hayward Esquire, before whom the annexed
affidavits were made, and who has thereto Sub-
scribed his name, was at the time of so doing
a Justice of the Peace of the State of Maryland
in and for the City of Baltimore, duly Commission-
ed and Sworn. In testimony whereof I

Clerks Office Circuit Court

hereto Set my hand and affix the Seal of the Superior Court of Baltimore City this 30th day of October A. D. 1863.

Seal

Geo E Langstroth Clerk
of the Superior Court of Baltimore City

Plea of Defendant Bastable

Circuit Court of Cook County
September Term 1863.

State of Illinois
County of Cook } Ss.

J J Bankard
G W Bastable
Asbery F Fawsett
and
Godfrey Gordon
& Isaac Hook

Attachment.

And the said defendant G. W. Bastable, by Walker & Dexter his Attorneys, comes and defends the wrong and injury, when &c. and prays judgment of the said writ and declaration because he says that at the said time when &c. he was not a partner of the said defendants Asbery F Fawsett & J J Bankard and this he is ready to verify - Wherefore inasmuch as he is named jointly in said writ and declaration with the said defendants Asbery F Fawsett and J J Bankard, he the said

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defendant G W Bastable prays judgment of the said writ and declaration ~~and that~~ the same may be quashed &c.

Walker & Dexter
Attorneys for Deft.
G W Bastable

State of Maryland
Baltimore City } ss.

The said defendant G W Bastable being duly sworn, on oath says, that the plea by him above pleaded is true in substance and fact.

G W Bastable

Subscribed and Sworn
to before me this 30 day
of October A.D. 1863.

W H Hayward, Justice of the Peace.

Circuit Court of Cook County
September Term 1863.

State of Illinois
County of Cook } ss.

J J Bankard
G W Bastable &
Aseberry S Hamlet
adrs
Godfrey Gordon
& Jesse Hoot

Attachment

And the said defendant G W

3 2.

Bastable by Walker & Dexter his Attorneys comes and defends the wrong and injury, when &c. and says that he did not undertake and promise in manner and form as the said plaintiffs have above thereof complained against him and of this he puts himself upon the Country &c.

Walker & Dexter
Attorneys for Deft.

State of Maryland
Baltimore City } S.S.

The said defendant G. W. Bastable being first duly sworn, on oath says that the plea by him above pleaded is true in substance and fact. and says that he did not execute the said Contract alleged and set forth in said declaration.

Subscribed & sworn to before me this 30th day of October, A.D. 1863.
G. W. Bastable

P. W. Hayward, Justice of the Peace.

State of Maryland
Baltimore City } S.S.

The said defendant G. W. Bastable being first duly sworn deposes and says that he has a good defense to the above entitled Cause upon the merits

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G W Bastable.

Subscribed & Sworn to
before me this 30th day
of October A. D. 1863.
W H Hayward. Justice of the Peace.

5 Cents Revenue Stamp

State of Maryland
Baltimore City } Set.

I hereby Certify that William H Hayward Esquire. before whom the annexed Affidavits were made, and who has thereto Subscribed his name, was at the time of so doing a Justice of the Peace of the State of Maryland in and for the City of Baltimore duly Commissioned and Sworn.
In Testimony whereof, I hereto set my hand and affix the Seal of the Superior Court of Baltimore City this 30th day of October A.D. 1863.

Seal

Geo E Langston.
Clerk of the Superior
Court of Baltimore City

5 Cents Revenue Stamp

Pleas of Defendant Samuels.

State of Illinois }
Cook County } ss.

Circuit Court of Cook County
September Term 1863.

J J Bankard
G W Bastable &
Asbery F Fawsett — Attachment.
and
Godfrey Gordon
& Jesse Stoot

And the said defendant Asbery F Fawsett by Walker & Upton his Attorneys comes and defends the wrong and injury when &c. And prays judgment of the said writ and declaration because he says that at the said time when &c. he was not in partnership with the said defendants G W Bastable and J J Bankard or either of them. And avers that the said several supposed promises and undertakings in said declaration mentioned. If any such were made, were and each of them was made by the said defendant J J Bankard alone or by him jointly with the said defendant G W Bastable, and not by the said J J Bankard and G W Bastable jointly with him the said Asbery F Fawsett. And this he the said defendant Asbery F Fawsett is ready to verify. Wherefore inasmuch as he the said Asbery F Fawsett is sued jointly in said writ and declaration with the said J J Bankard and G W Bastable,

18.

35.

he the said Asberry F Fawsett prays judg-
-ment of the said writ and declaration
and that the same may be quashed &c.
Walker & Dexter Asberry F Fawsett.
Attys for Defft.
Asberry F Fawsett.

State of
County- } ss.

The said defendant
Asberry F Fawsett being duly Sworn, on
Oath Says, that the plea by him above plead-
-ed is true in Substance and fact.
Subscribed & Sworn Asberry F Fawsett
to before me this 2d
day of November A.D. 1863.
William F Whitehouse
Notarial Seal
Notary Public

Circuit Court of Cook County
September Term 1863.

State of Illinois
County of Cook } ss.
J J Bankard
Geo Bartlett
Asberry F Fawsett } Attachment.
ads.
Godfrey Gordon
& Jesse Hoyt

And the said defendant Asberry G. Fawsett by Walker & Dexter his attorneys comes and defends the wrong and injury. when &c. and says that he did not undertake and promise in manner and form as the said plaintiffs have above thereof complained against him. and of this he puts himself upon the Country &c.

Walker & Dexter

Attorneys for defts. Asberry G Fawsett

State of
County } ss.

The said defendant Asberry G Fawsett being duly Sworn. on oath says that the plea by him above pleaded is true in substance and fact.

Subscribed & Sworn to Asberry G Fawsett.
before me this 2d day
of November 1863.

William G Whitehouse
Notary Public

Notarial Seal

State of
County } ss.

Asberry G Fawsett being first duly Sworn on oath says that he is one of the defendants named in the above entitled cause. and that he has a good

37.

defense to said Cause on the Merits
Subscribed & sworn to Asberry F Bancroft
before me this 2d day
of November A.D. 1863
William F Whitehouse
Notarial Seal Notary Public

And afterwards, to wit: on the 11th day of November in the year last aforesaid, said plaintiffs by their said Attorneys filed in the Court aforesaid their Similitters to the said defendants Several pleas in Bar, in the words & figures following to wit:

Similitters.

State of Illinois
Cook County ss } In Circuit Court, Cook County
Sept Term A.D. 1863.

Godfrey Gordon et al.
vs
I I Bancroft et. al.

And the said plaintiffs as to the ~~said~~ plea of the said I I Bancroft and one of the above defendants by him last above pleaded, and whereof he hath put himself upon the Country, doth the like

Bates & Gowsbee.
Attorneys for Plaintiffs

State of Illinois }
County of Cook } ss

In Circuit Court Cook County
Sept Term AD 1863.

Godfrey Gordon et al }
vs. }
I I Bankard et al }

And the said plaintiffs as to the of the said J McAistable, one of the above defendants by him last above pleaded and whereof he hath put himself upon the Country doth the like.

Bates & Grosbee
Attys for Plaintiffs

State of Illinois }
Cook County ss }

In Circuit Court Cook County. Sept Term AD 1863

Godfrey Gordon Et al }
vs. }
I I Bankard et al }

And the said plaintiffs as to the plea of the said Asbery F Brownell one of the above defendants by him last above pleaded, and whereof he hath put himself upon the Country doth the like.

Bates & Grosbee
Attys for Plaintiffs

Ten afterwards, towit: on the 25 day of

February A D. 1864 said plaintiffs by their said Attorneys filed in the Court aforesaid in said Cause their Certain Replications to the said defendants Several pleas in the words & figures following. Viz:

Replications.

Godfrey Gordon et al
vs.
I I Bankard et al

Circuit Court Cass County. Sept Term 1863.

And the said plaintiffs say the said writ and declaration, by reason of Anything by the said defendant J J Bankard one of the above defendants Impleaded &c, in his said plea above alleged, ought not to be quashed, because they say that at the time of the making of the said promises and undertakings, to wit: the 24 day of June 1862. he the said J J Bankard was a Co-partner with the said Asbery F Gansett and Wm Bastable, and the said promises and undertakings above set forth, were the promises and undertakings of the said Asbery F Gansett Wm Bastable and J J Bankard as Copartners in the name of J J Bankard for the use and benefit of said Copartnership and that said promises and undertakings above were not the Sole promises and und-

Pleadings of said defendants I I Bankard as above pleaded. And this the said defendants pray may be enquired of by the Country &c. And the Defts. doth the like

Bates & Bowlees
Attys. for Defts.

Godfrey Gordon et al. vs. I I Bankard et al. } Circuit Court Cook County. Sept. Term 1863.

And the said plaintiffs say that the said writ and declaration by reason of anything by the said G M Bastable one of the above defendants impleaded &c. in his said plea above alleged, ought not to be quashed because they say that at the time of the making and delivery of said writing above set forth, he said G M Bastable was a partner of the said defendants I I Bankard and Asberry F Fawcett and that said writing above set forth was the Contract of said I I Bankard G M Bastable and Asberry F Fawcett above defendants, as Copartners, and for the benefit and use of said Copartnership. And this the plaintiffs pray may be enquired of by the Country &c.

And the defendant doth the like.

Bates & Bowlees
Attys. for Plffs.

Godfrey Gordon et al
vs
I I Bankard et al

Circuit Court Cook County Sept Term 1863

And the said plaintiffs say that the said writ and declaration by reason of anything by the said defendant Asberry F Gaussett one of the above defendants in pleaded &c. in his said plea above alleged, ought not to be quashed. because they say, that at the time of the making and delivery of the above Contract. to wit. the 24th. day of June 1863 the said Asberry F Gaussett was a partner with the said I I Bankard and G W Bastable and that the said several promises Undertakings above set forth were the joint promises Undertakings of the said I I Bankard G W Bastable and Asberry F Gaussett, and that said writing was signed in the name of said I I Bankard for the said firm and Copartnership of said defendants, and that said Contract above set forth, was not the sole Contract of said I I Bankard or for the sole benefit of him said I I Bankard, and this the plaintiffs pray may be enquired of by the Country &c.

And the defts. doth the like

Bates & Gowsler
Attys for Plffs.

And afterwards, towit: at the February Term of said Court, towit: on the 25th day of Feby in the year last aforesaid the following proceedings, among others in said Court were had and Entered in said Cause Viz

Godfrey Gordon & Jesse Hoot
v.
I I Bamard G McBastable and Asberry H Fawsett
} Attachment

This day again come the said parties by their attorneys and issue being joined herein it is ordered that a Jury come. Whereupon come the Jurors of a Jury of good and lawful men, To wit: Robert Rogers William Cleveland John Veroomy Owen Coony Richard Veroomay Benjamin Crow Charles Vanatta Henry Beaubein. Ed Miller H A Wyncoop Louis Rubeart and James A Bayer who being duly elected tried and Sworn well and truly to try the issue joined aforesaid and a true Verdict render according to law and the Evidence And after hearing a part of the Evidence the plaintiffs by their Counsel Enter their motion for leave to file a Replication to the Defendants plea in abatement filed in said cause, instanter, which motion is resisted by defendants Counsel and

the Court having carefully considered the premises and being now fully advised therein doth sustain said motion and orders that Plaintiffs have leave to file a Replication to the defendants said plea in abatement instanter, to which Ruling of the Court the said defendants by their Counsel now here excepts. And the hour of adjournment having arrived by Consent of said parties said Jury is thereupon allowed to separate to meet the Court at ten o'clock tomorrow Morning to which time the further hearing of said Cause is now adjourned.

And afterwards. towit: at the February Term of said Court. towit on the 26th day of February in the year last aforesaid the following proceedings. Among others in said Court were had and entered in said Cause. Viz:

Godfrey Gordon and Jesse Hook
v
I I Bankard G W Bastable
and Asbery S Sawsell
} Attachment.

This day again come the said parties by their Attorneys. and the Jurors of the Jury aforesaid also come

and having heard further testimony in said Cause, the same not being closed. and the hour of adjournment having arrived by Consent of said parties said Jury is again allowed to Separate to meet the Court at ten Oclock tomorrow Morning to which time the further hearing of said Cause is now adjourned

And afterwards, towit: at the February Term of said Court, towit: on the 27th day of February in the year last aforesaid the following proceedings, among others in said Court were had and entered in said Cause, Viz:

Godfrey Gordon and Jesse Hoot
v.
J J Bankard & Wm Bastable and Asbery F Fawsett
} Attachment.

This day again come the said parties by their Attorneys and the Jurors of the Jury aforesaid also come and having now heard all the Evidences and arguments of Counsel adduced by the said parties and instructions from the Court, retire to consider of their Verdict with the further instruction given by Consent of said parties to sign and Seal up their

Verdict when they shall have agreed upon the same and deliver it to the Clerk of this Court, and that they be thereafter discharged

And afterwards, to wit: at the February Term of said Court, to wit: on the 29th day of February in the year last aforesaid the following proceedings, among others in said Court were had and entered in said Cause, Viz:

Godfrey Gordon and Jesse Hook
v.
I I Bankard & Wm Bastable and Asberry F Fawsett } Attachment.

This day again come the said parties by their attorneys and the Jury aforesaid having agreed upon their Verdict, reduced the same to writing, and signed and sealed it under the instructions of the Court, do say "We the Jury find the issues for the defendants" Whereupon the plaintiffs by their Counsel &c[illegible] to the form of said Verdict, and move the Court for a new trial of said Cause.

And afterwards, to wit: at the February Term of said Court, to wit: on the 19th day of

March in the year last aforesaid the follo=ing proceedings among others in said Court were had and entered in said Cause Viz:

Godfrey Gordon and Jesse Hook
vs.
I I Bankard G W Bastable and Asberry F Fawsett } Attachment.

This day again Come the said parties by their Attorneys and Counsel having been heard as well in support of the motion of the Plaintiffs. here=tofore Entered for a new trial of said Cause, as in opposition thereto, and the Court not being being Sufficiently advised in the premises takes said motion under advise=ment.

And afterwards, to wit: at the March Term of said Court, to wit: on the 23rd day of March in the year last aforesaid, the following proceedings, among others in said Court were had and entered in said Cause. Viz:

Godfrey Gordon and Jesse Hook
vs.
I I Bankard G W Bastable and Asberry F Fawsett } Attachment.

This day again come the said parties by their Attorneys. and the Court having had the motion of the Plaintiffs for a new trial of said Cause under advisement and being now fully advised of and concerning the premises doth order that said motion be and the same hereby is overruled to which ruling of the Court in overruling said motion for a new trial the Plaintiffs by their Counsel now here except and on their motion leave are allowed the Plaintiffs in which to prepare and file the Bill of Exceptions in said Cause.

Therefore it is Considered that said Defendants do have and recover of the said Plaintiffs their costs and Charges by them about their Suit in this behalf expended, and have Execution therefor.

And afterwards, towit: on the 2nd day of April in the year last aforesaid, said Plaintiffs filed in said Court in said Cause, their Certain Bill of Exceptions in the words and figures following, towit:

Jesse Hook &
Godfrey Gordon
vs.

In Circuit Court Cook County
May Term 1864.

J J Bankard
G M Bastable &
Asbery F Lawson

Afterwards, to wit: at a Circuit Court held at the Court House in the City of Chicago in and for the County of Cook on the twenty fourth day of February 1864 of the said February Term 1864. before Honorable Thomas J Williams Circuit Judge, appointed to hold the said Circuit Court. According to the form of the Statute in such Case made and provided. the aforesaid issue so joined between the said parties as aforesaid. Came on to be tried by a Jury of the County of Cook aforesaid, for that purpose duly impannelled, good and lawful men of the said County. at which day Came there as well the said plaintiffs as the said defendants by their Respective Attorneys aforesaid; and the Jurors of the Jury aforesaid impannelled to try the said issue being called also Came and were then and there in due manner Chosen and Sworn to try the same issue And upon the trial of that issue the Counsel for the said plaintiffs. to maintain and prove the said issue on their part gave in Evidence that testimony of Edward Williams. who being duly Sworn and Examined Says that he knows Gordon & Hook the plaintiffs. and Bankard

Bastable & Bansett the defendants. does not know that there is any regular partnership between the defendants, in the business of buying and selling Cattle; but knows that there have been some Government Contracts with Bankard & Bansett. and Bastable told witness he was in them. Witness being then asked the question by Counsel of the plaintiffs whether the Contracts referred to were joint Contracts by Bankard & Bansett or separate Contracts. Says he does not know. he thinks the Contracts were open in June 1863. but is not positive about the date. as well as memory serves him. they were then open. Witness sold Cattle in June & July to the defendant Bankard. It was about the time the Northern Central Rail Road was torn up by the Confederate forces. being asked by plaintiffs Counsel whether the Cattle were weighed in under the Contract of Bankard with the Government. or the Contract of Bansett with the Government or sold under Each Contract. Says he does not know. being asked by plaintiffs Counsel whether he ever heard Mr Bankard say that Mr Bastable was interested with him or whether Mr Bansett was or either or both of them in his Contract with the Government for the supply of Cattle or in the business of buying and selling Cattle generally. says

he does not remember that he ever did. being asked by plaintiffs Counsel whether he ever heard Mr Fawcett say that Mr Bankard was interested with him or whether Mr Bastable was or either or both of them in his Contract with Government for the Supply of Cattle or in the business of buying & Selling Cattle generally Says that he thinks Mr Fawcett has told him that all three were interested both in buying and Selling some Cattle & in the government Contracts that were on hand in June & July 1863. Cross Examination - Witness was asked by defendants Counsel the following question. On your Examination in Chief you have said that the defendant Fawcett told you that he was interested with the other defendants in Government Contracts and in buying and Selling Cattle. be good enough to Say when he so told you & reference to what Contract. Witness Answered that he Cannot recollect dates but had frequent Conversations with him Fawcett about them buying & Selling Cattle, and Cannot Say about what particular Contracts he had such Conversations. Plaintiffs Counsel here by permission asked witness whether the Contracts thus referred to were Government Contracts. Witness Says they were. These Conversations with Fawcett

were held about the Cattle Scales in Baltimore
Witness was then asked by defendants Coun-
sel the following question. You Spoke about
having Sold Cattle to Mr Bankard about
June or July 1863. did you know Mr Gawsett
in that Contract. Witness Says he did not
being asked by defendants Counsel. do you
know for what purpose Mr Bankard bought
these Cattle. Witness Says Mr Bankard
bought Some in order to Supply the Gov-
ernment & Some for other purposes being ask-
ed by defts Counsel. who were the purchasers
of these Cattle, or who paid you. Witness Says
Mr Bankard bought them & paid me for them

Examination in Chief Resumed Witness was
asked by pltffs Counsel the following question
You Stated that you Sold Some Cattle to
Bankard for the purpose of filling Some
Government Contracts, have you any Know-
ledge whether these Cattle were put in by
Bankard under his own Contract with the
Government, Witness Says he does not Know

Cross Examination Resumed.

Witness being asked by defts Counsel. do
you Know whether Mr Gawsett had any
Contract with the Government or not. Says
he thinks he does Know he had. being
further asked where were Cattle under

Fawsetts Contract delivered Forbes. Witness says they were he supposes delivered here or at Philadelphia. as these were the points at which the Government received Cattle. being further asked. Where was Mr Fawsett when the Northern Central Rail Road was broken up. Witness says he does not know. he does not recollect whether Mr Fawsett was in Baltimore then or not —

John J Mayberly being duly Sworn & Examined by the Counsel for the Plaintiffs Says that he was engaged about July 11. 1863 in dealing in Cattle. about that time July 11 witness partner Sold to Mr Bastable in Philadelphia 48 head of Cattle. witness partner was Mr Bonaw Reed. witness went to see Mr Bastable previous to the Sale at his house in Waverly Terrace in Baltimore and told him he witness did not think his witness Cattle were good enough to put into the Philadelphia Market. but that witness would sell them to him Bastable to put into Mr Bankards Contract with the Government or Fawsetts Contract. Bastable said it was not necessary for witness to go over to Philadelphia. and that he would give witness as much for the Cattle as he would

give any one else. Witness made the Sale to Bastable of 48 head. he Supposes the Sale took place on the 11th of July or probably on the previous day as the Check was dated 11 of July Mr. Bastable paid by giving a check to Mr. Reed payable to Witness order it was drawn by Fawsett & Co.— Bastable agent it was for $1000- to the best of Witness knowledge. Witness being further Examined by Plaintiffs Counsel Says "that his understanding and the general impression was that Bankard Fawsett and Bastable were interested in the Contract" "but to this answer of the said Witness. the Counsel for the defendants then and there objected, to the giving the Same to the Jury for the reason that the Same was the individual impression or opinion of the Witness and that general impressions were not proper Evidence to prove a Copartnership. which objection the Said Judge of the Circuit Court. did then and there Sustain and rejected the Said Evidence as inadmissable to which opinion and decision of the Said Judge the Counsel for the plaintiffs did then and there Except. the Witness further Stated in answer to question of plaintiffs Counsel. Question. You have Stated that your understanding and the

general impression was that the parties interested in the Government Contract before mentioned by you were, Bankard Bastable and Fawcett. State whether or not you had any Conversation with Mr. Bastable in relation to his interest in said Contract and what he said. Answer. he had some Conversation with Bastable, who wanted witness to attend to some little business in the west & he told witness that he did not want to do a large Commission business here for he Expected to make right smart money out of the Contract. Question. What Contract were you Speaking of.
Answer Bankards, or Bankards & Fawcetts
Question Do you or do you not Know whether Bankard had a Contract with the Government in June & July 1863. for furnishing Cattle to the Government.
Answer. he did not Know it.
Upon a Cross Examination to question by defendants Counsel. How do you Know that Bankard had a Contract with the Government in June & July 1863.
Answer. they were buying Cattle at the time and putting them into the Government.
Question Whom do you mean by they in your last Answer.

Answer. He means Bankard Bastable and Fawsett.

Question Do you mean that all these had a joint Contract with the Government, and if so how do you know the fact.

Answer. They were all buying Cattle from different parties and putting them in to the Government.

Question Are you prepared to say that all persons who at that time were purchasing Cattle & delivering them to the Government had jointly or severally an Especial Contract with the Government for the Sale & delivery of Cattle to the Government.

Answer All persons had not of Course, but no persons delivered Cattle at that time to the Government. Except those who had Contracts with the Government.

Question Do you Know of your own knowledge that Bastable had any Contract with the Government?

Answer He does not know that Bastable individually had any Contract with the Government.

Question Do you know of your own knowledge apart from your inferences, who Composed the firm of Fawcett & C

Answer To the best of his knowledge. the

firm was composed of Bankard Bastable & Sawsett.
Question What do you mean by the best of your knowledge mentioned in your last Answer.
Ans. Because they were filling that Contract
Ques. What do you mean by that Contract
Ans. The Government.
Ques. What do you mean by the Government Contract. whose Contract by whom made with what Officers of the Government. and with what Contractor or Contractors was it in writing or by parol. if by parol. was you present when it was made. if in writing did you ever see it and when & where and in whose possession.
Answer She does know what Contract to call it. but the Government Contract. it was Bankers Contract. it was Bankards Contract. it was with Thomas Sulevan. the Commissary of Subsistence. that he does not know whether it was in writing or by parol. but supposes it was in writing. that he was not present when it was made. and if it was in writing he never saw it.
Ques Why then do you say that the Contract was a Contract with the Government by Bankard Bastable & Sawsett. have you any knowledge

really and truly in the matter. is not your belief in fact his truth based in suspicion & grounded on inferences.

Ans. Because they were buying Cattle from different parties at that time and weighing them to the Government.

Ques. In your last Answer you say they were buying Cattle and weighing them to the Government. State whether Bastable at any time weighed Cattle to be delivered to the Government in any other Capacity than as Agent for Bankard.

Ans. He thinks not at that time.

Ques. Do you know of your knowledge whether or not Mr. Fawsett of whom you have spoken had or had not a partner residing in Washington City.

Ans. He had a partner previous to that time to the best of Witness knowledge, but whether he had at that time. Witness does not know.

Ques. Name said partner referred to in your last Answer and say whether said person & Fawsett did not Compose the firm of Fawsett & C.

Ans. He does not recollect his name. but that Mr Cumbaugh was his partner. and thinks they did not Compose the firm of Fawsett & C in this transaction.

Ques. Why do you think that Cumbaugh &

Sawsett did not Compose the firm of Sawsett
& in the transaction of which you speak.
Mrs. Because Crumbaugh did not appear to
take any interest in the Contract, that Crum-
baugh were here nearly every week.

Henry L Seymour being duly Sworn and
Examined by the Counsel for the plaintiffs says
that he was formerly a Clerk for Edward
Williams and is now interested with him in
the business of buying and selling Cattle,
that he has knowledge of Cattle weighed into
the Government between the 1st & 10th of July 1863
at Philadelphia that 620 or 623 head were
weighed in during that time. they were delivered
to the Government under Sawsetts Contract does
not know who was interested with Sawsett, or
whether he had partners or not. Edward Williams
delivered Cattle to Wm Bankard in Philadelphia
during the same period. the Cattle were sold
to Bankard and delivered to the Government
in Sawsetts name. the Cattle of Scott & Gordon
were delivered to the Government in the same
way that Williams were. they were all in the
same lot and were driven to Perrysville together
Perrysville was Government depot. the Cattle were
inspected by Govern't Inspectors. and the parties
who furnished them had to drive them to Perrysville
when the Cattle offered to were inspected in Phila-

=delphia. Mr Fawcett was not there, but Mr Bankard was. Bankard was there one night and left the next day. it was Sunday. Bankard was there. and they did not to the best of witness knowledge attend to any business and witness does not know that Bankard was ever at the yard. Bankard paid Williams for the Cattle. he Williams weighed us at Philadelphia.

Cyprenius Beers Called on behalf of the plaintiffs. being first duly Sworn was Examined in Chief by Mr. Fowler and testified as follows

Int. Where do you reside?

Ans Im Chicago Sir

Int State whether you know the parties to this suit the plaintiffs and defendants here?

Ans. I do

Int Will you State if you ever had any Conversation with Mr. Fawcett, or either of these defendants relative to any business transactions they had together?

Objected to.

Int Did you ever hear him tell of their having any interest together in buying Cattle, or in government Contracts?

Objected to.

Ans. I had a Conversation with Mr Fawcett the day. I think, before he came up here, before

he left Baltimore to come to Chicago, via Baltimore -

Objected to on the ground that it was an attempt to establish an alleged Copartnership by the admissions of One of the partners, and also that the witness was interested in the result of this Suit.

Objection overruled.

To which ruling Counsel for the defendants then and there Excepted -

Int. Had you ever any Conversation with Mr Fawcett in relation to his interest with Mr Bankard and Mr Bastable in the buying of Cattle

Ans. Mr Fawcett told me that he and Mr Bankard had put their ——

Int. Before we come to that, when was this, and where was it? this Conversation.

Ans. This was about, perhaps a week after the Contract was let; the Contract was let about the 20th

Int. What Contract?

Ans. Mr Bankards Contract, and Mr Fawcetts: I was present when they were taken.

Int. Contracts taken from whom?

Ans. The Government.

Int. What time was this, or about what time?

Ans. I think about the 20th of June 1863.

Int. At what place were these Contracts let?

Ans. In Baltimore, in the Commissary's Office
Int. State what Mr. Fawcett said to you?
Ans. He said to me, that he and Mr. Bankard had put their Contracts together: he was Coming West to purchase Cattle - it was in Baltimore at the public house which is now kept —
Int. What did he say that Bankard was going to do? what was his part of the business?
Ans. He did not State particularly what Bankard was to do at the time:
Int. State all he did say. You say he said they was putting their Contracts together?
Ans. Yes Sir and he was Coming West to make purchases.
Int. Was there anything said about a partnership between them, or having a joint interest?
Ans. They were going to put their Contracts together. and he was going West to make purchases. And Mr. Bankard was to attend to the business at this End - to deliver the Cattle here.
Int. State all of that Conversation?
Ans. He States that they had done so for the purpose of avoiding Competition. Making one Contract of it. there would be less Competition in dealing their purchases.
Int. Go on.
Ans. He was Coming west. Mr. Fawcett was

coming west. to purchase the Cattle. and Mr. Bankard was to attend to the business here - the financial question.

Int. This Conversation. you say was with reference to those two Contracts?

Ans. Yes Sir

Int. And you were present when they were taken?

Ans. Yes Sir. In the fore part of June there was a public letting in Baltimore.

Int. was it May or June

Ans. I think it was June

Int. State your recollection about the time?

Ans. I think it was June: there was a public letting in Baltimore. and Mr. Fawcett obtained a Contract and Mr. Bankard did subsequently to Mr. Fawcett - perhaps a week thereafter. It might have been in the latter part of May but my impression is the forepart of June

Int. Have you detailed the whole of that Conversation?

Ans. I think I have - the substance of it.

Int. State if you Ever had any other Conversation at any other time or place, than this first one you have already alluded to?

Witness. with either of the parties?

Counsel. Between Mr. Fawcett or Mr. Bankard or Mr. Bastable?

Ans I sold Mr. Bastable Cattle

Int. Go on and tell us all about it?
Ans. In the months of June
Objected to
Objection Sustained
Int. Had you any Conversation with Mr. Fawcett when Mr. Gordon was present?
Ans. I had a Conversation with Mr. Fawcett when Mr. Gordon was present. Coming home with the Cars from Philadelphia to Baltimore
Int. When was this?
Ans. It was about the 13th or 15th of July.
Int. State what that Conversation was?
Ans. The Subject that they were discussing was the Contracts. Mr. Fawcett remarked that Mr. Bastable Came very near not having an interest; it was the last day, in the afternoon before he decided on having an interest.
Int. An interest in what?
Ans. And interest in these Contracts: but he remarked. I went to him, and told him he must decide one way or another. and finally he decided to take an interest.
Int. An interest with whom?
Ans. In the Contracts. with him & Mr. Bankhead
Int. Then you think was somewhere about the 13th to the 15th of July?
Ans. Yes Sir. between the 10th and 15th.

Int. Of what Year?
Ans. Last Year
Int. Have you had any other Conversation with Mr. Fawcett, or Mr. Bankard or Mr. Bastable or either of them, Except these?
Ans. With Mr. Bankard I have.
Int. What Conversation have you had with Mr. Bankard but these?
Ans. He approached me to buy some Cattle, and he repeated the same thing as Mr. Fawcett did.—
Int. What was that?
Ans. That they had put their Contracts together — him and Fawcett.
Int. State whether anything was said in regard to their having a joint interest in buying Cattle to fill that Contract and if so, what he did say?
Ans. No Sir. I do not think he said anything of their having a joint interest: he Stated that they had put their Contracts together
Int. What did Mr. Bankard say the object was for Mr. Fawcett and him, in putting these two Contracts together to fill?
Ans. Not to create Competition: they thought they Could fill them better. he told me that Mr. Fawcett was in the East, buying he was there trying to buy some Cattle

of me that I had on the Road.

Int. What time was this?

Ans. This was perhaps - I cannot tell particular by the date - but it was after they had taken their Contract - After Mr. Fawcett left for the West - Cattle were not coming down as plenty as he wanted to deliver and he wanted to buy some of me. It was perhaps three weeks after taking the Contract - I do not Recollect the date

Int. Was you in Philadelphia during the fore part of July last?

Ans. I was.

Int. Did you see any of these defendants there?

Ans I saw Mr. Bastable there

Int what was his business there?

Ans He was delivering Cattle for these Contracts.

Int. The Contracts you have alluded to?

Ans Yes Sir

Int Will you state whether Mr Gordon was there at that time?

Ans. Mr Gordon was there at that time

Int Do you Know about any Cattle having been delivered to the Defendants here by Mr Gordon at that time.

Objected to

Int Do you Know whether any Cattle were delivered to Mr Bastable by Mr Gordon and upon

what Contracts they were delivered?

Ans. I was present at the Scales, and saw some Cattle weighed off. Mr Gordon was weighing them to Captain Sangsden Government Agent.

Int On Mr Bawcetts Contract?

Ans. I do not Remember: there was quite a large lot of them - some two or three hundred.

Int Who paid for those that Mr Gordon delivered there on that occasion?

Ans. I do not Know Sir

Int State whether you was present at any time when Mr Gordon made an offer of Cattle to Mr Bastable, and whether Mr Bastable refused to receive any?

Ans. I was not present.

Int You stated a little while ago, that you had a Conversation with Mr Bankard, at the time you were making a Contract for the Sale of Cattle, State whether you made any Contract for the Sale of Cattle to Mr Bankard?

objected to.

Objection Sustained

Int. Do you know what the price of Cattle were in Baltimore and Philadelphia in the last of June and first of July 1863. say from the 11th to the 15th of July?

Ans. I sold some there at that time.

Int. What was the price of Cattle then ?
Ans. I sold Mr Bastable some.
Int What was the Market price ?
Witness. for Government Cattle ?
Counsel Yes. Sir.
Ans. From the 11th to the 15th July. from 4 1/2 to 4 3/4 — 4 1/2 I sold myself for. subject to inspection —

Cross Examined by Mr. Walker.

Int You have brought a Suit against these defendants ?
Ans. I have.
Int What was the date of the first Conversation you pretend to have had with Mr Fawcett ?
Ans. I think it was the afternoon before he left to go West.
Int. I want to know what the date was ?
Ans. I could not tell the date unless I knew the date of the Contract.
Int. Have you any recollection about it at all ?
Ans. It was about a week after their Contract that he left to go west — a week or ten days and it was the Evening that he was to leave.
Int Were you present when the Contract was made. between Mr Fawcett and the Government ?
Ans I was present when it was declared off.
Int It was about a week after that time was

it?

Ans. I think it was.

Int. Where was the Conversation?

Ans. At the Hotel at the Seale Yard - It is now kept by his brother I believe.

Int. He told you that they were going to put their Contracts together?

Ans Yes Sir

Int And he was going West?

Ans Yes Sir

Int Was Mr Bankard present?

Ans. He was not.

Int Was Mr Bastable present?

Ans. He was not.

Int Did you ever Communicate that Conversation to either of the parties?

Ans I do not know that I ever did

Int Did Mr Fawsett. at that time. tell you the name of the firm Composed of these three gentlemen?

Ans. No Sir.

Int. He did not state it at all?

Ans. No Sir.

Int Did he state that they had formed a Copartnership under the name of J J Bankard?

Ans He did not.

Int He stated that they had put their Contracts together. or were going to do so. and that

Mr Sawtell was going west and Mr Bankard was staying there?

Ans. Yes Sir. Mr Bankard was to stay there to attend to the financial.

Int. That is the first Conversation?

Ans Yes Sir

Int. When was the next?

Ans. The next I believe think was about the 13th or 15th of July.

Int Where were you?

Ans On the Cars Coming from Philadelphia to Baltimore.

Int. Which do you think it was the 13th or the 15th?

Ans. Well Sir I think it was Tuesday of the week. My impression is so. Why I am so particular is that I had sold them some Cattle to Mr. ——

Int I ask whether it was the 13th or 15th I do not want any trades you have made.

Ans. I cannot state the particular day. It was between the 10th and 15th.

Int. Why do you say it was between the 10th and 15th?

Ans I say it was between the 13th and 15th.

Int Why do you say so? How do you know it was either?

Ans. I know that Saturday was the 10th or 11th

Int. You went over the next Tuesday?
Ans. I think it was the next Tuesday
Int. Where did you go from?
Ans Philadelphia
Int. To what place?
Ans. Baltimore. Tuesday or Wednesday - the
fore part of the week.
Int. How long did you remain in Baltimore?
Ans. I remained in Baltimore, perhaps two or
three days.
Int Who was present at the Second Conversation
you say you had on the Cars?
Ans Mr. Gordon was present the plaintiff
Mr. Fawcett and myself: we three were to-
-gether.
Int. Mr. BanCard was not present?
Ans. No Sir.
Int Was Mr. Bastable?
Ans Mr. Bastable was not present.
Int. So far as you know then, they have no
knowledge that any Such Conversation
took place between you and these gentle
men?
Ans. I never Communicated it.
Int. Did he in that Conversation State to you
the name of the Copartnership which you
pretend they had formed here? Did he state
that it was I I BanCard?

Ans. He did not Sir.
Int. When was this Conversation with Mr Bankard?
Ans. It was in the month of June.
Int. About what time?
Ans. I should think about the 10th. the forepart of June.
Int. Who of these defendants was present at this Conversation?
Ans. There was no one present but Mr Bankard. Mr Bastable came up with Mr Bankard, they both came up into my room, but Mr Bastable did not stay long.
Int. He did not hear the Conversation?
Ans. I do not think he heard that Conversation.
Int. You have taken some interest in this Case, Mr Byers have not you?
Ans. I was summoned here.
Int. You have taken some interest in the Case?
Ans. No Sir I have no interest in the Case.
Int. You do not feel any interest do you?
Ans. If I am called upon to testify upon oath, I expect to tell the truth.
Int. I ask you if you feel any interest in this Case?
Ans. No Sir. I have no interest.
Int. Not the slightest? You do not Care which way it goes?
Ans. No long as justice is done.

Int. Are you just as willing this Case should go one way as the other?

Ans. I am.

Int. You have not the slightest feeling about it in any manner or form?

Ans. I told you I have no feeling

Int. Who are your Attorneys?

Ans. The same.

Int. Did you ever Communicate with these gentlemen with respect to the facts of this Case that is on trial?

Ans. They have asked me.

Int. You have been in their Office?

Ans. I have been in their office.

Int. To Communicate about the facts to be proved in this Case?

Ans. I have Sir.

Int. How came you to go there if you had no interest in it?

Ans. I went there to attend to my own Case.

Int. Might not the same questions be involved in your Case that is involved in this?

Ans. I do not know what the question is.

Int. You do not think they are the same do you?

Ans. My Lawyers manage my Case.

Int. You have no knowledge about it at all how you?

Ans. I stated to you the facts.
Int. And you have no knowledge about what questions are involved. I presume?
Ans No particular knowledge.
Int. Have you any idea that they are the same involved in this ou trial?
Ans. I think they may be the same.
Int Do ~~you~~ not you know they are the same and none other?
Ans. I do not know they are the same Sir.
Int. Suppose they were precisely the same. would you feel any interest in this case?
Ans. I should not feel interest enough to testify to what was not true.

By Mr. Bates –

Int. You have had other matters in our office besides this, have you not?
Ans Yes Sir.
Int When you were in Washington we had business together?
Ans. Yes Sir.
Int You were asked whether Mr. Bastable was present at this Conversation, and you answered. not. and whether you had Communicated with him. and you Commenced saying something – You said "but" some thing. I want you to Communicate your knowledge of the fact whether this gentle-

knew were partners or not in these Contracts?
Objected to.
The Court. He may go on if he knows it.
Ans. I think Mr. Bastable left the room very soon after he came in.
Int. You stated that you never had Communicated these declarations of Barcett either to Bastable or Bankard. and then you said "but" and then Mr. Walker interrupted you and the sentence was not finished? Can you state anything further about this transaction than you have already stated?
Ans. I do not remember anything about it.

Wm Webb Called on behalf of the plaintiffs. being first duly Sworn. was Examined in Chief by Mr. Towsley and testified as follows.
Int. Where do you Reside?
Ans. In Chicago.
Int. Do you know the parties here in this Suit?
Ans. Yes Sir.
Int. You know both parties?
Ans. Yes Sir.
Int. What is your business?
Ans. I am engaged in the Cattle business.
Int. State whether you have ever had any business with Mr. Bankard?
Ans. Yes Sir

Int. Relative to these Contracts ?

Ans. Yes Sir.

Mr. Dexter. We object to this testimony on the same grounds as we did to that of Mr. Beers. that it was an attempt to establish a Copartnership by the admission of one of the partners. and that the witness was interested in the Result of the Suit.

objection over ruled

To which Ruling Counsel for the defendants then and there Excepted.

Int. When was this Conversation with Mr Bankard ?

Ans. It was about the 25th of May or first of June about the 27th of June I think it was.

Int. What Year ?

Ans. 1863.

Int. Where was it ?

Ans. It was in Mr Sullivans office

Int. Where is that ?

Ans. It is in Baltimore

Int. What did Mr Bankard State to you in Regard to the buying of Cattle, and who was interested with him in the buying of Cattle.

objected to

Objection overruled — To which Ruling Counsel for the defendants then and there Excepted

Int. State what Conversation you had with Mr.

Bankard on that occasion?

Ans. I had made a Contract with Mr Bankard on the 27th.

Objected to.

Objection overruled. To which ruling Counsel for the defendants then and there excepted

Ans. Continued. and afterwards I went over to Mr Sullivans office in Baltimore with Mr Bankard. Said I to Mr Bankard "Mr Bassett has got a Contract" Said I "this will Cause a good deal of Competition" Said he "no it wont, because he and I have formed a partnership in our Contracts; it wont interfere with you in buying Cattle in Chicago, and that it probably would be an advantage to me there in Chicago"

Int. State if afterwards you ever had any Conversation with Mr Bastable?

Ans. Yes Sir at Pittsburgh, on about the 7th of June; I do not recollect the day exactly.

Int. Was this prior or subsequent to the Conversation you had with Bankard?

Ans. Yes Sir.

By Mr Dexter

Int. Prior to the other?

Ans. Yes Sir.

By Mr Bowden

Int. When was this Conversation?

Ans. It was on the 7th of June.
Int. Where was it?
Ans. At Pittsburgh.
Int. What was the Conversation
Ans. When we were at the Scott House he said that he was the partner of Mr. Bankard in getching Cattle to fill these two Contracts
Int. What did he tell you about Mr. Gawcett?
Ans. He told me that Mr. Gawcett was gone to Chicago — either gone or going. I am not positive —
Int. For what purpose?
Ans. To purchase Cattle on the same Contracts, By the Court.
Int. On what Contracts?
Ans. On the Contracts that was let on the 20th day of June at Baltimore: Mr Gawcett had a Contract, and Mr Bankard let at the same time; these Contracts if I recollect aright, were the same.
Int. He said he was a partner in these Contracts?
Ans. Yes Sir. At the time Mr Bastable was a gentleman who I do not know whether he could take a Contract for Government himself for reasons that I need not mention here
Int. This Conversation between you and Bastable was after the letting of these Contracts?
Ans. Yes Sir at Pittsburgh, or or about the 7th of

Jones.

Int. What was his business at Pittsburg?

Ans. To purchase Cattle on the same Contracts Wm. Fawsetts and Wm. Bankard's — he also Stated tome "it would make less Competition in the market by taking these Contracts together, and make it better for them and probably for me"

Int. State whether either of the other defendants was present at the time when you had this Conversation with Mr. Bastable: was either of the other two defendants present?

Ans. They were not

Int. At the time you had the Conversation with Wm. Bankard was either of the other defendants present?

Ans. No Sir

Int. Was there any other persons present beside you?

Ans. No there was not.

By Mr. Bates.

Int. It was at Scotts tavern, in Pittsburgh

Ans. At the Scott House.

By Mr. Fowslee.

Int. Do you know what the Market price of Cattle was in Philadelphia between the 10th & 15th of July 1862. of your own knowledge?

Ans. Well. I were interested in some Cattle that

went there about the 12th of July.
Int. You went there about the 12th ?
Ans. I would be positive about that - the Cattle that was Shipped there ——
Objected to
Objection over-ruled.
Ans Cont'd — the Market price of government Cattle was Ranging from 4½ to 4 3/4.
By Mr. Bates.
Int. During that portion of time ?
Ans. Yes Sir
Int. 12th to 15th ?
Ans Yes Sir
Int. Did you ever have any Conversation with Mr. Bancroft.
Ans Well, no Sir, not directly as regards this.
Int. Have you ever any other but these Conversations you have related with Mr. Bancroft or Mr. Bastable, or either of them with regard to their interests in these Contracts any more than upon these two occasions which you have heretofore Stated ?
Ans. I do not recollect any now.
Int. You do not recollect any now ?
Ans. No Sir.
Cross Examined by Mr. Walker.
Int. You do not recollect having any Conversation other than those you have men-

leagued with either of these defendants?

Ans. No Sir.

Int. Tell us the date of the first Conversation?

Ans. I cannot tell the date of the first Conversation — I can tell about.

Int. Well, about?

Ans The Conversation I had with Mr Bankard in Baltimore?

Int The first you had on this Subject?

Ans. Well I think it was on the 27th. of June.

Int. That was the first one you have no doubt?

Ans. Yes Sir about that.

Int Who was that with?

Ans. With Mr Bankard. I would not be positive about the day.

Int. Where was it?

Ans. It was in Baltimore.

Int. Who was present?

Ans. Not any one I recollect of.

Int. You were together, alone?

Ans. Yes Sir

Int. Where about in Baltimore?

Ans. When the Conversation took place it were at Mr Sullivans office.

Int Did he tell you at that time, the name of the Co partnership?

Ans. He told me that Mr Sawtell had a Contract and he had a Contract about the

some price if I recollect right. and they had thrown their Contracts together to avoid Competition in the market. I told him I thought that would be the best thing he could do.

Int. Is that all the Conversation?

Ans. Yes Sir.

Int. All at that time?

Ans. I believe it was about all I recollect of.

Int. Then so far as you know. it was the whole of that Conversation?

Ans. No Sir I had a Conversation with Mr. Bastable.

Int. At that time that was the whole of the Conversation with Mr. Bankard so far as you recollect. and as far as you know?

Ans. What I stated. was about all the Conversation I recollect of.

Int. Was it about all. or was it all you recollect?

Ans. All Sir.

Int. That was that Fawcett and Bankard had put their Contracts together to avoid Competition?

Ans. Yes Sir: they told me they had formed a partnership with the two Contracts. I did not say "put them together"

Int. That you have put in — you have recollected that since?

Ans. I put it in before.

Int. Did he tell you that in reference to these two Contracts, that they had formed a partnership?

Ans. Yes Sir.

Int. Are you sure that that was all, because I do not want you to alter it again?

Not answered.

Int. Did he tell you the Copartnership name, under which they had formed a Copartnership, at that time?

Ans. Well he said it was Mr. Bankard and Mr. Bassett.

Int. That you understood to be the partnership name?

Ans. Yes Sir

Int. Where was the Conversation you had with Mr. Bastable?

Ans. At Pittsburg.

Int. Who was present at that Conversation?

Ans. Not any One.

Int. That was between yourself and Mr. Bastable.

Ans. Yes Sir.

Int. What was the date of that Conversation?

Ans. I would not be positive about the date, but I think about the 7th of June.

Int. How long after the other was it? in your judgment?

Ans. Perhaps about ten days.-

Int. Was the other was on the 27th. of June, and this was about ten days after?

Ans. To the best of my recollection.

Int. You are no doubt you are right?

Ans. As regards the date I would not be positive.

Int. But you think it was about Ten days after the one you had with Bankard?

Ans. Yes Sir. I should think it was about that time.

Int. What did Mr. Bastable say to you?

Ans. He said to me at Pittsburg, that he was a partner of Mr. Bankard on Mr. Fawcetts Contract and Come to Pittsburg to buy Cattle for them.

Int. Is that all he said?

Ans. Well I believe that is all I recollect.

Int. He said that he was a partner with Mr. Bankard in Mr. Fawcetts Contract to buy Cattle?

Ans. Yes Sir.

Int. What was the language used?

Not answered

Int. Did he state what was the name of the Copartnership?

Ans. Well - Mr. Fawcett and Mr. Bankard.

Int. He stated that the name of the Copartnership was Mr. Fawcett and Mr. Bankard?

Ans. Yes Sir.

Int. And it was a Copartnership in Relation to the Fawcett Contract?

Ans. Yes Sir — I believe there was no other Contract at the time.

Int. There was no Contract Except the Fawcett Contract at that time?

Ans The Fawcett and Bankard Contract.

Int. And this partnership was a partnership in the Fawcett Contract?

Ans. Yes Sir

Int. Your Recollection is pretty distinct about that is it not?

Ans It is to the best of my Recollection.

Int. Did you write that down in a book.

Ans. No Sir. I did not.

Int. Was it written down by anybody in your presence?

Ans No Sir. it was not.

Int. It lies wholly in your Recollection?

Ans. Yes Sir.

Int. And you have Stated it as it lies in your Recollection?

Ans. To the best of my Knowledge Sir.

Int. Upon this Cross Examination?

Ans. To the best of my Knowledge.

Int. You Say you have never had any Conversation with Either of the other defendants in Reference

to this subject matter. Have you any interest in any Contracts, or any Suits pending in relation to these defendants?

Ans. I have not in reference to this. I have a Contract with Mr Bankard which I made on the 27 June. I did not know that Mr Fawcett and Mr Bastable had any interest in it.

Int. On the 27th June then there was no partnership between these parties?

Ans Well Mr Bankard told me there was not, but after Mr Bankard and I had met he told me they had become partners.

Int Mr Bankard then told you that after the 27th of June they had become partners?

Ans. Yes Sir I believe about that time.

Int. It was after the 27th of June that he told you they had become partners - is that true Sir?

Ans. Yes Sir.

Int. Prior to that time they were not partners as you understood it?

Ans. At the time I made the Contract they were not. I believe Sir.

Int You Sued Mr Bankard on this Contract?

Ans. Yes Sir.

Int And the Suit is pending in this Court?

Ans. Yes Sir it is.

Int. Who are your Attorneys in this Case?
Ans. Bates & Fowslee.
Int. Do not you feel some interest in this?
Ans. No Sir not a bit; I stand on my own.
Int. Is your recollection of these Conversations and facts pretty good?
Ans. I think so.
Int. Did not you have a Conversation with Mr. Fawcett in Reference to this matter?
Ans. Mr. Fawcett and I have had Conversations more or less every day when he has been here. but I do not know as regards that.
Int. I understood you to say before that you had had none. Did not you meet Mr. Fawcett one time down at the Cattle Yards. at which you had a Conversation?
Ans. We had talked together I suppose every day we met probably.
Int. Did not you have a Conversation with Mr. Fawcett down at the Cattle Yards in Chicago?
Ans. I may have had a Conversation with Mr. Fawcett in relation to a Contract of my own but no further.
Int. I ask you if you had a Conversation with Mr. Fawcett down at the Cattle Yards in Chicago?
Ans. I have had a Conversation about different

things —

Int. No matter what it was about?

Ans. Yes Sir.

Int. It was in the alley was it not?

Ans. I dis-remember that.

Int. You could not recollect that?

Not answered.

Int. Did not you say to Mr Bassett that you had sued Mr Bankard on your Contract because you knew there was no Copartnership at the time you made your Contract and for that reason you sued Mr Bankard Did not you state so to him

Ans. I do not recollect what it was.

Int. Did not you say at the same time that "I shall be a good witness for you on the trial of your Case, because I know there was no Copartnership?

Ans. No Sir. I did not.

Int. Are you sure about that?

Ans. Yes Sir I am.

Int. What did you say about that subject matter?

Ans. I do not remember the words that passed between myself and Bassett.

Int. How do you know that you did not make that statement. if you do not know what passed?

Ans. I do not remember what the Statement

was.

Int. Did you not say to Mr. Fawcett "I shall be a good witness for you on the trial of your Case, because I know there was no Copartnership"?

Ans. No Sir I never stated that to Mr. Fawcett

Int. What did you say in relation to that subject matter?

Ans. I do not recollect what I said in relation to that subject.

Int. Did not Mr. Fawcett say they were not partners and had not been partners in any manner?

Ans. I do not recollect anything of it.

Int. In any manner or form?

Ans. No Sir.

Int. Have you not to day had a Conversation with Mr. Fawcett in relation to this subject matter?

Ans. Mr. Fawcett and I were talking to day.

Int. Did not Mr. Fawcett remind you to day of that Conversation and of that Statement and did not you say "that is all true - they were not partners then but afterwards I learned they were partners"

Ans. No Sir.

Int. Have you had a Conversation with Mr. Fawcett to day?

Ans. Yes Sir
Int. Right here ?
Ans. Yes Sir.
Int. Sitting there ?
Ans Yes Sir.
Int Did not he tell you in that Conversation of the Statement which you had made to him in the alley at the Cattle Yards ?
Ans. I believe not Sir
Int. And did you not admit that the Conversation took place ?
Ans I admit that I had a Conversation at various times.
Int. At the Cattle Yards ?
Ans. Yes Sir
Int. And did you not reply that you were going to get round by saying that Bankard long afterwards told you that they had subsequently formed a Copartnership ?
Ans. I do not recollect.
Int. I want you to say whether you had that Conversation or not ?
Ans. I was talking with Mr Fawcett but I do not recollect whether we had that Conversation or not: we were laughing & talking
Int. What were you talking about ?
Ans. We was talking about the present Contract

And I told him I thought they would make a good thing.

Int. What Contract?

Ans. The present Contract.

Int. With whom?

Ans. Government.

Int. What other matters did you talk about?

Ans. I do not recollect of anything Concerning this Suit.

Int. What other matter or thing was it about? You say there were Several. You have only mentioned one now.

Ans. Mr. Fawcett was saying that he would probably beat these parties in this Suit.

Int. You did talk about this Suit then?

Ans. Yes Sir

Int. Did you not say a few minutes ago that you never exchanged a word with any of them?

Ans. Not to my recollection.

Int. What other matters and things were talked about Sir?

Ans. I do not recollect of anything else.

Int. Mr. Fawcett told you today, he would beat in this Suit?

Ans. Yes Sir.

Int. Did not you State in that Conversation right here today, talking about this Subject

matter. that you would get round the State-
ment you made to him by Stating that —
Bankard told you. after all this had taken
place. they had formed a Copartnership? Now
Sir. Yes or No? Just tell the Jury what it was.

Ans. I do not recollect any more than what I
have Stated.

Sol. Did you make that Statement or not?

Ans. As regards to what it is, I do not know.

Sol. I ask you if you did not State to Mr. Fawcett
Sitting here. right here to day. in the presence of
this Jury. that you would get round the
Statement you made in the Cattle Yards.
"that you would be a good Witness for
him & c" by Stating that Bankard informed
you after all this had taken place that they
had formed a Copartnership?

Ans. No Sir, I did not Say that to Mr. Fawcett.

Sol. Just relate to the Jury what you did Say
in reference to it?

Ans. Well I disremember now.

Sol. If you do not recollect what you did Say.
how do you know that you did not Say it?

Ans. Well as regards other matters. I do not
know as I am Compelled to answer all this.

Sol. Yes Sir. the Court will allow you to answer.

Ans. I do not know that we had any Conversation
about anything else.

Int. A minute ago you wanted to get around by saying that you talked about matters not relating to this suit. Now what was it that you talked about?

Not answered.

Int. Where do you live?

Ans. In Chicago

Int. How long have you lived here?

Ans I have been living here — making it my home about two years.

Int In what business are you engaged?

Ans Cattle business

Int. How long have you been?

Ans. About 7 years

Int. When did you come to this City?

Ans. I have been for 7 years almost

Int. But recently?

Ans I came here last Sunday

Int. You came here to attend this trial?

Ans. No Sir I did not

Int. You are here accidentally?

Ans. No Sir

Int. You were brought in here by subpoena?

Ans. I was brought in to attend this suit.

Int. You were brought in by subpoena?

Ans I attend as a witness

Int You were brought by subpoena?

Ans No Sir.

Sol. You volunteered?
Ans. They told me they would subpoena me if it was necessary.
Sol. How did they come to tell you that?
Ans. I was in the City.
Sol. You volunteered to come and appear as a witness in this Case?
Ans. I should not have done, if I had not been called upon.
Sol. How came you to be called upon?
Ans. I suppose they thought I knew something about this Case.
Sol. How did they happen to think you knew something about this Case?
Ans. Having a Case of my own.
Sol. Did they think you knew about it from that simple fact?
Ans. No Sir. I were asked if I knew anything with regard to the Case.
Sol. You told them you did know something about it?
Ans. I claim to, to the best of my knowledge.
Sol. You volunteered the information to them?
Ans. No Sir I did not.
Sol. When did you tell them you knew something about it? Was it before or after the Conversation you had with Mr. Bancroft down at the Cattle Yards, in which you said you would be

a good witness for him?

Ans. I never had that Conversation

Int. Was it before or after you had the Conversation down there, that you had an interview with these Gentlemen?

Ans. I believe I had this Communication with them when I went to see them about a Suit of my own.

Int. When did you go?

Ans. I do not Recollect.

Int. How long ago was it? was it a Year ago?

Ans. No Sir it is not a Year ago.

Int. Do you know how long ago it was?

Ans. It was about the time I Sued Mr. Bamlard.

Int. How did they come to ask you if you knew anything about this Case? It had not anything to do with your Suit, had it?

Ans. No Sir, not at all.

Int. Did you have any Recent Conversation with these Gentlemen here, about this Suit, before you came into the Court to Testify?

Ans. They told me I had a Suit pending which would soon come off

Int. When did they have that Conversation with you?

Ans. On last Monday I believe.

Int. Did you go to their Office to Communicate with them, or did they send for you?

Ans I went to their office Sir

Int You volunteered to go to their office to make this Communication?

Ans Yes Sir.

Int Did they tell you what they wanted you to testify to?

Ans No Sir.

Int When did they tell you that?

Ans They did not tell me at all.

Int Have you ever had any Conversation about what you would testify to?

Ans No Sir. I never have.

Int Have you had any Conversation to day?

Ans No Sir.

Int Did not you and Mr Bates, during the progress of this trial get the Sheriff to unlock that door and go into that room? (pointing to the door)

Ans No Sir.

Int Did you ever have any Conversation with either of these gentlemen with regard to what you were going to testify to?

Ans Not with Regard to that Conversation.

Int Did you ever tell them what you would testify to?

Ans I said that if I was Called upon I would testify to the best of my knowledge.

Int Did you ever tell them that you would testify to this Conversation that you have testified

to. before you came upon this Stand?
Ans. Never.
Int. You did not?
Ans No Sir
Int. They did not know what you would testify to?
Ans No Sir
Int. They had not the slightest idea?
Ans. I suppose they thought I would not testify to what was not true.
Int Why?
Ans. My word was never disputed before.
Int. Did these Gentlemen know that your word had not been disputed?
Ans. I do not know.
Int. At the time you had the Conversation at the Cattle Yards. did you Communicate to Mr Fawcett the Conversations you had had with these other two defendants?
Ans. No Sir I believe we had no Conversation about this.

By Mr. Fowsley. Re-examined

Int. You had a contract with Mr Bamford?
Ans. Yes Sir.
Int Do you recollect the date of that Contract?
Ans I think it is about the 2nd of June. the Contract was got on the 20th.
Mr Fowsley. I ask the Court that I may be

allowed to shew him the Contract so as to refresh his memory.

Witness. The 20th. of May was when the Contract was let at Baltimore.

Objected to by defendants Counsel on the ground that the Contract speaks for itself.

(Objection Sustained.)

By Mr. Bates.

Int. When did you state in your Examination in Chief that the first Conversation between yourself and Bankard took place?

Ans. About the 27 of May.

Int. Then in your Cross Examination you said the 27th of June

Ans. That was a mistake Sir of mine.

Int. Your first Conversation then, was about the 27th. of May?

Ans. Yes Sir. I made a mistake of a month It should be the month of May instead of the month of June.

Int. Then the Second Conversation — with Bankard, when did that take place?

Ans. About the 7th. of June.

Int. You was mistaken then, in your Cross Examination, when you said the 27th of June?

Ans. Yes Sir.

Int. And then you say the Second Conversation —

was about ten days after the first one?

Ans. Yes Sir.

Whereupon the said Counsel for the said plaintiffs did then and there insist before the said Circuit ~~Court~~ Judge on the behalf of the said plaintiffs. that the said Circuit Judge, instruct the said Jury as follows.

I. That in order to charge persons as partners the utmost strictness of proof is not required. it is sufficient that they have acted as partners and that by their habit and Course of dealing, Conduct and declarations they have induced those with whom they have dealt to Consider them as partners. And that a Copartnership between the persons may be proved by parol evidence. And that if the Jury believe from the Evidence in this Cause that the defendants signed the Contract in the name of I I Bankard and were each interested in the profits and losses of this Contract. then they must find that these defendants were partners in this Contract.

II. That although the Contract declared upon is signed by I I Bankard alone. and that signature is prima facie evidence that no one else was interested therein. Yet if the Jury believe from the Evidence adduced that on the 24th. of June 1863. Asbery Sawsell and Gilbert M Bastable

were secret parties in interest with I I Bankard in the profits and losses to be gained or lost under said Contract. And that the name I I Bankard as signed to said Contract was intended to and did in fact represent as the defendants as a firm name. that then Defendants are liable as partners, although the Contract is signed by I I Bankard alone and although there was no public knowledge that they had any such interest therein.

III. If defendants Refused at any time to receive Cattle from the plaintiffs on the Contract, and informed them, they would receive no more Cattle under the Contract before the time had expired for delivery Cattle to Government by defendant Bankard. It is not necessary for Plaintiffs to prove a tender of the Cattle by plaintiffs to defendants or or prove an inspection or an offer of inspection of the Cattle to be delivered under the Contract to recover the damages for non-acceptance of the Cattle from defendants.

4. That Plaintiffs had all the time for the delivery of the Cattle mentioned in the Contract to defendants, that the defendant Bankard had given him by the Government to fill his - Bankards Contract with the Government.

5. The rule of damages (if any are found

by the Jury) is the difference between the value of the Cattle at the place of delivery, at the Expiration of the time plaintiffs had to deliver Cattle to the defendants under the Contract and the Contract price mentioned in the Contract

6. If defendants, wilfully and without sufficient Cause refused to receive the Cattle on the Contract before the time had Expired for delivery of Cattle to the Government by defendant BankRard. it is not necessary to aver or prove a readiness on the part of Plaintiffs to deliver the Cattle mentioned in the Contract to defendants. before a Recovery Can be had by Plaintiffs against defendants. for damages for the Refusal to accept Cattle on the Contract by Defendants,

7. If plaintiffs has delivered a part of the Cattle mentioned in the Contract and defendants wilfully and without sufficient Cause Refused to accept the balance of the Cattle at any time within the time limited for the delivery of the balance of the Cattle, then the defendants if they have treated the Contract as partners under the firm name of I I BankRard are liable in damages for the breach of the Contract and that plaintiffs are not bound to prove an offer or tender of Cattle on the Contract as preliminary to a recovery which said instructions and Charge to the said

Jury the said Circuit Court did then & there give.

And the said Counsel for the said Defendants did then and there, on the behalf of the said defendants insist before the said Judge of said Circuit Court, that the said Judge should give to the said Jury the following instructions and the said Judge of said Circuit Court did then and there on the Request of said defendants give in Charge to said Jury the instructions as follows.

No 1. If the Jury believe from the Evidence that at the time the Contract declared upon was Execut. the defendants were partners doing business under Either the firm name of Fawsett and Bankard, Fawsett & Co or Bankard & Fawsett, and not under the firm name of J I Bankard and that the plaintiffs knew the fact, then they must find for Defendants.

No 2. Although the Jury shall find from the Evidence that the plaintiffs on the Eleventh day of July were ready and willing and offered or tendered to the defendants the balance of the Cattle under their said Contract and that defendants refused to receive them, Yet if they shall also find from the Evidence that before the said Eleventh day of July the Plaintiffs had neglected or refused to put in Cattle as fast as required by said Contract, or in accordance

with the terms of the same, then the plaintiffs had perfected their Contract and if the said defendant had not waived said default, the jury must find for Defendants.

No. 3. If the Jury shall find from the evidence that the plaintiffs failed to furnish Cattle under their said Contract in accordance with and as fast as they were required to do by the terms of their said Contract - they had thereby forfeited their right to put in any more Cattle under said Contract. And if the defendants did not waive such default but insisted thereon the jury must find for Defendants although they may find from the evidence that on said Eleventh day of July the plaintiffs offered were ready and willing to put in the balance of said Cattle under said Contract and that Defendants refused to receive them.

No. 4 Although the jury may find from the evidence that defendants were partners at the time of the Execution of the Contract sued on, and that said Contract was made and executed as a partnership Contract and as such is binding on all the defendants. Still they must find for Defendants unless they shall also find that the plaintiffs delivered or tendered and offered to deliver the Cattle, or that defendants before any default on the part of Plaintiffs refused

to receive any more Cattle, or that plaintiffs were excused by Defendants from delivering the Cattle so agreed to be delivered in accordance with the terms of said Contract.

No 5. Although the Jury may find from the Evidence that on the Eleventh day of July 1863. the plaintiffs were ready & willing & then & there tendered and offered to deliver to defendants the balance of said Cattle under their said Contract and that defendants refused to receive said Cattle. Yet if they shall also find from the Evidence, that before that time, the plaintiffs had failed to deliver the Cattle under said Contract in accordance with the terms of the same, was past as required by the terms of their said Contract, then the Defendants were not bound to receive the balance of said Cattle but were at liberty to treat said Contract as forfeited and the Jury must find for Defendants

No 6. If the Jury believe from the Evidence that the Defendants on the Eleventh day of July A.D. 1863. offered and were ready and willing to receive Two Hundred Head of Cattle of the plaintiffs under their said Contract without annexing any Conditions to such offer and that Plaintiffs had that number of Cattle then ready to put in on said Contract, but refused to put them in and Defendants thereupon treated

the Contract as broken, then the Jury must find for the defendants.

No 7. Unless the Jury believe from the Evidence that the defendants, at the time of the Execution of the Contract sued on, were partners, and that said defendant Bankard made said Contract with Plaintiffs as such partner, and also that Plaintiffs made such Contract with said Bankards such partner, relying upon said partnership or defendants as such partners to carry out and fulfill such Contract, and not upon the personal responsibility of said Bankard alone, they must find for defendants.

No 8. If the Jury believe from the Evidence that at the time of the Execution of the Contract declared upon, the defendant Bastable was the agent of Bankard, and not a partner, the Jury must find for the defendants.

No 9. Although the Jury may find from the Evidence that the defendants were partners at the time of the Execution of the agreement declared upon, yet they must find for the defendants, unless they also find from the Evidence that they were doing business under the firm name of J. Bankard at that time, and under such name Executed the Contract sued on in this case.

No 10. The Contract declared upon is Executed in the individual name of J. J. Bankard.

And the presumption of law is that it is the Contract of I I Bankard alone, and not the Contract of the defendants as partners, and the Jury must find for the defendants unless they shall find from the Evidence, not only that said I I Bankard executed said Contract but that the defendants were associated together at the time of and in the making of the Contract as partners under the firm name of I I Bankard.

No 11. The defendants are not liable as partners upon the Contract declared upon unless the Jury shall find from the Evidence that they were such Copartners preceding or Contemporaneously with the Execution of said Contract, and the Jury must find for defendants.

No 12. The acts admissions or declarations of one or more of the defendants is not Evidence of the Existence of a Copartnership between the defendants. So as to bind the other defendants as partners unless the Jury shall find from the Evidence that such acts, admissions or declarations were made in the presence and hearing of such other defendants or were subsequently brought home to the knowledge of such other defendants and assented to by them.

No 13. If the Jury believe from the Evidence that at the date of the Execution of the Contract

declared upon. the defendants were not Copart-
ners, then no admissions or declarations made
by the defendants. or any of them as to any
partnership existing (if any) since the Execution
of said Contract, are Evidence to prove a joint
liability between the defendants so as to
bind them as partners in said Contract.
And the jury must find for Defendants,
but to the giving the said instructions of said
defendants to said jury by said Circuit Judge
Numbered. Number two Nine and twelve, and
that part of said defendants instruction Number
ten as follows. And the jury must find for
the defendants unless they shall find from
the Evidence not only that said I I Bankard
Executed said Contract, but that the defendants
were associated together at the time of and
in the making of the Contract as partners under
the name of I I Bankard. the said Counsel
for said plaintiffs did then and there on behalf
of said plaintiffs Except.
And the said Circuit Judge under the Charge
and with the said instructions as set forth above
in Numbers Nine, twelve, & part of instruction
ten of said defendants instructions as aforesaid
out. left the aforesaid issues, and the Evidence
so given on the trial there of as aforesaid to the
said Jury, and the jury aforesaid then and there

gave their verdict for said defendants, and inasmuch as the said several matters so produced and given in evidence on the part of the said plaintiffs, and by said defendants objected to and insisted on, and the said Charge and the said instructions of the said Circuit Judge on the part of said defendants above mentioned and by said Counsel for the said plaintiffs objected to, and insisted on by said defendants do not appear by the record of the verdict aforesaid the said Counsel for the said plaintiffs did then and there propose their aforesaid Exceptions to the opinion of said Circuit Judge and Requested him to put his seal to this bill of Exceptions, Containing the said several matters so produced and given in evidence on the part of the said plaintiffs as aforesaid and the said Charge and instructions to the said Jury by the said Circuit Judge according to the form of the Statute in such case made and provided, And thereupon then and there the said plaintiffs did move the said Circuit Court for a new trial in said cause, and that the verdict of the Jury be set aside and in arrest of Judgment. for the following reasons viz

1. That the Court erred in charging the Jury for defendants (Ninth instruction) that although the Jury may finds from the Evidence that the

defendants were partners at the time of the Execu. of the agreement declared upon. that they must find for the defendants unless they also find from the Evidence that they were doing business under the firm name of J J Bankard at the time and under such name Executed the Contract Sued on this Cause.

II. Because the Judge erred in Charging the Jury (twelfth defendants Instruction) that the acts, admissions or declarations of one or more of the defendants, is not Evidence of the Existence of a Copartnership between the defendants, so as to bind the other defendants as partners unless the Jury shall find from the Evidence that such acts, admissions or declarations were made in the presence and hearing of such other defendants or were Subsequently brought home to the Knowledge of such other defendants and assented to by them

III. Because the Judge erred in Charging the Jury (part of Tenth instruction) that unless they shall find from the Evidence, not only that the defendants were associated together at the time of and in the making of the Contract as partners under the firm name of J J Bankard

4. Because the Charge of the Court for the defendants was Contrary to Law.

5. Because the Verdict of the Jury was Contrary to law and the Evidence.

And thereupon the said Circuit Judge did then and there overrule the said Motion of said plaintiffs for arrest of said Judgment and for a new trial in said Cause, to which opinion and decision of the said Judge of the said Circuit Court the Counsel for the said plaintiffs on the behalf of the said plaintiffs did then and there Except.

And therefore the said Circuit Judge at the Request of the said Counsel for the said plaintiffs did put his Seal to this Bill of Exceptions pursuant to the Statute in such Cases provided on the 30th day of March A.D. 1864.

Erastus S Williams (Seal)
Judge of 7th Judicial Circuit

The above Bill of Exceptions Settled as above

Bates & Bowlee for Plffs.
Walker & Dexter
Attorneys for Defts.

I William L Church Clerk of the Circuit Court of Cook County in the State aforesaid do hereby certify the above to be a true perfect and complete copy of all pleadings proceedings of record and bill of exceptions in a certain cause lately pending in said Court on the Common Law side thereof wherein Godfrey Gordon and Jesse Cook were plaintiffs and E J Bankard, G M Bastable and Asbury H Barrett were defendants

In Witness Whereof I have hereunto set my hand and affixed the seal of said Court at Chicago this 12th day of April A D 1864

Wm L Church Clerk



ASSIGNMENT OF ERRORS.

I.

The court erred in charging the jury that, although they may find from the evidence that the defendants were partners at the time of the execution of the agreement declared upon, yet they must find for the defendants unless said jury find from the evidence that they were doing business under the firm name of J. J. Bankard, and under such name executed the contract sued on in this cause.

II.

The court erred in charging the jury, that the acts, admissions or declarations of one or more of the defendants is not evidence of the existence of a co-partnership between the defendants, so as to bind the other defendants as partners, unless the jury shall find from the evidence that such admissions or declarations were made in the presence and hearing of such other defendants, or were subsequently brought home to the knowledge of such other defendants, and assented to by them. 12th defendants' instructions.

III.

The court erred in charging the jury that they must find for the defendants unless they shall find from the evidence, not only that the defendants were associated together at the time of, and in the making of the contract, as partners under the firm name of J. J. Bankard. Part of 10th instruction.

IV.

For that the said twelfth instruction for defendants, by the court to said jury, had a tendency to mislead the jury, and also to confuse the minds of the jury in making up a proper verdict in this cause.

V.

Because the verdict of the jury does not declare in words which of the issues joined in the case was found for the defendants.

VI.

Because said verdict of the jury was contrary to law and the evidence in the case.

VII.

The Court erred in deciding that the answer of John J. Myherly, a witness produced and sworn on part of plaintiffs, which answer is as follows: "that his understanding and
57 the general impression was that Bankard, Fawsett and Bastable was interested in the contract," should not be read to the jury in the trial of said cause.

VIII.

Because the verdict of the jury was a general verdict for the defendants.

IX.

Because by the said verdict of the jury it does not appear whether they had found for the plaintiffs or defendants the first issue in said cause, (except inferentially).

BATES & TOWSLEE,
Plaintiffs' Attorneys.

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Supreme Court

3d Grand Division

Godfrey Gerden et al

Plffs in Error

vs.

I. I. Bankard et al

Defts in Error

Record

Filed May 9. 1864.

L. Leland

Clk.

Chicago Evening Journal Print, 50 Dearbon Street.

SUPREME COURT OF ILLINOIS.

Third Grand Division.
APRIL TERM, A.D. 1864.

GODFREY GORDON and JESSE HOOK,
Plaintiffs in Error,
vs.
J. J. BANKARD, G. M. BASTABLE & ASBERRY FAWSETT,
Defendants in Error.
PARTNERS UNDER NAME, STYLE & FIRM OF J. J. BANKARD.

BRIEF OF PLAINTIFFS IN ERROR.

THE plaintiffs in this cause declared that the defendants in error made and executed to them the contract set out in the declaration as co-partners, under the name, style and firm of J. J. Bankard, and averred a breach thereof.

To this declaration the defendants, under the statute, pleaded that the "defendants were not partners," but did not in that plea aver that they were not partners "*under the name, style and firm* of J. J. Bankard."

The whole cause turned on the issue of the co-partnership, and the errors assigned in the record are, the charge as given by the Court below, on the question of co-partnership as presented in the pleadings. The evidence contained in the abstract shows a state of facts on which the jury were bound to have found the question of co-partnership in favor of the plaintiffs, and would have done so, except for the mis-direction of the Court below.

II.

And we contend that on the special plea, denying co-partnership in this case, the sole question presented to the jury was:— "Were the defendants in this case partners at the time of making the contract?" and not as put by the Court: "Were these defendants partners *under the name, style and firm of J. J. Bankard?*"

The declaration, it is true, declared that the defendants in error were co-partners under the name style and firm of J. J. Bankard at the time of the making of the contract; but the defendants, in their special plea denying the partnership, restricted the issue to the simple denial that they were partners, but went no farther; and did not affirm "that they were not partners *under the name, style and firm* of J. J. Bankard." The plea in this cause, denying the co-partnership, under the statutes, is in derogation of common law, and the Legislature, in requiring the defendants to deny by a special plea the partnership, if they relied upon that as their defense, requires them to state in such special plea all that is relied upon, and all else is admitted; and the plaintiff is not bound to prepare to prove anything on the question of partnership except what the defendants deny in their special plea.

In this cause the defendants simply denied "that they were partners at the time of making the contract," and that was the sole issue before the jury. They did not deny in their plea "that they were partners under the name, style and firm of J. J. Bankard," and so admitted, if the jury believed that they were partners

at all, that they were such partners "*under the name*, STYLE AND FIRM OF J. J. BANKARD," as averred in the declaration. The charge on this point had a tendency to confuse the jury, and so was erroneous.

"The charge to the jury on this point suggested a question not raised by the plea of no partnership, and so clearly tended to render the real question uncertain, and to confuse the jury."

Wells *vs.* Hudson River R. R. Co., 2 Amer. Law Reg., new series, p. 87.

"A suit is brought by [or against] John Smith & Co., and "the defendants go to trial without denying the partnership, they "cannot afterwards object that the parties are not well described."

Robinson et al. *vs.* Maganty, 28 Ill. 426.

Everything touching the co-partnership is admitted, unless specifically denied by plea under the statute, that is clear. The defendants, in their plea, simply denied that they were partners, and so admitted that if they were partners then, they were partners under the *name, style and firm of J. J. Bankard.* The instruction of the Court on this point was not relevant, as it went beyond the issue raised by the special plea, and was calculated to mislead the jury and should not have been given.

Harris *vs.* Miner, 28 Ill., 142.

II.

But the Court manifestly erred in the 12th point charged for the defendants, "that the several admissions and declarations for defendants as partners, were not evidence of co-partnership, unless MADE IN THE PRESENCE OF EACH OTHER, OR COMMUNICATED TO EACH OTHER." This is clearly error, for "A partnership may be proved "by parole evidence that the alledged partners *severally* admitted "the fact, or held themselves out as such."

Bryan *vs.* Watson, 4 Shepley, 261.

"If in transacting business they severally spoke of each other as partners in connection with the business, such declarations may be given in evidence to prove partnership."

Gilbert *vs.* Whidden, 7 Shepley, 367.

"The admission of *each member* of a firm may be used to prove that *he is a partner* or member thereof."

Hengley *vs.* Stenckler, 3 Watts & Sarg. 415.
Johnson *vs.* Harden, 3 Watts, 104.
17 Sargeant & Rawle, 453, 457.
Dixon *vs.* Hood, 4 Miss. Rep., 416.
Crosier *vs.* Kerbur, 4 Texas Rep., 252.

Even if a person not being a partner, declares himself a partner, he shall be liable as such.

In 16 Illinois, 38, Roach *vs.* Perry, this court say, "Where "the witness said, 'I understood from all the Roaches that they "'worked the farm in common, as partners,' that this is sufficient "evidence of co-partnership."

In determining whether a partnership exists as to third persons, *all the declarations*, by words or acts, of the supposed partners, the rights they have exercised, and every circumstance attending the transaction, may be proved by third persons, and must be considered in determining what is the true relation between the parties. Pierson *vs.* Stringer, 4 Richardson 309.

Where two persons, father and son, held themselves out as partners by signing receipts indiscriminately, and *speaking* of their business as a common one, they were held to be partners as to third persons, although in fact they were not.

Merschom *vs.* Hobrick, 2 New Jersey, 372.

Now the evidence offered for the plaintiffs tended to show, at

least, that each one of these defendants had *severally* admitted that they were partners, yet the Court, in the 12th point asked by the defendants, charged the jury, "that these several admissions of the defendants were not sufficient to justify them in finding a co-partnership unless such admissions were made in the presence of all, or were ratified and confirmed by them." The 12th instruction charged for the defendants was clearly not law, and was erroneous.

IIII.

But the Court, in refusing the new trial, decided that this 12th instruction for defendants was to be taken in connection with the 1st point charged for the plaintiffs, and that, taking the whole charge together, there was no error.

Now taking the 1st instruction given for the plaintiffs, by the Court, Abstract p. 37, and read it in connection with the 12th instruction given for defendants, Abstract p. 42, simply interposing the conjunction, *but*, between them, and we have this as the charge of the Court on that point of evidence of partnership:

"1. That in order to charge persons as partners, the utmost strictness of proof is not required. It is sufficient that they have acted as partners, and that by their habit and course of dealing, conduct and declarations, they have induced those with whom they have dealt to consider them as partners, and that a co-partnership between the persons may be proved by parole evidence; and that if the jury believe, from the evidence in this cause, that the defendants signed the contract in the name of J. J. Bankard, and were each interested in the profits and losses of this contract, then they must find that these defendants were partners in this contract."
12. *But* "the acts, admissions or declarations of one or more of the defendants are not evidence of the existence of a co-partnership between the defendants as partners, unless the jury shall find from the evidence that such acts, admissions or declarations were made in the presence or hearing of such other defendants, or were

subsequently brought home to the knowledge of such other defendants, and assented to by them."

And is it not evident that the charge was erroneous, and tended to mislead and confuse the jury? Can those two instructions be thus read as one, either by laymen or lawyers, and yet it be said that the result of the whole instruction was not to tell the jury "that, although each partner had *severally* admitted that he was a partner, yet that such admissions were not evidence of co-partnership unless they were made in the *presence of each other, or were brought home and ratified by each partner?*" Surely every lawyer would so construe these two instructions, and in any event they were calculated to confuse and mislead the jury as to the effect of such admissions in establishing the co-partnership. If the two instructions tend even to mislead or confuse the jury, then they were erroneous and we were entitled to a new trial.

In the case already cited, 28 Ill., 142, Harris et al. *vs.* Miner, the Court say in conclusion, "The instruction as given, was calcu-"lated to mislead the jury, and we must consider by the verdict 'rendered they were misled."

IV.

But if the jury were not confused and misled by these two instructions, then the verdict was contrary to the evidence, for that establishes the admission severally of each separate partner that the partnership existed, and taken in connection with the acts of all of them, made out a case prima facie of partnership, and the defendants introduced no evidence to disprove it. The evidence in the Abstract all tends prima facie to show partnership, and the several admissions of the separate partners were ruled out under these instructions of the Court.

BATES & TOWSLEE,

Attorneys for Pl'tiffs in Error.

In Supreme Court
3rd Jud. Dist.

Godfrey Gordon et al
Plffs in Error

vs

I. I. Bankard et al
Defts in Error

Plffs in Error

Salem May 10. 1864
L. Salmon Clk