

37

about buying. They were eighty four head of cattle bought at the same time with the thirty-three head. They were a part of the Eighty head. I don't know whether Strattan got any money from Woodward, nor where he got his money. I bought some more for Woodward afterwards

Cross Examination by counsel for Plaintiff

I have known Woodward since 1859. There was a partnership contract between Woodward and Strattan in 1859 for buying cattle. I heard them say so in June 1859 in my presence. Strattan introduced me to Samuel Woodward. Woodward proposed to furnish the money. I never had any interest in the 34 head of cattle. I purchased what cattle of the 34 head I bought, on the joint account of Strattan and Woodward. I understood from the defendant Oscar Strattan that he was buying the thirty four head of cattle for joint account of himself and Woodward. Lee Strattan told me so, they Strattan and Woodward were to have equal property on the 34 head of cattle and equal profits. Woodward sent \$1280 that I know of, it came through me. Between \$400 and \$600 I know Strattan paid.

Defendants recall witness Baker who on

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

Defendants next called William Martin General Freight Agent of the Chicago Burlington and Quincy Rail Road

Company at Chicago: Who produced the Books of the Rail Road Company which contained the following Receipt to wit:

Freight Office C. B. and N. R. Co.

East Burlington Aug 24th 1859

Received of C. Strattan two cars of
Cattle [34 Head more or less] to be delivered
at Chicago Station at Special Rates being
\$55.⁰⁰ per car from Agency City and charges
\$600.⁰⁰ In consideration of which and for
other valuable considerations it is hereby
mutually agreed that said Company
shall not be liable for loss by jumping
from the cars; delay of trains or any
damage said property may sustain. —
Except such as may result from a collision
of the trains or when cars are thrown from
the track in course of transportation to be
fed and taken care of by owners.

signed R. F. Howford for C. B. & N. R. Co.

C. Strattan

And who testified that the cattle were now
consigned to Oscar Strattan in Chicago
and that said Strattan paid the Freight
on said Cattle amounting \$110.⁰⁰ and
the six hundred dollars advanced by the
R. R. at Agency City.

The defendants then rested their case

The Plaintiff by his Counsel then offered Samuel Woodward the defendant in the execution as a rebutting witness to prove the ownership of the said 34 Head of cattle taken in execution against said Woodward at the suit of George Smith et al. The defendant's counsel objected to the witness testifying on the ground of interest which objection the Court sustained and refused to let Woodward testify to which ruling of the Court excluding the said Woodward from testifying the Plaintiff by his counsel then and there excepted. This was all the testimony in the case the jury gave a verdict for plaintiff for nominal damages And afterwards the Plaintiff by his counsel moved for a new trial on the following grounds:

- (1st) The verdict is against the evidence
- (2nd) The Court erred in refusing to let Woodward be sworn and testify on the part of the Plaintiff

Hervey Anthony and Galt
Attys for Plff.

41 which said motion for a new trial the Court overruled to which decision of the Court overruling the motion for a new trial the Plaintiff by his counsel then and there excepted.

And inasmuch as the matters and things aforesaid do not appear of record the Plaintiff by his counsel presents this his Bill of Exceptions to the Court and asks that he may sign and seal the same and make it a part of the record in said cause which is accordingly done

Wm H. Higgins *(Seal)*
Judge

It is hereby stipulated and agreed by and between the attorneys for defendants and Plaintiff that the above Bill of Exceptions may be signed and seal by the Judge and filed by the clerk as of the term at which the above cause was tried and within the time allowed by the Court for filing the same

Chicago

E. W. Evans
Attorney for Dfts

Hervey, Anthony, and Salt
Atts for plff.

State of Illinois
County of Cook

I Thomas B Carter Clerk of
the Superior Court of Chicago, within and for the
County and State aforesaid do hereby Certify that the
 foregoing is a full true and complete Transcript of
all the Pleadings on file in my office. & all the
Orders and Judgments entered of record in said Court,
together with the Bill of Exceptions & stipulations filed,
in a certain Case wherein William James Connor
of the County of Cook in the State of Illinois who
sues for the use of George Smith and Elisha R Willard
was Plaintiff and Owen Stratton John B Lyon
Albert M Come and James T Hoyt were defendants
In testimony Whereof I have hereunto
set my hand and affixed the Seal
of said Court at Chicago in the
County aforesaid the Twenty Seventh
day of March A D 1863
Thomas B Carter
Clerk



Assignment of Errors

Supreme Court of Illinois

Third Grand Division

William James Coroner, who sues for the
 use of George Smith & Elisha W. Willard } *Plff in*
Error

vs

Oscar Shotton, John B. Lyons &

Albert Morse, unpleaded with James J. Hoyt
 } *Defendants in Error*

And now comes the said
 Plaintiff in Error, by Hervey Anthony Galt
 his attorneys and says, that in the record
 & proceedings aforesaid, and also in the ren-
 dition of the judgment aforesaid, there is
 manifest error in this, to wit:

1. The verdict is against Evidence

The Court erred in refusing to let Woodward
 be sworn & testify on the part of the Plain-
 tiff

And the said Plaintiff in error prays that the
 judgment aforesaid, for the errors aforesaid, and
 for other errors apparent in the record and proceed-
 ings aforesaid, may be reversed, annulled, and altogether
 held for nothing, & that the said Plaintiff in Error may
 be restored to all things which he has lost by occasion
 of the said judgment

Hervey Anthony Galt
 atty for Plff in Error -

And now comes the Dept. above
by Evans this attorney, I say that
in the Records & proceedings in said case. There
is no error, & pray that Justice may
be affirmed.

E. U. Evans
per Dept. }

2104

Supreme Court

James A. Stratton

William James } Plff in
Cosover whose name
the use of Smith &
William }

Oscar Stratton }
et al } vs }
et al }

Abstract of
Record

Filed Apr 23 1863

L. Selous
CM

Henry Anthony Galt
vs }
et al }

\$10.00 paid by Henry Anthony
Galt