SPRATT ET AL. *vs.* VAUGHN & CO.

Where the verdict turns upon the weight of conflicting evidence, the jury being the judges of the facts, this Court will not reverse the decision of the Circuit Court refusing a new trial.

Writ of Error to Ouachita Circuit Court.

This was an action of assumpsit, brought by Vaughn & Co. against Spratt & Kerr, on an account for merchandize, &c., determined in the Ouachita Circuit Court, in March, 1849, before Hon. JOHN QUILLIN, Judge.

Defendant Kerr filed two separate pleas: 1st. Non assumpsit.

2d. That the promises in the declaration mentioned were special promises to pay the debt of his co-defendant Spratt, and were not made in writing—(Special plea of the statute of frauds.) On demurrer overruled to the second plea, plaintiff took issue to both pleas. Spratt seems to have been in default.

The cause was submitted to a jury, and verdict for plaintiff for $114.49, and judgment against both defendants.

Motion for new trial overruled, and bill of exceptions, setting out the evidence.

Evidence.—Conally, witness for plaintiffs, testified that he was clerk for plaintiff at the time the goods specified in the account sued on were sold and delivered, and the items in the account were correct. That, during the years 1844-5, defendants had purchased goods on a joint account, and, at the end of that time, the defendants disagreed in their private settlements, and owing to that fact Kerr told plaintiffs to have their accounts charged to them separately, for their private convenience in settling, which plaintiffs did; and, at the same time, Kerr said he would still be liable, as he was before, to pay for what goods Spratt might

purchase. That said account had been sent out for suit against Spratt alone some time before the commencement of this suit. That, about the 1st January, 1847, Kerr had settled all demands against him, but had not settled the account sued on. That the goods specified in the account were charged to Spratt individually, and that the books of plaintiffs had been altered since said goods were sold by adding Kerr's name, but the goods were charged in the individual name of Spratt at the request of Kerr & Spratt, in order that they might more conveniently settle between themselves.

WATKINS & CURRAN, for plaintiffs.

Mr. Justice SCOTT delivered the opinion of the Court.

The instructions given by the Court to the jury no where appear upon the record; and the only question presented relates to the sufficiency of the evidence to sustain the verdict and judgment. Several circumstances are shown in evidence to negative a joint liability which other portions of the testimony amply affirm. It is, therefore, a case where the jury weighed the evidence and returned their verdict accordingly. Such verdicts, where amply supported by the evidence, as in this case, and unimpeached for the admission of improper testimony, or the exclusion of that which was proper, or for misdirection of the jury, or for a finding contrary to the law properly given them in charge, this Court has uniformly refused to disturb. There was no error in the ruling of the Court below refusing a new trial. Let the judgment be affirmed with costs.