

# THE COOK-SMITH CATTLE-STEALING CASE.

It will be remembered by our readers that Cook, the man committed for trial last week, for stealing cattle, made a statement strongly tending to criminate Mr. Jacob Smith, butcher of the Empire Market, at the corner of Commercial St. on First South St.; and that at the close of Cook's examination Smith was bound over to appear for examination.

On Saturday last, by the request of Mr. Whitney, Mr. Smith's counsel, Tuesday (yesterday) morning was set by Justice Clinton for the examination of Smith, but owing to the absence of witnesses—Cook and some others—the investigation did not commence till about 2 past 2 o'clock yesterday afternoon, at which time Mr. Smith, his counsel and witnesses, Z. Snow, Esq., prosecuting attorney, Cook and several other witnesses for the prosecution were in court. The following witnesses for the prosecution—Messrs. George Anderson, his son, George Edward Anderson, —Cook, George Seamon and Abraham Coons—were sworn; also Mr. Rusch for the defence.

The last-named witness, who is slaughterman, shopman, bookkeeper and general factotum for Mr. Smith, was first called to the stand, and was put through a long examination by the prosecution.

He deposed that he was the hired man of Jacob Smith & Company; that he cut up the meat, sold it, kept books, etc. He sometimes attended to the butchering. On the 13th of September he slaughtered two animals at Smith's slaughter house on the west side of Jordan, one of which was light brown, the other one red. They had no brands that he could see, although the hides were spread on the floor and water poured on them to make brands plain if there had been any. Mr. Alexander and his son, parties who had testified in the examination of Cook, came there and claimed those animals. There was another one, alive, in the corral which Mr. Alexander claimed; he took that away. When Mr. Alexander came in, the first question he asked was, "Where did you get those cattle?" Witness replied, "From Mr. Cook." Alexander went out, but witness called him back, saying, "Hold on; I want to see you. Come in." He came back and again asserted that the cattle were his. Witness told him he wished he had come sooner, for it would have saved him some hard work—in killing the animals; but as they were killed he, witness, said, "I had better haul them to market, and in the morning we will pay you for them at market price." Mr. Alexander also agreed to this. Witness also killed one animal two days before this—on the 11th; they paid Mr. Cook for that. The hides of these several animals were all sold to Mr. Pugsley. His team came to the slaughter house for them and took them all away together. When he butchered the animals he cut off their heads, but not the ears and horns; he never received any instructions to that effect, and he was satisfied that no such instructions had been given to any other butchers there. Mr. Smith had books in which entries of buying and selling beef were made; witness kept them. There was also a book kept at the slaughter house, witness had written some in it, and others had written some in it. It was not the practice to bring the books from the slaughter house to the market to transfer entries from them. He did not see anybody take the animals to that slaughter house on the 11th and 13th, but Mr. Cook came and received pay for them. Somewhere about the time these cattle were driven to the slaughter house—he thought it was on the 12th—Cook was in the shop and asked him, witness, if they wanted any cattle; he, Cook, said he had six or seven head and he wanted to get rid of them. Witness told him they could not use them all at one time; but Cook said he would drive them in, and put them in the field, and when they wanted them they could go and get them. Witness told Cook he must wait until Mr. Smith came, he had nothing to do with it. He knew there had been dealings between Cook and Smith during the last few months, in buying and selling cattle. Cook would come into the shop and say to Smith, "I have some more cattle, and if you want them you shall have them." He would say this, no matter whether whether one person or a dozen persons were present. When they bought of Cook, he would drive them in, and the beef would be weighed, then Cook would come and get his money, whatever the beef came to at market price.

On the 13th of September market price was 6½ or 7 cents a pound. Cook was always paid for the cattle they bought of him by the pound, with the exception of one head, which they gave him \$20 for. He never received any instructions from Mr. Smith about what should be done with the heads, ears, horns and feet, but a boy had been sent out this summer to burn a lot of old rubbish that had accumulated at the slaughter house, and that was the usual practice. Mr. Cook was never employed by the day to work for Mr. Smith.

Cross-examined by Mr. Whitney. He had been in the butchering business five years, had followed it in this city since the 14th of last December; had attended to the slaughtering for Mr. Smith since about the first of July; nobody had given directions about slaughtering but himself since then. He did not remember Mr. Smith being at the slaughter house since it was rebuilt—in the beginning of June; and did not know that he had ever been there, he had never seen him there. Smith went into the slaughtering business here, sometime last fall. He, witness, had known Cook since New Year's '72. Mr. Smith generally bought the cattle, sometimes he, witness, would when Smith was not about. Cattle were delivered at the slaughter house after they were bought. He never saw but one head—bought of Mr. E. Hanks—in the city, did not see them until after they were delivered at the slaughter house. They did not slaughter all the beef they sold, bought some from the wholesale butchers; they could often do better that way than by purchasing from those who had animals to sell. When Mr. Alexander came to the slaughter house and claimed the cattle, he said his cattle were branded A R on the left shoulder. Mr. A., witness, and another man looked for the brand, but they could not find it, although they spread one hide on the ground and poured water on it to make the hair lie flat. He, witness, took a knife and scraped the water off, but could not see any brand; could not see whether it ever had been branded. Mr. Alexander did not pretend when at the slaughter house that he could see the brand. He, witness, looked for, but could not see the brand on the animal Mr. Alexander took away. There is a record kept at the slaughter house of the brands of all cattle killed there, when brands can be found on them. Mr. Gallagher, partner of Mr. Smith, sometimes paid Cook the money for some of the cattle, and he, witness, had also paid him some, and they had also got the receipts for the money paid him. He had got books in court showing the various transactions of the firm with Cook in the purchase of cattle.

These books—the blotter, day book and ledger—were examined by the Court and counsel, and the entries—showing a total of some \$500 credited to Cook for cattle bought of him—traced in regular order, with dates, into the various books.

Witness said Cook was never paid for beef but what an entry was made in these books. He was never employed by Smith or had any business connection with him only what those books showed; and when he came to the market to do business, it was transacted just as it was with any other party.

Re-examined by Mr. Snow. Witness stated that he commenced working for Mr. Smith about the middle of last December; the books showed that Cook's transactions with Smith commenced about the 25th of January last; and in answer to the question of the counsel, whether, from that time until this affair came up, he had slaughtered many animals except what were purchased from Cook, witness replied, "Yes, we got some from Mr. Alexander, some from Mr. Winter, over Jordan, and from Mr. Hanks."

In answer to Mr. Whitney witness said there had been as many as fifteen or twenty head of cattle killed on some days in that slaughter house, but they did not all come from Cook.

Mr. Snow. You said there were cattle brought there by others than Cook. I want to know how many Mr. Hanks brought.

Wit. One.

Counsel. Only one.

Wit. Yes. Mr. Alexander also brought one or two head, he did not remember. Bishop Winters also brought two or three head. He supposed there were some cattle brought in there last Fall branded "P. K." He did not commence slaughtering there until the beginning of June, but they were killing cattle out there as early as Oct. 1st. In reference to the receipts said to have been given by Cook for the money he had received, witness said they were all in

his handwriting except the mark made by Cook; he had always understood from Cook that he could not write. He made his mark every time a receipt was given, witness first reading the receipt to him. He, Cook, would come in sometimes for two, five or ten dollars; he did not give a receipt for each of these small sums, but would give one for several of them bulked together. He gave credit to Cook on the books for the full value of what the firm received from him, at the time they received it. Sometimes they would credit him with more than the beef would have cost elsewhere, for it was sometimes very poor, not enough tallow in a whole animal to grease a steel. He knew a man named Abraham Coons; he had been at the slaughter house to claim one head of cattle. After Mr. Coons claimed the animal he, witness, told Cook about it; and on a Sunday morning witness and Cook went over to Coons' in a team, and Coons and another man got on and they all drove to the slaughter house together. They had a pair of scissors along and they cut the hair of the animal in dispute as close as they could to see the brands, one declaring that it was a perfect circle, the other that it was an imperfect circle. There was a good deal said, and finally witness got buffy, and told them he wanted to go, and they must settle it the best they could. One of them then proposed to witness that he should kill it and take the hide off, and by the time the hide was dry the brand would show plain on the flesh side, and if it were Cook's they were to pay him; but if Coons' they were to pay him. Witness told Coons he would kill that heifer if he, Coons, would stand all damages to Jacob Smith and Company, for the animal might turn out not to belong to either of them, and the community might say they were killing cattle and did not know who they belonged to. Coons would not agree to this, and witness refused to kill it. All the proposition made about dividing this animal, was that witness should kill it and divide it between Coons and Cook. He heard afterwards that they found out that the animal belonged to a Mr. Rhodes, and that the latter got it from Coons.

In answer to Mr. Whitney witness showed entries in the books of beef purchased from other dealers besides Cook; he also stated that rubbish, such as bones, heads, horns, and whatever else accumulated around a slaughter house, had been burned up at the slaughter house three or four times this summer; but there had been no attempt to burn up these things for the sake of concealing brands. He had never had orders of that kind, and had never known of anything being done there to cover marks on the ears, horns, or hides. Nothing had been done there, in destroying the refuse, but what was customary in slaughter houses. He did not know that Cook drove these cattle, claimed by Mr. Alexander, to the slaughter house, only Cook told him he would drive cattle there. That was the course usually pursued by cattle men—they would go to the market house, make arrangement as to how many were wanted, and drive them there on such and such a day, and the slaughterman would go and find them there and kill them. Mr. Pugsley bought all their hides, and gave four dollars each for them.

Cook was placed on the stand and, examined by the prosecution, deposed as follows:

Had resided in the 5th Ward, on and off, since last October. Since Christmas last had been engaged in driving stock, by the day, for Mr. Smith; he had six dollars a day for this work. The last two trips he told Smith he was not well enough to go, and he received more than six dollars a day. Smith gave him marks and brands of the cattle that he drove up. He never drove in any cattle but those for Smith, except once, sometime in the summer, he drove two for himself, and one of these belonged to Mr. Rhodes. He drove in the cattle claimed at the slaughter house by Mr. Alexander; he drove them in for Mr. Smith. Never, that he knew of, was there any book-keeping done when he sold beef to Smith, he never saw anything of the kind. There was no understanding between him and Smith about the purchase of beef, only that he, Smith, should pay him, Cook, six dollars a day, and he almost wore his shoes off in getting that. He could not read writing; could not write. He never signed receipts in presence of Mr. Rusch for any cattle but the two he sold to them for himself, one of which was claimed by Mr. Coons, but which belonged to Mr. Rhodes. As soon as he, witness, saw the brands on that an-

imal, he knew it belonged to Mr. Rhodes, of Mill Creek, and he told Rhodes about it, and he got it the next day. He knew it was Mr. Rhodes' animal, because he, witness, had one of his own with the same brand. He never did give but one receipt to Rusch, and he signed that with his mark. There was no witness present when he gave that; he did not remember who wrote it. Mr. Rusch handed it to him in the Empire Meat Market, and he told him he could not read it. He did not pay any particular attention to that receipt, and he did not think he could identify it.

Six receipts, said, by Mr. Rusch, to have been signed by Cook, were handed to the witness that he might, if he could, identify the one he signed, but he failed to do so.

Mr. Snow. Here are six receipts, and I understand you to say you signed but one?

Wit. I never gave but one, and that I handed to Mr. Rusch. Witness further deposed that he never could get a settlement with Smith for the beef he had let him have.

Mr. Snow. I see that in the aggregate, Mr. Rusch has you credited on the books with about \$500, I want to know if you ever let Mr. Smith have beef to that amount?

No sir, I let him have but one head.

Can you add numbers at all?

No, sir. He could not tell the amount of money he had had from Smith since last January, he kept no account, he only got a dollar or two at a time, barely enough to pay his board—five dollars a week; he guessed he was in debt now. He had a few head of horned stock on the range last January, but he never sold any to Smith but those that had been mentioned. Mr. Smith had given him the brand P. K., and he had shown that to George Seamon. He knew Mr. Barratt, but did not know that he ever showed him the brand P. K. He had shown him others, for as he was unable to read, he used to show them to parties, but he never showed any that he did not receive from Smith. Smith always gave him these brands personally, and he never gave them in the presence of others, out always when they were alone.

Messrs. Gallagher and Selby, witnesses for the defence, were then sworn. Mr. Gallagher was a partner with Mr. Smith in the slaughtering business. He testified that part of the payments to Cook, as recorded in the ledger, were made by himself, and that at one time he paid him as much as \$75 at the Empire meat market, for cattle he had sold the company. His testimony in relation to the business transactions of the firm with Cook in the purchase of cattle was substantially the same as that of Rusch.

In his cross-examination this witness explained the meaning of the "P. K." brand. He said that when Mr. Smith commenced business he was in partnership with a man named Philip Kohire, his brand was "P. K." He, the witness, gave Cook that brand one day when he was going after stock, ordering him to look for certain animals branded "P. K."

Mr. Selby, an ore buyer, testified that he had met Cook in Smith's shop, and on one occasion, this summer, when Mr. Gallagher was paying him some money, he, witness, lent Gallagher \$10 to make up the amount he desired to pay Cook.

Mr. Astarido, who rents a stall in the Empire Market, testified that he had seen Cook there, had heard him and Mr. Smith, talk over business transactions, had seen beef weighed and Cook paid as much as fifteen or twenty dollars at a time for it.

Here the case rested.

The Court then recalled Cook to the stand, "to lecture him a little." He then said:

Was it the understanding between you and Mr. Smith when he gave you brands, that you were to go out and drive them in, and that they were to be stolen cattle?

No Sir, it was not.

Court. Mr. Smith never intimated to you that they were to be stolen cattle?

No, sir.

Mr. Whitney wished Mr. Smith sworn.

The prosecution objected, but was willing he should make his statement without oath.

Mr. Whitney. I am willing that he should add the sanction of an oath to it.

Mr. Snow. I am not until the legislature says so.

The Court refused to allow Smith to be sworn, and he made no statement.

Mr. Snow reviewed the evidence. Taking Mr. Smith's books he found