

COOKE AND OTHERS V. NAVARRO AND OTHERS.

*Circuit Court, S. D. New York.*

December 28, 1886.

NEW TRIAL—VERDICT—EVIDENCE EQUALLY BALANCED.

Where the testimony of plaintiff contradicts that of defendant, and each is corroborated by other evidence, the court will not disturb the verdict.

The plaintiffs sue to recover for goods sold and delivered. The defense is that the goods were sold to one Pedro Garay, and not to the defendants. The cause was tried at the December circuit, and the plaintiffs had a verdict. The defendants now move for a new trial.

*Preston Stevenson*, for plaintiffs.

*Emmet E. Olcott* and *William Q. Judge*, for defendants.

COXE, J. The conclusion is reached, after a full examination of the papers submitted on this motion, that the court will not be justified in disturbing the verdict of the jury. The question now is, not what opinion the court entertains upon the facts, but was there sufficient evidence of a sale to the defendants to require a submission of the cause to the jury? The plaintiff Cooke testified positively to an agreement by the defendant Munoz, representing the firm, to pay for the goods. This was an original promise. The plaintiffs' version of the transaction is corroborated by the fact that the bills were uniformly made out to the defendants, and accepted by them without objection. The defendants flatly contradicted the plaintiffs' testimony as to what took place when the bargain was consummated, and their theory that the sale was made to Garay is sustained by several collateral facts and circumstances. There was, then, a positive assertion by the plaintiffs, and an equally positive denial by the defendants, each being corroborated, to some extent, by presumptions drawn from the undisputed testimony. In such circumstances the jury, and not the court, must determine the controversy. The verdict is not so clearly against the weight of evidence as to warrant the court in setting it aside, and the motion at the close of the testimony to direct a verdict for the defendants was, of course, properly denied. No exception was taken to the charge, and no exception to the admission or rejection of evidence is argued on the briefs.

The motion is denied.