

Opinion of the Court.

RED RIVER CATTLE COMPANY v. SULLY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
NORTHERN DISTRICT OF TEXAS.

No. 249. Submitted March 28, 1892. — Decided April 4, 1892.

When the errors assigned depend upon the terms and construction of a contract, it should appear in the record.

THIS was an action brought by the defendant in error to recover damages for the non-performance of a contract contained in a bill of sale of cattle running on a range and in the pastures of the plaintiffs in error in Texas. The record contained no copy of this contract. The brief of the counsel for plaintiffs in error stated "the questions involved" thus:

"1. Under the contract, should the winter loss from December 29, 1883, to October 1, 1885, be added to the number of cattle actually found and counted? or should only the winter loss occurring from December 29, 1883, to the spring of 1884, be added to the number actually found and counted?"

"2. Under the contract, before the Red River Cattle Company could recover for any excess over 3700 head owned by it on the 29th of December, 1883, was it necessary that more than 3700 should be actually found and counted? or was it only required that the number actually found and counted, when added to the winter loss occurring after December 29, 1883, should exceed 3700 head?"

*Mr. Sawnie Robertson* and *Mr. W. O. Davis* for plaintiffs in error.

*Mr. James W. Brown* for defendant in error.

THE CHIEF JUSTICE: The only errors assigned which might call for consideration depend upon the terms and the construction of a contract which does not appear in the record.

The judgment is, therefore,

*Affirmed.*