

No. 13038

Supreme Court of Illinois

OLE
HAYLOCK

vs.

March

84
STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division,

No. 131.

1880

Repeal

Kadner

Mar 1

12038

In Supreme Court
April Term 1860.

Erastus Halleck

vs

Stephen March et al

} Error to Name Co.

Argument of Plaintiff in error.

This action is upon a promissory note, made by the deft. March in his individual name, and by the other two defts, Bowman & Lloyd, in their partnership name as surety.

The defts plead that on the 19th day of Jan. 1859, the said plaintiff and defendants submitted themselves and all matters of difference in the plaintiff's declaration complained of, to the arbitrament of Eli Barber and J. S. Van-Patten, with power in case of a disagreement, to select an umpire, - and that an arbitration was had of all the matters in dispute between the said parties, and an award was made by the said arbitrators, Eli Barber and J. S. Van-Patten, and S. W. Durant who was selected by them as an umpire - under their hands and ready to be delivered, by which said award the said defendants were found to be indebted to said plaintiff in the sum of seventy cents.

The plaintiff replied, denying the submission in manner and form as the said defendants in their plea alleged and upon this issue the parties went to trial, and under the evidence and instructions given by

the Court, the jury found for the defendants.

The only point of issue presented by the pleadings, is the submission to arbitration.

And this is the principal question for this Court to consider.

The proof shows that on the 18th day of Jan. 1859. or a few days before, the plaintiff Holbeck and the defendant March, agreed verbally to submit to an arbitration - one party said "I will abide by the arbitration," and the other said, "I will."

Bowman was present when this agreement was made, but there is no proof to show that he, either for himself, or in behalf of Bowman & Lloyd, agreed to the submission, or became a party thereto.

The proof further shows that on the 19th day of Jan. 1859. an arbitration was had, Bowman was present during the arbitration, took part in the consultation, was sworn and testified.

A. J. Jones testifies that Bowman represented the firm of Bowman & Lloyd, as he supposed.

There is no other evidence that Bowman for himself, or for Bowman & Lloyd, agreed to submit, and did submit to the arbitration.

There is no proof to show that Lloyd was present at the time of the agreement, or the arbitration, - or that he was a party to the same, or consented thereto, - or had any knowledge or notice thereof.

The proof shows, conclusively, as counsel for the plaintiff thinks, that neither Bowman nor Bowman & Lloyd, were, or intended to be, parties to the agreement, or the arbitration.

J. G. Van Patten, one of the arbitrators, testifies that Bowman never spoke to him about acting as one of the arbitrator. - that when March spoke to him he did not know that any parties, but March and Halleck, were mentioned - that he did not know that Bowman & Lloyd submitted to him any matters to arbitrate, - and did not know that Bowman & Lloyd had anything to do with it until all the preliminaries were arranged, and then only as appeared from Bowman's statements as testimony.

The copy of the award introduced by the defendants on the trial, shows beyond all question, that it was not the intention of Bowman, or Bowman & Lloyd, to become parties to the submission, or the arbitration.

It reads, "We the undersigned, arbitrators, in the matter wherein Stephen March & Erastus Halleck are parties concerned &c"

Now, if Bowman, or Bowman & Lloyd were parties to the submission, why are they not named in the award? The arbitrators did not understand them, to be parties to the submission.

Counsel are of the opinion, that the mere fact, that Bowman was present at the time of agreement, and also at the arbitration, although he may have been interested in the matter submitted, is not evidence of itself that he, Bowman assented to the submission, or became a party thereto, and if this opinion be correct, the Court erred in refusing the 2nd instruction asked for by the plaintiff.

There is no proof as before stated, that Lloyd assented to the submission, or the arbitration, or had any knowledge or notice thereof or was a party thereto: or that Bowman had any power or authority to act for him. Bowman & Lloyd are liable upon the note as partners and the rule of law is that one partner cannot submit any partnership matter to arbitration, so as to bind the other partners:

That one partner has not even the implied authority so to do - and to do so there must be special authority given, or it must be done with the knowledge, consent, and approval of the other partner, or partners.

The cases cited by counsel in this brief, fully sustain this doctrine.

Counsel are aware that the contrary doctrine has been held in Kentucky, Ohio, & Pennsylvania but in their researches they have been unable to find any other authorities sustaining the last position.

If counsel's view of the law is correct, the instruction given by the Court for the defendants is erroneous, in this - to wit -

Instead of reading, "If the jury believe from the evidence, that Halleck, the Plaintiff, and March and Francis H. Bowman, on the part of and for Bowman and Lloyd, agreed to the submission &c" - the instruction to be good law should have read, "If the jury believe from the evidence, that Halleck, the plaintiff, and March and Francis H. Bowman, on the part of and for Bowman and Lloyd, and with special authority from Lloyd, or with his knowledge, consent and approval agreed to the submission &c"

Had the instruction even been framed as suggested, there is nothing in the evidence to show that Brownson had such special authority, or that Lloyd had any knowledge of the submission, or ever gave his consent thereto, or approved of the same.

There is still another point in the case. - The plaintiff replied, denying the submission, only - he could not deny the arbitration, without being guilty of double pleading.

Counsel however hold that under the pleadings, it was incumbent on the defendants to prove not only a submission by all the parties, of the note in question, but also an arbitration in pursuance of that submission, and the making of an award by the arbitrators, the same being ready to be delivered.

It appears from the proof, that the award made, was destroyed by one of the arbitrators - but for what purpose it does not appear. -

It would seem that the arbitrator or arbitrators must have had some good cause, for destroying the work of their own hands, and hence the same was never delivered nor ready to be delivered.

Counsel are therefore of the opinion, that the Court erred in permitting a copy of the award to be read in evidence - for the original had never been binding on the parties thereto.

Counsel are chiefly of the opinion that the Court erred in refusing the plaintiff's 2nd instruction, and in giving the defendants instructions - in admitting a copy of the award in evidence, and in over-ruling the motion for a new trial - and that the verdict and judgment in the case are contrary to the evidence and

the law, and asked to have the judgment reversed, and the cause remanded for a new trial.

By J. L. Beveridge

Eastman & Bates
J. L. Beveridge for
Proff. in error.

157 ~~84~~ 84
Supreme Court
Ernestus Pollock
vs
Stephen Mumford
et al

Argument for
Plaintiff is over

Filed May 9, 1860
L. Leland
Clerk

Beveridge for
Defendant

Note. Show this case to C. P. before
printing - Note the last part of the
opinion - There is no evidence in the
abstract ^(I have read both) nor record that Bowman
was Hallack's partner. He was Lloyd's
partner. Shall I make the ^{necessary} corrections
indicated by brackets in the opinion?

I am not sure that the ^{G. W.} statement as
amended would be ~~good~~ law -

Shew EP

Before Printing

A/31 -

BRIEF OF PLAINTIFF IN ERROR.

SUPREME COURT,

APRIL TERM, 1860.

Erastus Halleck,
vs.
Stephen March, et al. } ERROR TO KANE CO.

ERRORS ASSIGNED.

- 1st—Court erred in allowing improper evidence to go to the jury on part of the defendants.
- 2d—In refusing instructions asked for by plaintiff.
- 3d—In giving the instruction asked for by defendants.
- 4th—In *over-ruling motion* for new trial.
- 5th—In giving judgment on the verdict.
- 6th—The verdict was contrary to the law and evidence.

POINTS AND AUTHORITIES.

1st—There is no evidence that all the defendants submitted the matter in dispute to arbitration.

2d—One partner has no power to submit to arbitration any matter arising out of the partnership business, so as to bind his Co-partners.

Story on Partnership, Sec. 114.

Collyer on Partnership, Sec. 485.

Kanhaus vs. Ferrer, 1 Peters, 222.

Watson on Arbitration, p. 82.

Billing on Awards, p. 47.

3d—One partner has not an *implied* authority to bind his Co-partners, by a submission to arbitration.

Gow on partnership, 2 ch. 2 sec. p. 66.

3 Kent Com. Sec. 43.

Chitty on contracts, 9th Am. Ed. 231.

Russell on Arb. 27.

Stead vs. Salt, 3 Bing. (Eng. R.) 101.

Kyd on Awards, 42

Harrington vs. Higham, 13 Barb. 660.

Armstrong vs. Robinson, 5 Gill & Johns, 412.

EASTMAN & BOTSFORD.

J. L. BEVERIDGE,

For Plaintiffs.

181 ~~181~~ - 84
Erastus Hulbeck
as
Stephen Murely
Hul

Briggs

Filed May 1, 1860
L. Leland
Clerk

Buried
for Adam

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of Kane Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Kane County, before the Judge thereof, between Erastus Halleck

plaintiff, and Stephen March, and John Lloyd and Francis H. Bourman the last two named partners in business under the name & firm of Bourman & Lloyd—defendants; it is said that manifest error hath intervened, to the injury of the said plaintiff—

as we are informed by his complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Stephen March, John Lloyd, and Francis H. Bourman

that ~~that~~ they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April A.D. 1869 to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Stephen March, John Lloyd, and Francis H. Bourman

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 3 day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty

L. Leland

Clerk of the Supreme Court.

J. B. Rie Deputy

Executed this writ April 5th 1860 by Reading the
same to the within named Stephen Morcho
John Lloyd Mel Francisco H. Brown
Ethan P. Allen Sheriff of
Kane County Ill
by A. Lewis Deputy

131

Writ of Habeas Corpus

No.

Stephen Morcho
vs
John Lloyd
Mel Francisco H. Brown

SCIRE FACIAS.

FILED Apr 17 — A. D. 1860

A. Lewis

Deputy

Sherriff fees

3 Services 1.50

9 miles .45

Return 1.10

2.05

E. P. Allen

Deo Part by Plaintiff

E. P. Allen

Sherriff

STATE OF ILLINOIS---SUPREME COURT,

Third Grand Division thereof---April Term, 1860.

ERASTUS HOLLECK }
vs. } *Error to Kane.*
STEPHEN MARCH *et al.* }

POINTS AND AUTHORITIES FOR DEFENDANTS IN ERROR.

Where there are several persons, either plaintiffs or defendants, for example partners, who are jointly bound, the submission of one for himself and his associates is good.

Bouvier's Institutes, vol. 3 p. 48, sec. 2493;
Wilcox vs. Singletory, Wright's (Ohio) R., p. 420;
Southard vs. Steele, 3 Munroe, p. 435;
Taylor vs. Coryell, 12 Serg. & Rall R., 243;
Catlin vs. Deo, and Ball 284;
Cheworth vs. Pickford, 7 Mees & Wells, 314, 321.

See note to Story on Partnerships, page 179, and notes to sec. 114, and the authorities there cited.

This was a parole submission and all the parties appeared, and this note was finally passed upon by the arbitrators, and Hallock said he would stand by the award. The fact that the arbitrators have made an error, will not vitiate the award.

7 Cowen R., 185; 1 Barber C. R., 173;
Merritt vs. Merritt, 11 Ill., 567.

Whether the descision was correct or erroneous, it is not a proper subject of inquiry.

Ibid, 11 Ill., 568;
Pottel vs. McWater, 13 Ill., 456.

A new trial will not always be granted even if the jury find against the weight of evidence, and against the instructions of the Court, or through the misdirection of the Court on a point of law, provided the Court is satisfied that justice has been done.

Gillett *et al.* vs. Sweat, 1 Gilm., 475 & 490;
Greenup vs. Stoker, 3 Gilm., 202.

W. D. BARRY,
Att'y for Def'ts in Error.

181

Colleck vs March

Defendants: Print

13038

Filed May 14, 1860

L. Leland
Clerk

RECORDS OF THE CIRCUIT COURT OF THE JUDICIAL DISTRICT OF THE SOUTHERN DISTRICT OF NEW YORK

STATE OF ILLINOIS---SUPREME COURT,

Third Grand Division thereof---April Term, 1860.

ERASTUS HOLLECK }
vs. STEPHEN MARCH *et al.* } *Error to Kane.*

POINTS AND AUTHORITIES FOR DEFENDANTS IN ERROR.

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Gillett *et al.* vs. Sweat, 1 Gilm., 475 & 490;
Greenup vs. Stoker, 3 Gilm., 202.

W. D. BARRY,
Att'y for Def'ts in Error.

Holleck v March

Defendants- Poms

Filed May 14, 1860

L. L. Linn

Clerk

13038

PLATON OLIPHANT & SONS, PRINTERS, 101 N. 3rd St., PHILADELPHIA, PA.

Page 1. Supreme Court of the State of
Illinois April Term AD 1868
State of Illinois
Frank County.

Erastus Heallack
vs.
Stephen March } Assumpsit \$300⁰⁰
Francis Mc Bowman }
John Sloya }

The only question that seems to be made in this case by the plaintiff in Error is, that one partner has not the right to submit the partnership matter of the firm to arbitration; Upon this point I am ready to admit that the authorities are somewhat conflicting and the question so far as I am able to ascertain has never been passed upon by this court.

In "Bowvies Institute" (which work is said to be reliable authority) in Vol 3. Page 48. Sec 2490 the rule is laid down in these words: "Where there are several persons either as plaintiffs or defendants for example partners who are jointly bound the submission of one for himself and his associates is good." In support of this position he cites "Wilcoy v Singleterry" Wright (Ohio) Reports Page 4201 "Southern v Steele" 3^d Monroe (Kentucky) Reports " 435; The case referred to in Wright Reports is not discussed at length by the court the court having disposed of it in a very summary manner and use this language: "We think it very clear that

Page 2" One of several partners joint parties to a suit may
lawfully contract to submit it to arbitration and bind
his co-partners; The consideration upon which a
suit upon an award is made is the contract of
submission 3. Ohio Repts 513. The submission in the
case at bar was good. This decision was made by
two of the judges of the supreme court of Ohio viz
Judges Lane and Wright. The case in F. Monroe
was discussed at great length by the court and it
was a case in all its features similar to the one
now before the court, it being upon parole submission
and the court ~~says~~ after a careful examination
of all the authorities seems to come to this conclusion
that one of two partners has not the right to submit
matters of partnership to arbitrators by an instrument
under seal but that one of two partners has the right
to submit partnership matters to arbitrators by parole
agreement and the award would bind the partnership
and I would respectfully call the attention of the
court to this case as it seems to be a decision full of
sound reason and good sense and well supported
by authorities; In this connection I would also call
the attention of the court to the case of Taylor vs
Coryell 12th Serg & Rale 243, also to note 3. of section
114. of Story on Partnerships Page 181 and especially to the
argument of Sir H. Pollock in that case and the
authorities there cited; The above are all the
authorities I have been able to find upon this
point since I was called into this case

The next point to which I would call the attention of the Court is the fact that here was a trial before the Arbitrator and the Court will see by the Abstract that the note upon which this suit is brought was laid before the Arbitrator and was fully adjudicated upon by them and indeed there is no pretense that anything unfair was done by the arbitrator but on the contrary the plaintiff himself was fully satisfied with the award for the language used by him was that he would abide by the arbitration; That the note in question was passed upon by the Arbitrator the Court will see by the testimony of Grooms for he swears distinctly that the note was brought in by Hallack and that the same was fully considered by the Arbitrator and formed a part of their award; Now I do not consider it very material whether one partner can bind another partner or not for the Court must see in this case that the parties have selected their own tribunal, have tried their matters of difference in their own way, and have had a full opportunity for a fair hearing, and so far as anything appears upon the Record full ample and complete justice has been done between them; Now as I understand the doctrine to be well settled by this Court that the Court will not grant a new trial when justice has been done between the parties; Upon this point the first case I would call the attention of the Court to is the case of Shultz Smith vs Shultz 1st of June commencing on page 491. where the Court per Chief Justice Wilson

* March being the only person who had any real interest in the event of this suit on the side of the defense

uses this language, "A court will not grant a new trial when in its opinion substantial justice has been done between the parties though the law arising on the evidence would have justified a different result"

The next case upon this point to which I would call the attention of the court is the case of "Seigh v. Hodges & Scam." commencing on page 15. On page 18 of same case the court says, "Sitting as the circuit court was in disposing of this ~~case~~ motion for a new trial we are only to ascertain if upon the whole case presented substantial justice has been done; It does not always follow that a new trial will be granted even if the jury find against the weight of evidence; Against the instructions of the court or through the misdirection of the court on a point of law provided the court is satisfied that justice has been done; The same doctrine has again been recognized in "Gillett vs Sweet" 1st Gilm 475-; Now if the court will apply this principle to the case under consideration, There was a note made and executed by Stephen March as principal and Brown and Lloyd as securities; Suppose that the plea in this case had alleged the fact that the arbitration had been between March and the ~~all~~ ^{the} present plaintiff in this suit and that said note upon which this suit is brought had been fully adjudicated upon by the arbitrator and that an award had been made upon it; This plea undoubtedly would have been good and the evidence would clearly have sustained it

and the result of the verdict would have been the same as it now is and I am unable to discover the least advantage that the plaintiff could obtain should the court grant a new trial in this case for undoubtedly the court would give permission to amend the pleadings and the necessary result would be that another verdict would be rendered in favor of the defendants; There is one other view in which I would present the case for the consideration of the court; Suppose the court comes to the conclusion that one partner can not bind his copartner by an agreement to arbitrate; The question then arises may not the other partner ratify such a submission.

On this point I would call the attention of the court to Story on Contracts Pages 214 & 15 - Secs 219-220 & 221. In sec 219 Judge Story says: "To the general rule that a partner may bind the firm in transactions within the scope of the business of the copartnership there are two exceptions; The first is that one partner can not without the consent of his copartners submit or refer any matter to arbitration although it immediately refer to the business of the partnership

In section 220. The other exception is that a partner can not execute a specialty so as to bind his copartners unless authority be expressly given him under seal; Sec 221. In America however this exception is subject to many restrictions and modifications and the more equitable doctrine declared in the courts of the United States is that a previous parole assent

or a subsequent parole ratification whether express or implied is sufficient to give validity to a deed signed by one partner in behalf of the partnership. Now it would seem on general principles (although I do not find any authority ^{directly} in point) that the same rule would apply in cases of Arbitrations; And when one partner did not dissent his ratification would be presumed; The next point to which I would call the attention of the Court is that the award is final and conclusive between the parties and upon this point I would respectfully refer the Court to Freeman's Digest Vol 1. Page 213 where the authorities are collected and referred to on this point and this principle seems to be fully established;

1st The fact that Arbitrators have made an erroneous decision will not vitiate their award; If they have acted in good faith the award is conclusive upon the parties and neither party is permitted to avoid it by showing that the arbitrators erred in judgment either respecting the law or the facts in the case; "7th Brown 185. 1st Barber 567.

2^d Whether the decision was correct or erroneous is not a proper subject of inquiry. Where the parties select their own tribunals for the adjustment of all their transactions they must abide its decision if there be no fraud misconduct or partiality; 11th Ills 568. The above decisions show with what tenacity

the courts have sustained the awards made by
arbitrators and I am not aware of a single
case to be met with in our reports where a
party has had a full opportunity for a hearing before
the arbitrator and they have made an award
that the courts have ever interfered to set the
same aside

W. D. Barry
Atty for Deft in Error

No 131-84
Wallack
vs
March Etal

Argument for
Deft. in Error

Filed May 31, 1880
L. Leland
Clerk

United States of America }
State of Illinois Kane County } ss

Plas before the
Honorable Isaac G. Wilson Judge of the thirteenth
Judicial circuit and presiding Judge of the
Circuit Court of Kane County in the State
of Illinois at a Term of said court begun
and held at the Court House in Genoa in
said County on the third Monday of
November in the year of our Lord One
Thousand Eight Hundred and Fifty
Nine and of the Independence of the
United States of America the Eighty
Fourth

Present the Hon. Isaac G. Wilson Judge
{ Edward S. Joslyn State attorney
{ Ethan J. Allen Sheriff
Absent Paul R. Wright }
Clerk }

Be it Remembered that heretofore To wit: on
the 21st day of January A.D. 1859 a
Summons was issued by the clerk of
said court which was in the words &
figures following To wit:

State of Illinois }
Kane County }^{ss}

The People of the State of
Illinois to the Sheriff of said county Greeting:
We command you that you Summon
Stephen March Francis H. Bowman &
John Lloyd if they shall be found in your
county personally to be and appear before the
circuit of said county on the first day of
the next term thereof to be holden at the
Court House in Genoa in said county
on the second Monday of May next to
Answer unto Erastus Hallock in a
Plea of Assumpsit Do the damage of
the said Plaintiff as he says in the
sum of Three Hundred Dollars and
have you then and then this writ with
an endorsement thereon in what manner
you shall have executed the same

{ Court
file }

Witness Paul R. Wright clerk
of our said court and
the seal thereof at Genoa
in said county this 21st
day of January A.D. 1859
P. R. Wright
Clerk

Which Summons was returned on the 28th day
of January A.D. 1859 and endorsed as follows

5
Served this writ by reading to Francis
H. Bowman & John Lloyd & Stephen March
this 21 day of January 1859
Ethan J. Allen

Sherriff of Kane county
by W. M. Clark
Deputy

And afterwards Do mit on the 5th day of
February A.D. 1859 a Declaration was filed
in the office of the clerk of said court in
the words and figures Do mit:

State of Illinois } Kane County Circuit Court
Kane County }^{ss.} of the May Term A.D. 1859
Erastus Wallock Plaintiff
vs. Eastman & Botsford his
attorneys complains of Stephen March (also
of Francis H. Bowman & John Lloyd (the two
last named) partners in business under the
name firm and style of Bowman & Lloyd
defendants who are summoned & of a
plea of Dispass on the case or promises
For that Whereas the said defendants heretofore
to wit: on the nineteenth day of November
in the year of our Lord One thousand Eight
Hundred & fifty six at St Charles Do mit:
at said county of Kane made then certain
promissory note in writing bearing date

3

the day and year aforesaid and then and
 then delivered the same to Erasmus Wallock
 in and by which said note said defendants
 by the name style and description of Stephen
 March Bowman & Lloyd promised to
 pay to said Erasmus Wallock the sum of
 Four Hundred and fifty five Dollars
 & Twenty three cents by the first day of
 April One Thousand Eight Hundred
 and Fifty Eight for value received
 By means whereof and by force of
 the statute in such cases made &
 provided the said defendants became
 liable to pay said plaintiff said sum
 of money. Mentioned in said note
 & being so liable in consideration thereof
 then and ^{there} undertook and promised
 to pay the same to the said Plaintiff
 according to the tenor and effect of
 the said note to wit: at the place aforesaid -
 And whereas also ^{the} said Defendants
 afterwards to wit: on the first day of
 January in the year of Our Lord One
 Thousand Eight Hundred and fifty
 Nine & to wit: at said County became
 and are indebted unto the said plain-
 tiff in a large sum of money & to
 wit the sum of Three Hundred

5- Dollars for money before that time lent
and advanced to said defendants by
said plaintiff at said defendants request
and also in the like sum for money
before that time paid out and expen-
ded for said defendants by the said
plaintiff at the like special request
of said defendants and in the like
sum for money before that time had
and received by said defendants to
and for the use of said plaintiff
and also in a like sum for interest
and forbearance of large sums large
sums of money before that time had &
laid out and expended for said
defendants at the said like special
request of said defendants by the
said plaintiff. Yet the said defendants
not regarding their said promises & under-
takings but continuing although often
requested so to do have not paid said
plaintiff either of the said sums of money
above mentioned or any part thereof but
so to do have ^{and still as neglect & refuse} wholly neglected
and refused to the damage of said
plaintiff of the sum of three Hundred
Dollars and therefore he brings this
Bill &c

Eastman & Bateford

Plaintiffs Attys

Copy of Note & Account declared on
St Charles Nov 19th 1856
By the first day of April 1858 I promise
to pay to Erastus Wallack and not to any
other person except his heirs & executors
the sum of Four Hundred and Fifty-
five dollars & 23/100 for value recd.

Stephen March
Bowman & Lloyd ^{Sutcliffe}

On the back of which note
is written the following
Interest to commence April 1st 1857
at ten per cent as per agreement.

327.00

Paid on the within note Three
Hundred & Twenty Seven Dollars
April 1st 1858 " E. F. Wallack

Stephen March Bowman & Lloyd
Do Erastus Wallack & Co
Do Money lent and advanced \$300.00
Do Money Paid laid out & expended 300.00
Do Money had & account to and for the use of said
Plaintiffs 300.00
Do Money due as interest & forebearance 300.00

Endorsed - Dated Feb. 5th 1859
P B Wright clark

And Afterwards Do wit: on the 15th
day of February A.D. 1859 Pleas were filed
in the office of the clerk of the Circuit Court
aforesaid in the words & figures following
Do wit:

Stephen March	} Hancock County Circuit Court
Francis H. Bowman	
John Gloy &	
at	
Erastus Hallack	} February Term A.D. 1859

And the said defend
ants by A. M. Herrington come and
defend the wrong and injury where
and say that the said Plaintiffs ought
not further to have or maintain his
aforesaid action there against the said
defendants because they say that after
the making of the said several promises
and undertakings in the said declar-
ation mentioned & before the commence-
ment of this suit Do wit on the nineteenth
day of January A.D. 1859 at St Charles
in the county of Hancock and State of
Illinois the said plaintiffs and the
said defendant submitted themselves
to wit: on the day and year last afore-
said to the arbitrators of Eli Barber
& J. S. Van Patton mutually chosen in

8
the following manner The said plain-
tiff selected Eli Barber and the said
defendants selected J. S. Van Patten to whom
it was mutually agreed by the respective
parties they would submit all those matters
of difference in said declaration mentioned
complained of and that after they had
heard all the evidence and allegations
of the parties in the premises if they could not
agree upon an award in the premises then they
the said arbitrators so mutually chosen as
aforesaid should choose a third man
to aid them in the premises And then
said defendants aver that the said
Arbitrators so mutually chosen as afore-
said not being able to agree upon and in the
premises did then and there select as the
third arbitrator in the said premises J. W.
Durant and the said defendants aver
that the said parties did then and
there engage in all things well and
truly to stand to obey abide perform
fulfil and keep the award order and
arbitriment final and ~~said~~ ^{said} determination
of said arbitrators so chosen as aforesaid of and
concerning all ~~business~~ ^{controversies} of ~~contentions~~ actions
and cause of actions in said declaration
mentioned And the said defendants

7.

Further and Saith that the said arbitra-
 tors aforesaid took upon themselves the
 burthen of said Arbitration and having
 duly examined & considered the subject
 matters in dispute between the said
 plaintiffs and the said defendants they the
 said arbitrators did ~~not~~ make their
 award in writing under their hands
 of and concerning the said ~~promises~~^{things}
 and ~~undertakings~~^{of and concerning the said promises} in the said declar-
 ation mentioned and ready to be ~~delivered~~
 delivered to the said parties in difference
 and did thereby then and there award
~~that~~ that the said defendants were
 indebted to the said plaintiffs in the
 sum of twenty cents as by said award
 bearing date on the day of year last
 aforesaid) reference being thereunto had
 will more fully appear and this the said
 defendants are ready to verify by the said
 record Wherefore they pray Judgment if
 the said plaintiffs ought to have and
 maintain his aforesaid action things
 against them &c.

Herrington Jm
 depts.

10
Stephen March
Francis H. Bowman
& John Lloyd
at
Erastus Hallock

Kane County Circuit Court
Feb Term A.D. 1859

And the said defendants
by A. M. Herrington their attorney sworn
and defend the wrong & injury when ec.
& forth that they did not undertake a
promise in manner & form as the said plain-
tiff hath above therein complained against
them and of this they put themselves
upon the country &c

A. M. Herrington
deft's attorney

And the Plaintiff
doth the like

D. L. Eastman
Plffs. atty.

Dated Feb. 15th 1859.

P. R. Wright
Clerk

And afterwards Do wit on the 3^d day of
March A.D. 1859 the same being one of the
days of the ^{February} ~~November~~ Term of said Court
The following among other proceedings was
had and entered of record

Erastus Hallack

Stephen March
Francis H. Bowman
& John Lloyd

} Assumpsit

This day comes the plaintiff
defendants by Werrington their attorney
and on their motion it is ordered by the
Court that the Plaintiff be ruled to file his
replication herein by Monday next

And afterwards do wit on the 10th day
of March 1859 a Replication was filed in
the office of the clerk of said court in the
words & figures following do wit

Erastus Hallack

Stephen March
John Lloyd &
Francis H. Bowman

} Term court, Circuit Court
February Term A.D. 1859

And the said plaintiff
as to the said plea of the said defendants
by their first above pleaded by D. L. Eastman
his attorney says Recludi non because
he says that the said Plaintiff and the
said defendants did not after the making
of the said several promises & undertakings

in said declaration mentioned and
 before the commencement of this suit sub-
 mitted themselves to the arbitration of Eli
 Barber & J. S. Van Patten in manner & form
 as said the said defendants hath above
 in his said plea in that behalf alleged
 And thus the said plaintiff pray may
 be inquired of by the country &c

D. L. Eastman
 Plffs. atty.

And the said defendants
 with the like
 A W Herrington
 their atty }

Filed March 10th 1859 }
 P. C. Wright clerk }

And afterwards Do wit on the 29th day
 of November 1859 the same being one of
 the days of the November term of the said
 Court the following among other proceed-
 ings was had and entered of record in
 said court

44
Erasmus Hallack

Stephen March
Francis H. Bowman
& John Lloyd

Assumpsit

This day comes the Plaintiff
by Eastman & Botsford & Moore his attorney
and the defendants by Herrington & Barry
their attorney also come and on motion of
the defendants leave is given them to withdraw
the Plea of the General issue Thereupon on
motion of the Plaintiff it is ordered by the
court that a jury come whereupon come
a jury of good and lawful men to wit
John J. Chambers Calist Kipp John W. C. Ollend
George Thompson Zachariah Hathorn Marcus P.
Rowland Joseph Spaulding Holmes Miller
G. C. Everts Henry Lyon George Buckland and
H. P. Stephens who are lawfully tried selected &
sworn to try the issues between the parties & to
render a true verdict according to the evidence
after hearing the evidence arguments of
counsel and the instructions of the court the
jury retire under in the charge of a sworn
officer of this court to consider of their verdict
Subsequently the jury return into court and
for a verdict upon their oaths do say
that the jury find the issues joined for the

14
defendants which verdict is ordered by the
court to be entered of record — Thereupon
the Plaintiff moves for a new trial

And afterward Do sit on the 17th day of
December 1859 the same being one of the days
of the November Term of said court the
following among other proceedings was
had and entered of record

Epastus Hallack
v
Stephen March } Assumpsit
Francis W. Bowman
& John Lloyd }

This day come again
the Parties in this suit by their respective
attorneys and the Plaintiffs Motion for a
new trial therefor entered herein coming
on to be heard after argument of counsel
the court being fully advised overrules said
Motion and orders judgment on the verdict
of the jury herein to which decision of the
court the Plaintiff by his attorney excepts
It is therefore considered by the court that
the defendants have and recover of the
Plaintiff their costs in this suit expen-
ded and have execution therefor

5
And afterwards So on the 17th day of December
A.D. 1857 a bill of exceptions was filed in
the office of the clerk of the said court in words
and figures following to wit:

State of Illinois } Kane County Cir Court-
Kane County } November Term A.D. 1857
Erastus Hallack

v
Stephen March Francis

H. Bowman & John Lloyd

} And now comes on
to be heard the above
entitled cause the Plaintiff appearing by
his atty Eastman & Moore & the defendants by
their atty. A. W. Huntington it being one of the
days of the said Kane County Circuit Court
and of the said November Term thereof the Plain-
tiff and read in evidence a note a copy of
which is appended to the declaration filed in
this case and which is in substance mentioned
in body of said declaration of which the following is a true
copy

St Charles Nov. 17 1856

By the first day of April 1858 I promise
to pay to Erastus Hallack (and not
to any other person except his heirs or ex-
ecutors the Sum of Some Hundred and
Fifty Two Dollars & ²/₁₀₀ or value rec^d
Stephen March
Bowman & Lloyd

16
Endorsed - Paid on the within note three
Hundred & Twenty Seven Dollars April 1st
1858 E. T. Hallack
Interest to commence April 1st 1857 at
ten per cent as per agreement
and rested his case

The Defendants then introduced A. J. Groom
who being sworn testified as follows I know
the parties to this suit - know that an arbi-
tration was had about the 19th of January
1859 It was held in my office shop in St
Charles (per several notes were presented to the
witness) These notes were presented before the
arbitration Notes given in evidence to
the jury which are as follows

St Charles July 9th 1856

\$50.

Don March after date I
promise to pay to the order of March
& Hallack the sum of Fifty Dollars
Dollars at ten per cent per annum
until paid value received

Simon Shattuck

Endorsed

Elmer Shattuck

For value rec^d or guarantee the
payment of the within note to D. March

S. March

E. Hallack

\$80.00

St Charles Oct. 20th 1856

By the first of May next I promise
to pay to the order of March & Hallack or
bearer Eighty Dollars at ten per cent per
annum until paid value received

No 22 - Due 1st May /57 } Leroy Grunk

Endorsed

For value rec^d on guar
antee the payment of
the within note to S March

S March
& Hallack

\$85.00

Franklin Groce Aug. 9 1856

Three Months after date I promise
to pay to March & Hallack or order
Eighty Five Dollars value received with
interest at six per cent

Edward Haggerty

Shew now present at the arbitration Stephen
March Erastus Hallack J. H. Bowman
J. S. Van Patten Eli Barber and myself

The Parties now sworn Bowman was
sworn He represented the firm of Bowman
& Lloyd as I supposed he was then during
the arbitration Bowman & Lloyd had
signed the note as security only It was
agreed to submit the dispute about said
note to the decision of Van Patten & Barber

15
and if they could not agree they should
select the third man. They did not agree
and selected E. W. Durand as the third
man and an award was agreed upon.

Cross Ex^t — Bowman was there he was
sworn — can't say that I heard Bowman
say that he submitted to the arbitration.
Bowman came there so far as I know of
his own accord — I did not see ^{Mr. A.} Lloyd
there at all, ^{that he was not there} I was not present when the agree-
ment to submit to arbitration was
made — I think the agreement was
made the day previous to the arbitration.
The words between the parties at the
time of the arbitration I do not remem-
ber — I think one party said "I will
abide by the arbitration" and the other
said "I will" Bowman was there at
the time —

Afterwards the arbitrators came in
Direct Resumed —

It was only a few days
after I heard that there was to be an arbi-
tration that it took place. Bowman was
present in the room all the time during the
arbitration talking promiscuously & consulting.
I do not recollect certainly whether he

Witnesses were sworn they talked about
the note in this case it was brought
into account and was arbitrated
Hallack brought in the note
Re cross Exd.

There were other papers sub-
mitted - A note made by Krumb for \$50.
one by Shattuck for \$50. March said he
had taken a new note for this last one
in place of the old one payable to him
there was one Haggarty note for about
\$80. not endorsed Notes payable to March
& Hallack and at the time in my hands
as assignee of March. One note spoken
of which had been paid in Lee co. This last
note was not before the arbitrators

James Vartatten sworn for Deft. - Was in
St. Charles January 19 1854 was one of the
arbitrators. Myself and Eli Barber the
submission was by word of mouth
There were present March Hallack Grover
Bowman Barber & Myself This note was
then the one on which this suit is brought
I think Hallack produced it March
offered some notes Bowman testified in
the case and so did the other parties
Barber & Myself disagreeing we chose S. H.

Darand is third Man after hearing the parties and the evidence made an award. There were other notes submitted to us one Krumpholtz Haggarty note talked about.

The notes were talked about by all the parties present. The award was destroyed by myself about a month ago. I allowed Bowman to make a copy of it (paper shown to witness). This may be a correct copy. I think it is a correct copy of the award as made. This paper is Bowman's handwriting. I bound up the original on my own motion.

Cross Ex^d — I learned two or three days before the meeting of the arbitration. March notified me and my impression is he told me Barber was to be one of the arbitrators. ^{Barber said (never said anything to me about acting as arbitrator)} When March spoke to me I don't know that any parties but March & Hallack were mentioned. Do not know that Bowman & Lloyd submitted to me any matter to arbitrate. The arbitration was in Groves shop about January 19th 1859. Bowman was there and was sworn. Lloyd was not there. The counsel for plaintiff called upon me for the award. I did not give it to him. I told him it was lost.

Direct resumed by Deft — I did not know

Each party was allowed to make his statement before the arbitrators or what he knew about it and Mr Bowman his The Parties made their statements I think without oath but am not positive Bowman was upon at the shop when we arrived there I did not know what Parties matters were to be arbitrated until we got there.

Re cross exam by Plff. — I did not know that Bowman & Lloyd had anything to do with it until the preliminaries were arranged and then as appeared from Mr Bowmans statements or testimony. The defendants then offered the copy of the award made by Bowman in accordance to the introduction of which the Plff. objected. The objection was overruled by the court and the paper read to the jury as follows. ~~His case~~ We the undersigned arbiters in the matter wherein Stephen March & Erastus Hallack are parties concerned after having carefully examined the written arguments entered into between the said parties and also Mr Bowmans statement as to his understanding of the same have arrived at the following conclusions. That Hallack is holder in the guaranty on

the notes Erny Krumb of Eighty Dollars
 given Oct. 20th 1856 Simon and Eben Shattocks
 of Fifty Dollars dated July 8th 1856 & Edward
 Haggarty of Eighty Five Dollars given August
 9th 1856 and understand that he admits
 the same on Frost's note but that he is not
 holder on the duplicate note of Shattocks
 taken by March subsequent to the said agree-
 ment of guaranty and that March took
 the same on his own responsibility also that
 any act or transaction of March's subse-
 quent to the guaranty does not cut off
 any interest Hallack had in the notes of
 the firm previous to the said guaranty
 we find that the present worth of the said
 notes is as follows

Frost	\$ 92.54
Krumb's	\$ 97.95
Shattocks	62.58
Haggarty's	105.94
Fint.	<u>\$ 363.81</u>
Hallack's note	\$ 186.90
our half Hallack's	<u>187.60</u>
Sum	70

Signed — { Eli Barber
 J. S. Van Ratten
 J. H. Durand

To which ruling of the court the
plaintiff then and there excepted

The Plaintiff has requested the court to
give the following instructions to the jury

"A"

The Court is asked to give the following
instructions on the part of the Plaintiff
Unless the jury believe from the evidence
that the Plaintiff and all the defendants
to wit Stephen March Francis ^{de} Bowman
John Lloyd agreed to submit the matters
of difference between them to the arbitra-
tion of James S. Van Patten Eli Barker
~~and~~ such other person as they should
select in case of their inability to agree
they should find for the issue found in
favor of the Plaintiff

"B"

The main fact that the defendant Bowman
was present as a witness at the time an
agreement was made between
the Plaintiff Hallock and the defendant
March to submit their matters to arbitration
is not evidence of itself that the Bowman assented
to the terms of submission then agreed on

Which instruction marked (A) was endorsed on its margin by the court "Given" and read to the jury. Instruction marked (B) was endorsed on its margin by the court "Refused" to which action or ruling of the court in refusing the said instruction "(B)" the said Plaintiff by his counsel then and there duly excepted.

The defendant asked the court to give the jury instructions marked (C)

"C"

If the jury believe from the evidence that Hallack the Plaintiff and March and Francis H. Bowman on the part of D for the Bowman & Gloyd agreed to the submission stated in the defendant's Plea in this case then the jury must find for the issues for the defendants. Which instruction the court endorsed upon its margin "Given" and read the same to the jury to which action and ruling of the court the said Plaintiff by his counsel then and there duly excepted.

The jury found the issues for the defendant. The Plaintiff moved the

8
court for a new trial on the ground that
the verdict was contrary to the evidence &
contrary to law and the court erred in
admitting the copy of the award in evidence.
That the court erred in giving the defendants
instruction That the court erred in refusing
the Plaintiff's instructions

The court over ruled the motions for a
new trial and rendered judgment upon the
verdict to which ruling of the court
the in refusing to a new trial the
Plff excepts & prays that this bill of
exceptions be signed & sealed in open court
which is done

Isaac G. Wilson

State of Illinois } ss I Paul R Wright clerk of
Kane County }
do hereby certify that the foregoing
is a true & perfect Transcript of the record
and files in my office in a suit in which
Eneas Hallack is plaintiff and Stephen
March John Boyd & Francis A. Bowman
are defendants of the following papers to wit:
Summons and the officers return thereon -
Declaration - Pleas - Replications - The award
of arbitrators - Non Promisory notes Bill of
exceptions & Instructions of the court
Witness my hand and the
Seal of said court at Genoa
in said county this 26th
day of March A.D. 1860
P. R. Wright - clerk



In Supreme Court
April Term 1860.

Ernestus Halleck
Plaintiff in error

vs

Stephen Muchstat
Defendants in error

} Error to Kane County.

Assignment of errors.

1. The Court erred in allowing improper evidence to go to the Jury on the part of defendants.
2. The Court erred in refusing plaintiffs instructions as asked.
3. The Court erred in giving defendants instructions as asked.
4. The Court erred in over-ruling motion for new trial.
5. In giving judgment on the verdict.
6. The verdict was contrary to the law and evidence.

Eastman & Botsford
J. L. Beveridge
Atty for Plaintiffs in error.

181

Supreme Court

Erastus Halleck

20

Stephen Marchant

Errors

4

Filed April 17, 1860

L. L. Mumford

Clk

W. L. Eastman
L. L. Beveridge
for pet in error

Two Tus At black

11

Stephen Macon
Francis H Brownson
John Loyde

Supreme court
of the Territory
1860

And the said Stephen
Macon Francis H Brownson & John
Loyde by W D Bory their attorney
Come & say there is no error either in the
record & proceedings aforesaid or
in giving the judgments aforesaid
aforesaid & therefore they pray that
the said judgments may be affirmed.

W D Bory
Atty for Defts

Filed Apr 24. 1865

A. Deland

Clark

11

131-84
Erasmus Hallack

Stephen March Et. al.

Filed April 3^d 1860
L. L. L. L.
Clerk

Duo 1860