

No. 13224

Supreme Court of Illinois

Farr

vs.

Johnson

STATE OF ILLINOIS.

SUPREME COURT,
Third Grand Division.

No. 298.

*Farr
&
Johnson*

1861

Rock Island April 24/61.

L Leland Ely

Ottawa.

Dear Sir.

Mr Hawley has just informed me that I have been a party to a violation of a rule of the Supreme Court against the withdrawal of papers from the files. If so it has been wholly unintentional on my part, and was done under the following circumstances. In the case in question (Farr vs Johnson) Mr Bigelow desired me to waive process enter appearance and submit the case at the present time upon written arguments, to which I agreed, and to enable me to do so the more conveniently he consented that I should bring home with me and retain for a few days the

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papers in the case, and handed
them to me for that purpose.
I inquired as to the rule of
Court in such case and was
informed that papers could be
taken from the files by consent
and the giving of a receipt,
I inferred that the consent
required was that of the oppo-
-site Counsel, and that he had
given the requisite receipt, &
thereupon took from him the
papers. Had I known for a
moment that the consent of
Court was required, I should
of course have obtained
before taking the papers.

I return herewith the papers
referred to, with the request
that you will ~~do~~ me the
favor to make known the
above facts to the Court, and

relieve me of any imputation
that might arise of a purpose
to violate or avoid any rule
of the Court, or of knowingly
contemning threats. I may add
that I am quite confident
Mr. Bigelow acted in the
matter in the good faith with
myself.

Yours truly
D. O. Wilkinson

P.S. I am just in receipt of
the proceedings sent me by you.
The other matters mentioned in
your letter I will see attended to,
and besides will see you soon
W.

298

Farr
v.
Johnson }

Judge Wilkison's
Return

W

Ottawa

J. Deland Esq

Filed May 1st 1861
J. Deland
Clerk

SUPREME COURT.

OLOF JOHNSON,	}	Points of Appellant.
<i>Appellee,</i>		
vs.		
GEORGE FARR,	}	T. G. FROST, and H. BIGELOW, <i>Attorneys for Appellant.</i>
<i>Appellant.</i>		

The declaration in this case counted on an award of \$4502,47 found to be due from Farr to Johnson. The court allowed the award offered in evidence to be read to the jury as being substantially the same as that set forth in the declaration, and as being an award of \$4502,47 due from Farr to Johnson, and not from Johnson and Farr to Johnson, overruling the objection made on the part of the defendant below to its introduction, and assumed this to be the true construction of the award, in the instructions given to the jury, and in the refusal to give the sixth instruction asked for by the defendant below. The jury, by the instructions of the court, were compelled to take the same view of the subject, and accordingly rendered a verdict for the whole sum of \$4502,47 in favor of Johnson and against Farr.

This construction was erroneous, and consequently the instructions of the court and the verdict of the jury, based upon such construction, were contrary to law, and not warranted by the evidence, for the following reasons :

1st. This construction is inconsistent with the express language of the award.

2d. It is inconsistent with the clear and obvious intention of the arbitrators.

1st. As to the language.

The account submitted for the action of the arbitrators was a bill of items in favor of Olof Johnson, against Johnson and Farr. This the arbitrator Jones swore they were arbitrating, and the express language of the award is that the "arbitrators between Olof Johnson, plaintiff, and George Farr, defendant, agree on the following points in the bill of

Olof Johnson, against Johnson and Farr," stating them numerically substantially, in the order in which they occur in bill "1st," "2d," "3d," "4th," "5th," "6th."

The sixth finding is just as much qualified by the limitation at the commencement of the award restricting it to the points in the bill of Olof Johnson, against Johnson and Farr, as any of the previous findings, and if the indebtedness named in No. one was an indebtedness of Johnson and Farr, so was the balance due Olof Johnson, or balance due not from Farr but from the firm of Johnson & Farr; and the language of the award throughout is consistent with this construction, and inconsistent with any other.

2d. It is an elementary rule, that the *intention* should always control the construction of a written instrument, when it is clearly apparent from the paper itself, even though to some extent, repugnant to express words inconsistent with it.

The bill referred to in the award is, by the language above quoted, made part of the award, and reference to the bill, therefore, is proper, if not absolutely necessary to a clear understanding of the award itself. This bill is an account in favor of Olof Johnson, against the firm of Johnson & Farr, and contains a balance sheet, due from Johnson & Farr to Olof Johnson, of \$5,042.13, giving the items from which this balance is arrived at, by arithmetical calculation, and leaving no sort of question as to what it means or from whom the balance is claimed to be due, and simply giving the state of the account between Johnson & Farr and Olof Johnson as being \$5,042.13 in favor of Johnson.

The Arbitrators in that award took up seriatim the items which go to make up this balance, and

1st. Reduce the charge for exchange from three per cent. to one and one-half per cent.

2d. They deduct \$125 from the bill of costs and expenses.

3d. They reduce the interest charge from ten to six per

cent. adding in the interest to the date of the award.

4th. Allow fifteen per cent. commission for paying indebtedness.

5th. Require a division of partnership assets according to contract.

6th. Reduce by means of the above deductions from Johnson's bill the balance in his favor against the firm of Johnson & Farr from \$5,042.13, as claimed by him, and stated in his bill, to \$4,502.47, as stated in the award.

Taking into consideration this bill, it is not possible to mistake the meaning of this award—parties, arbitrators, witnesses—all understood it alike, and differently from the court and jury, and a remittiter was accordingly instanter entered on the verdict.

Part II. The remittiter is of no avail.

1st. Because the judgment is erroneously entered up for the whole amount of the verdict. The words "subject to the above remittance," do not cure the error. The amount remitted should have been deducted, and judgment only entered for the balance.

2d. There was (if the construction taken by the defendant be correct) a fatal variance between the award set up in the declaration and that proved on the trial, and this objection as the record shows was taken by the defendant below.

3d. The award was uncertain and indefinite and no recovery could be had upon it. The arbitrators failed to push their investigation far enough to ascertain and decide upon the actual amount due from Farr to Johnson. The award cannot be helped out by intendment—it must definitely fix the sum due, and which is awarded to be paid by one party to the other. The award cannot conclude the partners beyond the facts found. The arbitrators may have found the parties equal partners and they may not. They should have decided that question. No presumption on their part could be indulged to aid a verdict, judgment or award.—*Meech vs.*

Allen 3 Smith Rep. 17 vol. N. Y. court of Appeals page 304, 305.

In this case the court use the following language: "Formerly a judgment creditor of one of the partners might levy his execution upon property belonging to the firm and upon the presumption that the interest of the partners was equal might proceed to sell and appropriate one half of the avails to the satisfaction of the debt." This, however, was long since overruled. Lord Eldon lays down the rule ever since acted upon, that the creditor in such cases must wait until the partnerships accounts are settled, before he can claim anything from the partnership property. The principle here asserted by Lord Eldon is distinctively applicable to the present case. It is, that no inference can be safely drawn from the external relations of partners to the world, as to the situation of their affairs inter sese; and that in all *judicial proceedings* concerning the latter an *investigation is first to be made*, and such is the variety and frequent complexity of partnership proceedings, that any other rule would obviously lead to gross injustice.

The arbitrators may have intended that Farr's share of the balance should be paid to Johnson directly by Farr, or that according to the usual course of business and practice in such cases, that it should be paid out of the assets of the firm referred to in the award when the same should be collected, and the balance of the assets, after paying the firm indebtedness, should be divided; we cannot say what conclusion they would have to come to on these points.

No recovery could be had in this action, on the original consideration or indebtedness, as there was no evidence of the same, aside from the award, nor could an action at law have been maintained by one partner against the other, on account of partnership matters. The suit was upon the award, and upon that alone, if at all, the verdict must be sustained. Suppose the jury had found a special verdict in

this case in accordance with the facts, and reported \$4502.47 due from Johnson & Farr to Olof Johnson, by the terms of the award, could judgement have been entered on such a verdict? If not, neither could a verdict be entered upon such an award. At best, the award only furnished a rule and basis upon which the parties might be enabled to settle it themselves.

III. The declaration of Farr to the arbitrators, that he would have nothing more to do with the arbitration, in connection with the circumstances under which it was made, amounted to a revocation—it meant that, or else it meant nothing at all—and the instruction No. 2, given at the request of the plaintiff below, did not fairly present the law on this point, and was calculated to mislead the jury.

It is not a correct proposition of law, as stated by the court, that to “constitute a revocation,” that the party “should, by the use of the word revoke, or of other words, clearly and distinctly inform the arbitrators that he revoked or annulled the agreement, submitting the case to them.”

A party cannot “revoke or annul the agreement submitting the case.” He may revoke the power of the arbitrators and by thus doing, he makes himself liable to an action, for a breach of the agreement. If it was the intention of Farr to revoke, and he used language to the arbitrators, showing a design to disregard their proceedings and treat them as void, this was sufficient, whether he clearly and distinctly informed the arbitrators that he revoked the agreement or not. There are various modes by which a party may revoke by implication, as by bringing suit, &c.

In 1st Cowen, N. Y. Rep. 340, the court say, “though this instrument be informal, and the defendants have failed to express their object according to grammatical rules, yet if an intention to revoke can be gathered from the entire deed, we must give it the same operation as if expressed in the plainest terms.”—See also 2 Wen. N. Y. Rep., 494.

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298. 141

Harr

v

Johnson

Appellants
Brief -

Filed May 12th 1861

L. Leland

Clank

SUPREME COURT.

OLOF JOHNSON,

Appellee,

vs.

GEORGE FARR,

Appellant.

Points of Appellant.

T. G. Fæst, and H. BIGELOW

Attorneys for Appellant.

The declaration in this case counted on an award of \$1502,47 found to be due from Farr to Johnson. The court allowed the award offered in evidence to be read to the jury as being substantially the same as that set forth in the declaration, and as being an award of \$4502,47 due from Farr to Johnson, and not from Johnson and Farr to Johnson, overruling the objection made on the part of the defendant below to its introduction, and assumed this to be the true construction of the award, in the instructions given to the jury, and in the refusal to give the sixth instruction asked for by the defendant below. The jury, by the instructions of the court, were compelled to take the same view of the subject, and accordingly rendered a verdict for the whole sum of \$1502,47 in favor of Johnson and against Farr.

This construction was erroneous, and consequently the instructions of the court and the verdict of the jury, based upon such construction, were contrary to law, and not warranted by the evidence, for the following reasons:

1st. This construction is inconsistent with the express language of the award.

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The account submitted for the action of the arbitrators was a bill of items in favor of Olof Johnson, against Johnson and Farr. This the arbitrator Jones swore they were arbitrating, and the express language of the award is that the "arbitrators between Olof Johnson, plaintiff, and George Farr, defendant, agree on the following points in the bill of

Olof Johnson, against Johnson and Farr," stating them numerically substantially, in the order in which they occur in bill "1st," "2d," "3d," "4th," "5th," "6th."

The sixth finding is just as much qualified by the limitation at the commencement of the award restricting it to the points in the bill of Olof Johnson, against Johnson and Farr, as any of the previous findings, and if the indebtedness named in No. one was an indebtedness of Johnson and Farr, so was the balance due Olof Johnson, or balance due not from Farr but from the firm of Johnson & Farr; and the language of the award throughout is consistent with this construction, and inconsistent with any other.

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The Arbitrators in that award took up seriatim the items which go to make up this balance, and

1st. Reduce the charge for exchange from three per cent. to one and one-half per cent.

2d. They deduct \$125 from the bill of costs and expenses.

3d. They reduce the interest charge from ten to six per

cent. adding in the interest to the date of the award.

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1st. Because the judgment is erroneously entered up for the whole amount of the verdict. The words "subject to the above remittance," do not cure the error. The amount remitted should have been deducted, and judgment only entered for the balance.

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III. The declaration of Farr to the arbitrators, that he would have nothing more to do with the arbitration, in connection with the circumstances under which it was made, amounted to a revocation—it meant that, or else it meant nothing at all—and the instruction No. 2, given at the request of the plaintiff below, did not fairly present the law on this point, and was calculated to mislead the jury.

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298.

Harr
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Appellants
Brief -

Filed May-1st 1861

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Clerk

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Attorneys for Appellant.

The declaration in this case counted on an award of \$4502.47 found to be due from Farr to Johnson. The court allowed the award offered in evidence to be read to the jury as being substantially the same as that set forth in the declaration, and as being an award of \$4502.47 due from Farr to Johnson, and not from Johnson and Farr to Johnson, overruling the objection made on the part of the defendant below to its introduction, and assumed this to be the true construction of the award, in the instructions given to the jury, and in the refusal to give the sixth instruction asked for by the defendant below. The jury, by the instructions of the court, were compelled to take the same view of the subject, and accordingly rendered a verdict for the whole sum of \$4502.47 in favor of Johnson and against Farr.

This construction was erroneous, and consequently the instructions of the court and the verdict of the jury, based upon such construction, were contrary to law, and not warranted by the evidence, for the following reasons :

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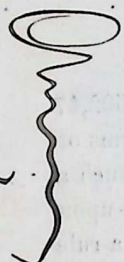
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In 1st Cowen, N. Y. Rep. 340, the court say, “though this instrument be informal, and the defendants have failed to express their object according to grammatical rules, yet if an intention to revoke can be gathered from the entire deed, we must give it the same operation as if expressed in the plainest terms.”—See also 2 Wen. N. Y. Rep., 494.

Fiarr. 
 v.
 Johnson.

Appellants

Brief.

Filed May - 17th 1861

L. Ireland

Clark

S U P R E M E C O U R T.

O L O F J O H N S O N ,

Appellee,

vs.

G E O R G E F A R R ,

Appellant.

Points of Appellant.

T. G. FROST, and H. BIGELOW

Attorneys for Appellant.

The declaration in this case counted on an award of \$1502,47 found to be due from Farr to Johnson. The court allowed the award offered in evidence to be read to the jury as being substantially the same as that set forth in the declaration, and as being an award of \$1502,47 due from Farr to Johnson, and not from Johnson and Farr to Johnson, overruling the objection made on the part of the defendant below to its introduction, and assumed this to be the true construction of the award, in the instructions given to the jury, and in the refusal to give the sixth instruction asked for by the defendant below. The jury, by the instructions of the court, were compelled to take the same view of the subject, and accordingly rendered a verdict for the whole sum of \$1502,47 in favor of Johnson and against Farr.

This construction was erroneous, and consequently the instructions of the court and the verdict of the jury, based upon such construction, were contrary to law, and not warranted by the evidence, for the following reasons:

1st. This construction is inconsistent with the express language of the award.

2d. It is inconsistent with the clear and obvious intention of the arbitrators.

1st. As to the language.

The account submitted for the action of the arbitrators was a bill of items in favor of Olof Johnson, against Johnson and Farr. This the arbitrator Jones swore they were arbitrating, and the express language of the award is that the "arbitrators between Olof Johnson, plaintiff, and George Farr, defendant, agree on the following points in the bill of

Olof Johnson, against Johnson and Farr," stating them numerically substantially, in the order in which they occur in bill "1st," "2d," "3d," "4th," "5th," "6th."

The sixth finding is just as much qualified by the limitation at the commencement of the award restricting it to the points in the bill of Olof Johnson, against Johnson and Farr, as any of the previous findings, and if the indebtedness named in No. one was an indebtedness of Johnson and Farr, so was the balance due Olof Johnson, or balance due not from Farr but from the firm of Johnson & Farr; and the language of the award throughout is consistent with this construction, and inconsistent with any other.

2d. It is an elementary rule, that the *intention* should always control the construction of a written instrument, when it is clearly apparrent from the paper itself, even though to some extent, repugnant to express words inconsistent with it.

The bill referred to in the award is, by the language above quoted, made part of the award, and reference to the bill, therefore, is proper, if not absolutely necessary to a clear understanding of the award itself. This bill is an account in favor of Olof Johnson, against the firm of Johnson & Farr, and contains a balance sheet, due from Johnson & Farr to Olof Johnson, of \$5,042.13, giving the items from which this balance is arrived at, by arithmetical calculation, and leaving no sort of question as to what it means or from whom the balance is claimed to be due, and simply giving the state of the account between Johnson & Farr and Olof Johnson as being \$5,042.13 in favor of Johnson.

The Arbitrators in that award took up seriatim the items which go to make up this balance, and

1st. Reduce the charge for exchange from three per cent. to one and one-half per cent.

2d. They deduct \$125 from the bill of costs and expenses.

3d. They reduce the interest charge from ten to six per

cent. adding in the interest to the date of the award.

4th. Allow fifteen per cent. commission for paying indebtedness.

5th. Require a division of partnership assets according to contract.

6th. Reduce by means of the above deductions from Johnson's bill the balance in his favor against the firm of Johnson & Farr from \$5,042.13, as claimed by him, and stated in his bill, to \$1,502.47, as stated in the award.

Taking into consideration this bill, it is not possible to mistake the meaning of this award—parties, arbitrators, witnesses—all understood it alike, and differently from the court and jury, and a remitteter was accordingly instanter entered on the verdict.

Part II. The remitteter is of no avail.

1st. Because the judgment is erroneously entered up for the whole amount of the verdict. The words "subject to the above remittance," do not cure the error. The amount remitted should have been deducted, and judgment only entered for the balance.

2d. There was (if the construction taken by the defendant be correct) a fatal variance between the award set up in the declaration and that proved on the trial, and this objection as the record shows was taken by the defendant below.

3d. The award was uncertain and indefinite and no recovery could be had upon it. The arbitrators failed to push their investigation far enough to ascertain and decide upon the actual amount due from Farr to Johnson. The award cannot be helped out by intendment—it must definitely fix the sum due, and which is awarded to be paid by one party to the other. The award cannot conclude the partners beyond the facts found. The arbitrators may have found the parties equal partners and they may not. They should have decided that question. No presumption on their part could be indulged to aid a verdict, judgment or award.—*Meech vs.*

Allen 3 Smith Rep. 17 vol. N. Y. court of Appeals page 304, 305.

In this case the court use the following language: "Formerly a judgment creditor of one of the partners might levy his execution upon property belonging to the firm and upon the presumption that the interest of the partners was equal might proceed to sell and appropriate one half of the avails to the satisfaction of the debt." This, however, was long since overruled. Lord Eldon lays down the rule ever since acted upon, that the creditor in such cases must wait until the partnerships accounts are settled, before he can claim anything from the partnership property. The principle here asserted by Lord Eldon is distinctively applicable to the present case. It is, that no inference can be safely drawn from the external relations of partners to the world, as to the situation of their affairs inter sese; and that in all *judicial proceedings* concerning the latter an *investigation is first to be made*, and such is the variety and frequent complexity of partnership proceedings, that any other rule would obviously lead to gross injustice.

The arbitrators may have intended that Farr's share of the balance should be paid to Johnson directly by Farr, or that according to the usual course of business and practice in such cases, that it should be paid out of the assets of the firm referred to in the award when the same should be collected, and the balance of the assets, after paying the firm indebtedness, should be divided; we cannot say what conclusion they would have to come to on these points.

No recovery could be had in this action, on the original consideration or indebtedness, as there was no evidence of the same, aside from the award, nor could an action at law have been maintained by one partner against the other, on account of partnership matters. The suit was upon the award, and upon that alone, if at all, the verdict must be sustained. Suppose the jury had found a special verdict in

this case in accordance with the facts, and reported \$4502.47 due from Johnson & Farr to Olof Johnson, by the terms of the award, could judgement have been entered on such a verdict? If not, neither could a verdict be entered upon such an award. At best, the award only furnished a rule and basis upon which the parties might be enabled to settle it themselves.

III. The declaration of Farr to the arbitrators, that he would have nothing more to do with the arbitration, in connection with the circumstances under which it was made, amounted to a revocation—it meant that, or else it meant nothing at all—and the instruction No. 2, given at the request of the plaintiff below, did not fairly present the law on this point, and was calculated to mislead the jury.

It is not a correct proposition of law, as stated by the court, that to “constitute a revocation,” that the party “should, by the use of the word revoke, or of other words, clearly and distinctly inform the arbitrators that he revoked or annulled the agreement, submitting the case to them.”

A party cannot “revoke or annul the agreement submitting the case.” He may revoke the power of the arbitrators and by thus doing, he makes himself liable to an action, for a breach of the agreement. If it was the intention of Farr to revoke, and he used language to the arbitrators, showing a design to disregard their proceedings and treat them as void, this was sufficient, whether he clearly and distinctly informed the arbitrators that he revoked the agreement or not. There are various modes by which a party may revoke by implication, as by bringing suit, &c.

In 1st Cowen, N. Y. Rep. 340, the court say, “though this instrument be informal, and the defendants have failed to express their object according to grammatical rules, yet if an intention to revoke can be gathered from the entire deed, we must give it the same operation as if expressed in the plainest terms.”—See also 2 Wen. N. Y. Rep., 494.

Farr
v.
Johnson

Appellants
Brief.

Filed May - 13th 1861

L. Leland
Clerk

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION,
APRIL TERM, 1861, AT OTTAWA,

GEORGE FARR, Appellant, }
vs
OLOF JOHNSON, Appellee. }

H. BIGELOW & T. G. FROST,
Attorneys for Appellant.

POINTS FOR APPELLANT.

I.

The Court erred, in allowing the written award signed by Wiley, Jones and Bond, to be given in evidence to the jury.

The authority given to arbitrators, should not be imperfectly exercised, since the obligation to perform the award arises exclusively from the promise contained in the submission. And all matters in difference which are recited in the submission, should be determined by the award.

Cald. on Art. 226.
Ibid, 236.

The award does not determine all the matters of difference recited in the submission. The submission, is a submission of the differences, in relation to the settlement of business of Johnson & Farr, while the award, is an award on the bill of account of Johnson against Johnson & Farr, and the award does not find that other differences do not exist, which it should do, in order to be upheld under the submission.

Cald. on Art. 236

The award is not made in pursuance of the terms of the submission; it is not between the PARTIES to the submission, but between Olof Johnson and Johnson & Farr.

II.

It is not sufficient, in order to make an award good, that the parties as well as the arbitrators, should understand what is meant by it. It should be in such clear and intelligible terms, that every one who reads it may comprehend it.

Gratz vs Gratz, 4 Rawle 411.

An award should be so plainly expressed, that each party may know from the award itself, what he is to do, and what he may compel the other to do. It must be certain of itself, and capable of being carried into execution without the aid of extraneous circumstances.

Schuyler vs Van Der-Veer, 2 Caines, 235.

McDonald vs Bacon, 3 Scam, 431.

Howard vs Babcock, 21 Ills. 259.

In the case of Schuyler vs Van Der-Veer, 2d Caines, Rep. 240, the Court say, "it ought to appear from the context of the award, or from the nature of the thing awarded, or by a manifest reference to something connected with it, what things the parties are ordered to do."

They also further say "if the defendant can have no remedy to coerce the plaintiff, to perform any part beneficial to the defendant, he ought not to be bound to pay," &c. Also in the same case, the Court say "the intention of all parties to an arbitration, is to have their controversies settled, and something ascertained which was before doubtful."

It does not appear from the award, what things the parties to it, or either of them, are to do, and the further language of the Court in Schuyler vs Van Der-Veer will properly apply to the award in this case, to wit: "It is upon the whole too vague, or rather senseless a paper, to be the basis of an action."

The award in this case does not settle the controversies, but leaves Farr to seek his remedy in some other way, than by an action on it.

III.

The award is based entirely upon an assumption, and the arbitrators say "*assuming* that \$9746,53 was the amount of indebtedness of Johnson & Farr," &c., &c. It does not *find* this amount to be the amount of indebtedness, and from the award itself, it is impossible to tell what the amount of indebtedness of Johnson & Farr was, and it seems clear, that the arbitrators did not know or find out the amount to their own satisfaction, but based their award upon an assumed or supposed state of facts, which even in the minds of the arbitrators, might or might not exist.

If, then, the first point in the award is a mere assumption, and not a finding of the arbitrators, the remaining points must be uncertain, since they are based upon the first point, and if the first point falls, the following points must fall with it, since they are so entirely dependant upon each other, that one cannot stand without the aid of the rest.

IV.

The award is an award between the appellee, (Olof Johnson,) and Johnson & Farr, (a firm composed of the appellant and appellee,) and such it was intended to be by the arbitrators, and so it was understood by the appellee, else why did he at once remit exactly one-half of the verdict as soon as it was returned by the jury.

If the award be between Olof Johnson and Johnson & Farr, it is clear that Johnson cannot recover on it in an action at law, for in that case he would be both plaintiff and defendant. It was error also to allow it to go to the jury, even if it was a good award between Johnson and Johnson & Farr, and an action at law could be maintained upon it, since it was a JOINT promise by Johnson & Farr to pay Olof Johnson, while the suit was brought against Farr, one of the firm of Johnson & Farr, and the promise or award is not mutual between the parties to the record.

V.

The award is not final; it does not settle Farr's rights; yet it is clear from the award, that the arbitrators undertook to award that he had rights, and they say in the fifth point of the award "that the assets of Johnson & Farr unsettled and not collected, shall be divided as per contract of April 26th, 1857," but it is impossible to tell either from the award or from any extrinsic matter, what assets were unsettled and not collected.

If Farr can *take* nothing under the award, when the arbitrators evidently intended that he should have something, he ought certainly not to be compelled to pay anything to Johnson, and if the award is uncertain as to the extent of Farr's rights, it is wholly void.

Kyd on awards, 248 & 249.

Certainty to a common intent, is requisite in an award, to make it binding, and this certainty is required in each and every of the findings in the award, and if Farr's rights are not determined by the award, it would not be in accordance with common justice, to say that his liabilities are found, and that he shall be held to perform them.

If from the tenor of the award, the arbitrators appear to have intended that the award should be mutual, awarding something in favor of each of the parties, and that which is awarded on one side be void, so that the performance of it cannot be enforced, the award is void for the whole, because that mutuality which the arbitrators intended, cannot be preserved.

Kyd. on awards p. 247.

If a part of the award is void, and the void part is so connected with the rest as to affect the justice of the case between the parties, the whole of the award is void.

Kyd on awards, 246.

The Court should have granted a new trial. The evidence showed that Farr revoked the authority of the arbitrators, before the award was made. The witness Pierce, swears to Farr's language to the arbitrators, which clearly shows that Farr intended to revoke the authority given to the arbitrators.

No 298
George Farr

vs
Olaf Johnson

Points for Appellant

Filed May 1st 1861

L. Leland

Clerk

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THIRD GRAND DIVISION,
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No 298

George Heers
vs
Olef Johnson
Points per Appellants

Filed May 1st 1861
G. Leland
Clerk

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION,
APRIL TERM, 1861, AT OTTAWA,

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vs
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No 298-141
George Tan

vs
Olof Johnson

Ponto for Appellant

Filed May 13th 1861

L. Leland

Clerk

SUPREME COURT.
ABSTRACT OF RECORD.

OLOF JOHNSON, Appellee, }
 vs. } **Appeal from Henry.**
GEORGE FARR, Appellant. }

KNOX, EUSTACE & REED,
Attorneys for Appellee.

H. BIGELOW & T. G. FROST,
Attorneys for Appellant.

1 This was an action of assumpsit, commenced by appel-
lee, against appellant, to the Special April Term, A. D. 1860, of
3 the Henry Circuit Court, upon an award of arbitrators. Upon
the application of the appellant the case was continued until
20 the October Term, A. D. 1860, when it was tried before the
Hon. JOHN H. HOWE, Judge, and a jury.

To the plaintiff's declaration the defendant interposed
12 three pleas: 1st, general issue; 2d, that the appellant revoked
the submission, or agreement to arbitrate, before the award
was made, and that the revocation was in writing, and notice
13 was given to the arbitrators; 3d, that the appellant revoked
the submission, verbally, before the award was made, and
14 notified the arbitrators and the appellee of the revocation.
12 On the first plea the appellee took issue. To the second plea
16 he replied: 1st, that the defendant did not revoke the submis-

16 sion before the award was made; 2d, that the defendant did
 not notify the plaintiff of the revocation before the making
 of the award; and to defendant's third plea, the plaintiff re-
 17 plied: 1st, that the defendant did not revoke the submission
 before the making of the award; 2d, that the plaintiff did not
 have notice of the revocation,—on all of which the defend-
 17 ant took issue.

The plaintiff (Johnson) first offered in evidence a written instrument, of which the following is a copy, to wit:

29 "Olof Johnson and George Farr propose to arbitrate the
 "differences between them, in relation to settlement of busi-
 "ness of Johnson & Farr, in hands of Olof Johnson for set-
 "tlement. Olof Johnson is to be plaintiff and George Farr
 "defendant; each party is to choose a person to be entirely
 "disinterested, and not to be involved in any business or other
 "transactions so as to be liable to be influenced unduly in
 "favor of, or against either party. The two persons they
 "choose to choose a third person. The said parties to each
 "be his own attorney in the case. The decision of the arbi-
 "trators to be binding and final upon the parties arbitrating.
 "The said arbitration to take place on Wednesday, Nov. 30,
 "'59, at 10 o'clock of said day. The parties have agreed up-
 "on John I. Bennett as the third man.

(Signed)

"O. JOHNSON,
 "GEO. FARR.

And the plaintiff at the same time called as a witness
 Claudius Jones, who testified as follows, to wit: "Know plain-
 tiff and defendant; know the hand-writing of each of them;
 this paper is signed by both of them, in their hand-writing,
 29 and they both acknowledged to me that they had signed it."

The plaintiff's attorney then proposed to read the paper
 in evidence to the jury, to which the defendant objected; the
 Court overruled the objection, and allowed said paper to be
 read to the jury, and defendant then and there at the time ex-
 cepted to the ruling of the Court.

The plaintiff then proposed to offer in evidence the written award on which this action is brought, of which the following is a copy, to wit:

" GALVA, Nov. 30, 1859.

" We, the arbitrators between Olof Johnson, plaintiff, and George Farr, defendant, agree on the following points in the bill of Olof Johnson against Johnson & Farr:

" 1st. Assuming that \$9,746.53 was the am't of indebtedness of Johnson & Farr, that Olof Johnson shall be allowed exchange on such am't of indebtedness as was payable in New York, at the rate of one and half per cent.

" 2d. That in the item charged costs and expenses, one hundred and twenty-five dollars shall be deducted.

" 3d. That Olof Johnson shall be allowed interest at rate of six per cent. on am't of indebtedness, less O. Johnson's credits to Johnson & Farr as per bill of July 16th, 1859, for \$7,338.72, from April 26th, 1857, to Nov. 30th, 1859.

" 4th. That the motion of defendant for non-suit, for cause of non-fulfillment of contract, be overruled, and Olof Johnson be allowed 15 per cent. commission, as per contract, on amount of indebtedness.

" 5th. That the assets of Johnson & Farr, unsettled and not collected, shall be divided as per contract, of April 26th, 1857.

31 " 6th. That we find balance due Olof Johnson of \$4502.47.

(Signed)

" CLAUDIUS JONES,

" WM. L. WILEY,

" EM. S. BOND."

And the plaintiff at the same time again called Claudius Jones, who testified as follows: "I was one of the arbitrators named in the award. I acted with Wiley and Bond, and went into the arbitration at the request of Farr. This is the agreement under which we acted. (Submission here shown to wit-

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ness.) We met Nov. 30, 1859, at the Railroad office in Galva. Both plaintiff and defendant were present, and the three arbitrators, Wiley, Bond and myself, chosen by the parties under the submission. We heard the statements of parties. (Award here shown witness.) That is the paper made and declared as the award. The other arbitrators signed it, and I signed it also. We agreed, on the date of the award,—that is, Nov. 30th, 1859.”

Cross-Ex.—“I was requested by Farr to act as arbitrator, about the middle of afternoon of Nov. 30th. No person was present at the time. I refused to act at first. Johnson and Farr then both requested me to act, and I consented. They both said they had come to arbitrate, and produced the agreement they had made on the subject. They said they had failed to settle their business themselves, and had agreed to leave it to Wiley, Bond and myself, and were agoing to abide by our decision. They had agreed on Bond and Wiley some days previous, and had not agreed on me until that day. I took the place of Bennett, who declined to act.

“Johnson produced bill of his account between Olof Johnson and Johnson & Farr. This is the bill. (Witness here produced the bill as follows) :

JOHNSON & FARR, in account with OLOF JOHNSON.

To amount of indebtedness paid, assumed July 1, '57	\$9,746 53	By total am't of cash collected from notes and acc'ts rec'd July 1, '57,	\$6,473 77
To exchange on \$8,345.49, paid in New York, at 3 per cent,	250 36	By Anderson & Hartzell's acct	627 10
To costs and expenses on collections,	252 52	By Henry Wald	75 98
Total,	\$10,249 41	By excess of O. Johnson,	161 87
Interest on above to date,	\$2,092 47	Total	\$7,338 72
Com's for paying indebtedness, as per agreement,	1,537 40—3,629 87	Interest on above to date,	1,498 43
	\$13,879 28	Balance,	\$8,837 15
			5,042 13
			<u>\$13,879 28</u>
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"We commenced at 4 o'clock on the 30th of November. It was about 10 o'clock when the parties left for us to make up a decision. After the parties left the room, Wiley and myself agreed on the points. Parties then came into the room, and we told them we would come in and announce the award to them in the morning.

"There was no balance struck that night; we had not put it together. We met next morning between 8 and 9 o'clock. The award was signed not far from 9 o'clock. I think we corrected the award before it was signed. That correction changed the result. This was a clerical error in figuring the per cent."

The witness being re-examined by the plaintiff, stated:

"That sum of \$9,746.53 was agreed on as the amount of indebtedness. We agreed on the rate of exchange Johnson was to be allowed. Farr objected to having attorneys. The amount of deduction was agreed on that night. The rate of interest was not fixed that night, on the amount of indebtedness; the rate was agreed on.

"The motion of Farr for non-suit was overruled that night. The uncollected assets were agreed on that night. The basis of calculation was agreed on that night. There was nothing to be done but the process of addition. We called on the parties and notified them that we had agreed on the points. We did not state our judgment, or how we had agreed, but simply that we had agreed. The non-suit claimed by Farr was acted on previous to his coming in."

38 The counsel for the appellee then offered to read the award in evidence to the jury, to which the defendant objected.

The Court overruled said objections, and allowed the award to be read to the jury, to which ruling and judgment of the Court the said defendant, by his attorneys, then and there at the time, objected. *excepted*

The plaintiff here rested his case.

The defendant then called Nelson Pierce as a witness, who testified as follows :

"I reside at Galva. I know the parties to this suit. I know Jones, Wiley, and Bond, the arbitrators spoken of. I was present some of the time during the arbitration. I was present when Farr made his motion for a non-suit. That was the evening of the first day. He called for a non-suit. He declined having anything more to do with the arbitration. He so stated to the arbitrators. There was no award then made that I knew of. It was on the 30th of November. It was spoken of that night about their coming together next morning. I do not recollect whether Farr had a statement in writing to read to them. We all left together. There was no award announced that night, in my presence. Some points may have been spoken of. I could not say whether the arbitrators decided on the motion for a non-suit or not. They went right on with their business."

On cross-examination, the witness stated :

"I was called there to make a statement. Farr called for a non-suit. I can't tell the exact words he used. Farr participated in the business that was going on, after his motion for a non-suit. I think we all went out together. I think the arbitrators said they had made some points. Farr came back again."

The witness being re-examined by defendant, further stated : "Farr and I went away, and then came back that night. I think that was the time Farr called for a non-suit. I understood him to say that he declined having anything more to do with the arbitration. This was near his language : 'Gentle-

men, I'll have nothing further to do with it.' There was a considerable arguing about it."

The defendant then called Claudius Jones, who testified as follows:

"This arbitration commenced on the afternoon of the 30th of November; this award was signed the next day, and also drawn up next day."

A paper, of which the following is a copy, was here shown to the witness, to wit:

38 "George Farr, on the point of commissions, \$1,537.40, insisted that Mr. Johnson was not entitled to any commission, "because he (Johnson) had not yet settled the business of the "firm of Johnson & Farr, and that this item of commissions "could not be charged until he (Johnson) had settled the "business of the firm, as per contract; that said Johnson had "not used diligence in the collection of the debts, as contracted, and that for non-fulfilment of the contract on his "(Johnson's) part, that Farr was entitled to a non-suit, and that "Farr insisted that this point should be settled before further "progress in the case should be had, and at this point in the case "notified the arbitrators, or two of them, Claudius Jones and "Emery S. Bond, that he would withdraw from the arbitration, and would go no further in the case. This notice was "given to the said arbitrators before making out their award.

"Signed,

EMERY S. BOND,

"CLAUDIUS JONES."

39 Whereupon he stated: "This is a copy of the paper brought in by Farr for me to sign. The original paper is lost. I will not swear it is an exact copy; the heading of it was true and we signed it; we did not read it all; relied on Mr. Farr for its being correct; it is not correct. That was the only paper signed by Bond and myself. All three of the arbitrators were there when the award was made. This other paper was

presented two hours after the award was made. An award had been made and declared before it was signed."

40 H. Bigelow was then sworn on the part of the defendant, and testified that he saw the paper spoken of by the witness Jones, in Jones' possession, and that it was signed by Jones and Bond; knows their hand-writing, and that the foregoing is an exact copy of it, taken by him and compared with the original.

On cross-examination, the witness swore that he was attorney for Farr at the time he took the copy.

George Farr, the defendant, was then sworn to prove the loss of said paper, and stated that it had never been in his possession since he gave it to Jones.

Thereupon the said copy was read in evidence to the jury, when the defendant rested his case.

This was all the evidence offered in the case by either party.

The Court then instructed the jury for the plaintiff as follows, to wit:

41 1st. If the jury believe that the parties signed the paper introduced, in writing, submitting their differences to arbitrators, and afterwards selected and agreed upon Claudius Jones, Wm. L. Wiley, and E. S. Bond, as such arbitrators, that they and the parties met at Galva on the 30th day of November, 1859, and proceeded to the hearing of the matters submitted, and that the arbitrators afterwards, on that day or the next day, made their decision and award between the parties and notified them thereof, the jury will find for the plaintiff the amount of money found by such award, in favor of the plaintiff, and against the defendant, unless the jury further find from the evidence, that the defendant revoked the agreement of submission before the making of the decision and award by the arbitrators.

2d. Although no technical words are necessary to constitute a revocation of the agreement of submission, yet it is ne-

cessary, in order to constitute a revocation by the defendant, that he should, by the use of the word "revoke," or of other words, clearly and distinctly inform the arbitrators that he revoked or annulled the agreement submitting the case to them.

3d. A mere mention, by the defendant, before the arbitrators, for a non suit, is not a revocation of an agreement of submission to arbitration.

4th. If the jury find from the evidence that the only evidence offered by defendant to show a revocation of the agreement of submission, was a statement or agreement made by the defendant on a motion before the arbitrators for a non-suit, and that thereafterwards the defendant continued before said arbitrators, and participated in the trial and argued or discussed the questions afterwards arising before them, and was also present at the decision, such further participation, if any, is evidence tending to prove that there was not a revocation of the submission to arbitration.

42 5th. The paper signed by Emery S. Bond and Claudius Jones, and purporting to be a statement or certificate as to what occurred before them, is not evidence to prove the statements of the defendant, Farr, before the arbitrators.

To the giving of each of which instructions the defendant, by his attorneys, objected; the Court overruled the objections and gave the instructions and each of them as asked; to which ruling and judgment of the Court the defendant then and there and at the time excepted.

The counsel for the defendant then requested the Court to give the following instructions on behalf of the defendant; to wit:

43 1st. No recovery can be had upon the written award offered in evidence, the same being indefinite and uncertain.

2d. No recovery can be had upon the written award of

ferred in evidence, for a greater sum than one-half of \$4,502.47, and legal interest from the date of said award, viz., one-half the sum in said award stated, with interest.

7th. The plaintiff is not entitled to recover on the award in evidence without showing compliance with its terms on his
 2 5 part, and tender or offer to Farr of the portion of the assets of the firm of Johnson & Farr to which Farr was entitled by the terms of the award.

The Court refused to give the instructions, or either of them, to the jury; to which ruling and judgment of the Court, the attorneys for the defendant then and there at the time excepted.

The jury on the same day (Oct. 31st, 1860) found a verdict for the plaintiff, and assessed his damages at \$4,750.10; and the defendant thereupon filed a remittitur on said verdict in the following words and figures, to wit:

44 " \$2,375.05. Of the above amount the plaintiff remits the amount of two thousand three hundred and seventy-five dollars and five cents. (Signed) OLOF JOHNSON.
 "November 1st, 1860."

Thereupon the defendant entered his motion for a new trial, for the following reasons, to wit:

45 1st. The Court erred in giving the several instructions asked for by the plaintiff.

2d. The Court erred in not giving the several instructions asked for by the defendant, and refused by the Court.

3d. The refusal of the Court to give the several instructions asked by the defendant was erroneous as to each several and separate instruction so asked by defendant and refused.

4th. The Court erred in rejecting the evidence offered by the defendant.

5th. The Court erred in admitting the evidence offered by the plaintiff, and objected to by the defendant.

6th. The verdict is against the evidence.

The Court overruled the motion for a new trial—to which judgment and ruling of the Court the defendant then and there at the time excepted.

27 The Court then rendered judgment on the verdict in the following words, to wit:

“ It is therefore considered and adjudged by the Court, that the plaintiff have and recover of the defendant the said sum of four thousand seven hundred and fifty dollars and ten cents judgment (subject to the aforesaid remittance), together with his costs in that behalf expended, and that he have execution therefor.”

The defendant prayed that a bill of exceptions might be signed, which was done, and for appeal, which was granted, and bond filed according to law.

298-141

Prof Johnson

vs

Geo Farr

Abstract

Filed April 18, 1861

A. Deland

clerk

State of Illinois. &

In the Supreme Court at Ottawa
Of the April Term A.D. 1861.

James Gilmore junior.

impeached with

William McCullough

Cyrus Jones and

Nelson Jones

Edward C. Howland

Error to
Record

Motion to stay

Proceedings on Affirmance—

The appellant moves the Court, of its
pleasure, or otherwise the Justice of the Court to whom this cause
has been assigned for opinion therein, to direct the Clerk to
stay all proceedings, and to abstain from issuing any certificate
or process of or upon the judgment of affirmance announced
herein— and if any shall have issued to recall the same, for
that the said appellant respectfully alleges and insists that
upon a more careful inspection of the record and proceedings
and the matters therein assigned for error, it will be found by
each justice that the judgment aforesaid must be reversed,
notwithstanding some of the matters assigned for error may
have been held by the Court to be insufficient &c. Such direction to
remain in force till opinion filed and opportunity given to take action
thereupon as the appellant may be advised &c.

Bourney for appellant

181-61
In the Supreme Court

Gimre H.

v.

Nowland

Motion to stay proceedings
on affirmed

Filed June 27, 1861
L. Leland
Clerk

54.42.13
41.7.45
45037
539.66

Journey
for Appellant

SUPREME COURT.

ABSTRACT OF RECORD.

OLOF JOHNSON, Appellee,
vs.
GEORGE FARR, Appellant. } **Appeal from Henry.**

KNOX, EUSTACE & REED,
Attorneys for Appellee.

H. BIGELOW & T. G. FROST,
Attorneys for Appellant.

1 THIS was an action of assumpsit, commenced by appel-
lee, against appellant, to the Special April Term, A. D. 1860, of
3 the Henry Circuit Court, upon an award of arbitrators. Upon
the application of the appellant the case was continued until
20 the October Term, A. D. 1860, when it was tried before the
Hon. JOHN H. HOWE, Judge, and a jury.

To the plaintiff's declaration the defendant interposed
12 three pleas: 1st, general issue; 2d, that the appellant revoked
the submission, or agreement to arbitrate, before the award
was made, and that the revocation was in writing, and notice
13 was given to the arbitrators; 3d, that the appellant revoked
the submission, verbally, before the award was made, and
14 notified the arbitrators and the appellee of the revocation.
12 On the first plea the appellee took issue. To the second plea
16 he replied: 1st, that the defendant did not revoke the submis-

16 sion before the award was made; 2d, that the defendant did
 not notify the plaintiff of the revocation before the making
 of the award; and to defendant's third plea, the plaintiff re-
 17 plied: 1st, that the defendant did not revoke the submission
 before the making of the award; 2d, that the plaintiff did not
 have notice of the revocation,—on all of which the defend-
 17 ant took issue.

The plaintiff (Johnson) first offered in evidence a written instrument, of which the following is a copy, to wit:

29 "Olof Johnson and George Farr propose to arbitrate the
 "differences between them, in relation to settlement of busi-
 "ness of Johnson & Farr, in hands of Olof Johnson for set-
 "tlement. Olof Johnson is to be plaintiff and George Farr
 "defendant; each party is to choose a person to be entirely
 "disinterested, and not to be involved in any business or other
 "transactions so as to be liable to be influenced unduly in
 "favor of, or against either party. The two persons they
 "choose to choose a third person. The said parties to each
 "be his own attorney in the case. The decision of the arbi-
 "trators to be binding and final upon the parties arbitrating.
 "The said arbitration to take place on Wednesday, Nov. 30,
 "'59, at 10 o'clock of said day. The parties have agreed up-
 "on John I. Bennett as the third man.

(Signed)

"O. JOHNSON,
 "GEO. FARR.

And the plaintiff at the same time called as a witness Claudius Jones, who testified as follows, to wit: "Know plain-
 tiff and defendant; know the hand-writing of each of them: this paper is signed by both of them, in their hand-writing,
 29 and they both acknowledged to me that they had signed it."

The plaintiff's attorney then proposed to read the paper in evidence to the jury, to which the defendant objected; the Court overruled the objection, and allowed said paper to be read to the jury, and defendant then and there at the time excepted to the ruling of the Court.

The plaintiff then proposed to offer in evidence the written award on which this action is brought, of which the following is a copy, to wit:

" GALVA, Nov. 30, 1859.

" We, the arbitrators between Olof Johnson, plaintiff, and George Farr, defendant, agree on the following points in the bill of Olof Johnson against Johnson & Farr:

" 1st. Assuming that \$9,746.53 was the am't of indebtedness of Johnson & Farr, that Olof Johnson shall be allowed exchange on such am't of indebtedness as was payable in New York, at the rate of one and half per cent.

" 2d. That in the item charged costs and expenses, one hundred and twenty-five dollars shall be deducted.

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(Signed)

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And the plaintiff at the same time again called Claudius Jones, who testified as follows: "I was one of the arbitrators named in the award. I acted with Wiley and Bond, and went into the arbitration at the request of Farr. This is the agreement under which we acted. (Submission here shown to wit-

Cross-Ex.—“I was requested by Farr to act as arbitrator, about the middle of afternoon of Nov. 30th. No person was present at the time. I refused to act at first. Johnson and Farr then both requested me to act, and I consented. They both said they had come to arbitrate, and produced the agreement they had made on the subject. They said they had failed to settle their business themselves, and had agreed to leave it to Wiley, Bond and myself, and were agoing to abide by our decision. They had agreed on Bond and Wiley some days previous, and had not agreed on me until that day. I took the place of Bennett, who declined to act.

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"The motion of Farr for non-suit was overruled that night. The uncollected assets were agreed on that night. The basis of calculation was agreed on that night. There was nothing to be done but the process of addition. We called on the parties and notified them that we had agreed on the points. We did not state our judgment, or how we had agreed, but simply that we had agreed. The non-suit claimed by Farr was acted on previous to his coming in."

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The Court overruled said objections, and allowed the award to be read to the jury, to which ruling and judgment of the Court the said defendant, by his attorneys, then and there at the time, objected. *excepted*

The plaintiff here rested his case.

The defendant then called Nelson Pierce as a witness, who testified as follows :

"I reside at Galva. I know the parties to this suit. I know Jones, Wiley, and Bond, the arbitrators spoken of. I was present some of the time during the arbitration. I was present when Farr made his motion for a non-suit. That was the evening of the first day. He called for a non-suit. He declined having anything more to do with the arbitration. He so stated to the arbitrators. There was no award then made that I knew of. It was on the 30th of November. It was spoken of that night about their coming together next morning. I do not recollect whether Farr had a statement in writing to read to them. We all left together. There was no award announced that night, in my presence. Some points may have been spoken of. I could not say whether the arbitrators decided on the motion for a non-suit or not. They went right on with their business."

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"CLAUDIUS JONES."

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Thereupon the said copy was read in evidence to the jury, when the defendant rested his case.

This was all the evidence offered in the case by either party.

The Court then instructed the jury for the plaintiff as follows, to wit:

41 1st. If the jury believe that the parties signed the paper introduced, in writing, submitting their differences to arbitrators, and afterwards selected and agreed upon Claudius Jones, Wm. L. Wiley, and E. S. Bond, as such arbitrators, that they and the parties met at Galva on the 30th day of November, 1859, and proceeded to the hearing of the matters submitted, and that the arbitrators afterwards, on that day or the next day, made their decision and award between the parties and notified them thereof, the jury will find for the plaintiff the amount of money found by such award, in favor of the plaintiff, and against the defendant, unless the jury further find from the evidence, that the defendant revoked the agreement of submission before the making of the decision and award by the arbitrators.

2d. Although no technical words are necessary to constitute a revocation of the agreement of submission, yet it is ne-

cessary, in order to constitute a revocation by the defendant, that he should, by the use of the word "revoke," or of other words, clearly and distinctly inform the arbitrators that he revoked or annulled the agreement submitting the case to them.

3d. A mere mention, by the defendant, before the arbitrators, for a non suit, is not a revocation of an agreement of submission to arbitration.

4th. If the jury find from the evidence that the only evidence offered by defendant to show a revocation of the agreement of submission, was a statement or agreement made by the defendant on a motion before the arbitrators for a non-suit, and that thereafterwards the defendant continued before said arbitrators, and participated in the trial and argued or discussed the questions afterwards arising before them, and was also present at the decision, such further participation, if any, is evidence tending to prove that there was not a revocation of the submission to arbitration.

42 5th. The paper signed by Emery S. Bond and Claudius Jones, and purporting to be a statement or certificate as to what occurred before them, is not evidence to prove the statements of the defendant, Farr, before the arbitrators.

To the giving of each of which instructions the defendant, by his attorneys, objected; the Court overruled the objections and gave the instructions and each of them as asked; to which ruling and judgment of the Court the defendant then and there and at the time excepted.

The counsel for the defendant then requested the Court to give the following instructions on behalf of the defendant, to wit:

43 1st. No recovery can be had upon the written award offered in evidence, the same being indefinite and uncertain.

2d. No recovery can be had upon the written award of

ferred in evidence, for a greater sum than one-half of \$4,502.47, and legal interest from the date of said award, viz., one-half the sum in said award stated, with interest.

7th. The plaintiff is not entitled to recover on the award in evidence without showing compliance with its terms on his
 2 5 part, and tender or offer to Farr of the portion of the assets of the firm of Johnson & Farr to which Farr was entitled by the terms of the award.

The Court refused to give the instructions, or either of them, to the jury; to which ruling and judgment of the Court, the attorneys for the defendant then and there at the time excepted.

The jury on the same day (Oct. 31st, 1860) found a verdict for the plaintiff, and assessed his damages at \$4,750.10; and the defendant thereupon filed a remittitur on said verdict in the following words and figures, to wit:

44 " \$2,375.05. Of the above amount the plaintiff remits the amount of two thousand three hundred and seventy-five dollars and five cents. (Signed) OLOF JOHNSON.
 "November 1st, 1860."

Thereupon the defendant entered his motion for a new trial, for the following reasons, to wit:

45 1st. The Court erred in giving the several instructions asked for by the plaintiff.

2d. The Court erred in not giving the several instructions asked for by the defendant, and refused by the Court.

3d. The refusal of the Court to give the several instructions asked by the defendant was erroneous as to each several and separate instruction so asked by defendant and refused.

4th. The Court erred in rejecting the evidence offered by the defendant.

5th. The Court erred in admitting the evidence offered by the plaintiff, and objected to by the defendant.

6th. The verdict is against the evidence.

The Court overruled the motion for a new trial—to which judgment and ruling of the Court the defendant then and there at the time excepted.

27 The Court then rendered judgment on the verdict in the following words, to wit:

“ It is therefore considered and adjudged by the Court, that the plaintiff have and recover of the defendant the said sum of four thousand seven hundred and fifty dollars and ten cents judgment (subject to the aforesaid remittance), together with his costs in that behalf expended, and that he have execution therefor.”

The defendant prayed that a bill of exceptions might be signed, which was done, and for appeal, which was granted, and bond filed according to law.

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Clay Johnson

vs

Geo. Starr

Abstract

Filed Apr 18, 1866

H. Leland
clerk

1 State of Illinois }
County of Henry } ss

Pleas before the Hon. John Mc Howe
Judge of the 6th Judicial Circuit At a Special
Term of the Circuit Court begun and holden at the
Court House in Cambridge in said County on
Monday the sixteenth day of April in the year of
our Lord one thousand eight hundred and sixty
being the third Monday of said month

Present. Hon John Mc Howe Judge

Thomas Wiley Jr Clerk

Permel Mc Sniff Sheriff

I know Ye that on the 5th day of March 1860 Olof Johnson
by Know Eustace & Reed his attorneys filed in said Court
a precipe for a summons in words and figures following
to wit:

" State of Illinois }
" Henry County } March Term AD 1860 of the
Circuit Court of said County

" Olof Johnson }
" George Farr } Assumpsit

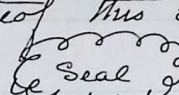
Damages \$5000.

" The Clerk of said Court will please
" issue a summons in said cause directed to the
" Sheriff of said county returnable on the first day
" of the next Term of the Circuit Court of said
" county

" Know Eustace & Reed

Attys for Pltff

And afterwards to wit on the day and year last aforesaid
a summons issued out of said court in said cause, which
summons is in words and figures following to wit.

" State of Illinois }
" Henry County } ss The People of the State of Illinois
" To the Sheriff of said County Greeting: You are
" hereby commanded to summon George Farr to
" appear before the Circuit Court of Henry County on the
" first day of the next term thereof to be holden at Cam-
" bridge on the Monday of next, to
" answer the complaint of Olof Johnson in a plea
" of Assumpsit. Damages claimed \$5000.
" And have you there and there this writ
" Witness Thomas Wiley Jr Clerk of said court and the
" seal thereof this 5 day of March 1860
"  Thomas Wiley Jr Clerk

And afterwards to wit on the 13th day of March 1860 the
Sheriff of said county returned into court said summons
with his endorsement in words and figures following
to wit

" I have served the within summons by reading the same
" to the within named George Farr this 10th day of March
" AD 1860

" P. H. Sniff Sheriff of Henry Co Ill
" By Geo A Brown Deputy Sheriff

And afterwards to wit on the 6th day April AD 1860 comes the said Plaintiff by his attys as aforesaid and files his declaration in said cause in words and figures following to wit:

State of Illinois }
 Henry County } Special April Term AD 1860 of
 the Circuit Court of said County

Olof Johnson Plaintiff in this suit by Moore Eustace &
 Reed his attorneys complains of George Farr Defendant
 in this suit of a Plea of Assumpsit:

For that whereas before the making of the promise and
 undertaking of said defendant hereinafter more men-
 tioned, certain differences had arisen and were then
 depending between the said plaintiff and the said
 defendant touching and concerning the settlement
 of the business of Johnson & Farr (the said Plaintiff
 & Defendant) late partners doing business under
 the name of Johnson & Farr, at Galva, to wit, at
 said County.

And thereupon for the purpose of putting an end to said
 differences the said plaintiff and the said Defendant
 heretofore to wit on the 26th day of November AD 1859
 at Galva to wit at said county respectively submitted
 themselves to the award of Claudius Jones Williams
 Wiley and Eimery & Bond to be made between them
 of and concerning said differences and in consideration
 thereof and that the said Plaintiff at the special instance
 & request of the said defendant had then & there under-
 taken & faithfully promised the said Defendant to

perform and fulfill the award of the said Claudius Jones William L Wiley and Emery S Bond to be so made between the said Plaintiff and the said Defendant of and concerning the said differences in all things therein contained on the said Plaintiffs part and behalf to be performed and fulfilled, he, said Defendant undertook and then & there faithfully promised the said Plaintiff to perform and fulfill the said award in all things therein contained on the said Defendants part and behalf to be performed and fulfilled,

And the said Plaintiff in fact says that the said Claudius Jones William L Wiley and Emery S Bond having taken upon themselves the burden of the said Arbitrament afterwards to wit on the 30th day of November AD 1859 at Galva to wit at said county made their certain award between the said Plaintiff and the said Defendant of and concerning the said differences and did thereby award that there was a balance of four thousand five hundred and two dollars and forty seven cents due said Plaintiff from the said Defendant

Of which said award the said Defendant afterwards to wit on the day and year last aforesaid at Galva to wit at said county had notice

And although the said Defendant was afterwards to wit on the day and year last aforesaid at Galva to wit at said county requested by the said Plaintiff to pay him the said sum of four thousand five hundred and two dollars and forty seven cents according to the tenor and effect of said award and his said

5.

promise and undertaking; yet the said Defendant not regarding his said promise and undertaking but contriving and fraudulently intending craftily to deceive and defraud the said Plaintiff in this behalf did not nor would not on the day and year last aforesaid or when he was so requested as aforesaid or at any time afterwards pay the said sum of money last mentioned or any part thereof to the said Plaintiff but has hitherto neglected and refused and still does neglect and refuse so to do.

And whereas also the said Defendant afterwards to wit on the day and year last aforesaid at Galva to wit at said County became and was indebted to said Plaintiff in the further sum of four thousand five hundred and two dollars and forty seven cents upon and by virtue of a certain award made by said Claudius Jones William L. Wiley and Emery & Bond upon and by virtue of a certain submission before that time made by said Plaintiff and the said Defendant to the award order and determination of the said Jones Wiley & Bond of and concerning all matters in difference then depending between the said Plaintiff and the said Defendant and upon and by virtue of which said reference the said Jones Wiley & Bond had then & there awarded that the said Defendant should pay a certain sum of money to wit the sum last mentioned to said Plaintiff and being so indebted he the said Defendant in consideration thereof afterwards

to wit on the day & year last aforesaid at the place aforesaid undertook & then & there faithfully promised the said Plaintiff to pay him the said last mentioned sum of money when he should be thereunto afterwards requested

And whereas also the said Defendant afterwards to wit on the day and year last aforesaid at the place aforesaid accounted with the said Plaintiff of & concerning divers other sums of money from the said Defendant to the said Plaintiff before that time due and owing and then in arrears and unpaid and upon such accounting the said Defendant was then & there found to be in arrear and indebted to the said Plaintiff in the further sum of four thousand five hundred and two dollars & forty seven cents and being so found in arrear and indebted he the said Defendant undertook and then & there faithfully promised the said Plaintiff to pay him the said last named sum of money on request

Yet the said Defendant not regarding his said several promises & undertakings has not paid the said several sums of money or either of them or any part thereof to said Plaintiff (although often requested so to do) but to pay the same the said Defendant has hitherto wholly neglected and refused and still does neglect and refuse to the damage of the said Plaintiff of five thousand dollars and therefore he brings this suit &c

Know Eustace & Reed
Attys for Pltff

(Copy of Award Sued on)

Galva Nov 30th 1859

We the arbitrators between Olof Johnson plaintiff and George Farr defendant agree on the following points in the Bill of Olof Johnson against Johnson & Farr

- 1st Assuming that \$9,746.53 was the amt of indebtedness of Johnson & Farr that Olof Johnson shall be allowed exchange on such amt of indebtedness as was payable in New York at the rate of one and half per cent.
- 2^d That in the item charged costs & Expenses one hundred and twenty five dollars shall be deducted
- 3^d That Olof Johnson shall be allowed interest at rate of six per cent on amt of indebtedness less Olof Johnson's credits to Johnson & Farr as per Bill of July 16th 1859 for \$7,338.72 from April 26th 1857 to Nov 30th 1859
- 4th That the motion of defendant for non-suit for cause of non-fulfillment of contract be overruled and Olof Johnson be allowed 15. per cent commission as per contract on amt of indebtedness
- 5th That all assets of Johnson & Farr unsettled and not collected shall be divided as per contract of April 26th 1857
- 6th That we find balance due Olof Johnson of \$4,502.47

Clausius Jones

(Signed)

Wm L Wiley

Eun S Bond

And afterwards to wit at the term aforesaid and on the 19th day of April 1860 it being the 3^d day of said term the following proceedings were had in said cause to wit

Olof Johnson
 as
 George Farr } Assumpsit

At this day came the plaintiff by Thore Eustace & Reed and Wilkinson & Pleasants his attys and the defendant by Bigelow & Frost his attys and this cause being called for the hearing of motions demurrers &c And the said defendant demurs to declaration, in words and figures following to wit: "And the said defendant by the Bigelow his attorney comes and defends the wrong & injury where &c and craves Oyer of the said award mentioned in said first two counts of said plaintiffs declaration mentioned which is read to the court in the following words & figures to wit

"Galva Nov 30th 1859"

We the Arbitrators between Olof Johnson plaintiff and George Farr Defendant agree on the following points in the Bill of Olof Johnson against Johnson & Farr

1st Assuming that \$9746.53 was the amt of indebtedness of Johnson & Farr that Olof Johnson shall be allowed no change on such

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units of indebtedness as was payable in New York at the rate of one and half per cent

2^d That in the item charged cost & expenses one hundred and twenty five dollars shall be deducted

3^d That Olof Johnson shall be allowed interest at rate of six per cent on amt of indebtedness less O Johnsons credits to Johnson & Farr as per bill of July 16th 1859 for \$ 1338.12 from April 26th 1857 to Nov 30 1859.

4th That the motion of defendant for non suit for cause of non fulfillment of contract be overruled and Olof Johnson be allowed 15 per cent commission as per contract on amt of indebtedness

5th That all assets of Johnson & Farr now settled and not collected shall be divided as per contract of April 26th 1857

6th That we find balance due Olof Johnson of \$ 4502.47

Signed

"Claudius Jones"

"Wm Le Wiley"

"Eun S Bond"

Wherefore the said defendant doth demur in law to said first two counts of said plaintiffs declaration mentioned and says he is not bound to answer the same and the said defendant prays judgment in that behalf and that the said plaintiff may be barred from having or maintaining his aforesaid

actions thereof in said first two counts and each of them in said plaintiffs declaration mentioned against him &c

And the said defendant show to the court the following causes of Special Demurrer to said first two counts of said plaintiffs declaration and to each of them

1st The said award declared on in each of said first two counts of said plaintiffs declaration is variant from and different in substance from the said award read to said court in this to wit

The said count mentioned & declared on in said first two counts & each of them is an award between the said plaintiff & the said defendant while the award shown & read to the court is an award between Olof Johnson the said plaintiff and Johnson & Farr (a copartnership composed of the said plaintiff and the said defendant)

2^d The said award read and shown to the court is uncertain and void

3^d The said award in the first point named therein and in each of the said points therein after made or found are wholly and entirely conditional and each of said points are based upon a contingency as also the whole of said award

4th The said award read & shown to the court is not an award between the said plaintiff and the said defendant

5th Because in the said first point made in the

said award shown to the court the amount of exchange therein undertook to be specified is wholly indefinite and it is impossible to determine the ~~exact~~ amount from said award or any part thereof

6th Because the said award refers to some other contract between the plaintiff and defendant as an umpire by or from which the said plaintiff & the said defendant are hereafter to determine their respective rights & liabilities

7th Because there is no final award that said defendant shall pay to said plaintiff any sum whatever at any time or that he shall do any other act whatsoever

8th Because the said award shown to the court does not settle or determine the amount of assets in the hands of plaintiff and it nowhere refers to anything whatever by which said assets can be determined either in amount or kind

9th The said award read & shown to the court is in every particular totally repugnant and uncertain and void in each of the pretended findings therein named and specified

10th The said pretended award shown to the court is otherwise informal and insufficient and is in fact no award and is wholly void for uncertainty and therefore different & variant from the said award mentioned in the said first two counts of said plaintiff's declaration & in each of them

The Below Defs atty

said award shown to the court the amount of exchange therein undertook to be specified is wholly indefinite and it is impossible to determine the ~~exact~~ amount from said award or any part thereof

6th Because the said award refers to some other contract between the plaintiff and defendant as an umpire by or from which the said plaintiff & the said defendant are hereafter to determine their respective rights & liabilities

7th Because there is no final award that said defendant shall pay to said plaintiff any sum whatever at any time or that he shall do any other act whatsoever

8th Because the said award shown to the court does not settle or determine the amount of assets in the hands of plaintiff and it nowhere refers to anything whatever by which said assets can be determined either in amount or kind

9th The said award read & shown to the court is in every particular totally repugnant and uncertain and void in each of the pretended findings therein named and specified

10th The said pretended award shown to the court is otherwise informal and insufficient and is in fact no award and is wholly void for uncertainty and therefore different & variant from the said award mentioned in the said first two counts of said plaintiff's declaration & in each of them

The Below Defs atty

And on motion leave is given to file an amended demurrer, And the court having heard the demurrer and reasons therefor overrules the demurrer

And afterwards to wit on the 30th day of April of the term aforesaid the following proceedings were had in said cause to wit

Olof Johnson	}	Assumpsit
is		
George Farr		

At this day this cause being again called the demurrer filed herein is withdrawn and on motion leave is given defendant to plead

And afterwards to wit at the term aforesaid and on the first day of May 1860 the said defendant files his plea in said cause in words and figures following to wit

George Farr	}
ads	
Olof Johnson	

And now comes the said defendant by George Farr by He Bigelow his attorney and defends the wrong and injury when he &c and saith that he did not undertake and promise in manner and form as the said plaintiff hath in his said declaration above thereof complained against him and of this he puts himself on the country for trial &c

He. Bigelow

And the said plaintiff } Defendants attorney
doth the like by }

State of Illinois }
Henry County } George Farr being first duly
sworn on his oath says that he is the defendant in
the above entitled suit and that the said plea
by him above pleaded is true in substance and
matter of fact

George Farr

Sworn to & Subscribed before
me this 24th day of April A.D. 1860

J. P. Villet clk

And for a further plea in this behalf the said defendant
by leave of court &c says Actio non because he says
that the said plaintiffs cause of action and all and every
portion thereof is upon the said award mentioned therein
in said plaintiffs declaration and that said agreement
to arbitrate was not under seal and that before the
making of the said award by the said arbitrators
the said defendant in writing revoked the said
agreement and all the power ever given the said ar-
bitrators to make said award and then & there notified
the said arbitrators not to make any award whatever
and that this defendant would not be bound by or
perform any award whatever which they the said
arbitrators might thereafter make & that said award
if any was made was made or so undertaken

to be made after said revocation was made by this defendant and after notice thereof to said arbitrators and the said plaintiff and thus the said defendant is ready to verify wherefore the said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him &c

W. Bigelow

Def's attorney

And for a further plea in this behalf the said defendant by leave of court &c says Actes non because he says that the said plaintiff cause of action and all & any portion thereof is upon the said supposed award mentioned in the first count of said plaintiffs declaration mentioned and that said agreement to arbitrate was by parol & not under seal and that before the making of said supposed award by the said arbitrators the said defendant orally notified said arbitrators and said defendant that he the said defendant would proceed no further in the said case and then and there revoked the agreement of submission and which said notification & revocation was by parol & the said defendant and the said arbitrators then and there had notice of said revocation and thus the said defendant is ready to verify wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him &c

W. Bigelow Def's atty

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State of Illinois }
 Henry County } ss The Bigelow being first duly
 sworn on oath says that he is attorney for said defend-
 ant in the above entitled case and that affiant
 further says that he is informed & verily believes
 that the matters stated & set forth in the foregoing
 pleas are true in substance and in fact
 Subscribed & sworn to before } The Bigelow
 me this 27th day of April }
 AD 1860

And afterwards on the 3^d day of May 1860 and
 at the term last aforesaid comes the said plaintiff
 by his attys and files his Demurrer to 2^d & 3^d Pleas
 filed herein in words and figures following to wit

Olof Johnson }
 vs }
 George Farn }

And the said Plaintiff as to the
~~second~~ several pleas of the said defendant by
 him secondly & thirdly above pleaded by his attorney
 comes & says that said pleas & the matters & things
 therein respectively contained are respectively
 insufficient in law & that the said plaintiff
 is ready to verify wherefore he prays Judgment &c
 Know Eustace & Reed
 attys for Pltff

And the said plaintiff as to the said plea of the said debt by him secondly above pleaded says precludi non because he says that the said debt did not before the making of the award in the said declaration mentioned revoke the agreement to submit to said arbitration as in said second plea he hath alleged and thus the said plaintiff pray may be enquired of by the country &c

Ymre Eustace & Reed

attys for Pltff

And the said debt doth the like

H. Bejelow for debt

And for further replication to said second plea the said pltff by special leave of court for that purpose first obtained says precludi non because he says that the said debt did not before the making of said award notify the said plaintiff of the revocation by him the said debt of said agreement of submission as in said plea he hath alleged and thus the said plaintiff pray may be enquired of by the country &c

Ymre Eustace & Reed

attys for Pltff

And the said debt doth the like

He Bejelow

Defts atty

And for replication to the plea of the said debt

by him thirdly above pleaded the said plaintiff says precludi non because he says that the said defendant did not before the making of the award in said plea mentioned revoke the said agreement of submission therein mentioned as in said third plea is alleged & thus the said plaintiff prays may be enquired of by the country &c

Knox Eustace & Reed

attys for Pltff

And the said deft doth the

like The Bigelow

defts attys

And for further replications to said third plea by special leave of court &c the said plaintiff says precludi non because he says that he the said plaintiff did not before the making of said award have notice of the revocation by said deft of said agreement of submission as in said plea is alleged & thus the said plaintiff prays may be enquired of by the country &c

Knox Eustace & Reed

attys for Pltff

And the said deft doth the

like The Bigelow

defts attys

and afterwards to wit at the term aforesaid and on the 10th day of May A.D. 1880 the said defendant by his atty files his affidavit for in said cause in words and figures following to wit

Olof Johnson }

^{vs}
George Harr }

The Bigelow being first duly sworn on his oath says that he is one of the attorneys in the above case and that said defendant cannot safely proceed to the trial of this cause at the present term of this court on account of the absence of Nelson Pieri who is a material witness in this case and by whom said debt expects to be able to ~~prove~~ prove that he said debt before the making of the award declared on in this case revoked the submission & all power ever given to said arbitrators to make any award and that the award made by said arbitrators after the same was executed & published was altered & changed in a material part to wit that said award was altered and changed in amount

And affiant further says that said witness has been subpoenaed to attend this court & was so subpoenaed on the part of the defendant at least three days since & has been in attendance on this court until last night when he left for home without the leave of said plaintiff or his atty as affiant believes & affiant further says that he believes said witness left this court & went home

because he was sick & unable to remain in attendance hereof as said witness informed this affiant that the said Pierce was sick & did not presume he would be able to be in attendance on the trial hereof & that affiant knows of no other witness by whom the same facts can be so well proved & that he expects to be able to procure the attendance of said witness at the next term of this court & that this affidavit is not made for delay but that Justice may be done

W. Bigelow

Sworn to & Subscribed before

me this 10th day of May. AD 1860

J. V. Viley & Clk

And afterwards to wit on the day and year last aforesaid to wit the 10th day of May 1860 and at the term aforesaid the following proceedings were had in said cause to wit

Olof Johnson

George Harr

Assumpt

And now at this day comes the parties herein as aforesaid, and motion is entered by defendant for continuance, which motion is in words and figures following: "And now comes the said Defendant by Bigelow & Frost his attys & moves the court to continue this cause to the next term of this court and for reasons refers

20 to the affidavit of Wm Bigelow filed in this case
" Frost & Bigelow Defts attys
" And now comes the said defendant by Frost &
" Bigelow his attys & move the court to continue this
" cause to the next term of this court for the following
" reason
" 1st No copy of the submission on which the arbitrators
" acted or assumed to act ~~in~~ is or has been filed
" in this case ten days previous to the first day
" of said term of said court
" 2^d There is no copy of any account filed in this case
" and
" 3^d Because of other & different reasons & other
" insufficiencies &c Frost & Bigelow Defts attys"
Motion sustained by the court And Ordered by the
court that this cause be continued with leave to plaintiff
to file an amended declaration

State of Illinois } Henry County Circuit Court
Henry County } October Term AD 1860
Plas before the Honorable John Mc Keown
Judge of the 6th Judicial Circuit of the State of Illinois
At a regular term of the Circuit court begun and
holden at the Court house in Cambridge in said
county of Henry and state of Illinois on the Second
Monday of October in the year of our Lord
one thousand eight hundred and sixty it

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being the eighth day of Said month
Present

Honorable John McNeave Judge
Thomas Wiley & Clerk
Purnel McNeill Sheriff

And afterwards to wit on the 31st day of October 1860 it
being the 16th day of the term last aforesaid the following
proceedings were had in the said cause to wit

Olof Johnson

vs

George Farr

} Assumpsit

At this day came the plaintiff
in this cause by Thos Eustace & Reed his attys and
the defendant by Bigelow and Frost his attys and
this cause now coming on to be heard and issue being
joined by the parties herein It is ordered by the court
that a jury be called to hear and decide the issue between
the parties in this suit And thereupon came the jurors of
a jury of good and lawful men to wit:

Benj. Brown Henry Albro A Dillenbeck Geo B Phillips
A Negus G. W Daily John Seymour A K Mcaney
W Taylor John Boyd Joseph Arnett A A Lee
who were duly selected chosen and sworn to well and
truly try this cause and a true verdict render according
to the evidence

And afterwards to wit on the 1st day of Nov of the
term aforesaid the jury having heard the evidence
the arguments of the counsel and all things to be

adduced herein. Are furnished with instructions in words and figures following to wit

"The Plff asks the court to instruct the jury as to the law of this case

- 1 "If the Jury believe that the parties signed the paper introduced in writing submitting their differences to arbitrators and afterwards selected & agreed upon Edmunds Jones Wm L Miley & E S Bond as such arbitrators, that they and the parties met at Galva on the 30th day of November 1859 & proceeded to the hearing of the matters submitted and that the arbitrators afterwards on that day or the next day made their decision & award between the parties and notified them thereof the Jury will find for the plaintiff the amount of money found by such award in favor of the plff & against the deft - unless the Jury further find from the evidence that the defendant revoked the agreement of Submission before the making of the decision & award by the arbitrators

- 2 "Although no technical words are necessary to constitute a revocation of the agreement of Submission yet it is necessary in order to constitute a revocation by the defendant that he should by the use of the word

"revoke" or other words clearly and distinctly inform the arbitrators that he revoked or annulled the agreement submitting the case to them

3.

"A mere mention by the deft before the arbitrators
"for a non-suit is not a revocation of an agreement
"of Submission to arbitration

4

"If the Jury find from the evidence that the only
"evidence offered by deft to show a revocation of the
"agreement of submission was a statement or
"argument made by the deft on a motion before the
"arbitrators for a non suit and that thereafter
"the deft continued before said arbitrators and
"participated in the trial and argued or discussed
"the questions afterwards arising before them and
"was also present at the decision, such further par-
"ticipation if any is evidence tending to prove that
"there was not a revocation of the Submission to
"arbitration

5

"The paper signed by Emory S Bond & Claudius Jones
" & purporting to be a statement or certificate as to
"what occurred before them is not evidence to
"prove the statements of deft Farr before the arbitrators

Defendants Instructions

The court is requested on the part of the defendant to
instruct the Jury

1st

"No recovery can be had upon the written award
"offered in evidence, the same being indefinite &
"uncertain

3.

"A mere mention by the deft before the arbitrators
"for a non-suit is not a revocation of an agreement
"of Submission to arbitration

4

"If the Jury find from the evidence that the only
"evidence offered by deft to show a revocation of the
"agreement of submission was a statement or
"argument made by the deft on a motion before the
"arbitrators for a non suit and that thereafter
"the deft continued before said arbitrators and
"participated in the trial and argued or discussed
"the questions afterwards arising before them and
"was also present at the decision, such further par-
"ticipation if any is evidence tending to prove that
"there was not a revocation of the Submission to
"arbitration

5

"The paper signed by Emory S Bond & Claudius Jones
" & purporting to be a statement or certificate as to
"what occurred before them is not evidence to
"prove the statements of deft Farr before the arbitrators

Defendants Instructions

The court is requested on the part of the defendant to
instruct the Jury

1st

"No recovery can be had upon the written award
"offered in evidence, the same being indefinite &
"uncertain

2 "No recovery can be had upon the written awards offered
 "in evidence for any greater sum than one half of
 " \$4502.47 & legal interest from the date of said award
 " viz one half the sum in said award stated and the
 " interest

Refused

3 "If the jury believe from the evidence that the arbitrators
 " only intended to award & did award that the sum
 " in said award stated viz \$4502.47 was the amount
 " due from the firm of Johnson & Farr to Olof Johnson
 " & that Farr was to pay one half that ~~sum~~ sum only
 " then the plaintiff would only be entitled to a verdict for
 " half said sum with legal interest from the date of
 " said award

Given

4 "If the jury find from the evidence that the Submission
 " was revoked by the deft before the award was made
 " they should find for the defendant

Given

5 "In determining whether there was a revocation or not
 " the jury should look at the substantial intention of the
 " deft as expressed & declared before the arbitrators
 " if it was his intention thus declared to discharge
 " said arbitrators & revoke said submission it is
 " not necessary that the revocation should be in
 " express words or that the said revocation should
 " be asked by the party

Given

21

being the eighth day of said month
Present

Honorable John McKeown Judge
Thomas Wiley Jr Clerk
Purnel McSniff Sheriff

And afterwards to wit on the 31st day of October 1860 it
being the 16th day of the term last aforesaid the following
proceedings were had in the said cause to wit

Olof Johnson
vs
George Farr } Assumpsit

At this day came the plaintiff
in this cause by Wm Eustace & Reed his atty and
the defendant by Bigelow and Frost his atty and
this cause now coming on to be heard And issue being
joined by the parties herein It is ordered by the court
that a jury be called to hear and decide the issue between
the parties in this suit And thereupon came the jurors of
a jury of good and lawful men to wit:

Benj. Brown Henry Albion A Dillenbeck Geo B Phillips
A Negus G. W Daily John Seymour A K Mcnney
M Taylor John Boyd Joseph Arnett A A Lee
who were duly selected chosen and sworn to well and
truly try this cause and a true verdict render according
to the evidence

And afterwards to wit on the 1st day of Nov of the
term aforesaid the jury having heard the evidence
the arguments of the counsel and all things to be

adduced herein, are furnished with instructions in words and figures following to wit

"The Plff asks the court to instruct the jury as to the law of this case

- 1 "If the jury believe that the parties signed the paper introduced in writing submitting their differences to arbitration and afterwards selected & agreed upon Claudius Jones Wm L Wiley & E S Bond as such arbitrators, that they and the parties met at Galva on the 30th day of November 1859 & proceeded to the hearing of the matters submitted and that the arbitrators afterwards on that day or the next day made their decision & award between the parties and notified them thereof the jury will find for the plaintiff the amount of money found by such award in favor of the plff & against the deft - unless the jury further find from the evidence that the defendant revoked the agreement of submission before the making of the decision & award by the arbitrators

Given

- 2 "Although no technical words are necessary to constitute a revocation of the agreement of submission yet it is necessary in order to constitute a revocation by the defendant that he should by the use of the word "revoke" or other words clearly and distinctly inform the arbitrators that he revoked or annulled the agreement submitting the case to them

Given

6

" A Revocation may be either expressed or by implication
 " & to be inferred by the jury from the conduct & declaration
 " of the party indicating his intention to disregard the
 " entire proceeding of the arbitrators, have nothing
 " further to do with them & not to be bound by their acts
 " said conduct & declaration being made in the presence
 " of the arbitrators & to them

Given

7

" The Plaintiff is not entitled to recover on the award in
 " evidence without showing compliance with its terms on

28

" his part & tender or offer to Farr of the portion of the
 " units of the firm of Johnson & Farr to which Farr
 " was entitled by the terms of the award

Refused

8

" A Revocation duly made at any time before award
 " made by the arbitrators is sufficient & in due
 " season.

Given

9

" Notice to the plaintiff is not essential to a revocation
 " if the same is duly made in the presence of the arbi-
 " trators & to them while the case was progressing &
 " before the award was made & while the trial was
 " going on

Given

10

" The fact if proved that the notification or revocation was
 " made while the cause was being tried & openly & in
 " the presence of the arbitrators is competent evidence
 " for the jury to consider in determining the question
 " whether the plaintiff did not in fact have notice

Given

Given

- 11 "Notice of revocation to the arbitrators before making
"the award is sufficient whether the plaintiff had
"notice of it or not"

The Jury aforesaid return into court their verdict in words and figures following to wit: "We the jury find verdict for the plaintiff and assess the damages at Four thousand Seven hundred and fifty & $\frac{10}{100}$ dollars (4750.10)" which is received by the court and ordered to be filed and entered of record in this cause,

And on the rendering of said verdict comes the said plaintiff and remits of the above amount the sum of two thousand three hundred and seventy five dollars and five cents (\$2375.05)

And now comes the said defendant by his attorneys aforesaid and moves the court for a new trial in this cause on the ground

- 1st The court erred in giving the several instructions asked for by the plaintiff
- 2 The court erred in giving the several instructions asked for by the deft & refused by the court
- 3 The refusal of the court to give the several instructions asked by the deft was erroneous as to such separate & several instructions so asked for by the deft and refused
- 4 The court erred in refusing the evidence offered by the deft

5 The court erred in admitting the evidence offered by the plaintiff & objected to by the defendant

6 The verdict was against evidence"

And the court having heard the motion and the reasons offered therefor and being now fully advised in the premises overrules the motion and judgment entered on the verdict. It is therefore considered and adjudged by the court that the plaintiff have and recover of the defendant the said sum of Four thousand seven hundred and fifty dollars and ten cents judgment (subject to the aforesaid remittance) together with his costs in this behalf expended and that he have execution therefor.

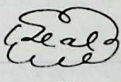
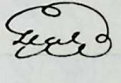
And afterwards to wit on the day and year last aforesaid comes the said defendant by his atty aforesaid and take exceptions to the judgment and ruling of this court and pray an appeal to the supreme court of the state of Illinois, which appeal is by the court granted and leave given said defendant to prepare and file his Bill of exceptions and file his Bond herein with Daniel L Wiley as surety in sixty days.

And afterwards to wit on the 29th day of December AD 1860 the said defendant filed his appeal Bond in said cause in words and figures following to wit;

" Know all men by these presents that we George Furr
" as principal and Daniel L Wiley as surety are
" held & firmly bound unto Olof Johnson in the penal

"Sum of two thousand seven hundred dollars (\$2700) for
 "the payment of which well and truly to be made we
 "bind ourselves our heirs executors and administrators
 "jointly severally and firmly by these presents
 "Witness my hands and seals this 22^d day of December
 "A.D. 1860

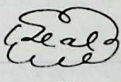
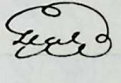
"The condition of the above obligation is such that whereas
 "the said Olof Johnson recovered a judgment against
 "the said George Farr for the sum of two thousand three
 "hundred seventy five & $\frac{5}{100}$ dollars and costs of suit
 "in the Henry County circuit court on the first day of
 "November A.D. 1860 from which judgment the said George
 "Farr has prayed an appeal to the Supreme court
 "Now if the said George Farr shall duly prosecute said
 "appeal and pay said judgment with the costs interest
 "and damages in the case the said judgment shall be
 "affirmed then this obligation to be void otherwise
 "to remain in full force & effect

"George Farr 
 "D. L. Wiley 

And afterwards to wit on the day and year last aforesaid
 to wit on the 24th day of December A.D. 1860 the said defendant
 by his atty, filed in said cause his Bill of exceptions to the
 rulings and judgment of this court, in words and
 figures following to wit:

"Sum of two thousand seven hundred dollars (\$2700) for
 "the payment of which well and truly to be made we
 "bind ourselves our heirs executors and administrators
 "jointly severally and firmly by these presents
 "Witness my hands and seals this 22^d day of December
 "A.D. 1860

"The condition of the above obligation is such that whereas
 "the said Olof Johnson recovered a judgment against
 "the said George Farr for the sum of two thousand three
 "hundred seventy five & $\frac{5}{100}$ dollars and costs of suit
 "in the Henry County circuit court on the first day of
 "November A.D. 1860 from which judgment the said George
 "Farr has prayed an appeal to the Supreme court
 "Now if the said George Farr shall duly prosecute said
 "appeal and pay said judgment with the costs interest
 "and damages in the case the said judgment shall be
 "affirmed then this obligation to be void otherwise
 "to remain in full force & effect

"George Farr 
 "D. L. Wiley 

And afterwards to wit on the day and year last aforesaid
 to wit on the 24th day of December A.D. 1860 the said defendant
 by his atty, filed in said cause his Bill of exceptions to the
 rulings and judgment of this court, in words and
 figures following to wit:

Olof Johnson }
 vs } Assumpsit
 George Farr }

Be it remembered that on this 31st day of October AD 1860 and on the trial of the above entitled cause the said plaintiff by his attorney in order to maintain and prove the issues on his part proffered to offer in evidence and read to the jury a certain instrument in writing of which the following is a copy to wit:

" Olof Johnson & George Farr ~~defendants~~, propose to arbitrate "
 " the differences between them in relation to settlement "
 " of business of Johnson & Farr in hands of Olof "
 " Johnson for settlement. Olof Johnson is to be plaintiff "
 " & George Farr defendant each party is to choose a person "
 " to be entirely disinterested and not to be involved in any "
 " business or other transactions so as to be liable to be "
 " ~~impeached~~ influenced unduly in favor of or against "
 " either party The two persons they choose to choose "
 " or third person The said parties to each be his own atty "
 " in the case The decision of the arbitrators to be binding "
 " & final upon the parties arbitrating The said arbitra "
 " tion to take place on Wednesday Nov 30/54 at 10 o'clock "
 " of said day The parties have agreed upon John I "
 " Bennett as the third man

(Signed)

O Johnson "
 Geo Farr "

And at the same time the said plaintiff called as a witness Clement Jones who being first duly sworn testified as follows " Knew plaintiff &

defendant. know the hand writing of each of them this paper is signed by both of them in their hand writing & they both acknowledged to me that they had signed it" The said plaintiff by his attorneys then offered the said paper in evidence and proposed to read the same to the jury to which the said defendant then & there by his counsel objected and the court after considering the objection overruled it and allowed the said paper to be read to the jury as evidence to the overruling of which objection and the reading of said paper in evidence the said defendant by his attorneys then and there at the time excepted

The said plaintiff then further to maintain said issues on his part proposed to offer in evidence and to read to the jury a certain written instrument of which the following is a copy

"Galva Nov 30th 1859"

- " We the arbitrators between Olof Johnson plaintiff and
 " George Farr defendant agree on the following points
 " in the Bill of Olof Johnson against Johnson & Farr "
 " 1st Assuming that \$9746.53 was the amt of indebted
 " ness of Johnson & Farr that Olof Johnson shall be al-
 " lowed exchange on such amt of indebtedness as was
 " payable in New York at the rate of one and half per cent
 " 2^d That in the item charged costs & expenses one
 " hundred and twenty five dollars shall be deducted
 " 3^d That Olof Johnson shall be allowed interest at
 " rate of six per cent on amt of indebtedness less
 " O Johnsons credits to Johnson & Farr as per bill

31

" of July 16th 1854 for \$ 7338.72 - from April 26th 1857 to
Nov 30th 1859

" 4th That the motion of defendant for nonsuit for
cause of nonfulfillment of contract be overruled and
Olof Johnson be allowed 15 per cent commission as
per contract on amt of indebtedness

5th That the assets of Johnson & Farr unsettled and
not collected shall be divided as per contract of
April 26th 1857

6th That we find balance due Olof Johnson of \$ 4502.47

Signed

" Claudius Jones "

" Wm L Wiley "

" E S Bond "

And the plaintiff at the same time called Claudius Jones
who testified as follows " I was one of the arbitrators named
in the award I acted with Wiley & Bond and went
into arbitration at the request of Farr This is the agree-
ment under which we acted We met Nov 30th 1859 at
the Rail Road office in Galva Both plaintiff and
defendant were present and the three arbitrators
Wiley Bond & myself chosen by the parties under the
submission. We heard the statements of parties
That is the paper made & declared as the award
The other arbitrators signed it and I signed it also
We agreed on the date of the award - that is Nov 30th 1859 -
The witness was then cross examined by Defendants
attorneys and testified further as follows

I was requested by Farr to act as arbitrator about
the middle of afternoon of Nov 30 No person was

31

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" Claudius Jones "

" Wm L Wiley "

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in the award I acted with Wiley & Bond and went
into arbitration at the request of Farr This is the agree-
ment under which we acted We met Nov 30th 1859 at
the Rail Road office in Galva Both plaintiff and
defendant were present and the three arbitrators
Wiley Bond & myself chosen by the parties under the
submission. We heard the statements of parties
That is the paper made & declared as the award
The other arbitrators signed it and I signed it also
We agreed on the date of the award - that is Nov 30th 1859 -
The witness was then cross examined by Defendants
attorneys and testified further as follows

I was requested by Farr to act as arbitrator about
the middle of afternoon of Nov 30 No person was

present at the time. I refused to act at first Johnson & Farr then both requested me to act and I consented. They both said they had come to arbitrate and produced the agreement they had made on the subject. They said they had failed to settle their business themselves and had agreed to leave it to Wiley Bond & myself and were going to abide by our decision. Wiley & Bond were there. They had agreed on Bond & Wiley some days previous and had not agreed on me until that day. I took the place of Bennett who declined to act. Johnson produced Bill of his account between Olof Johnson & Johnson & Farr this is the Bill (witness here produced the Bill of which the following is a copy).

Johnson & Farr in acct with Olof Johnson			
Document of indebtedness paid		By total amt of cash collected	
assumed July 1/57	\$9746 53	from notes & accts rec July 1/57	\$6473 77
"Exchange on \$5345.29		" Anderson & Hartzell acct	627 10
paid in N.Y. & o/c	250 36	" Henry Wald	75 98
"Boats & expenses on bills	252 52	" Excess of O. Johnson	161 87
Total	10249 41	Total	\$7838 72
" Interest on above to date	2092 47	" Interest on above to date	1498 43
" Comd for paying indebtedness ^{15% as per agreement}	1537 40		\$8837 15
	13879 28	Balance	5042 13
To Balance	\$5042 13		13879 28
E & O E			
July 16, 1854			

this is Bill we were arbitrating, that is, the accounts of Johnson & Harr, in the hands of Olof Johnson for settlement, Mr Johnson presented this Bill and claimed that the indebtedness was from Johnson & Harr to Mr Johnson, the submission was a submission of the charges contained in that Bill

We commenced at 4 O'clock on the 30th of November it was about 10 O'clock when the parties left for us to make up a decision, after the parties left the room Wiley & myself agreed on the points - parties then came into the room and we told them we would come in and announce the award to them the next morning There was no balance struck that night we had not put it together, We met next morning between 8 & 9 O'clock, the award was signed not far from 9 O'clock I think we corrected the award before it was signed That correction changed the result This was a clerical error in figuring the percent Re-direct examination resumed by Plff

That sum of \$ 4746.53 was agreed on as the amount of indebtedness, We agreed on the rate of Exchange Johnson was to be allowed, Harr objected to having attorneys, The amount of deduction was agreed on that night The rate of interest was not fixed that night on the amount of indebtedness, the rate was agreed on The motion of Harr for nonsuit was overruled that night The uncollected assets were agreed on that night, The basis of calculation was agreed on that night

There was nothing to be done but the process of addition. We called on the parties & notified them that we had agreed on the points, we did not state our judgment on the points or how we had agreed but simply that we had agreed. The motion claimed by Farr was acted on previous to his coming in.

The counsel for the plaintiff then offered to read the award (of which a copy is heretofore given) in evidence to the jury to which the counsel for the defendant objected, for the following reasons

1st The submission upon which the award was predicated varies from the submission in the declaration it is not of the same date

2^d The award is indefinite and finds no ascertained balance due from Farr to Johnson

3^d The award varies from that in the declaration in this to wit: The declaration avers an award for a specific balance due from Farr to Johnson whereas the award is simply an award of a specific balance due from Johnson & Farr to Olof Johnson of \$4502.47 and not of any balance due from Farr to Johnson

4th The award is uncertain in reference to the 5th finding of the arbitrators as to how the unsettled & uncollected assets of the firm of Johnson & Farr were to be divided & also it does not definitely ascertain the amount of said assets

5th The Bill referred to in the award is a part of the award and the award is not admissible in evidence without the Bill accompanying it

7th The award is indefinite as to what portion of the amount of the indebtedness of \$4502.47 due from Johnson & Kerr to Olof Johnson Kerr is to pay Johnson

8th The award was not made until the 1st day of December the submission required it to be made on the 30th of November

The award was also objected to upon all the grounds of objection stated in the Demurrer to the declaration to wit:

1st The said award mentioned & declared on in plffs declaration is variant form & different in substance from the award offered in evidence in this to wit

The said award mentioned & declared on in plffs declaration is an award between the said plaintiff and the said defendant while the award offered & proferred to be read in evidence is an award between Olof Johnson the said plaintiff and Johnson & Kerr (a copartnership composed of the said plaintiff and the said defendant) ~

2^d The said award read & shown to the court & proferred to be read in evidence is uncertain & void

3 The said award in the first point named therein & in each of the said points therein after made or found are wholly & entirely conditional and each of said points are based upon a contingency as also the whole of said award

4th The said award read & shown to the court is not an award between the said plaintiff and

36 The said defendant

5th Because in the said first point made in the said award shown to the court the amount of exchange therein understood to be specified is wholly indefinite and it is impossible to determine the amount from said award or any part thereof

6th Because the said award refers to some other contract between the plaintiff & defendant as an umpire by or from which the said plaintiff & the said defendant are hereafter to determine their respective rights & liabilities

7th Because there ~~are~~ is no final award that defendant shall pay to plaintiff any sum whatever at any time or that he shall do any other act whatever

8th Because the said award shown to the court does not settle or determine the amount of assets in the hands of plaintiff & it nowhere refers to anything whatever by which said assets can be determined either in amount or kind

9 The said award read & shown to the court is in every particular totally repugnant & uncertain and void in each of the pretended findings therein named & specified

10 The said award is otherwise informal & insufficient & is in fact no award and is wholly void for uncertainty and therefore different &

variant from the said award mentioned in said plaintiffs declaration &

The court overruled said objections & allowed the award to be read to the jury in evidence To which ruling of the court the counsel for the defendant then & there excepted

The plaintiff here rested his case

The defendant then called Nelson Pierce as a witness who being duly sworn testified as follows

I reside at Galva, I know the parties to this suit, I know Jones Wiley & Bond the arbitrators spoken of. I was present some of the time during the arbitration, I was present when Farr made his motion for a non suit. That was the evening of the first day He called for a non suit He declined having anything more to do with the arbitration He so stated to the arbitrators There was no award then made that I know of It was on the 30th of November, it was spoken of that night about their coming together the next day They spoke about meeting the next morning I do not recollect whether Farr had a statement in writing he read to them, we all left together There was no award announced that night in my presence, Some points may have been spoken of, I could not say whether the arbitrators decided on the motion for a non suit or not They went right on with their business

The witness being cross examined testified as follows.

I was called there to make a statement, Farr called for a non suit I cant tell the exact words he used Farr participated in the business that was going on after his motion for a non suit I think we all went out together I think the arbitrators said they had made some points Farr came back again

Re direct examination resumed

Farr & I went away & then came back that night I think that was the time Farr called for a nonsuit I understood him to say that he declined having anything more to do with the arbitration This was near his language "Gentlemen I'll have nothing further to do with it" There was a considerable arguing about it

Claudius Jones was then called as a witness on the part of the defendant & testified as follows

This arbitration commenced on the afternoon of the 30th of November This award was signed the next day and also drawn up the next day

A paper of which the following is a copy

"George Farr on the point of commissions \$1537.40
"insisted that Mr Johnson was not entitled to any
"commission because he Johnson had not yet
"settled the business of the firm of Johnson & Farr

"And that this item of commission could not be
 "charged until he Johnson had settled the business
 "of the firm as per contract that said Johnson had
 "not used diligence in the collection of the debts
 "as contracted and that for nonfulfillment of the
 "contract on his Johnsons part that Farr was entitled
 "to a non suit and that Farr insisted that this point
 "should be settled before further progress in the case
 "should be had and at this point in the case notified
 "the arbitrators or two of them Clandius Jones & Emory S Bond
 "that he would withdraw from the arbitration at this point
 "and would go no further in the case. This notice was
 "given to the said arbitrators before making out
 "of their award

(Signed)

" Emory S Bond

" Clandius Jones

was here shown to witness whereupon he
 stated this is a copy of the paper brought in by
 Farr for me to sign. The original paper is lost I will
 not swear it is an exact copy. The heading of it
 was true & we signed it. We did not read it all.
 Relied on Mr Farr for its being correct. It is not correct.
 That was the only paper signed by Bond & myself.
 All three of the arbitrators were there when the award
 was made. This other paper was presented two hours
 after the award was made. An award had been
 made & declared before it was signed.

Hoiram Bigelow was then called as a witness on the part of defendant who testified as follows

I saw the paper spoken of by the witness Jones. Mr Jones had it in a package of other papers. It was signed by Jones & Bond. I know their hand writing. That is a copy of it. I do not know where the original is. The last time I saw it was in Jones' office.

On cross examination the witness stated I saw it in Jones Bank during the last week of court last spring. That is an exact copy of it which I took & compared myself. I was attorney for defendant at that time.

George Farr being sworn to prove the loss of said paper testified & said, I left said paper with Claudius Jones the arbitrator & it has not been in my possession since & so far as I know it remains in the custody of said Jones.

Whereupon the said paper was read in evidence to the Jury by the counsel for the defendant.

The Defendant here rested his case.

The above and foregoing is all the evidence given on said trial by either party.

The plaintiff then requested the court to give the following instructions to the jury Numbered 1. 2. 3. 4 & 5

41 1st If the Jury believe that the parties signed the paper introduced in writing submitting their differences to arbitration and afterwards selected & agreed upon Laurence Jones Wm L Wiley & E S Bond as such arbitrators that they and the parties met at Galva on the 30th day of November 1859 & proceeded to the hearing of the matters submitted and that the arbitrators afterwards on that day or the next day made their decision & award between the parties and notified them thereof the Jury will find for the plaintiff the amount of money found by such award in favor of the pl^{ff} & against the def^t

Unless the Jury further find from the evidence that the defendant revoked the agreement of submission before the making of the decision & award by the arbitrators

2 Although no technical words are necessary to constitute a revocation of the agreement of submission yet it is necessary in order to constitute a revocation by the defendant that he should by the use of the word "revoke" or of other words clearly and distinctly inform the arbitrators that he revoked or annulled the agreement submitting the case to them

3 A mere motion by the def^t before the arbitrators for a non suit is not a revocation of an agreement of submission to arbitration

4 If the jury find from the evidence that the only evidence offered by def^t to show a revocation of the agreement of submission was a statement

"or argument made by the deft on a motion
 "before the arbitrators for a non suit And that
 "thereafterwards the deft continued before said ar-
 "bitrators and participated in the trial and argued
 "or discussed the questions afterwards arising
 "before them and was also present at the decision
 "such further participation if any is evidence
 "tending to prove that there was not a revocation
 "of the submission to arbitration

- 5 "The paper signed by Emory S Bond & Laurence Jones
 "& purporting to be a statement or certificate as to
 "what occurred before them is not evidence to prove
 "the statements of deft Harr before the arbitrators
 To the giving of each of which several instructions the
 counsel for the defendant duly & separately objected
 The court overruled said objections and gave in-
 struction No 1 on the part of the plaintiff to which
 ruling of the court in giving said instruction No 1
 the counsel for the defendant then & there duly excepted
 The court also at the request of the plaintiff gave in-
 struction No 2 & to which ruling of the court in
 giving said instruction No 2 the counsel for the
 defendant then & there duly excepted

The court also at the request of the plaintiff gave
 instruction No 3 to which ruling of the court in
 giving said instruction No 3 the counsel for the
 defendant then & there duly excepted

The court also at the request of the plaintiff
 gave instruction No 4 to which ruling of the

court in giving said instruction No 4 the counsel for the defendant then & there duly excepted

The court also at the request of the plaintiff gave instruction No 5 to which ruling of the court in giving said instruction No 5 the counsel for the defendant then & there duly excepted

The counsel for the Defendant then asked the court to give the following instructions to the jury to wit:
 "1st No recovery can be had upon the written award offered in evidence the same being indefinite and uncertain

And the said court refused to give said instruction to the jury to which ruling of the court and his refusal to give said instruction the said defendant then & there duly excepted

The counsel for the Defendant then asked the court to give the following instructions to the jury to wit:

"2^d No recovery can be had upon the written award offered in evidence for any greater sum than one half of \$4502.47 & legal interest from the date of said award viz one half the sum in said award stated with interest

And the said court refused to give said instruction as asked by said defendant to which ruling and refusal of said court to give the instruction the said defendant by his counsel then & there duly excepted

The counsel for the Defendant then asked & requested the court to give to the jury an instruction of which the following is a copy

"The plaintiff is not entitled to recover on the award
"in evidence without showing compliance with its terms
"on his part and tender or offer to Farr of the portion
"of the assets of the firm of Johnson & Farr to which
"Farr was entitled by the terms of the award

And the said court refused to give said instructions to which ruling and refusal of said court the said defendant by his counsel then and there duly excepted

The jury then retired and afterwards returned their verdict in the following words and figures to wit

"Olof Johnson }
"George Farr } We the jury find verdict for the
plaintiff and assess the damages at four
thousand seven hundred and fifty & ¹⁰/₁₀₀ dollars
(14750.10) G B Phillips Foreman

And the said plaintiff thereupon remitted a part of said verdict in the words & figures as follows

(\$ 2375⁰⁰/₁₀₀) "Of the above amount the plaintiff remits
"the sum of two thousand three hundred and
"seventy five dollars and five cents"

November 1st 1860

Olof Johnson

The said defendant thereupon entered his motion for a new trial for the reasons set forth therein which motion & reasons are in the following words & figures to wit:

Olof Johnson

vs

George Farr

} Motion for new trial

And now comes the defendant & moves for new trial on the following grounds

1st The court erred in giving the several instructions asked for by the plaintiff

2^d The court erred in ^{not} giving the several instructions asked for by the deft & refused by the court

4th The refusal of the court to give the several instructions asked by the deft was erroneous as to each several & separate instruction so asked by the deft & refused

5th The court erred in rejecting the evidence offered by the Deft

6th The court erred in admitting the evidence offered by the plaintiff & objected to by the Deft

7th The verdict is against the evidence

Bigelow & Frost Defts atty
And the said court after considering the said motion overruled the same to the overruling of which motion and refusal to grant a new trial the said defendant by his counsel then & there duly excepted ~

Inasmuch therefore as the foregoing does not
appear of record the said defendant George
Farr by his atty prays that this his Bill of exceptions
may be signed & sealed & made a part of
the record which is done

J Mc Moore ^{Seal}
Judge 6th Circuit Illinois

State of Illinois }
Henry County } I Amos Gould Clerk of the Circuit
Court in and for said county do hereby certify that the
foregoing is a true full and complete copy and
transcript of the record in said cause as appears
of record in my office

Witness Amos Gould clerk of said court and
the seal thereof at Cambridge in said county
this Eleventh day of March A.D. 1861

Amos Gould clerk
By W L Dalrymple Deputy

Inasmuch therefore as the foregoing does not
appear of record the said defendant George
Farr by his atty prays that this his Bill of exceptions
may be signed & sealed & made a part of
the record which is done

J Mc Moore ^{Seal}
Judge 6th Circuit Illinois

State of Illinois }
Henry County } I Amos Gould Clerk of the Circuit
Court in and for said county do hereby certify that the
foregoing is a true full and complete copy and
transcript of the record in said cause as appears
of record in my office

Witness Amos Gould clerk of said court and
the seal thereof at Cambridge in said county
this Eleventh day of March A.D. 1861

Amos Gould clerk
By W L Dalrymple Deputy

Claf Johnson

vs

George Ferr

Transcript from

Henry Co Circuit

Court

fees \$12.50

In the Supreme Court of the State of
Illinois. Of the April Term AD 1861

Alof Johnson appellee }
as } Appeal from Henry
George Harr appellants }

And now comes the said George Harr
by H Bigelow & J S Frost his attorneys and says
that in the record and proceedings aforesaid
there is manifest error in this to wit:

1st The Circuit Court erred in allowing im-
proper evidence to be introduced on the part of
the plaintiff and which was objected to by
the attorney for the defendant at the time

2^d The Circuit Court erred in allowing the
written award signed by Claudius Jones Wm &
Wiley and Emory & Bond to be given in evi-
dence to the jury although the same was ob-
jected to at the time by the attorney for the
defendant ~

3^d The Circuit Court in giving all and in
giving each of the instructions asked by the
attorney for the plaintiff and objected to at
the time by the attorney for the de-
fendant ~

4th The Circuit Court erred in refusing instructions Numbered one (1) two (2) and seven (7) and each of them, asked by the attorney for the defendant and refused ~

5th The Circuit Court erred in refusing to grant the defendant a new trial and in overruling his motion therefor ~

6th The Verdict was contrary to the law ~

7th The Verdict was contrary to the evidence ~

8th The Circuit Court erred in rendering judgment on the verdict, subject to the remittitur of the plaintiff in the case

9th The said judgment was given in favor of the said Cloy Johnson; whereas by the laws of the land it ought to have been given in favor of the said George Garr; wherefore the said George Garr prays that the said judgment may be reversed annulled and held for nothing, and that he may be restored to all things he has lost by reason thereof ~

By H Bigelow & J S Jones
his Atty's

Olof Johnson appellee } In the Supreme Court
as } On appeal from Henry
George Farr appellant }

And now comes the
said Olof Johnson appellee by Wilkinson &
Pleasant his attorneys and says that in
the record and proceedings aforesaid there
are no such errors as by the said appellant
are above assigned, and this he the said
appellee submits to this Honorable Court
and prays that the Judgment of the
said Circuit Court may in all things
be affirmed, and that he may recover
his costs herein

Wilkinson & Pleasant
attys for appellee.

298-141
Wm Johnson

George Hara

Transcripts

from Henry Co

Filed April 18. 1861

L. Leland

clerk