

No. 13499

Supreme Court of Illinois

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LAW E

vs.

Robinson

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 255.

Lowe
vs

Robinson

13400

1861

ABSTRACT.

SUPREME COURT OF ILLINOIS, APRIL TERM, A. D. 1861.

CALEB LOWE,
vs.
WILLIAM ROBINSON, } Appeal from Peoria.

This was an action of assumpsit tried before a Justice of the Peace May 23d, 1860, and appealed to the Circuit Court of Peoria County, where it was tried before Judge Powell and a jury, at the November Term, A. D. 1860. Verdict and judgment for Plaintiff for \$149.

Bill of Exceptions filed March 2d, 1861.

1 The Plaintiff read in evidence the following agreement:

KICKAPOO, PEORIA Co., ILL., Feb. 7th, 1859.

Articles of Agreement between Caleb Lowe, of Kickapoo and William Robinson, of Rosefield, said Lowe hereby agrees to pay said Robinson \$200 for labor, &c., of himself, wife and team on said Lowe's farm in Rosefield for one year from the 4th of March, 1859, the 200 dollars to be paid in sixty days from March 4th, 1860, and it is also agreed that at the expiration of the year, two men are to be chosen, one by said Lowe and one by said Robinson, to say how much more than \$200 said Lowe is to pay said Robinson, if anything, if those two cannot agree they are to choose a third to say what the amount shall be for his labor, &c., said Lowe to furnish the house with provisions and groceries and feed for said Robinson's two horses and two cows, said Lowe is to have the use of the cows, and no pigs are to be kept on the place, except they belong to said Lowe, said Wm. Robinson on his part does hereby agree to work for said Lowe one year from the 4th of March 1859, to the 4th of March 1860, on said Lowe's farm and otherwise as said Lowe may wish, through the year, and also furnish wagon, harness, plows, &c., and house furniture, excepting the cooking-stove, that said Lowe furnishes and said Robinson will take said stove at cost, said Robinson's family consists of himself, wife and three children, said Lowe is to live in the family and to have one room, the south one below. Said Robinson's wife is to cook and do the work of the house, except the washing for said Lowe and his men without any charge, any more than mentioned in the \$200, said Robinson is to accommodate said Lowe's hired men, if there is more than Robinson's wife can do the work for, say in a hurry in harvest, said Lowe will furnish help.

Witness,
MARY F. LOWE.

CALEB LOWE,
WILLIAM ROBINSON.

2 The Plaintiff then proved that he commenced work for Defendant on March 4th, 1859
3 and moved into Defendant's house, that he brought with him five dollars worth of provisions which were consumed in the family when Defendant failed to provide.

That Plaintiff's wife did some washing for Defendant and family and a hand or two and washed the bed-clothing of the house. That a man's washing was worth from ten to twenty-five cents per week.

4 E. C. Rynearson testified for Plaintiff that shortly after the 4th of March, 1860, Plaintiff chose him arbitrator to determine as Plaintiff told him how much his wages were to be under said contract.

Jacob Smith was chosen by Defendant as arbitrator. Smith and he met, but could not agree. Chose David Stet umpire. They met, and after reading the contract, Stet said he would put the wages at \$20 per month.

Witness agreed to the price fixed by Stet and the price stated to bystanders.

- 5 *Cross Examined.*—Witness said he had not spoken to Defendant about the arbitration. Defendant was not, and Plaintiff was, present at arbitration.

Smith had an account of Defendant against Plaintiff, which he wanted adjusted with all the accounts between the parties.

Smith said Defendant wanted him to have this done.

Witness objected, saying we have nothing to do with anything but the wages.

Arbitrators talked over the accounts; Robinson claimed some set off, washing and provisions; we did not agree and adjourned to another day, expecting parties would settle their accounts;—Plaintiff admitted \$91 of Defendant's account, but insisted that \$6 order was to be applied to pay for washing.

- 6 *Re-Examined.*—Stet and I agreed on wages. After we agreed, Smith proposed to adjust the other accounts. Stet and I thought we had no right to settle them, and thought it no harm to talk them over. Arbitration was early in March. I had no authority, as I understood it, as to any matter but the wages.

Plaintiff stated, when he admitted Defendant's account, that he had no other demand, or set off, against him.

Major Bohanan then testified for plaintiff, that Defendant told him he would not settle with Plaintiff; that he had chosen Smith, who was then present, arbitrator under written contract; that arbitrators had not agreed. This was about the middle of March last. Note sued on was given for a part of the wages under contract.

The Plaintiff here rested.

- 7 Jacob Smith testified for Defendant, that about the first part of March last Defendant called on witness and wanted to have witness act as arbitrator on his (Defendant's) part in an arbitration between Plaintiff herein and Defendant, and effect a settlement between them. That Plaintiff claimed more than \$200 for his year's services, and that according to the contract between them is (in) such case it was to be left to arbitrators; that Defendant gave witness the written contract between them, and also gave me his account against Plaintiff, and told witness to meet Plaintiff's choice as an arbitrator, whom he had learned was Mr. Ryneerson, and make a settlement; he also
8 told me he wanted me to get the account against Robinson also settled; that he wanted to get Plaintiff out of his house. Witness and Ryneerson met; Plaintiff was present, but Defendant was not present. Ryneerson read over the contract, and said all we had to do was to fix the amount of the wages, and I told him I wanted to settle all the accounts, and Ryneerson said he thought we had nothing whatever to do with the accounts; that we were appointed under the written contract, and would not determine anything except what was in the contract. I presented Defendant's account; Robinson claimed some accounts the other way; Robinson did not object to examining the accounts, and we talked about them. Ryneerson and I could not agree. I said what wages I thought Plaintiff ought to have, but Ryneerson would not say what he thought, but would not agree to my opinion.

We, Ryneerson and myself, then agreed to take Daniel Stet as a third man, or arbitrator, to act in the premises, and sent for him. Stet came, and we then told him we were unable to agree, and that we had chosen him to act as a third man, or arbitrator, under the contract. That Ryneerson then read over the contract to said Stet, and then said Stet said that he thought that \$240.00 for the year, or \$20.00 per month, after deducting lost time, would be right. We then talked about the other accounts. Ryneerson said he thought we had nothing to do with them. I told them (Ryneerson and Stet) that Lowe gave me the account with the contract, and that I understood all were to be passed upon together. Defendant's account amounted to

\$102, and in the first part of his account, filed here in court, Plaintiff admitted \$91.00 of Defendant's account as being correct. Plaintiff made some claims of accounts
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That Plaintiff occupied Defendant's house till about first of April. Defendant's teams and hand were there at work during the time. Plaintiff kept Defendant out of the house. Lowe's two teams were there and idle; think the damage to Lowe would be \$2 per day for the time each team was idle.

10 *Cross-Examined.*—Witness said that he presented Defendant's account to Ryneerson at the time of the arbitration, before Stet was sent for. That the witness was chosen by defendant as an arbitrator under the written contract read in evidence here to the jury, and under that contract only; that when said Lowe (Deft.) appointed witness one of the arbitrators that the words he used were as near as I can remember, as follows; "Robinson wanted more than two hundred dollars for his year's wages, and under the written contract it has to be left to arbitrators, he has to choose one arbitrator, who I am informed is Mr. Ryneerson, and I have to choose one, I want you to fix the wages and here is an account, (handing it to the witness) I would like to have you get that settled, too." This was the only authority I had as arbitrator. Witness further stated that at the time Plaintiff admitted the correctness of Defendant's account to the amount of \$91.00, he also said that \$91.00 was also all the just claims and set-offs that Defendant had against Plaintiff and that Defendant owed Plaintiff more than two hundred dollars after allowing all that Defendant rightfully had against Plaintiff. Witness knew Lowe's teams and hands were idle only from Lowe himself; does not know of his own knowledge that the teams and hand were idle; don't know that the crops were damaged by being put in late, think \$2 per day covered all damage. If Robinson occupied only the house and did not prevent the hands from working did not consider the damage much. Defendant told witness about that time that he had rented out his farm.

On being re-examined by Defendant's Attorney, witness stated that he understood from Defendant that they were to pass on both the contract and account, when he met arbitrators. He so understood it from said Lowe.

11 Defendant called Amos Vincent, who testified that on the 1st of March last he took care of Defendant's team and boarded at Plaintiff's until 12th or 14th of March, then boarded at Hall's who lived half mile farther from Defendant's farm. Plaintiff would not board him longer. Witness worked just as much when he boarded at Hall's as when he boarded at Robinson's.

Cross-Examined.—Plaintiff only had possession of the house. Witness worked one of Lowe's teams all the time.

12 Defendant called Isaac Delaplaine who testified that Robinson kept Defendant's house for some weeks after 4th of March, 1860, and keeping Defendant's tenants out, and his teams idle, at the cost of \$2 per day.

13 Robert Hall testified that Plaintiff used one of Defendants horses three weeks in the
14 summer of 1859 and it was worth 30 cents per day.

Defendant called Daniel Stet who testified in full that he was called in by Ryneerson and Jacob Smith as a third person in an arbitration between Robinson and Lowe,

the parties to this suit, and was called because Ryneerson and Smith could not agree, that we talked the matter over, and that Ryneerson read over the written contract between Lowe and Robinson. That I said that I thought the wages of Robinson should be \$20 a month, that then Smith also proposed to settle the accounts between the parties, but after talking the matter over sometime we could not agree, and so we adjourned to meet again. That we did not agree upon an award and that we adjourned to meet again for that purpose, but that we never met again.

On Cross-Examination—Witness said that when he (witness) met Ryneerson and Smith, they told him that they were chosen arbitrators, Ryneerson by Robinson, and Smith by Lowe, under a written contract (which contract was there and is the one read in evidence to the jury) that they, Ryneerson and Smith could not agree, and that under and according to the contract they had agreed on him, (witness) as the third man to come in and determine the matter, that Ryneerson then read over the written contract and I then gave it as my opinion that the wages should be \$20 per month, that Ryneerson said "well." Smith said he thought it too much, that then Smith took out an account of Lowe against Robinson and wanted to have it allowed, that Ryneerson said he thought we had nothing to do with the account, that all we had to do with was the wages under the contract, that I said I thought so too. Smith said he thought that we had better settle the account too and make a final settlement; that Lowe handed him the account when he (Smith) came away and told him that he (Lowe) wanted him to get the account settled also. That then we talked the accounts over and Robinson admitted Lowe's account to the amount of \$91, but claimed that Lowe did not have any more demands against him (Plff.) and also claimed that Lowe owed him (Plff.) a balance of more than two hundred dollars. We, arbitrators, could not agree and adjourned to meet again. We adjourned to settle the accounts, not the wages. When I said we did not make an award, I meant we did not agree upon the accounts. The wages I had put at \$20 per month before we talked about the accounts and Ryneerson said "well." Smith only objected. And I thought that Ryneerson and I agreed about that. I considered I had fixed the wages before we talked about the accounts. The only dispute among us was on the accounts.

On Re-Examination—Witness said that they (arbitrators) did not make or proclaim any award except what I have said in regard to wages.

Defendant here rested.

Plaintiff re-called Wm. Speer who testified that the reason Plaintiff's horses was not used was that defendant did not provide grain or feed for horses and they had to run out.

Here all parties rested.

The court gave the following instructions on the part of the Plaintiff.

1st. "If the jury believe from the evidence that Plaintiff was employed with his wife, &c., for the Defendant, Lowe, one year under the written contract, and that the Plaintiff, Robinson, performed the labor and services required in the contract, the jury will allow the Plaintiff for the contract price."

2nd. "If the jury believe from the evidence that under the written contract to determine the wages of the Plaintiff that arbitrators were mutually chosen according to the contract and have determined the amount of wages under the contract, then the jury will allow the Plaintiff the amount given by said arbitrators."

3d. "If the original arbitrators failed to agree and that they choose an umpire, a third person. Then in case original arbitrators disagree, the umpire alone may determine the matters in controversy provided they all act."

4th. "If these arbitrators were chosen under the written contract only, then they are to adjudicate the matters in the contract merely."

5th. "If the jury believe from the evidence that the parties to the suit appointed arbitrators mutually under the written contract, and that one of the parties tried to have

matters settled by the arbitrators, not in the contract, and further that the arbitrators as arbitrators and umpire passed upon the matters in the written contract and not upon the other matters, still the parties are bound, unless there was an express stipulation by the parties or one of them not to be bound unless all the matters were passed on by the arbitrators."

6th. "It is not necessary to the validity of an award that it be formally published to the parties to the arbitration as to the others, it is sufficient that it be in fact made when all the arbitrators are acting."

Defendant's Instructions :

19 1st. "The jury are instructed on the part of Defendant that they cannot find any thing due from Defendant to the Plaintiff over and above \$200 therein specified, unless they have some proof or evidence that something more was due him."

2nd. "The jury are further instructed that if they believe from the evidence that in the submission to the arbitrators that the Defendant, Lowe, submitted the written contract to the arbitrators in connection with all other accounts and with the understanding that the arbitrators were to pass upon all, then, in that case, Lowe would not be bound upon any award made upon the written contract alone, without passing upon the whole subject of accounts."

3d. Arbitrators cannot pass upon part of the matters submitted to them, and refuse and neglect to pass upon the balance submitted."

4th. "An expression of opinion by the umpire of the value of the labor of Plaintiff under the contract assented to by one of the arbitrators is not an award, (modified by the Court) unless the jury believes from the evidence that it was agreed and intended by them to be an award."

5th. "When the umpire and an arbitrator agree about a matter submitted to them, but announce to the parties that they have not agreed, their opinion in regard to the matter submitted to them is not a valid award."

20 6th. "An award to be valid must be made on all the matters submitted to the arbitrators, and an agreement as to any part of the matter submitted is not binding and does not constitute a valid award."

7th. "To constitute an award requires the deliberate agreement of the arbitrators or umpire or any two of them, and the mere expression of an opinion by the umpire not stated by him or intended by him as an award does not constitute a valid award."

8th. "Although the jury believes from the evidence that the umpire fixed the sum due for labor done under the contract, but adjourned with the arbitrators for another hearing before making the award as to said labor and as to other matters of account between the parties, and never again met, but declined making an award at a subsequent day. The jury are instructed that if they believe from the evidence that no other award was made, except as above stated, that there was no valid award settling the amount due for labor under the contract."

9. If the jury believe from the evidence that the arbitrators and umpire never announced to the defendant that they had made an award, but on the contrary, that the umpire and one of the arbitrators announced that they would not make an award, and never again met or attempted to agree, the jury are instructed that the defendant is not bound by any finding or award made by said umpire or arbitrators.

21 But the Court modified defendant's 4th instruction, by inserting at the close, "unless the jury believe from the evidence that it was agreed and intended to be an award, and refused to give defendant's 8th and 9th instructions, to which modification and refusal the defendant then and there objected and excepted."

21 Appeal Bond filed January 19th, 1860.

And the said Appellant comes and says that on said record is manifest error in this :

1. That said Court erred in giving each of the plaintiffs instructions.

2. That said Court erred in refusing and modifying the defendant's instructions.

3. That said Court erred in overruling the defendant's motion for a new trial, and in not granting the same, and in entering judgment for the plaintiff and not for the defendant, and in other matters, &c.

All of which said Apellant assigns for error, and prays that said judgment may be reversed, &c.

McCOY & HARDING,

Attorneys for Apellant.

25-55
Lowe
" Robinson

Filed - Apr. 29-1861-

L. Leland
clerk

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3 and moved into Defendant's house, that he brought with him five dollars worth of provisions which were consumed in the family when Defendant failed to provide.

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19 1st. "The jury are instructed on the part of Defendant that they cannot find any thing due from Defendant to the Plaintiff over and above \$200 therein specified, unless they have some proof or evidence that something more was due him."

2nd. "The jury are further instructed that if they believe from the evidence that in the submission to the arbitrators that the Defendant, Lowe, submitted the written contract to the arbitrators in connection with all other accounts and with the understanding that the arbitrators were to pass upon all, then, in that case, Lowe would not be bound upon any award made upon the written contract alone, without passing upon the whole subject of accounts."

3d. Arbitrators cannot pass upon part of the matters submitted to them, and refuse and neglect to pass upon the balance submitted."

4th. "An expression of opinion by the umpire of the value of the labor of Plaintiff under the contract assented to by one of the arbitrators is not an award, (modified by the Court) unless the jury believes from the evidence that it was agreed and intended by them to be an award."

5th. "When the umpire and an arbitrator agree about a matter submitted to them, but announce to the parties that they have not agreed, their opinion in regard to the matter submitted to them is not a valid award."

20 6th. "An award to be valid must be made on all the matters submitted to the arbitrators, and an agreement as to any part of the matter submitted is not binding and does not constitute a valid award."

7th. "To constitute an award requires the deliberate agreement of the arbitrators or umpire or any two of them, and the mere expression of an opinion by the umpire not stated by him or intended by him as an award does not constitute a valid award."

8th. "Although the jury believes from the evidence that the umpire fixed the sum due for labor done under the contract, but adjourned with the arbitrators for another hearing before making the award as to said labor and as to other matters of account between the parties, and never again met, but declined making an award at a subsequent day. The jury are instructed that if they believe from the evidence that no other award was made, except as above stated, that there was no valid award settling the amount due for labor under the contract."

9. If the jury believe from the evidence that the arbitrators and umpire never announced to the defendant that they had made an award, but on the contrary, that the umpire and one of the arbitrators announced that they would not make an award, and never again met or attempted to agree, the jury are instructed that the defendant is not bound by any finding or award made by said umpire or arbitrators.

21 "But the Court modified defendant's 4th instruction, by inserting at the close, "unless the jury believe from the evidence that it was agreed and intended to be an award, and refused to give defendant's 8th and 9th instructions, to which modification and refusal the defendant then and there objected and excepted."

21 Appeal Bond filed January 19th, 1860.

And the said Appellant comes and says that on said record is manifest error in this:

1. That said Court erred in giving each of the plaintiffs instructions.

2. That said Court erred in refusing and modifying the defendant's instructions.

3. That said Court erred in overruling the defendant's motion for a new trial, and in not granting the same, and in entering judgment for the plaintiff and not for the defendant, and in other matters, &c.

All of which said Apellant assigns for error, and prays that said judgment may be reversed, &c.

McCOY & HARDING,

Attorneys for Apellant.

255
Lower
vs
Robinson
Abstract

Filed Apr. 29-1861
L. Leland
Clark

ROBERT A. HARRISON

Attorney at Law

ABSTRACT.

SUPREME COURT OF ILLINOIS, APRIL TERM, A. D. 1861.

CALEB LOWE,
vs.
WILLIAM ROBINSON, } Appeal from Peoria.

This was an action of assumpsit tried before a Justice of the Peace May 23d, 1860, and appealed to the Circuit Court of Peoria County, where it was tried before Judge Powell and a jury, at the November Term, A. D. 1860. Verdict and judgment for Plaintiff for \$149.

Bill of Exceptions filed March 2d, 1861.

- 1 The Plaintiff read in evidence the following agreement :

KICKAPOO, PEORIA Co., ILL., Feb. 7th, 1859.

Articles of Agreement between Caleb Lowe, of Kickapoo and William Robinson, of Rosefield, said Lowe hereby agrees to pay said Robinson \$200 for labor, &c., of himself, wife and team on said Lowe's farm in Rosefield for one year from the 4th of March, 1859, the 200 dollars to be paid in sixty days from March 4th, 1860, and it is also agreed that at the expiration of the year, two men are to be chosen, one by said Lowe and one by said Robinson, to say how much more than \$200 said Lowe is to pay said Robinson, if anything, if those two cannot agree they are to choose a third to say what the amount shall be for his labor, &c., said Lowe to furnish the house with provisions and groceries and feed for said Robinson's two horses and two cows, said Lowe is to have the use of the cows, and no pigs are to be kept on the place, except they belong to said Lowe, said Wm. Robinson on his part does hereby agree to work for said Lowe one year from the 4th of March 1859, to the 4th of March 1860, on said Lowe's farm and otherwise as said Lowe may wish, through the year, and also furnish wagon, harness, plows, &c., and house furniture, excepting the cooking-stove, that said Lowe furnishes and said Robinson will take said stove at cost, said Robinson's family consists of himself, wife and three children, said Lowe is to live in the family and to have one room, the south one below. Said Robinson's wife is to cook and do the work of the house, except the washing for said Lowe and his men without any charge, any more than mentioned in the \$200, said Robinson is to accommodate said Lowe's hired men, if there is more than Robinson's wife can do the work for, say in a hurry in harvest, said Lowe will furnish help.

Witness,
MARY F. LOWE.

CALEB LOWE,
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- 2 The Plaintiff then proved that he commenced work for Defendant on March 4th, 1859
3 and moved into Defendant's house, that he brought with him five dollars worth of provisions which were consumed in the family when Defendant failed to provide.

That Plaintiff's wife did some washing for Defendant and family and a hand or two and washed the bed-clothing of the house. That a man's washing was worth from ten to twenty-five cents per week.

- 4 E. C. Rynearson testified for Plaintiff that shortly after the 4th of March, 1860, Plaintiff chose him arbitrator to determine as Plaintiff told him how much his wages were to be under said contract.

Jacob Smith was chosen by Defendant as arbitrator. Smith and he met, but could not agree. Chose David Stet umpire. They met, and after reading the contract, Stet said he would put the wages at \$20 per month.

Witness agreed to the price fixed by Stet and the price stated to bystanders.

- 5 *Cross Examined.*—Witness said he had not spoken to Defendant about the arbitration. Defendant was not, and Plaintiff was, present at arbitration.

Smith had an account of Defendant against Plaintiff, which he wanted adjusted with all the accounts between the parties.

Smith said Defendant wanted him to have this done.

Witness objected, saying we have nothing to do with anything but the wages.

Arbitrators talked over the accounts; Robinson claimed some set off, washing and provisions; we did not agree and adjourned to another day, expecting parties would settle their accounts;—Plaintiff admitted \$91 of Defendant's account, but insisted that \$6 order was to be applied to pay for washing.

- 6 *Re-Examined.*—Stet and I agreed on wages. After we agreed, Smith proposed to adjust the other accounts. Stet and I thought we had no right to settle them, and thought it no harm to talk them over. Arbitration was early in March. I had no authority, as I understood it, as to any matter but the wages.

Plaintiff stated, when he admitted Defendant's account, that he had no other demand, or set off, against him.

Major Bohanan then testified for plaintiff, that Defendant told him he would not settle with Plaintiff; that he had chosen Smith, who was then present, arbitrator under written contract; that arbitrators had not agreed. This was about the middle of March last. Note sued on was given for a part of the wages under contract.

The Plaintiff here rested.

- 7 Jacob Smith testified for Defendant, that about the first part of March last Defendant called on witness and wanted to have witness act as arbitrator on his (Defendant's) part in an arbitration between Plaintiff herein and Defendant, and effect a settlement between them. That Plaintiff claimed more than \$200 for his year's services, and that according to the contract between them is (in) such case it was to be left to arbitrators; that Defendant gave witness the written contract between them, and also gave me his account against Plaintiff, and told witness to meet Plaintiff's choice as an arbitrator, whom he had learned was Mr. Ryneearson, and make a settlement; he also
8 told me he wanted me to get the account against Robinson also settled; that he wanted to get Plaintiff out of his house. Witness and Ryneearson met; Plaintiff was present, but Defendant was not present. Ryneearson read over the contract, and said all we had to do was to fix the amount of the wages, and I told him I wanted to settle all the accounts, and Ryneearson said he thought we had nothing whatever to do with the accounts; that we were appointed under the written contract, and would not determine anything except what was in the contract. I presented Defendant's account; Robinson claimed some account the other way; Robinson did not object to examining the accounts, and we talked about them. Ryneearson and I could not agree. I said what wages I thought Plaintiff ought to have, but Ryneearson would not say what he thought, but would not agree to my opinion.

We, Ryneearson and myself, then agreed to take Daniel Stet as a third man, or arbitrator, to act in the premises, and sent for him. Stet came, and we then told him we were unable to agree, and that we had chosen him to act as a third man, or arbitrator, under the contract. That Ryneearson then read over the contract to said Stet, and then said Stet said that he thought that \$240.00 for the year, or \$20.00 per month, after deducting lost time, would be right. We then talked about the other accounts. Ryneearson said he thought we had nothing to do with them. I told them (Ryneearson and Stet) that Lowe gave me the account with the contract, and that I understood all were to be passed upon together. Defendant's account amounted to

\$102, and in the first part of his account, filed here in court, Plaintiff admitted \$91.00 of Defendant's account as being correct. Plaintiff made some claims of accounts 9 against Defendant for washing, meat, flour, &c. Plaintiff made no objection to the account being adjusted by the arbitrators and claimed that one of the items in Lowe's bill of about \$6, being an order on Pettingill in his favor, was to apply on washing done for Lowe. Robinson also admitted that he had lost twelve days during the year he was working for Defendant. The arbitrators did not agree and so we adjourned to another time, hoping that in the meantime the parties would settle. We did not make any award as I understood. I did not understand Rynearson to agree to anything, did not hear him give any opinion whatever. We, arbitrators did not meet again. Stet and I met but did not do anything, as Robinson came by where we were and told Stet that he did not want us to make any award.

That Plaintiff occupied Defendant's house till about first of April. Defendant's teams and hand were there at work during the time. Plaintiff kept Defendant out of the house. Lowe's two teams were there and idle; think the damage to Lowe would be \$2 per day for the time each team was idle.

- 10 *Cross-Examined.*—Witness said that he presented Defendant's account to Rynearson at the time of the arbitration, before Stet was sent for. That the witness was chosen by defendant as an arbitrator under the written contract read in evidence here to the jury, and under that contract only; that when said Lowe (Deft.) appointed witness one of the arbitrators that the words he used were as near as I can remember, as follows; "Robinson wanted more than two hundred dollars for his year's wages, and under the written contract it has to be left to arbitrators, he has to choose one arbitrator, who I am informed is Mr. Rynearson, and I have to choose one, I want you to fix the wages and here is an account, (handing it to the witness) I would like to have you get that settled, too." This was the only authority I had as arbitrator. Witness further stated that at the time Plaintiff admitted the correctness of Defendant's account to the amount of \$91.00, he also said that \$91.00 was also all the just claims and set-offs that Defendant had against Plaintiff and that Defendant owed Plaintiff more than two hundred dollars after allowing all that Defendant rightfully had against Plaintiff. Witness knew Lowe's teams and hands were idle only from Lowe himself; does not know of his own knowledge that the teams and hand were idle; don't know that the crops were damaged by being put in late, think \$2 per day covered all damage. If Robinson occupied only the house and did not prevent the hands from working did not consider the damage much. Defendant told witness about that time that he had rented out his farm.

On being re-examined by Defendant's Attorney, witness stated that he understood from Defendant that they were to pass on both the contract and account, when he met arbitrators. He so understood it from said Lowe.

- 11 Defendant called Amos Vincent, who testified that on the 1st of March last he took care of Defendant's team and boarded at Plaintiff's until 12th or 14th of March, then boarded at Hall's who lived half mile farther from Defendant's farm. Plaintiff would not board him longer. Witness worked just as much when he boarded at Hall's as when he boarded at Robinson's.

Cross-Examined.—Plaintiff only had possession of the house. Witness worked one of Lowe's teams all the time.

- 12 Defendant called Isaac Delaplaine who testified that Robinson kept Defendant's house for some weeks after 4th of March, 1860, and keeping Defendant's tenants out, and his teams idle, at the cost of \$2 per day.

- 13 Robert Hall testified that Plaintiff used one of Defendants horses three weeks in the 14 summer of 1859 and it was worth 30 cents per day.

Defendant called Daniel Stet who testified in full that he was called in by Rynearson and Jacob Smith as a third person in an arbitration between Robinson and Lowe,

the parties to this suit, and was called because Rynearson and Smith could not agree, that we talked the matter over, and that Rynearson read over the written contract between Lowe and Robinson. That I said that I thought the wages of Robinson should be \$20 a month, that then Smith also proposed to settle the accounts between the parties, but after talking the matter over sometime we could not agree, and so we adjourned to meet again. That we did not agree upon an award and that we adjourned to meet again for that purpose, but that we never met again.

On Cross-Examination—Witness said that when he (witness) met Rynearson and Smith, they told him that they were chosen arbitrators, Rynearson by Robinson, and Smith by Lowe, under a written contract (which contract was there and is the one read in evidence to the jury) that they, Rynearson and Smith could not agree, and that under and according to the contract they had agreed on him, (witness) as the third man to come in and determine the matter, that Rynearson then read over the written contract and I then gave it as my opinion that the wages should be \$20 per month, that Rynearson said "well." Smith said he thought it too much, that then Smith took out an account of Lowe against Robinson and wanted to have it allowed, that Rynearson said he thought we had nothing to do with the account, that all we had to do with was the wages under the contract, that I said I thought so too. Smith said he thought that we had better settle the account too and make a final settlement; that Lowe handed him the account when he (Smith) came away and told him that he (Lowe) wanted him to get the account settled also. That then we talked the accounts over and Robinson admitted Lowe's account to the amount of \$91, but claimed that Lowe did not have any more demands against him (Plff.) and also claimed that Lowe owed him (Plff.) a balance of more than two hundred dollars. We, arbitrators, could not agree and adjourned to meet again. We adjourned to settle the accounts, not the wages. When I said we did not make an award, I meant we did not agree upon the accounts. The wages I had put at \$20 per month before we talked about the accounts and Rynearson said "well." Smith only objected. And I thought that Rynearson and I agreed about that. I considered I had fixed the wages before we talked about the accounts. The only dispute among us was on the accounts.

On Re-Examination—Witness said that they (arbitrators) did not make or proclaim any award except what I have said in regard to wages.

Defendant here rested.

Plaintiff re-called Wm. Speer who testified that the reason Plaintiff's horses was not used was that defendant did not provide grain or feed for horses and they had to run out.

Here all parties rested.

The court gave the following instructions on the part of the Plaintiff.

1st. "If the jury believe from the evidence that Plaintiff was employed with his wife, &c., for the Defendant, Lowe, one year under the written contract, and that the Plaintiff, Robinson, performed the labor and services required in the contract, the jury will allow the Plaintiff for the contract price."

2nd. "If the jury believe from the evidence that under the written contract to determine the wages of the Plaintiff that arbitrators were mutually chosen according to the contract and have determined the amount of wages under the contract, then the jury will allow the Plaintiff the amount given by said arbitrators."

3d. "If the original arbitrators failed to agree and that they choose an umpire, a third person. Then in case original arbitrators disagree, the umpire alone may determine the matters in controversy provided they all act."

4th. "If these arbitrators were chosen under the written contract only, then they are to adjudicate the matters in the contract merely."

5th. "If the jury believe from the evidence that the parties to the suit appointed arbitrators mutually under the written contract, and that one of the parties tried to have

matters settled by the arbitrators, not in the contract, and further that the arbitrators as arbitrators and umpire passed upon the matters in the written contract and not upon the other matters, still the parties are bound, unless there was an express stipulation by the parties or one of them not to be bound unless all the matters were passed on by the arbitrators."

6th. "It is not necessary to the validity of an award that it be formally published to the parties to the arbitration as to the others, it is sufficient that it be in fact made when all the arbitrators are acting."

Defendant's Instructions :

19 1st. "The jury are instructed on the part of Defendant that they cannot find any thing due from Defendant to the Plaintiff over and above \$200 therein specified, unless they have some proof or evidence that something more was due him."

2nd. "The jury are further instructed that if they believe from the evidence that in the submission to the arbitrators that the Defendant, Lowe, submitted the written contract to the arbitrators in connection with all other accounts and with the understanding that the arbitrators were to pass upon all, then, in that case, Lowe would not be bound upon any award made upon the written contract alone, without passing upon the whole subject of accounts."

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9. If the jury believe from the evidence that the arbitrators and umpire never announced to the defendant that they had made an award, but on the contrary, that the umpire and one of the arbitrators announced that they would not make an award, and never again met or attempted to agree, the jury are instructed that the defendant is not bound by any finding or award made by said umpire or arbitrators.

21 But the Court modified defendant's 4th instruction, by inserting at the close, "unless the jury believe from the evidence that it was agreed and intended to be an award, and refused to give defendant's 8th and 9th instructions, to which modification and refusal the defendant then and there objected and excepted."

21 Appeal Bond filed January 19th, 1860.

And the said Appellant comes and says that on said record is manifest error in this :

1. That said Court erred in giving each of the plaintiffs instructions.

2. That said Court erred in refusing and modifying the defendant's instructions.
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All of which said Apellant assigns for error, and prays that said judgment may be reversed, &c.

McCOY & HARDING,

Attorneys for Apellant.

255

Lower
or

Robinson

Abstract

Filed Apr. 29 1861

Le Leland
 clerk

ABSTRACT.

SUPREME COURT OF ILLINOIS, APRIL TERM, A. D. 1861.

CALEB LOWE,
vs.
WILLIAM ROBINSON, } Appeal from Peoria.

This was an action of assumpsit tried before a Justice of the Peace May 23d, 1860, and appealed to the Circuit Court of Peoria County, where it was tried before Judge Powell and a jury, at the November Term, A. D. 1860. Verdict and judgment for Plaintiff for \$149.

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- 2 The Plaintiff then proved that he commenced work for Defendant on March 4th, 1859
3 and moved into Defendant's house, that he brought with him five dollars worth of provisions which were consumed in the family when Defendant failed to provide.

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Defendant called Daniel Stet who testified in full that he was called in by Rynearson and Jacob Smith as a third person in an arbitration between Robinson and Lowe,

the parties to this suit, and was called because Ryneearson and Smith could not agree, that we talked the matter over, and that Ryneearson read over the written contract between Lowe and Robinson. That I said that I thought the wages of Robinson should be \$20 a month, that then Smith also proposed to settle the accounts between the parties, but after talking the matter over sometime we could not agree, and so we adjourned to meet again. That we did not agree upon an award and that we adjourned to meet again for that purpose, but that we never met again.

15 *On Cross-Examination*—Witness said that when he (witness) met Ryneearson and Smith, they told him that they were chosen arbitrators, Ryneearson by Robinson, and Smith by Lowe, under a written contract (which contract was there and is the one read in evidence to the jury) that they, Ryneearson and Smith could not agree, and that under and according to the contract they had agreed on him, (witness) as the third man to come in and determine the matter, that Ryneearson then read over the written contract and I then gave it as my opinion that the wages should be \$20 per month, that Ryneearson said "well." Smith said he thought it too much, that then Smith took out an account of Lowe against Robinson and wanted to have it allowed, that Ryneearson said he thought we had nothing to do with the account, that all we had to do with was the wages under the contract, that I said I thought so too. Smith said he thought that we had better settle the account too and make a final settlement; that Lowe handed 16 him the account when he (Smith) came away and told him that he (Lowe) wanted him to get the account settled also. That then we talked the accounts over and Robinson admitted Lowe's account to the amount of \$91, but claimed that Lowe did not have any more demands against him (Plff.) and also claimed that Lowe owed him (Plff.) a balance of more than two hundred dollars. We, arbitrators, could not agree and adjourned to meet again. We adjourned to settle the accounts, not the wages. When I said we did not make an award, I meant we did not agree upon the accounts. The wages I had put at \$20 per month before we talked about the accounts and Ryneearson said "well." Smith only objected. And I thought that Ryneearson and I agreed about that. I considered I had fixed the wages before we talked about the accounts. The only dispute among us was on the accounts.

On Re-Examination—Witness said that they (arbitrators) did not make or proclaim any award except what I have said in regard to wages.

Defendant here rested.

Plaintiff re-called Wm. Speer who testified that the reason Plaintiff's horses was 17 not used was that defendant did not provide grain or feed for horses and they had to run out.

Here all parties rested.

The court gave the following instructions on the part of the Plaintiff.

1st. "If the jury believe from the evidence that Plaintiff was employed with his wife, &c., for the Defendant, Lowe, one year under the written contract, and that the Plaintiff, Robinson, performed the labor and services required in the contract, the jury will allow the Plaintiff for the contract price."

2nd. "If the jury believe from the evidence that under the written contract to determine the wages of the Plaintiff that arbitrators were mutually chosen according to the contract and have determined the amount of wages under the contract, then the jury will allow the Plaintiff the amount given by said arbitrators."

3d. "If the original arbitrators failed to agree and that they choose an umpire, a third person. Then in case original arbitrators disagree, the umpire alone may deter- 18 mine the matters in controversy provided they all act."

4th. "If these arbitrators were chosen under the written contract only, then they are to adjudicate the matters in the contract merely."

5th. "If the jury believe from the evidence that the parties to the suit appointed arbitrators mutually under the written contract, and that one of the parties tried to have

matters settled by the arbitrators, not in the contract, and further that the arbitrators as arbitrators and umpire passed upon the matters in the written contract and not upon the other matters, still the parties are bound, unless there was an express stipulation by the parties or one of them not to be bound unless all the matters were passed on by the arbitrators."

6th. "It is not necessary to the validity of an award that it be formally published to the parties to the arbitration as to the others, it is sufficient that it be in fact made when all the arbitrators are acting."

Defendant's Instructions :

19 1st. "The jury are instructed on the part of Defendant that they cannot find any thing due from Defendant to the Plaintiff over and above \$200 therein specified, unless they have some proof or evidence that something more was due him."

2nd. "The jury are further instructed that if they believe from the evidence that in the submission to the arbitrators that the Defendant, Lowe, submitted the written contract to the arbitrators in connection with all other accounts and with the understanding that the arbitrators were to pass upon all, then, in that case, Lowe would not be bound upon any award made upon the written contract alone, without passing upon the whole subject of accounts."

3d. Arbitrators cannot pass upon part of the matters submitted to them, and refuse and neglect to pass upon the balance submitted."

4th. "An expression of opinion by the umpire of the value of the labor of Plaintiff under the contract assented to by one of the arbitrators is not an award, (modified by the Court) unless the jury believes from the evidence that it was agreed and intended by them to be an award."

5th. "When the umpire and an arbitrator agree about a matter submitted to them, but announce to the parties that they have not agreed, their opinion in regard to the matter submitted to them is not a valid award."

20 6th. "An award to be valid must be made on all the matters submitted to the arbitrators, and an agreement as to any part of the matter submitted is not binding and does not constitute a valid award."

7th. "To constitute an award requires the deliberate agreement of the arbitrators or umpire or any two of them, and the mere expression of an opinion by the umpire not stated by him or intended by him as an award does not constitute a valid award."

8th. "Although the jury believes from the evidence that the umpire fixed the sum due for labor done under the contract, but adjourned with the arbitrators for another hearing before making the award as to said labor and as to other matters of account between the parties, and never again met, but declined making an award at a subsequent day. The jury are instructed that if they believe from the evidence that no other award was made, except as above stated, that there was no valid award settling the amount due for labor under the contract."

9. If the jury believe from the evidence that the arbitrators and umpire never announced to the defendant that they had made an award, but on the contrary, that the umpire and one of the arbitrators announced that they would not make an award, and never again met or attempted to agree, the jury are instructed that the defendant is not bound by any finding or award made by said umpire or arbitrators.

21 But the Court modified defendant's 4th instruction, by inserting at the close, "unless the jury believe from the evidence that it was agreed and intended to be an award, and refused to give defendant's 8th and 9th instructions, to which modification and refusal the defendant then and there objected and excepted."

21 Appeal Bond filed January 19th, 1860.

And the said Apellant comes and says that on said record is manifest error in this :

1. That said Court erred in giving each of the plaintiff's instructions.

2. That said Court erred in refusing and modifying the defendant's instructions.

3. That said Court erred in overruling the defendant's motion for a new trial, and in not granting the same, and in entering judgment for the plaintiff and not for the defendant, and in other matters, &c.

All of which said Apellant assigns for error, and prays that said judgment may be reversed, &c.

McCOY & HARDING,

Attorneys for Apellant.

255

Lower
as
Robinson
Abstract

Filed Apr. 29-1861

Le Leland
Clerk

ABSTRACT.

SUPREME COURT OF ILLINOIS, APRIL TERM, A. D. 1861.

CALEB LOWE,
vs.
WILLIAM ROBINSON, } Appeal from Peoria.

This was an action of assumpsit tried before a Justice of the Peace May 23d, 1860, and appealed to the Circuit Court of Peoria County, where it was tried before Judge Powell and a jury, at the November Term, A. D. 1860. Verdict and judgment for Plaintiff for \$149.

Bill of Exceptions filed March 2d, 1861.

- 1 The Plaintiff read in evidence the following agreement :

KICKAPOO, PEORIA CO., ILL., Feb. 7th, 1859.

Articles of Agreement between Caleb Lowe, of Kickapoo and William Robinson, of Rosefield, said Lowe hereby agrees to pay said Robinson \$200 for labor, &c., of himself, wife and team on said Lowe's farm in Rosefield for one year from the 4th of March, 1859, the 200 dollars to be paid in sixty days from March 4th, 1860, and it is also agreed that at the expiration of the year, two men are to be chosen, one by said Lowe and one by said Robinson, to say how much more than \$200 said Lowe is to pay said Robinson, if anything, if those two cannot agree they are to choose a third to say what the amount shall be for his labor, &c., said Lowe to furnish the house with provisions and groceries and feed for said Robinson's two horses and two cows, said Lowe is to have the use of the cows, and no pigs are to be kept on the place, except they belong to said Lowe, said Wm. Robinson on his part does hereby agree to work for said Lowe one year from the 4th of March 1859, to the 4th of March 1860, on said Lowe's farm and otherwise as said Lowe may wish, through the year, and also furnish wagon, harness, plows, &c., and house furniture, excepting the cooking-stove, that said Lowe furnishes and said Robinson will take said stove at cost, said Robinson's family consists of himself, wife and three children, said Lowe is to live in the family and to have one room, the south one below. Said Robinson's wife is to cook and do the work of the house, except the washing for said Lowe and his men without any charge, any more than mentioned in the \$200, said Robinson is to accommodate said Lowe's hired men, if there is more than Robinson's wife can do the work for, say in a hurry in harvest, said Lowe will furnish help.

Witness,
MARY F. LOWE.

CALEB LOWE,
WILLIAM ROBINSON.

- 2 The Plaintiff then proved that he commenced work for Defendant on March 4th, 1859
3 and moved into Defendant's house, that he brought with him five dollars worth of provisions which were consumed in the family when Defendant failed to provide.

That Plaintiff's wife did some washing for Defendant and family and a hand or two and washed the bed-clothing of the house. That a man's washing was worth from ten to twenty-five cents per week.

- 4 E. C. Rynearson testified for Plaintiff that shortly after the 4th of March, 1860, Plaintiff chose him arbitrator to determine as Plaintiff told him how much his wages were to be under said contract.

Jacob Smith was chosen by Defendant as arbitrator. Smith and he met, but could not agree. Chose David Stet umpire. They met, and after reading the contract, Stet said he would put the wages at \$20 per month.

Witness agreed to the price fixed by Stet and the price stated to bystanders.

- 5 *Cross Examined.*—Witness said he had not spoken to Defendant about the arbitration. Defendant was not, and Plaintiff was, present at arbitration.

Smith had an account of Defendant against Plaintiff, which he wanted adjusted with all the accounts between the parties.

Smith said Defendant wanted him to have this done.

Witness objected, saying we have nothing to do with anything but the wages.

Arbitrators talked over the accounts; Robinson claimed some set off, washing and provisions; we did not agree and adjourned to another day, expecting parties would settle their accounts;—Plaintiff admitted \$91 of Defendant's account, but insisted that \$6 order was to be applied to pay for washing.

- 6 *Re-Examined.*—Stet and I agreed on wages. After we agreed, Smith proposed to adjust the other accounts. Stet and I thought we had no right to settle them, and thought it no harm to talk them over. Arbitration was early in March. I had no authority, as I understood it, as to any matter but the wages.

Plaintiff stated, when he admitted Defendant's account, that he had no other demand, or set off, against him.

Major Bohanan then testified for plaintiff, that Defendant told him he would not settle with Plaintiff; that he had chosen Smith, who was then present, arbitrator under written contract; that arbitrators had not agreed. This was about the middle of March last. Note sued on was given for a part of the wages under contract.

The Plaintiff here rested.

- 7 Jacob Smith testified for Defendant, that about the first part of March last Defendant called on witness and wanted to have witness act as arbitrator on his (Defendant's) part in an arbitration between Plaintiff herein and Defendant, and effect a settlement between them. That Plaintiff claimed more than \$200 for his year's services, and that according to the contract between them is (in) such case it was to be left to arbitrators; that Defendant gave witness the written contract between them, and also gave me his account against Plaintiff, and told witness to meet Plaintiff's choice as an arbitrator, whom he had learned was Mr. Ryneearson, and make a settlement; he also
8 told me he wanted me to get the account against Robinson also settled; that he wanted to get Plaintiff out of his house. Witness and Ryneearson met; Plaintiff was present, but Defendant was not present. Ryneearson read over the contract, and said all we had to do was to fix the amount of the wages, and I told him I wanted to settle all the accounts, and Ryneearson said he thought we had nothing whatever to do with the accounts; that we were appointed under the written contract, and would not determine anything except what was in the contract. I presented Defendant's account; Robinson claimed some accounts the other way; Robinson did not object to examining the accounts, and we talked about them. Ryneearson and I could not agree. I said what wages I thought Plaintiff ought to have, but Ryneearson would not say what he thought, but would not agree to my opinion.

We, Ryneearson and myself, then agreed to take Daniel Stet as a third man, or arbitrator, to act in the premises, and sent for him. Stet came, and we then told him we were unable to agree, and that we had chosen him to act as a third man, or arbitrator, under the contract. That Ryneearson then read over the contract to said Stet, and then said Stet said that he thought that \$240.00 for the year, or \$20.00 per month, after deducting lost time, would be right. We then talked about the other accounts. Ryneearson said he thought we had nothing to do with them. I told them (Ryneearson and Stet) that Lowe gave me the account with the contract, and that I understood all were to be passed upon together. Defendant's account amounted to

\$102, and in the first part of his account, filed here in court, Plaintiff admitted \$91.00 of Defendant's account as being correct. Plaintiff made some claims of accounts
9 against Defendant for washing, meat, flour, &c. Plaintiff made no objection to the account being adjusted by the arbitrators and claimed that one of the items in Lowe's bill of about \$6, being an order on Pettingill in his favor, was to apply on washing done for Lowe. Robinson also admitted that he had lost twelve days during the year he was working for Defendant. The arbitrators did not agree and so we adjourned to another time, hoping that in the meantime the parties would settle. We did not make any award as I understood. I did not understand Ryneerson to agree to anything, did not hear him give any opinion whatever. We, arbitrators did not meet again. Stet and I met but did not do anything, as Robinson came by where we were and told Stet that he did not want us to make any award.

That Plaintiff occupied Defendant's house till about first of April. Defendant's teams and hand were there at work during the time. Plaintiff kept Defendant out of the house. Lowe's two teams were there and idle; think the damage to Lowe would be \$2 per day for the time each team was idle.

10 *Cross-Examined.*—Witness said that he presented Defendant's account to Ryneerson at the time of the arbitration, before Stet was sent for. That the witness was chosen by defendant as an arbitrator under the written contract read in evidence here to the jury, and under that contract only; that when said Lowe (Deft.) appointed witness one of the arbitrators that the words he used were as near as I can remember, as follows; "Robinson wanted more than two hundred dollars for his year's wages, and under the written contract it has to be left to arbitrators, he has to choose one arbitrator, who I am informed is Mr. Ryneerson, and I have to choose one, I want you to fix the wages and here is an account, (handing it to the witness) I would like to have you get that settled, too." This was the only authority I had as arbitrator. Witness further stated that at the time Plaintiff admitted the correctness of Defendant's account to the amount of \$91.00, he also said that \$91.00 was also all the just claims and set-offs that Defendant had against Plaintiff and that Defendant owed Plaintiff more than two hundred dollars after allowing all that Defendant rightfully had against Plaintiff. Witness knew Lowe's teams and hands were idle only from Lowe himself; does not know of his own knowledge that the teams and hand were idle; don't know that the crops were damaged by being put in late, think \$2 per day covered all damage. If Robinson occupied only the house and did not prevent the hands from working did not consider the damage much. Defendant told witness about that time that he had rented out his farm.

On being re-examined by Defendant's Attorney, witness stated that he understood from Defendant that they were to pass on both the contract and account, when he met arbitrators. He so understood it from said Lowe.

11 Defendant called Amos Vincent, who testified that on the 1st of March last he took care of Defendant's team and boarded at Plaintiff's until 12th or 14th of March, then boarded at Hall's who lived half mile farther from Defendant's farm. Plaintiff would not board him longer. Witness worked just as much when he boarded at Hall's as when he boarded at Robinson's.

Cross-Examined.—Plaintiff only had possession of the house. Witness worked one of Lowe's teams all the time.

12 Defendant called Isaac Delaplaine who testified that Robinson kept Defendant's house for some weeks after 4th of March, 1860, and keeping Defendant's tenants out, and his teams idle, at the cost of \$2 per day.

13 Robert Hall testified that Plaintiff used one of Defendants horses three weeks in the
14 summer of 1859 and it was worth 30 cents per day.

Defendant called Daniel Stet who testified in full that he was called in by Ryneerson and Jacob Smith as a third person in an arbitration between Robinson and Lowe,

the parties to this suit, and was called because Ryneerson and Smith could not agree, that we talked the matter over, and that Ryneerson read over the written contract between Lowe and Robinson. That I said that I thought the wages of Robinson should be \$20 a month, that then Smith also proposed to settle the accounts between the parties, but after talking the matter over sometime we could not agree, and so we adjourned to meet again. That we did not agree upon an award and that we adjourn to meet again for that purpose, but that we never met again.

On Cross-Examination—Witness said that when he (witness) met Ryneerson and Smith, they told him that they were chosen arbitrators, Ryneerson by Robinson, and Smith by Lowe, under a written contract (which contract was there and is the one read in evidence to the jury) that they, Ryneerson and Smith could not agree, and that under and according to the contract they had agreed on him, (witness) as the third man to come in and determine the matter, that Ryneerson then read over the written contract and I then gave it as my opinion that the wages should be \$20 per month, that Ryneerson said "well." Smith said he thought it too much, that then Smith took out an account of Lowe against Robinson and wanted to have it allowed, that Ryneerson said he thought we had nothing to do with the account, that all we had to do with was the wages under the contract, that I said I thought so too. Smith said he thought that we had better settle the account too and make a final settlement; that Lowe handed him the account when he (Smith) came away and told him that he (Lowe) wanted him to get the account settled also. That then we talked the accounts over and Robinson admitted Lowe's account to the amount of \$91, but claimed that Lowe did not have any more demands against him (Plff.) and also claimed that Lowe owed him (Plff.) a balance of more than two hundred dollars. We, arbitrators, could not agree and adjourned to meet again. We adjourned to settle the accounts, not the wages. When I said we did not make an award, I meant we did not agree upon the accounts. The wages I had put at \$20 per month before we talked about the accounts and Ryneerson said "well." Smith only objected. And I thought that Ryneerson and I agreed about that. I considered I had fixed the wages before we talked about the accounts. The only dispute among us was on the accounts.

On Re-Examination—Witness said that they (arbitrators) did not make or proclaim any award except what I have said in regard to wages.

Defendant here rested.

Plaintiff re-called Wm. Speer who testified that the reason Plaintiff's horses was not used was that defendant did not provide grain or feed for horses and they had to run out.

Here all parties rested.

The court gave the following instructions on the part of the Plaintiff.

1st. "If the jury believe from the evidence that Plaintiff was employed with his wife, &c., for the Defendant, Lowe, one year under the written contract, and that the Plaintiff, Robinson, performed the labor and services required in the contract, the jury will allow the Plaintiff for the contract price."

2nd. "If the jury believe from the evidence that under the written contract to determine the wages of the Plaintiff that arbitrators were mutually chosen according to the contract and have determined the amount of wages under the contract, then the jury will allow the Plaintiff the amount given by said arbitrators."

3d. "If the original arbitrators failed to agree and that they choose an umpire, a third person. Then in case original arbitrators disagree, the umpire alone may determine the matters in controversy provided they all act."

4th. "If these arbitrators were chosen under the written contract only, then they are to adjudicate the matters in the contract merely."

5th. "If the jury believe from the evidence that the parties to the suit appointed arbitrators mutually under the written contract, and that one of the parties tried to have

matters settled by the arbitrators, not in the contract, and further that the arbitrators as arbitrators and umpire passed upon the matters in the written contract and not upon the other matters, still the parties are bound, unless there was an express stipulation by the parties or one of them not to be bound unless all the matters were passed on by the arbitrators."

6th. "It is not necessary to the validity of an award that it be formally published to the parties to the arbitration as to the others, it is sufficient that it be in fact made when all the arbitrators are acting."

Defendant's Instructions :

19 1st. "The jury are instructed on the part of Defendant that they cannot find any thing due from Defendant to the Plaintiff over and above \$200 therein specified, unless they have some proof or evidence that something more was due him."

2nd. "The jury are further instructed that if they believe from the evidence that in the submission to the arbitrators that the Defendant, Lowe, submitted the written contract to the arbitrators in connection with all other accounts and with the understanding that the arbitrators were to pass upon all, then, in that case, Lowe would not be bound upon any award made upon the written contract alone, without passing upon the whole subject of accounts."

3d. Arbitrators cannot pass upon part of the matters submitted to them, and refuse and neglect to pass upon the balance submitted."

4th. "An expression of opinion by the umpire of the value of the labor of Plaintiff under the contract assented to by one of the arbitrators is not an award, (modified by the Court) unless the jury believes from the evidence that it was agreed and intended by them to be an award."

5th. "When the umpire and an arbitrator agree about a matter submitted to them, but announce to the parties that they have not agreed, their opinion in regard to the matter submitted to them is not a valid award."

20 6th. "An award to be valid must be made on all the matters submitted to the arbitrators, and an agreement as to any part of the matter submitted is not binding and does not constitute a valid award."

7th. "To constitute an award requires the deliberate agreement of the arbitrators or umpire or any two of them, and the mere expression of an opinion by the umpire not stated by him or intended by him as an award does not constitute a valid award."

8th. "Although the jury believes from the evidence that the umpire fixed the sum due for labor done under the contract, but adjourned with the arbitrators for another hearing before making the award as to said labor and as to other matters of account between the parties, and never again met, but declined making an award at a subsequent day. The jury are instructed that if they believe from the evidence that no other award was made, except as above stated, that there was no valid award settling the amount due for labor under the contract."

9. If the jury believe from the evidence that the arbitrators and umpire never announced to the defendant that they had made an award, but on the contrary, that the umpire and one of the arbitrators announced that they would not make an award, and never again met or attempted to agree, the jury are instructed that the defendant is not bound by any finding or award made by said umpire or arbitrators.

21 But the Court modified defendant's 4th instruction, by inserting at the close, "unless the jury believe from the evidence that it was agreed and intended to be an award, and refused to give defendant's 8th and 9th instructions, to which modification and refusal the defendant then and there objected and excepted."

21 Appeal Bond filed January 19th, 1860.

And the said Appellant comes and says that on said record is manifest error in this :

1. That said Court erred in giving each of the plaintiffs instructions.

2. That said Court erred in refusing and modifying the defendant's instructions.
3. That said Court erred in overruling the defendant's motion for a new trial, and in not granting the same, and in entering judgment for the plaintiff and not for the defendant, and in other matters, &c.

All of which said Apellant assigns for error, and prays that said judgment may be reversed, &c.

McCOY & HARDING,

Attorneys for Apellant.

255

Caleb Lowe

vs

William Robinson

Abstract

Filed Apr. 29th 1861

L. Leland
clerk

Be it remembered that Heretofore to wit: on the twenty fifth day of June in the year of our Lord one thousand eight hundred and fifty there was filed in the office of the clerk of the circuit court in and for the county of Peoria in the State of Illinois Daccants, a summons, transcript & appeal bond on the words & figures following, to wit:

account

Wm. Robinson To Cald Lowe		Dr. as follows
1859 March	To Help to move to Farm Teams &c.	\$ 2.00
July 4 th	To Order	5.00
"	To Cash	3.00
" 22 ^d	To Mending Harness	1.35
" 28 th	To Mending & fixing Collars	3.90
Sept.	To Cash	.50
" 22 ^d	To Cash	1.00
	To Dunsells order	2.00
	To Pettengills order - for working me Cr.	6.50
Oct. 17 th	To Seabury's order with interest to May 4 th 1860.	31.76
Nov.	To Cash to shoe horses	2.00
"	To Flour	12.00
	To Store	20.00
1860 Feb 20 th	To Cash shoeing horses	1.85
		\$103.06
July 5 th	To being off from work on the Farm with team when much wanted As per Agreement to work on the place.	2.00
Sept 17 th	To being off work with Team to 22 ^d 5 days at \$1.50 per day	7.50
	To furnishing his family stock and team the same time.	7.50
Oct.	To being off work 5 th 6 th 7 th 10 th & 17 th 5 days at \$1.50 per day	7.50
	To furnishing his family stock & team same time	7.50
Decr.	To being off from 18 th to 22 ^d 3 days nothing done on farm \$1.50	4.50
	To furnishing family &c same time	4.50
1860 Jan 22 ^d	To being off to 20 th 3 Days on account of running of his horses from the farm. horses gone some 3 days @ \$1.50	4.50
	To furnishing his family & stock same time	3.00

To Use of my Wagon not having one suitable to
work with as per Agreement thro the year 10.00

To One horse being out of use on farm some 6 weeks
in summer on account of sore shoulder — 10.00
carried over — \$171.56

Wm. Robinson To Caleb Love also Dr.

To Damages being on my Farm contrary to Agreement Dated
Kickapoo Feb 7th 1859. after being legally warned off of the place 21 days
for detention of all sorts of work on the farm during that time
and for preventing others coming on to the place My teams
being idle most of that time &c 7^{ps} day \$147.00
Amt brot over 171.56
\$318.56

" Contra Cr By Note
being part of contract for — — — \$100.00
Due May 4th 1860 \$218.56
As per Receipt Dec^r 24th 1859 "

account

" Caleb Love To Wm. Robinson Dr. \$ cts
March 4th 1859. To flour fifty lbs. 1.80
Dr 20 lbs pork 2.20
March 4th 1860. Washing for son & his hands 12.00
for 12 months
for not furnishing corn for horse
as per. contract 5 weeks 5.00
ballance due on face of contract 100.00
Claimed on Special clause in contract
that by its terms was to be left to me 100.00
221.00

Note for \$100 Due May 4th Jan on
contract & enclosed thereon Dec 24th 1859. 100.00
321.00

Credit

March 4 th 1859 Recd. of Low one store	\$ 30.00
July 4 th 1859 Rec. order \$5 cash \$3	8.00
Aprie one plow	11.00
Cash paid by Low to Seabury	31.00
	80.00
ballon due	231.00

~~Serve the within writ by reading the same to the within named party this 22^d day of May 1860~~

Summons

" State of Illinois) The People of the State of Illinois
County of Teoria) to any Constable of said County, Greeting.
You are hereby commanded to summon Caleb Lowe to appear before me. at my office in Rosefield on the 23rd day of May A. D. 1860. at 1 o'clock, P.M., to answer the complaint of W^m Robinson for a failure to pay him a certain demand not exceeding 300 dollars; and therefor make due return as the law directs. Given under my hand and seal, this 17th day of May A.D. 1860.
W W Miller J.P. Seal

(endorsed)
Served the within writ by reading the same to the within named party this 22^d day of May 1860
J. W. Miller, const.

Transcript

" William Robinson) justices court before W. W. Miller
vs) J.P. suit brought upon a note
Caleb Lowe } of \$100.00 given Dec. 24th 1859 payable May 4th 1860. signed by defendant said note assigned to M. S. Bohannon and reassigned by said M. S. Bohannon to William Robinson also a written contract calling for \$200.00, also an open account May 17th 1860 summons issued returned served on the 26th day of May a contra acct. sent to J.P. by defendant on the 24th amounting to \$210.50 May 26th plaintiff appeared defendant failed to appear case called and evidence heard. it is considered that plaintiff have judgement against defendant.

Judgement is therefore rendered against defendant for
debt, ————— \$204.50

Justices cost 1.31

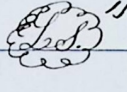
Court 3.50

Witness fees 2.50

State of Illinois }
Peoria County }

W.W. Miller one of the Justices of the
Peace in and for said County do hereby certify that the
aforegoing transcript of the cause of William Robinson vs.
Caleb Lowe is a true copy from my docket

given under my hand and seal 14th day of June 1860.

W.W. Miller J.P. 

appeal
bond.

Know all men by these Presents, That we, Caleb Lowe
Henry A Chase
are held and firmly bound unto William Robinson in the
penal sum of Four hundred and twenty four Dollars, lawful
money of the United States; for the payment of which, well and
truly to be made, we bind ourselves, our heirs and administrators,
jointly and severally, firmly by these presents. Witness,
our hands and seals this second day of June 1860.

The condition of the above Obligation is such, that whereas
the said William Robinson did, on the 26 day of May 1860
before Miller a Justice of the Peace for the county of
Peoria, recover a judgment against the above bounden Caleb
Lowe for the sum of two hundred & eleven ⁸⁰/₁₀₀ Dollars; from
which said judgment the said Caleb Lowe has taken an
appeal to the circuit court of the county of Peoria aforesaid, and
state of Illinois. Now if the said Caleb Lowe shall prosecute
his appeal with effect and shall pay whatever judgment
may be rendered by the court upon dismissal or trial

of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Approved before me at my office, this 14th
day of June 1860.

W. W. Miller J.P.

Henry S. Chase *Seal*
Caleb Lowe *Seal*

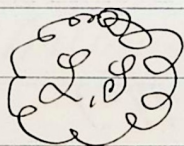
And on the same day to wit: the 26th day of June A. D. 1860 there was issued out of the office of the clerk of said court in said ~~ca~~ Cause and under the seal of said court a Writ which with the return endorsed thereon are in the words and figures following, to wit:

"The People of the State of Illinois,

To the Sheriff of Peoria County—Greeting:

We command you to Summon William Robinson if he may be found in your county, to appear before our circuit court on the first day of the special term thereof to be held at Peoria, within and for the said county of Peoria, on the third Monday of August next, then and there, in our said court, to prosecute his suit against Caleb Lowe lately appealed to our circuit court from the judgment W. W. Miller a Justice of the Peace in and for said county by said Caleb Lowe, and make ^{return} of this writ, with an indorsement of the time and manner of serving the same, on or before the first day of the term of ^{the} said court to be held as aforesaid.

Witness, Enoch T. Sloan, clerk of our said court, and the seal thereof, at Peoria, this 26th day of June in the year of our Lord one thousand eight hundred and sixty



Enoch T. Sloan Clerk.

By P. Newton Deputy."

(Endorsed)

"The within named William Robinson is not found in my County this 18th 1860 John Bryner Sheriff"

And afterwards, to wit: on the fifteenth day of December A.D., 1860 there was filed in the office of the clerk of said court in said cause a motion in arrest &c in the words & figures following, to wit,

William Robinson	}	appeal
vs		November Term
Caleb Lowe		1860

And now comes the defendant by McCoy & Harding his Attorneys, and moves the court in arrest of judgement in the ~~above~~ case to set aside the verdict of the jury and for a new trial. For the following reasons.

- 1st The verdict is against the law and evidence.
- 2nd The court admitted improper evidence to given to the jury on the part of the plaintiff.
- 3^d The court refused proper evidence on part of the Defendant.
- 4th The court gave improper instructions to the jury on part of the plaintiff.
- 5th The court refused proper instructions to the jury on part of the Defendant.

McCoy & Harding
Attys. for Defendant.

Proceedings at a Special Term of the Circuit Court began and held at the Court house in and for the County of Peoria and State of Illinois on the third Monday in the Month of August in the Year of our Lord one thousand eight hundred and Sixty it being the twentieth day of said Month, in pursuance of an order of said Court made and entered of Record at the last May Term thereof, which said order is in words following, to wit: - "Ordered by the Court that a special term of the circuit court of

Peoria County, State of Illinois, for the trial of
civil Cases, be held at the court house, in the
City and County of Peoria, on the third Monday
in August next." Present the Honorable Elisha N.
Powell Judge of the 16th Judicial Circuit in said
State, John Bryner Sheriff and Enoch P. Sloan
Clerk, to wit:

Thursday August 23^d A. D. 1860
William Robinson

vs Appeal from J. P.
Caleb Lowe

This day came the plaintiff by
Davidson his attorney and entered his appear-
ance herein and this cause is continued.

Proceedings at a term of the Circuit Court
begun and held at the Court house in the City
and County of Peoria, State of Illinois, on the
nineteenth day of November in the year of our
Lord one thousand eight hundred and sixty,
it being the third Monday of said month,
Present the Honorable Elisha N. Powell Judge
of the 16th Judicial Circuit, in said State,
John Bryner, Sheriff and Enoch P. Sloan,
Clerk, to wit:

Friday December 7th A. D. 1860
William Robinson

vs Appeal from J. P.
Caleb Lowe

This day came the plaintiff by Davidson
his attorney and the defendant by Harding, Mc Coy
his attorneys, and it is ordered that a jury be

impanelled to try the issues in this cause, whereupon
 Came a jury of twelve good and lawful men, to wit,
 David Young, J. H. Eckley, James Bryden, J. B.
 Warner, A. H. Gordon, Les B. Parker, John Murry,
 W. B. Henry, John Waugh, Les B. Babcock, Orrin
 Doty and Charles Jacobs who being duly chosen,
 tried and sworn to well and truly try the issues
 joined in this cause and a true verdict give
 according to the evidence, do say, we the Jury
 find for the plaintiff and assess his damages
 at the sum of one hundred and forty nine dol-
 lars. Therefore it is considered by the court that
 the said William Robinson have and recover of
 the said Caleb Lowe the said sum of one
 hundred and forty nine dollars his damages
 aforesaid, and also his costs and charges
 by him about his suit in this behalf expended,
 and that he have execution therefor.

Monday December 31st A.D. 1860
 William Robinson
 vs Appeal from J. P.
 Caleb Lowe

This day Come this Cause on to be
 heard on the Motion of defendant for a
 new trial, and the court being fully advised
 in the premises overruled said Motion

On motion it is ordered that the plaintiff
 pay one fourth of the Costs of this Court.

Wednesday January 2^d A.D. 1861
William Robinson
vs Appeal from J. P.
Caleb Lowe

This day Come defendant by attorney
and prayed an appeal to the Supreme Court of
this State, which is allowed on his giving bond
in the penal sum of three hundred dollars
payable to said plaintiff with Sidney Pulajer
as security, Conditioned as the law directs, to
be filed with the clerk of this Court in twenty
days from this date. Agreed that the Bill
of Exceptions may be signed at the next term
of this Court.

And afterwards, to wit: on the Second day of March
in the year of our Lord one thousand eight hundred
and Sixty one there was filed in the office of the clerk
of said Court in said Cause a Bill of Exceptions
in the words and figures following to wit:

William Robinson) Circuit Court of
vs) Ponia County
Caleb Sore) November term AD 1860 appeal from
Be it remembered that on the trial of
the above cause the plaintiff in order to maintain
the issues on his part read in evidence the following
article of Agreement
"Kickapoo Ponia Co Ills
Feb 7th 1859

Articles of agreement between Caleb Sore of Kickapoo
vs William Robinson of Renfield, said Sore hereby
agrees to pay said Robinson \$200 for labor & of
himself wife & team on said Sore's farm, in Ren-
field for one year from the 4th of March 1859 the 200
dollars to be paid in sixty days from March 4th 1860
& it is also agreed that at the expiration of the year
two men are to be chosen one by said Sore & one
by said Robinson, to say how much more than \$200
said Sore is to pay said Robinson if any thing
if those two cannot agree they are to choose a third
to say what the amount shall be for his labor &
said Sore to furnish the house with provisions &
groceries & feed for said Robinsons two horses & two
cows & said Sore is to have the use of the cows
& no pigs are to be kept on the place except they
belong to said Sore. Said Wm Robinson on his
part does hereby agree to work for said Sore one year
from the 4th of March 1859 to the 4th of March 1860
on said Sore's farm & otherwise as said Sore may
wish, through the year & also furnish wagon har-
nesses, ploughs &c & house furniture excepting the
cooking stove, that said Sore furnishes & said

Robinson will take said store at cost, said Robinson's family consists of himself wife ^{three} ~~two~~ children, said Sours is to live in the family & to have one room. The south one below, said Robinson's wife is to cook & do the work of the house except the washing for said Sours & his men, without any charge any more than mentioned in the \$200. said Robinson is to accommodate said Sours hired men, if there is more than Robinson's wife can do the work for say in a hurry in harvest said Sours will furnish help.

Witness

Mary J Sours

Caleb Sours

William Robinson

"Dec 24th 1859 Recd of C Sours a note for 100\$ due May 4th 1860 to apply on the within Cuted & set apart to Sours for same"

Pff also gave in evidence the following promissory note

"Peria Decr 24th 1859
\$100⁰⁰/₁₀₀ For value recd I promise to pay Wm Robinson or order One Hundred Dollars on May 4th 1860
Caleb Sours"

It was then agreed between said parties that this suit was originally brought before the justice of the peace on the 17th day of May A.D. 1860

Pff then called Wm Speer who after being duly sworn testified as follows - That pff moved into the house of deft ^{his} & commenced work for deft on the 4th day of March A.D. 1859 - That witness with ^{his} own

Team moved plff to defts house on defts farm in
Township in Peoria County - That I
worked for deft from the 29th day of March 1859 to
August 18th of same year - That ~~plff~~^{plff} worked same time
for deft & after I left - that plff brought with him
when he moved to defts two hams weighing about 18 pounds
each worth 12 cts per pound also plff brought with
him some 30 pounds of wheat flour 3 cts per pound all
which was consumed in the family when deft failed to
provide for them - that deft did not repay it as far
as witness knew - that Mrs Robinson did washing
for family { plff & plff wife & three children } also for one
of defts other hired hands & a part of the time for two
hands & witness knows of Mrs Robinson (plffs wife) wash-
ing for deft himself - saw her wash collars for him
that deft lived at Kickapoo but was up at the farm
every week & some times 3 or 4 days in the week &
sometimes all week - knows that Mrs Robinson did all
the washing that was done at the house - seen her wash-
ing sheets & pillow slips cases were changed on beds
every week 2 sheets & two pillow cases to each bed
clean ones put on every week - that besides the beds for
the family there was always one for hands in use & one
for deft - that a man has from two to five pieces of
apparel washed every week & that the price in that
neighborhood was five cents a piece that plff had team
wagon harness harrow & ploughs - that wagon was a
good common wagon fit to do any farm work &
would haul loads to Peoria was just as good as defts
wagon - Know that plff used defts wagon part of the time
was at request of deft & because deft thought his wagon
would haul largest load - ^{deft} said he would make no charge

if Plff would use his wagon.

Plff then called E. C. Byrneson who was sworn & testified as follows to wit: That he knew parties to suit that in March last in the first part of the month shortly after the 4th day of the month he was chosen by plff as an arbitrator on the part of plff to determine as he understood it & as plff told him to determine how much wages plff was to have under for his services under the contract read in evidence - that he witness was chosen under said contract as written agreement only that Jacob Smith was arbitrator chosen by deft - that arbitration was between plff & deft - that said Smith & witness met in first part of March ^{last} & Smith said how much he thought plff ought to have for his services that witness said he could not agree to that - that then witness As said Smith chose one Daniel Stet as umpire or third man to act with them & sent for Stet, that Stet came & then they (witness As Smith) told Stet that they had chosen him (Stet) as a third man according to the written contract, that arbitrator had had the written contract offered & given in evidence here before them - that witness then read over said written contract to said Stet and Smith - that said Stet said that he would put the wages at twenty dollars a month that he witness agreed to the price fixed by Stet - that witness As Stet at that time fixed the wages - that the wages fixed by witness & Stet was then stated before the persons present

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Cross Examined by Defendant
At the time arbitrators met witness said he had not spoken to deft about the arbitration - that deft was not present at arbitration but that plff was present - that Smith had an account of deft against plff that he proposed to have adjusted - I said we arbitrators had nothing to do with accounts between the parties - that we had nothing to do with any thing except that of wages under the contract - that Smith wanted after Stet & I had settled the wages to investigate the other accounts & said that deft wanted him (Smith) to get the account also settled - that we did talk over the matter of accounts between the parties - that Robinson claimed some sett offs - some washing-flour & pork or hams - tho we did not agree on them & adjourned to another day - that we made an award except agreeing upon the wages - that we adjourned expecting the parties would settle their accounts - that deft admitted of deft's account against him ninety one Dollars - that one item of an order on Pettigill of about six dollars Plff claimed was to apply on washing done by Plff's wife for deft

Reexamined by Plff
Mr Stet & I agreed on the wages { \$240 a year } that after we agreed on the wages, Smith proposed to adjust other accounts. that Stet & myself thought we had no right to fix the accounts, yet we thought if we could settle them too there would be no objection so we talked the matter over, we did this of our own accord, & not because we were authorized -

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We had no authority at least I had none as I understood it I was chosen to determine with Smith how much wages were \$300 if any plff was to have for his years services & nothing more - we adjourned to meet again ^{to an award upon the accounts we had agreed} because we had not agreed upon the wages - that at the time plff admitted \$91⁰⁰ of debts claims he further stated that debt had not sett off or other demands against him (plff) whatever

Plff then called Major Bohannon who being sworn testified as follows to wit: sometime last March about the middle of the month debt came to house of witness & wanted witness to go and try to get plff to leave debt house - that debt said he supposed that as witness had had some dealings with plff he could have influence with plff and could get him (plff) to leave his place - witness and debt then talked over the difficulties between plff and debt - debt told witness that plff had lost thirteen days in the year ending March 4th 1860 but that plff claimed he had only lost two days - that he debt had tried to settle with plff but ^{could} not - that plff had worked for debt under a written contract, and that he debt had appointed an arbitrator J. Jacob Smith who was then present at the conversation under said written contract & that plff had chosen O. H. Greene on his part - that the arbitrators did not agree - that debt had given a note to plff on his wages for One hundred dollars which was given to plff for witness - that note offered in evidence is the one - that plff transferred note to witness but that before the commencement of this suit witness transferred

and desired
it back to plff - Deft also said that he (Deft) had
rented his farm or a part of his farm & that the
renters wanted to move into the house - but could not
while plff remained there

Plff here rested

Deft then introduced on his part Jacob
Smith who being sworn testified as follows; to-wit;
That about the first part of March last Deft called
on witness & wanted to have witness to act as arbitrator
on his (Deft's) part in an arbitration between
Plff herein & Deft & effect a settlement between
them - that plff claimed more than \$200⁰⁰ for
his years services & that according to the contract
between them in such case it was to be left to
arbitrators - that Deft gave witness the written con-
tract between them & also gave me his account
against plff & told witness ^{to meet} plff's choice as an ar-
bitrator - whom he had learned was Mr. Hymerson
& make a settlement - he also told me he wanted
me to get the account against Robinson & also settle

That he wanted to get self out of his house -
 Witness & Hymearson met - self was present but
 debt was not present - Hymearson read over the con-
 tract & said all we had to do was to fix the amount
 of the wages & I told him I wanted to settle all the
 accounts & Hymearson said he thought we had
 nothing whatever to do with the accounts that we were
 appointed under the written contract & would not determine
 any thing except what was in the contract - I presented
 debt account & Robinson claimed some accounts the
 other way - Robinson did not object to examining
 the accounts & we talked about them - Hymearson
 & I could not agree - I said what wages I thought
 self ought to have - but Hymearson would not say what
 he thought but would not agree to my opinion -
 We & Hymearson & myself then agreed to take
 Daniel Stet as a third man or arbitrator to act
 in the premises and sent for him - Stet came ^{and}
 we ^{then} told him we were unable to agree & that we
 had chosen him to act as a third man or arbitrator
 under the contract - that Hymearson then read over the contract
 to said Stet - & then Stet said that he thought that
 \$240⁰⁰ for the year or \$20⁰⁰ per month after
 deducting last time would be right - we then talked
 about the other accounts - Hymearson said he thought
 we had nothing to do with them - I told them
 { Hymearson & Stet } that Lou gave me the account with
 the contract & that I understood all were to be passed
 upon together - Debt's account amounted to \$102 &
 is the first part of his account filed here in court
 self admitted \$91⁰⁰ of debt account as being correct
 self made some claims of account against debt for

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washing, ~~meat~~^{meat}, flour &c - plff made ^{no} objection to
the accounts being adjusted by the arbitrators & claimed
that one of the items in Sours bill of about \$6
being an order on Pettugill in his favor was to
apply on washing done for for Sours - Robinson
also admitted that he had lost 12 days during the
year - he was working for debt - the arbitrators did
not agree ^{as} so we adjourned to another time, hoping
that in the mean time the parties would settle - we
did not make any award as I understood -
I did not understand Byrneson to agree to any thing
- did not hear him give any opinion whatever -
The arbitrators did not all meet again - Slet and
Imet but did not do any thing as Robinson came
along the road by where we were & Slet went out
as talked with him - Robinson told Slet that he
did not want us to go any further & did not want
us to make any award - Robinson did not get out
of his wagon & when through talking with Slet
drove on by - Witness stated that he knew that plff
occupied plffs house until the first of april or
until the last days of March - knows because
he was there two or three times during that time -
know that defts teams and hand were there for the
purpose of work all the time - know that plff
kept debt out of the house - know that Vincent
was there all the time taking care of defts horses -
~~know~~ that Sours had two teams there & that they
were idle - think the damage to Sours would be \$2.⁰⁰
per day for the time each team lay idle - Cannot
estimate what the damage would be for stopping
teams or this season of the year & causing crops to be
put in late

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Cross Examination

Witness said that he presented defts account to Byrneson at the time of the arbitration before Stet was sent for - that he witness was chosen by debt as an arbitrator under the written contract read in evidence here to the jury & under that contract only - that when Sours (Deft) appointed witness one of the Arbitrators - that the words he used were as near as I can remember as follows - Robinson wanted more than two hundred dollars for his years wages & under the written contract it has to be left to arbitration: he has to choose one Arbitrator who I am informed is Mr Byrneson Q/ I have to choose one - I want you to fix the wages Q/ here is an account I handing it to witness; I would like to have you get that settled too - This was the only authority I had as arbitrator - Witness further stated that at the time plff admitted the correctness of defts account to the amount of \$91⁰⁰ - he also said that \$91⁰⁰ was all the just claims & sett offs that debt had against plff Q/ that debt owed plff more than two hundred dollars after allowing all that debt rightfully had against plff -

Witness ^{know that I only} ~~knows~~ that defts two teams & hand were idle only from Sours himself - did not know that plff kept Sours hand ^{and} teams from working on the farm - does not know of his own knowledge that the teams ^{and} hand were idle - don't know that the crops were damaged at all by being put in late - don't know that they were put in late - think \$3⁰⁰ a day covered all the damage - If Robinson only occupied the house

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Q. did not prevent the hands working the farm would not consider the damage much - don't know that Robinson kept possession of anything but the house & may be a part of the stable - Stable would accommodate 4 or 5 horses - there was also a shed where horses could be stalled - deft told witness about that time that he had rented out his farm & that one man was to ~~have~~ one part & another man the other part of his farm - On being re-examined by deft's attorney witness Smith stated that he understood from defendant when he handed the contract & his account to him; that they were to pass upon the account as well as upon the contract when he would meet the other arbitrator - In answer to plff's atty said that he so understood it from the language of said Sours above given

Deft then called Amos Vincent who being sworn testified as follows to wit:
That on the first of March last I took care of deft's team & boarded at plffs until 12th or 14th of March then went & boarded with Hall who lived about 1/2 mile farther from deft's farm - That plff would not board me longer & so I had to leave - plff kept possession of the place until the 26th of March last on which day he left - witness used deft's teams all the time Robinson was there - Witness thinks deft sustained no damage by

Plff remaining on place - that witness worked just as many hours while boarded at Hoals as while boarded at Robinsons - That witness had to start to work a little earlier & would take him little later to get through. -

- Cows examined -

Said plff only had possession of house & not of the farm - that witness worked one of Lowers teams on the farm all the time Robinson was there & plff did not attempt to interfere - that witness had rented a part of farm for year 1860 & another man the other part - that w/ who rented defts farm were to have the use of his teams -

that plff would not board me longer because his family were sick with measles & deft would not pay for boarding - reason plff did not move away sooner was because his family ^{were} ~~was~~ sick with ~~the~~ measles - Deft was to have $\frac{2}{3}$ of the crop

Deft then called Isaac Delaplaine who being first duly sworn testified that he had rented a part of defts farm in the Spring of 1860 & was to have the use of ~~the use~~ of the house as soon as plff moved out - was to have the same on 4th of March - witness was to crop a part of farm that season - that defts team was to be used by witness that witness resided some 5 miles from Robinsons with his family at that time - That witness wanted possession of the house on 4th march but plff would not give possession

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There was no place for witnesses to board near the farm - that by not being able to get possession of ~~the~~ horse, witness was unable to move as soon as he otherwise would & by that means the wheat crop was put in late - was 8 acres of wheat - that the wheat did not yield as much by 6 or 7 bushels, to the acre as if it had been put in early - That at the next harvest was worth 72 cts per bushel - that Deft was entitled to $\frac{2}{3}$ of the crop - That the damage of a team being idle at that time was \$3 per day & if two teams were idle \$4 per day -

On cross examination witness said that he was at farm every day or two that he did work with his team on farm plowing 3 days before Robinson moved away - could have worked on the farm all the time ^{self?} was there if witness had boarded with Robinson - That Deft was then boarding with Plff - that ^{witness} Plff did not try to get board with Plff or Hall who lived in the neighborhood - that the only damage was to the wheat crop - that the only damage of a team being ^{then was in not being able} idle to get the crop in season - that if the wheat had been as good put in late as if put in early then it was no damage whatever by the teams being idle then - that Vincent was working one of Robinsons teams on the farm all the time

Deft then called Robert Hall, who testified that during last March he lived on Defts farm half mile from Robinson, - that Vincent boarded with him during a part of March

Know of plff being absent from work on 5th & 6th days of July 1859 also 3 or 4 days in September 1859. It was absent in Jan'y last from 5th to — Know that plffs used defts wagon part of the time & part of the time his own wagon — that he used defts wagon to haul corn to Peoria for deft & also some on the farm when large ^{loads} were to be hauled — heard deft tell plff to use Defts wagon as a larger load could be hauled with it that plff used defts wagon about $\frac{1}{2}$ the time that the use of a wagon for a year would be worth \$10⁰⁰ — Know that one of Robinsons horses was unwell in the summer of 1859 for about six weeks — Know that plff during this time used one of plffs defts horses to plow corn — would think about $\frac{1}{2}$ the time — would use one of his (plffs) own horses $\frac{1}{2}$ day & then one of defts the other half — was in plowing corn — think the use of a horse in the country is about 30 cents per day.

On cross examination witness said that at the time deft told plff to use defts wagon — the witness Speer was present — did not hear deft say he would not charge plff for use of his wagon.

Deft then called Daniel Stet; who testified that he was called in by Hymearson & Jacob Stet as a third person in an arbitration between Robinson & Surr the parties to this suit & was called in because Hymearson & Smith could not agree — that we talked the ^{the} matter over & that Hymearson

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read over the written contract between Sours and Robinson - that I said that I thought the wages of Robinson should be \$20⁰⁰ a month - that then Smith also proposed to settle the accounts between the parties, but after talking the matter over some time we could not agree so we adjourned to meet again - that we did not agree upon an award - & that we adjourned to meet again for that purpose but that we never met again -

On cross examination witness said that when he & witness I met Wynnearson & Smith that they told him that they were chosen arbitrators - Wynnearson by Robinson & Smith by Sours under a written contract & which contract was there & is the one read in evidence to the jury & that they Wynnearson & Smith could not agree & that under ^{according to} the contract they had agreed on him & witness as the third man to come in & determine the matter & that Wynnearson then read over the written contract & I then gave it as my opinion what the wages should be & told them that I should put the wages at \$20 per month - that Wynnearson said "well" - Smith said he thought it too much - that ^{then} Smith took out an account of Sours against Robinson & wanted to have that allowed - that Wynnearson said he thought we had nothing to do with the accounts - that all we had to do with was the wages under the contract - that I said I thought so too - Smith said he thought that we had better settle the accounts too & make a final settlement - that Sours

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handed him the account when he {Smith} came away and told him that he {Sore} wanted him to get the accounts settled also - That then we talked the accounts over & Robinson admitted Sore's account to the amount of \$91.00. but claimed that Sore did not have any more demands against him (plff) & also claimed that Sore owed him (plff) a balance of more than two hundred dollars - The arbitrators could not agree. & adjourned to meet again - We adjourned to settle the accounts, not the wages - when I said we did not make an award I meant we did not agree upon the accounts - the wages I ^{had} put at \$20. per month before we talked about the accounts & Hymecarson said "well" - Smith only objected - (As I thought that Hymecarson ^{As} I agreed about that) - I considered I had fixed the wages before we talked about the accounts - The only dispute among us was on the accounts -

On re-examination witness said that they (arbitrators) did not make or proclaim any award except what I have said in regard to the wages -

Def^t ~~here~~ ^{here} rested his cause

Plff then recalled Wm Speer who testified that he was present when Def^t requested plff to use his wagon - That plff objected to using it least def^t would afterwards make a charge for the same - that def^t then told plff that he would make no charge whatever

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for the use of his wagon - That one of Plffs
horses was unable to work for about six weeks with
sore shoulder arising from work on the farm there -
That plff generally used his other horse all day in
plowing corn - did use one of defts horses in all
about 3 days - That reason was Sore did not
provide grain or provender for horses & they had to
run out & one horse could not stand it to work all
the time - That plffs wagon was a good common
wagon - but Sore thought his stronger -

Were both parties rested -

The above was all the evidence in the case -

The Court gave the following instructions to the jury
on the part of plff

" 1
" Given
If the jury believe from the evidence that the plff
was employed with his wife, team &c for the defendant
Sore for one year under a written contract and that
the plaintiff Robinson performed the labor & services
required in the contract the jury will allow the plff
for the contract price."

" 2
" Given
If the jury believe from the evidence
that under the written contract to determine the
wages of the plff that arbitrators were mutually chosen
according to the contract and have determined the amount
of wages under the contract then the jury will allow the
plaintiff the amount given by said arbitrators -"

" 3
" Given
If the original Arbitrators failed to agree & that they
chose an umpire - a third person - then in case the original
arbitrator disagree, the umpire alone may determine the matter in

Controversy, provided they all act."

4 If these Arbitrators were chosen under the written contract only - then they are to adjudicate the matters in the contract merely -

If the jury believe from the evidence that the parties to this joint appointed arbitrators mutually under the written contract ^{as} that one of the parties tried to have matters settled by the arbitrators not in the contract & further that the arbitrators as Arbitrators & umpire passed upon the matters in the contract ~~written contract~~ ^{as} not upon the other matters, still the parties are bound, unless there was an express stipulation by the parties or one of them not to be bound, unless all the matters were passed on by the Arbitrators."

6 It is not necessary to the validity of an award that it be formally published to the parties to the arbitration as to the others - it is sufficient that it be in fact made when all the arbitrators are acting."

To the giving of which instructions the deft by his atty then & there objected & excepted but the court overruled said objections & gave said instructions & to the overruling said objections & the giving said instructions the deft by his counsel then & there objected & excepted - The deft then asked the court to instruct the jury as follows

" William Robinson }

vs }

Caleb Lowe }

Defendants instructions

19

"1 The Jury are instructed on the part of deft that they cannot find anything due from deft to the plaintiff over and above \$200 therein specified unless they have some proof or evidence that some thing more was due him."

"2 The Jury are further instructed that if they believe from the evidence that in the submission to the ~~instructions~~ arbitrators that the defendant Love submitted the written contract to the arbitrators in connection with all other accounts and with the understanding that the arbitrators were to pass upon all then ^{and} in that case Love would not be bound upon any award made upon the written contract alone - without passing upon the whole subject of accounts."

"3 Arbitrators cannot pass upon part of the matters submitted to them & refuse ^{and} neglect to pass upon the balance submitted."

"4 An expression of opinion by the Umpire of the value of the labor of plaintiff under the contract assented to by one of the Arbitrators is not an award" (modification of the court) "unless the jury believe from the evidence that it was agreed and intended by them to be an award."

"5 When the Umpire & an arbitrator agree about a matter submitted to them - but announce to the parties that they have not agreed - their opinion in regard to the matter submitted to them is not a valid award."

"Jury"

6 An award to be valid must be made on all the matters submitted to the arbitrators. If an agreement as to any part of the matters submitted is not binding & does not constitute a valid award."

"Jury"

7 To constitute an award requires the Deliberate agreement of the arbitrators, or umpire or any two of them, If the mere expression of an opinion by the Umpire not stated by him or intended by him as an award does not constitute a valid award"

"Refused"

8 Although the jury believe from the evidence that the umpire fixed the sum due for labor done under the contract but adjourned with the arbitrators for another hearing before making the award as to said labor. If as to other matters of account between the parties If never again met but declined making an award at a subsequent day - They jury are instructed that if they believe from the evidence that no other award was made except as above stated that there was no valid award settling the amount due for labor under the contract."

"Refused"

9 If the jury believe from the evidence that the arbitrators & umpire never announced to the defendant that they had made an award but on the contrary that the umpire & one of the arbitrators announced that they would not make an award. If never again met or attempted to agree. The jury are instructed that the defendant is not bound by any finding or award made by said umpire or arbitrators."

And the Court gave the 1st, 2nd, 3^d, 5th, 6th & 7th of
defts instructions without modifications but the Court
refused to give the 4th instruction without modifica-
tion & modified the same by inserting the following
to wit "unless the jury believe from the evidence
that it was agreed & intended by them to be an
award" And the Court refused to give the defts
8th & 9th instructions entirely - to all of which modifica-
tion of defts 4th instruction & refused by the Court
to give defendants 8th & 9th instructions the defts
then & there by his counsel objected & excepted & prays
that his bill of exceptions may be signed &
sealed which is accordingly done

J. H. Powell Seal

On the 19th day of January in the year of our Lord one
thousand eight hundred and sixty there was filed in
the office of the clerk of said Court in said cause an
appeal Bond in the words & figures following, to wit:

I now all men by these presents: That we
Leah & Son & Sidney Pulsifer of the City of Peoria Illinois
are held & firmly bound unto William Robinson in
the penal sum of Three hundred dollars lawful money
for the payment of which well & truly to be made we
bind ourselves our heirs administrators jointly & severally
firmly by these presents witness our hands & seals this 10th
day of January AD 1861

The consideration of the
above allegation is such, that whereas the said
William Robinson did at the November term
AD 1860 of the Circuit Court of Peoria County
Illinois obtain a judgment in said Court for

the sum of One hundred Fifty Nine Dollars
& costs of suit against the above bounden Caleb Lowe
from which said judgment the said Chase has
prayed an appeal to the supreme Court of said State
of Illinois - now if the said Caleb Lowe shall duly
prosecute said appeal & shall pay whatever judgment
costs, interest & damages may accrue against him
in case said judgment should be affirmed on the
trial of said appeal in the said Supreme Court
then the above obligation to be void; otherwise to
be & remain in full force & virtue.

Caleb Lowe
Sidney Pulsifer

State of Illinois ss. I Enock P. Sloan,
County of Peoria ss. I Enock P. Sloan,
Clerk of the Circuit Court in and for the County of
Peoria in the State of Illinois do hereby certify
that the foregoing is a true and correct copy
from the files and Records of my office of
proceedings had in said Circuit Court in a
certain Cause wherein William Robinson, is plain-
tiff and Caleb Lowe is defendant as the
same remain of record and on file in my office
In witness whereof, I have set my
hand and affix the seal of said Court
at office this fifteenth day of April
in the Year of our Lord one thousand
eight hundred and Sixty one.
Enock Sloan, Clerk

Supreme Court of Illinois
April Term AD 1861

Caleb Love } Appeal from
vs }
William Robinson } Priora —

And the said appellant comes
and says that on said record it is
manifest error in this

1. That said Court Erred in giving
each of the plaintiffs instructions
2. That said Court Erred in refusing
to modify the defendants in-
structions
3. That said Court Erred in
overruling the defendants' Motion
for a new trial & in not granting
the same - & in entering judgment
for the plaintiff & not for the defendant
4. & in other matters &c

All of which said appellant
affirms for error, & prays that said
Judgment may be reversed &c

M^r Coy & Harding
Attorneys for appellant

²⁵³
Galeb Lowe
h

William Robinson

Record

Appeal from
Prima

Filed Apr 18. 1861

A. L. L. L.
L. L. L.

\$8.50