

14251

No. _____

Supreme Court of Illinois

Smith

vs.

Smith

STATE OF ILLINOIS,
SUPREME COURT.

Third Grand Division.

No. 70

14257

Smith
75.
Smith

1862

Proced.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

CHARLES P. SMITH }
vs. } *Appeal from Knox.*
COONROD SMITH. . }

POINTS AND AUTHORITIES.

BY H. M. WEAD, for Appellant.

1st. The Court had no power after setting aside to *recommit* the case to the arbitrators to make a new award, against the objections of defendant below.

Fitzgerald vs. Fitzgerald, Hardin's Rep., 227.
Martin vs. O'Neal, 2 Little's Rep., 54.
Watson on Awards, side paging 53.
14 Texas, 56, *Payne vs. Metz*.
7 Indiana Rep., 669—do 53.
Doke vs. James, 4 Comstock, 567.

2d. The last award should have been set aside by the Court below, because of the misconduct and incapacity of one of the arbitrators.

Pitt vs. Smith, 3 Campbell, 33.
Menkens vs. Lightner, 18 Ill., 282.
Leighton vs. Sargeant, 11 Foster N. H. 119.
Pelham vs. Page, 1 Eng., 535.
People vs. Douglass, 4 Cowen, 36.
Brandt vs. Fowler, 7 Cowen, 562.

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Wm P Smith
Commod Smith

Brief
of Puff. in war

Filed Apr. 25. 1842.

J. H. Adams
clerk

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THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

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⁷⁰
Charles P Smith

⁶²
Leonard Smith

Brief —

REPRESENTATIVE COURT OF THE

Filed Apr 25, 1852
J. Selman
Clerk

IN THE SUPREME COURT, STATE OF ILLINOIS,
Third Grand Division, April Term, A. D. 1861.

CHARLES P. SMITH, Appellant, }
vs. } Appeal from Knox County.
COONROD SMITH, Appellee. }

A B S T R A C T.

- Page 1 Summons issued by the clerk. Action of debt against Charles P. Smith at the suit of Coonrod Smith, dated October 9th, 1857.
- 2 October 12th, 1857, summons returned by sheriff, defendant not found in my county.
- 3 October 19th, 1857, (October term of said court) the court ordered an alias summons to issue, &c.
- 5 Alias summons issued April 1st, 1858, returnable at the April term, A. D. 1858.
Alias summons returned by sheriff April 9th, 1858, defendant not found in my county.
April term of said court, 1858. Ordered by the court that this suit be continued for want of timely service.
No pleadings on file in this cause.
October term, A. D. 1858. Following order made by court:
- COONROD SMITH }
vs. } October 21, 1858. Debt.
CHARLES P. SMITH. }
- This day came the parties and their attorneys, and by agreement on file it is ordered by the court that this suit be referred to John Lafferty, M. Hubble and John Arnold for arbitration and adjustment, and they to make out and file their report herein by the first day of the next term of this court, until which time this cause is continued.
- At the June term of said court, June 9th, 1859, plaintiff's attorney moved the court for judgment on the award filed in this cause, and thereupon defendant's attorney entered cross motion to set aside said award.
- 6 September term, 1859, September 29th, 1859. Plaintiff's attorney moved the

court for judgment on the award, and defendant's attorney filed cross motion to set aside the award.

- 6 Copy of paper purporting to be a copy of the award, to wit:

STATE OF ILLINOIS, KNOX COUNTY.

Coonrod Smith	}	Debt. Arbitration.
vs.		
Charles P. Smith.		We, John Arnold, John Lafferty and M. C. Hubble, arbitrators appointed in said cause, after being duly sworn and having heard all the proof of both parties and the argument of counsel, do award and determine that Coonrod Smith shall recover of Charles P. Smith and that Charles P. Smith shall pay Coonrod Smith the sum of two hundred and eighty-four dollars and all the costs of this arbitration and in the circuit court.

Given under our hands and seals, this 21st day of December, A. D. 1858.

JOHN ARNOLD, [seal.]

JOHN LAFFERTY, [seal.]

M. C. HUBBLE, [seal.]

"The above is a true copy of the award made in the above entitled cause by us."

JOHN ARNOLD,

JOHN LAFFERTY,

M. C. HUBBLE.

- 7 Copy of the defendant's reasons to set aside the award, filed June 13th, 1859:

1st. The arbitrators never made and reported to this court any award according to law.

2d. Because the award was not made and reported to this court at the term next after the same was referred to them as required by law.

3d. Because the award does not show that the arbitrators were sworn by any officer authorized to administer the oath to them nor what oath was administered, and what, by the oath taken, they were bound to decide upon.

4th. Because no copy of the award was delivered to the parties.

TYLER & SANFORD, Att'ys for def't.

- 8 February term, A. D. 1860, on the 14th of March, 1860, this cause coming on to be heard, on plaintiff's motion for judgment on the award, court having heard the motion, by agreement of counsel takes the case under advisement to be decided in vacation of this term.

June term, 1860. On motion and by agreement this cause to be decided in vacation as of this term.

- 9 September term, 1860. Cause coming on, the court being fully advised in the premises, it is ordered by the court that the plaintiff's motion for judgment on the award be overruled.

And also at said term the following order was made:

October 17th, 1860.—Ordered by the court that the arbitrators heretofore ap-

pointed herein proceed to re-hear the matters submitted to them in this suit and make a further award herein and report to a subsequent term of this court.

10 Copy of the above order served on the arbitrators.

11 November 10th, 1860.—Arbitrators caused to be served notice on the defendant, Charles P. Smith, that they would proceed to hear said cause on the 7th December, 1860, (at the place mentioned in the notice), when and where he could appear with his witnesses.

12 Copy of the award of said arbitrators, made December 7th, 1860 :

“We, John Arnold, John Lafferty and M. C. Hubbell, arbitrators appointed in said cause, after having been duly sworn according to law, and having given both parties more than ten days notice of the time and place of hearing said cause, and after hearing all the evidence of both plaintiff and defendant, who were present with their witnesses before us, and the argument of counsel, we do award and determine that Coourod Smith shall recover of Charles P. Smith, and that Charles P. Smith shall pay Coourod Smith, the sum of \$ 350, and all the costs of this arbitration; and also the said Charles P. Smith shall pay all costs made in said cause in the circuit court of Knox county in said state. (Signed and sealed by the arbitrators.)

15 On back of said award all the arbitrators certify that they delivered true copies of said award to each party on 10th of December, 1860. Also the affidavit of M. C. Hubbell (arbitrator) that he left with Charles P. Smith a true copy of said award.

16 February term of said court, 1861, February 26th.—This cause coming on to be heard, the plaintiff's attorney moved the court for judgment on the award. Court being fully advised, &c., orders that said motion be sustained, and that plaintiff have judgment for \$350 debt, and the further sum of \$50.12, the costs of arbitration herein, and that he have his execution therefor.

17 Thereupon the defendant, by his attorney, excepted to the rulings of the court and prayed an appeal to the supreme court. Appeal granted by the court upon the defendant giving bond with security to be approved by the clerk, by agreement, in the sum of \$ 600; bond to be filed within 30 days from the date hereof and bill of exceptions in 30 days from the date hereof.

BILL OF EXCEPTIONS.

(Bill of exceptions up to page 23 of the record the same in substance as the foregoing record; then appears a bill of exceptions made October 17th, 1860, in substance as follows, to wit:)

23 & 24 September term, A. D. 1860.—Be it remembered that this day came the plaintiff and filed his motion herein to have this cause recommitted to the arbitrators for further examination and adjudication, which motion is as follows, to wit:

Whereas, the court, on the 10th October, 1860, overruled plaintiff's motion for judgment on the award for the reason that no copy of said award was served on defendant in the time required by law: Now comes the plaintiff and moves the court

to order the arbitrators heretofore appointed to hear and determine said cause, to again proceed to hear said cause and report their award to the court according to law.

DOUGLAS & CRAIG, Pl'ffs Att'ys.

And the court, upon hearing, sustained the motion, and ordered said cause to be recommitted, against the objections of the defendant, to which decision the defendant then and there excepted in open court at the time the same was made, and as the same does not appear of record, it is ordered that this bill of exceptions be signed and sealed and made a part of the record.

E. N. POWELL, [seal.]

Filed Oct. 17, 1860. C. ARMES, Clerk.

(Bill of exceptions after this the same as the previous record up to page 28th, when appears the following:)

28 February term, A. D. 1861, to wit, Feb. 21st, 1861.—Plaintiff filed his motion for judgment on said last mentioned award.

29 On same day defendant filed his motion to set aside said award and his reasons for the same, (which reasons are as follows, to wit:)

1st. Because this cause was once submitted to arbitrators and the award set aside, and the case, over a term afterwards, against the objections of the defendant, was again submitted to the same arbitrators.

2d. Because the award now presented by the plaintiff, which he asks judgment upon, was made without authority of law.

3d. Because the arbitrators did not give the defendant a copy of the award.

4th. Because the award was obtained by undue means, and the arbitrators were guilty of misconduct and misbehavior.

5th. Because the award is otherwise insufficient and uncertain.

P. H. SANFORD, Att'y for Def't.

32 That defendant, in support of his motion to set aside last mentioned award, did, on 25th Feb., 1861, file in said case the written affidavits of sundry persons, to wit:

AFFIDAVIT OF GILES COOK.

Being sworn says—He was at said arbitration on 7th December, 1860, and that said Arnold (arbitrator) was so drunk during said arbitration that, in my opinion, he was wholly unfit to act as an arbitrator or to transact any business of importance. (Subscribed and sworn to before proper officer.)

AFFIDAVIT OF ISAAC COPLEY.

33 Being duly sworn, says—He was present at said arbitration on 7th of December, 1860, and that John Arnold, one of said arbitrators, was so drunk during said arbitration that he was, in my opinion, wholly unfit to act as arbitrator or to transact any business of importance. (Subscribed and sworn to, &c.)

AFFIDAVIT OF DAVID TRIPP.

Being duly sworn, says—He was present at said arbitration on 7th of December,

34 1860, and that John Arnold, one of said arbitrators, was so drunk during said arbitration that, in my opinion, he was wholly unfit to act as an arbitrator or to transact any business of importance. (Subscribed and sworn to, &c., &c.)

AFFIDAVIT OF JOHN BECKERS.

(Swears to the same fact and is in the same language as the three foregoing affidavits.)

(Joint affidavit of C. P. Sansbury and J. J. Knapp, same precisely as the foregoing in language and facts.)

AFFIDAVIT OF CHARLES P. SMITH.

To which is attached copy of what purports to be the said last award marked exhibit "A," (which is the same in every way as the copy hereinbefore given, except that the signature of M. C. Hubbell is written N. C. Hubbell.)—Charles P. Smith being duly sworn, says that the paper marked exhibit "A," purporting to be a copy of an award made by said arbitrators, is the only instrument that has been served on him or given to him by them or any other person as a copy of said award in said case. Subscribed and sworn to, &c., &c.

AFFIDAVIT OF P. H. SANFORD.

38 P. H. Sanford, one of defendant's attorneys, being duly sworn, says that as attorney for said defendant he did on 7th December, 1860, object before said arbitrators to their acting as such arbitrators, for the reason that they were appointed without his consent and were not legally appointed. Said objections were made before any evidence was produced before said arbitrators. (Subscribed and sworn to, &c.)

Plaintiff produced the following affidavits in writing as rebutting testimony, to wit:

39 A. M. Craig, being duly sworn, says he saw said arbitrators sign the award and copy of award delivered to Charles P. Smith, both of which are now here shown to the court. Both of said papers were signed in my presence on the day of their date. (Subscribed and sworn to before proper officer.)

John Lafferty, being duly sworn, deposes and says, that on the 8th November, 1860, as deponent is informed and believes, a true copy of said award was delivered to said plaintiff and defendant. (Subscribed and sworn to, &c.)

40 Plaintiff also produced George A. Charles as a witness on the stand, who testified as follows:—I was present at said arbitration on 7th December, 1860. John Arnold, one of the arbitrators, was a good deal fuddled; can't say whether he was too drunk to do business or not; some people do business better when some in liquor.

41 Cross examined.—Arnold was so drunk at that time that I should not want him to do any business for me. I think he was not in a fit condition to do business of importance.

It was admitted on the trial that both parties appeared by themselves and counsel before the arbitrators Dec. 7th, 1860.

That the foregoing evidence is all the evidence produced on the trial of said cause.

That afterwards, on 26th February, 1861, said court, after hearing all the evidence in case and argument of counsel, rendered judgment on said last mentioned award, against the objections of defendant; to which judgment and the rendition of the same the defendant then and there excepted and objected in open court; and as the foregoing does not appear of record, it is ordered that this bill of exceptions be signed and sealed and made a part of the record.

March 27th, 1861.

(Signed by the Judge)

E. N. POWELL, [seal.]

42 Appeal bond filed March 19th, 1861, and approved by the clerk. (Copied in the record.)

43 Clerk certifies under his hand and seal of said court, that foregoing is true and complete copy of record and proceedings in said case, &c.

After which certificate appears the following stipulation, signed by the attorneys of each party:

STATE OF ILLINOIS, KNOX COUNTY, ss.—*Knox Circuit Court.*

COONROD SMITH	}	Debt.
vs.		
CHARLES P. SMITH.		

It is agreed by and between the parties to this suit that a pluries summons was issued in said cause and duly served on the defendant, and that plaintiff filed in said court in this cause his declaration in debt in due form and in due time, and that before any pleas were filed in said cause, the same was referred to the arbitrators, John Arnold, John Lafferty and M. C. Hubbell; and as said pluries summons and declaration are lost so as to not form a part of the record, it is agreed that neither party shall be prejudiced for want of a copy of said pluries summons and declaration in the copy of the record in this cause sent to the supreme court of said state.

TYLER & SANFORD, Att'ys for Def't.

DOUGLAS & CRAIG, Att'ys for Pl'ff.

Harvard
Att'ny for Pl'ff

265 - 78
Chas P Smith

10

Coonrod Smith

Abstract

Filed Apr 8. 1861

A. Deland

Clerk

In the Supreme Court, State of Illinois
Third Grand Division April Term 1861

Charles P. Smith }
vs } Appeal from Knox County
Coorod Smith. }

Appellants Points & Brief

This was ~~originally~~ an action of Debt brought by
the Appellee against the Appellant at the
October Term 1857 of the Knox Circuit Court

No proceedings were had in the case until
the October Term 1858 when the Court ordered,
as per agreement of the parties, that the suit
be referred to John Scaffery, M. Hubble & John Arnold
for Arbitration, and that they make out & file
their report by the first day of the next Term
of said Court (See Page 5 of the Record)

The Award was not filed until the June
Term 1859 (The February Term intervening) when
the Plaintiff (below) moved the Court for judgment
on the award, and the Defendant entered and
filed his Cross motion, to set aside the award,
and his reasons for the same.

Copy of the Award on Page 6 of the Record.
Copy of the Defendants reasons for setting aside
the same on Page 7 of the Record.

At the September Term 1859 the Plaintiff again moved the Court for judgment on the Award, and the Defendant renewed his Cross Motion

Page 8

At the February Term AD 1860, the Court having heard the Motion, by agreement of Counsel takes the Case under advisement to be decided in Vacation of that Term.

June Term 1860, on Motion & by agreement this Case to be decided in Vacation as of that Term

Page 9

At the September Term 1860, the Court ordered that the Plaintiffs Motion for judgment on the Award be overruled

Page 9

And at the same Term the Court further ordered, "That the Arbitrators heretofore appointed herein proceed to re-hear the matters submitted to them in this Suit & make a further Award herein and report to a subsequent Term of this Court"

Against the objections of the defendant then & there made (See bill of exceptions Page 23 & 24 of Record)

Page 11 & 12

December 7th 1860 the Arbitrators met & made a new Award.

The Defendant by his Attorney appeared before the Arbitrators on said 7th day of December but before any evidence was heard. Objected to their acting as such Arbitrators for the reason that they

Record

were appointed without his consent and were not legally appointed. (See affidavit of P. H. Sanford Page 38 of the Record)

It appears that during said last mentioned Arbitration John Arnold one of the Arbitrators was so much intoxicated that he was unfit to transact any business of importance.

(See the Affidavits of Giles Cook, Isaac Lepley, David Trish, John Beckers, L. P. Sandburg & J. J. Knapp, from Page 32 to 37 of Record also Testimony of G. A. Charles Page 40)

" Page 16

At the February Term 1861 the Plaintiff moved the Court for judgment on said last Award the Court heard & sustained the motion, gave judgment against the defendant for \$350, Debt and \$50.12 Costs.

Before the above motion was heard & proceedings had the defendant filed his Cross motion, to set aside said Award, and his reasons for the same, together with the affidavits above referred to. (See bill of exceptions page 28, 29 & 32 of the Record)

" Page 41

On the 26th of February 1861 the Court after hearing all the evidence in the case & the argument of Counsel rendered judgment on said Award (as above set forth) to which the defendant by his attorney, then & there objected & excepted in open Court

In asking this Court to reverse the judgment of the Circuit Court the Appellants Counsel in this argument will only call the attention of the Court to two points, believing that either of them are sufficient to reverse the judgment of the Court below

First, That the Court had no power, after setting aside the first Award, to recommit the case to the Arbitrators to make a new Award against the objections of the Defendant, below

Second, That the last Award should have been set aside by the Circuit Court, because of the misconduct and incapacity of one of the Arbitrators

As to the first point

Where does the Court derive the power to refer a case in Court to Arbitrators; from the Statute and the Consent of the parties; The Court has no power over the proceedings of the Arbitrators.

After the Award is returned into Court, if no legal defects appear on its face and no sufficient cause shown why it should be set aside, it is the duty of the Court to render judgment on the Award or if the Award is bad for legal causes should set it aside, beyond this the Court has

no power. And if an award is set aside the case stands in Court the same as if never referred to Arbitrators and either party have the right to a trial by Jury. Even if the parties consent to arbitrate, and the arbitrators are selected & ordered by the Court to proceed to make an award, either party has the right at any time before any evidence is introduced before the arbitrators to revoke their authority and have the case go back for trial by Jury.

The Court cannot go beyond the letter of the Statute except by the consent of both parties

By reference to the Revised Statutes of 1845 Chapter 7 page 56 & 57. it will be seen that no authority is given to the Court to recommit a cause to arbitrators under any circumstances not even to correct Clerical errors or matters of form

Sec 10 gives the Court - power to set aside awards for certain causes but no power to recommit to arbitrators

Let us examine the first award and see what errors existed and the causes, why it should have been set aside &c

- 1st The award does not show that the arbitrators were sworn in conformity to the Statute
- 2^d No copy of the award was ever delivered to the parties

3^d The Award was not reported to the Court at the next Term ~~but~~ after the same was referred to the Arbitrators, as required by the order of Court & as required by law

Either of the above Causes were sufficient to set aside the Award, The Court overruled the motion of the Plaintiff for judgment on the Award, because no copy of the Award was served on the defendant, and the effect of the ruling of the Court was that the Award was a nullity,

Again, three Terms of Court elapsed from the filing of the 1st Award to the recommitment of the case to the Arbitrators. The Arbitrators were in fact dismissed from the case and undoubtedly never expected to have anything further to do with the case until nearly a year afterwards when they were notified to make a further Award

Their duties should have ceased with the return of the ^{first} Award into Court, and certainly should have ceased with the expiration of the Term at which they first reported. And the Court had no more right to refer the case back to them, when it did, against the objections of either party than he would have had to refer it to the Arbitrators in the first instance without the consent of both parties

If it be possible that a Court has the power to recommit a case for a further award after an award has been set aside as in this case, the Court would have no more power to refer the case back to the same arbitrators than they would have to refer a case back to the same jury after new trial granted

A party may find, in the interval, that some or all of the arbitrators are prejudiced against him, or are incompetent to properly investigate the case, and he certainly should have the right to have others in their places

In this case the first award was for \$ 284.⁰⁰/₁₀₀ and the last award for \$ 350.⁰⁰/₁₀₀ and we have the right to say that this increase of \$ 66.⁰⁰/₁₀₀ was the result of the prejudice of the arbitrators

The authorities on this point, we think, are clear. In *Fitzgerald vs Fitzgerald Harder Reports (N.Y.)* page 227 The Court say, that when arbitrators have once reported their powers cease unless the matters are re-committed by consent. See also *Martin vs Oreal 2^d Sittal Reports (N.Y.)* page 54

The Kentucky Practice Act in regard to awards (if we are not mistaken) is the same as our own see *Watson on Awards* side page 83
Payne vs Metz 14 Texas Page 56

Jeff. R.R. Co vs Mounts 7 Ind. 669
Ind. C.R.R. Co vs Bradley 7 " 53
Doke vs James 4th Comstock (Mg) 567

The law is well established that the authority of an Arbitrator is Countermandable before award made, whether the Submission is by Rule of Court, or by deed or other Contract of the parties. (See Watson on Awards Side page 16 See 4 Title, Revocation,)

The Objections of the defendant to the Re-commitment of the Case to the Arbitrators, was a sufficient Revocation of their authority, and a further revocation was made by the defendant when on the day of the Arbitration & before any evidence was offered, he objected to their acting as Arbitrators & that they acted without his Consent

The Re-commitment of this Case to the Arbitrators, under the circumstances was an assumption of power by the Court, not authorized by our Statute nor by the recorded decision of any Court in this, or any other Country

As to the Second Point

Section 10 of Chapter 7 of the Revised Statutes Provides that if Arbitrators "misbehave" the Court may set aside such Award.

That Drunkenness is Misbehavior, no man will dispute, That Courts ought not to Compell a man to submit to the Rulings judgment or Award of a Drunken man is a

Plain Principle of Common Sense.

At first blush we are forced to the conclusion that an award made by such a man should be instantly set aside on application to the Court.

And the authorities do not weaken this conclusion. The \$66.00 added to the last award may have been the result of this man's imbecile, prejudiced & deranged state of mind.

True two of the arbitrators were sober, ~~as far as appears from ought that appears in the record~~, but the case was referred to three men and we were entitled to the suggestions, arguments & sound judgment of each & all of the arbitrators, and should not be bound by the wild suggestions & unsound arguments of an intoxicated brain, which undoubtedly effected to our detriment the conclusions & judgment of the other two.

The case of, *Henderson vs Buckley* 14th B. Mon (H. L.) 292 is right in point.

See also *Binmister vs Read* 1st Gilman 92

Three men purported to act in this arbitration but one of them was, *Non Compos Mentis*, in the eyes of the law.

In *Pitt vs Smith* 3^d Lam. p. 33

Lord Ellenborough held that an agreement signed by an intoxicated man is void on the ground that such a person "has no appealing mind" and he re-asserted this rule in.

Fenton vs Holloway 1st Stark, 126

A similar doctrine is asserted in
Munks vs Lightner 18 Ill 282

In Leighton vs Sargent 11 Foster (N.H.) 149
the Court held that a new trial should have
been granted, on the ground that some of the jurors
after retiring to make up their verdict, drank
a small quantity of Brandy. (which produced
no perceivable intoxication)

See also Pelham vs Page 1st Guy, 535

Courts will always relieve a man from
a contract made by him when intoxicated
and why not relieve a party ~~from the act~~ who
has been injured by the act of a drunken man
as in the present case

No Authority is known to us where
any Judicial act of a drunken man has been
sustained, when properly sought to be avoided

An Award of Arbitrators is a Judicial
proceeding (see 8th Cowen Page 27)

We can find no Authority sustaining
the decision of the Circuit Court in refusing
to set aside said Award but on the contrary
we believe that, by the law plainly laid down
the Court should have set it aside.

WAB Johnson
H. M. Mead
for Appellach

265 - 70
Charles P. Smith

^{v2}
Coovered Smith

argument for appel
tant

by

~~J. B. Johnson~~
H. W. Mead

Filed May 9, 1861

L. Leland
Clerk

Chas P Smith
02 } Appeal from May
Leovard Smith }

The Clerk will please enter this
case on the docket

J. W. Mead
for P. M.

In above case plaintiff moves to
extend the time for filing record
until Tuesday next

Apr 17, 1861

J. W. Mead
for P. M.

265
Chas P Smith

ⁿ
Cooper Smith

Receipt & Motion

Filed April 18, 1861
L. Island
Ch.

Charles P Smith } In the Supreme Court of
vs } the State of Illinois
Conrod Smith } April Term A.D. 1861
3rd Hand Decision

Appeal from Knox

And now comes the said Charles P Smith
by his Attorney At Law and says that in the
record & proceedings aforesaid and in the
judgment aforesaid manifest injury hath
intervened to his injury in this

1st The Court erred in in recommending
said Award to the Arbitrators after the
first Award had been made

2 The Court erred in not disposing of the first
Award in some way

3 The Court erred in rendering judgment
upon the second Award, against the Plaintiff

4. The ~~2~~ second Award was void because
it does not show what was submitted,
nor what was decided.

5. The Court erred in not setting aside the
second award upon the plaintiffs motion

6. Said record & proceedings are otherwise
erroneous, for which reasons the said
Chas^r Smith prays that said judgment
may be reversed set aside & for nought
held

By A. M. Wood

his Attorney

And the said Commod Smith by his
attorney comes and says there are no such
errors as above alleged in the record and
proceedings of said Circuit, nor any nor
either of them, wherefore said Commod
prays that said judgment of the Circuit
Court be in all things affirmed

Manning, Douglas Hoag,
for Commod Smith.

Transcript of Proceedings, so far as the same are shown by the papers on file and the Records in my office, lately had in the Circuit Court of Knox County, in the Tenth Judicial Circuit in and for said County and State of Illinois, between Conrad Smith Plaintiff and Charles P. Smith Defendant.

No Precipe for Summons on file,

Copy of Summons, to wit:

State of Illinois,
 Knox County $\bar{3}$ ss. The People of the State
 of Illinois,
 To the Sheriff of said Knox County,
 Greeting.

The Command you do Summon Charles P. Smith if he may be found in your County, to appear before the Circuit Court of said County of Knox, at the next Term thereof, to be holden at the Court House in Knoxville on the Third Monday in the month of October next. To answer unto Conrad Smith, in a Plea that he render unto the said Plaintiff the sum of two thousand Dollars, which he owes to, & unjustly detains from the Plaintiff, and

make return of this writ, with an address-
ment of the time and manner of serving the
same, on, or before the first day of ~~the~~ the term
of said Court, to be held as aforesaid.

Notices Cephas Arms,
Clerk of the said Court, and the Seal then
of at Knoxville this 9th day of October
A. D. 1857
Cephas Arms, Clerk
J. A. Pierce Deputy

Seal

Copy of Return upon said Summons, viz:

" I cannot find the Defendant
within named in my County, October
14th 1857 G. W. Coker, Sheriff of
Knox Co. By John S. Rude, Deputy "

Copy of Filing upon the back of said Sum-
mons, to wit:

No. 283

Knox Circuit Court, October
Term A. D. 1857

Clara Smith Pff. vs. Charles
P. Smith, Def't. Summons for Defendant.
Filed this — day of — A. D. 1857 —

Clerk,
Sheriff's fees. Services \$ — miles travel —
Return — \$ — Sheriff Knox County,
N. V. Craig for Pff.

At the Oct. Term of this Court, A.D. 1857, was entered of Record, the following Order to wit:

" Conrad Smith vs. Oct. 19, 1857
 283 Charles P. Smith vs. Debt.

It is ordered by the Court that an alias summons issue herein returnable at the next Term of this Court, "until which time this cause is continued"

Copy of alias Summons, to wit:

" State of Illinois vs. The People of the
 Knox County } State of Illinois,
 John Sherry of Knox County }
 Sheriff

The Command You, as before, to
 Summon Charles P. Smith, if he may
 be found in Your County, to appear
 before the Circuit Court, of said County
 of Knox, at the next Term thereof, to be
 holden at the Court House in Knoxville
 on the Third Monday in the month of
 April next, to answer unto Conrad
 Smith, in a Plea that he render to the
 Plaintiff the sum of Two Thousand Dollars
 and which he owes, and unjustly de-
 tains from the said Plaintiff & his dam-

ago two thousand dollars, and make return of this writ with an endorsement thereon of the time and manner of serving the same, on or before the first day of the term of said Court, to be held as aforesaid,

Witness Cephias Anns, Clerk of our said, and the Seal thereof at Knoxville this 1st day of April A.D. 1858 -
Cephias Anns Clerk

"**Ret**" Return upon said Summons. (Copy)
"I cannot find the within named C. P. Smith, this 9th day of April A.D. 1858 -
J. W. Duke Sheriff of Knox County"

Copy of Filing upon each of Summons.

"Summons, Knox Circuit Court, April Term, A.D. 1858 - Carad Smith vs. C. P. Smith, Capt. Sum for Defendant,
Filed this - day of - A.D. 1858. Sum,
Sheriff's fees, Services of - Milstrand
Return 10 - \$ 0.10 - G. W. Duke
Sheriff Knox Co.

"N. & Craig atty -"

At the April Term of said Court the following order was entered of Record, in this cause to wit:

* A bill entered of Record June Term, 1857. Suit: Conrad Smith vs Charles P. Smith.
"This bill came to Remedy by his Attorney - and named the Court for Judgment
in the award filed herein, and thereupon comes the Respondent, by his Attorney,
and enters his Cross-Motion & sets aside the Award, June 9, 1858."

April 21st, 1858

Conrad Smith vs Charles P. Smith
Debts

Ordered by the Court, that this suit be continued until the next Term of this Court, for the want of timely Service of Summons."

No Pleadings on file in this cause at the October Term A. D. 1858. The following order of Court, was entered of Record in this cause. To wit:

Conrad Smith vs Charles P. Smith
Debts

Oct. 21, 1858.

This day came the Parties, and their Attorneys, and by agreement on file, it is ordered by the Court that this suit be referred to John Saffery, M. Hubbles and John Arnold, for Arbitration and adjustment, and they to make out and file their Report herein, by the first day of the next Term of this Court, until which time this cause is continued.

*

at the September Term of Court A. D. 1859, the following order was entered of Record to wit:

Copy of Depts Reasons. In Set aside
award, upon which is the following
filing:
"Smith v. Smith, Award,"
"Motion to Set aside, Reasons"
"Filed June 13, 1859
C. Ann. Clk."

In wit:

"State of Illinois
Knox County 3^d J.
Knox Circuit Court
June Term A.D. 1859

Courrod Smith

vs.

Charles P. Smith } Award.

The Rept. comes to Court
& set aside the award for the following
Reasons. To wit:

1st. The Arbitrators were made and
reported to this Court any Award ac-
cording to Law.

2^d. Because the Award was not made
and reported to this Court, at the time
next after the same was referred to them
as required by Law.

3^d. Because the award does not show
that the Arbitrators were sworn by
any Officer authorized to administer
the oath to them, nor what oath was
administered, and what by the oaths
taken they were bound to decide upon.

4th Because no copy of the Award was
delivered to the Parties.

Tyler & Sanford
Attys for Rept. "

at the February Term A.D. 1860,
the following order was entered of
Record & writ,

"February 24" 1860.

Court met pursuant to adjournment
present same as yesterday,
Conrad Smith

vs
Charles R. Smith } Rebt.
by his attorney and moves the Court
that judgment be rendered on the
award "

at the Feb. Term 1860
the following order was also entered
of Record & writ,

"March 14, 1860.

15,
"

Conrad Smith }
vs } Rebt.
Charles R. Smith }
moving on & be heard on Plaintiff's motion
for judgment on award of Arbitrators
Cherrin, the Court having heard said
motion, by agreement of Counsel
takes the same under advisement
& be decided in vacation of this term,
copy of order of Court, at June Term, 1860, viz:

"On motion & by agreement, this cause is to be de-
cided in vacation, as of this term, June 6, 1860"

At the September Term 1860,
the following order was entered of Record
Doubt;

" Oct. 10, 1860,
" Conrad Smith
12, Charles P. Smith vs. Debt,

This day came the
Plaintiff by his attorneys and moved
the Court for judgment on award
of Arbitrators heretofore appointed
Herrin, and the Court being fully ad-
vised in the premises, it is ordered by
the Court that said motion be over-
ruled "

and also at said Term
the following order in said cause was
entered of Record, Doubt;

" Conrad Smith
12, Charles P. Smith vs. October 14th 1860
Debt.

Ordered by the Court,
that the Arbitrators heretofore appointed
Herrin, proceed to re-hear the matters
submitted to them in this suit, and
make a further award Herrin, and
report to a subsequent Term of this
Court "

* "We accept service of the above order & cert. in us this 10th day of November A.D. 1860 -
John Arnold
W. C. Abbott
John Lapperty"

Copy of Process, ^{or order} issued by Clerk to Arbitrators to wit:

Conrad Smith vs. Charles P. Smith
Rebb.

Ordered by the Court, that the Arbitrators heretofore appointed herein proceed to re-hear the matters submitted to them in this suit and make further Award herein, and report to a subsequent Term of this Court.

State of Illinois
County of Knox 3^d J. C. Cephas Annis,
Clerk of the Circuit Court within and for said County and State do ^{dearly} certify, that the foregoing is a true copy of the order of said Knox County Circuit Court, made in said cause, on the 17th day of October A. D. 1860 at the September Term of said Court.

Given under my hand and the Seal of said Court, at my Office in Knoxville this 1st day of November, A. D. 1860.

Cephas Annis
Clerk

"LUB"

*

11 upon the back of which is the following filing receipt;
"Filed Feb. 4, 1861
J. H. Lewis CLK"

Copy of Notice to Charles P. Smith, Trustee

"State of Illinois }
Huron County } ss.

Coroner Smith
vs. Debt
Charles P. Smith

Mr. Charles P. Smith
You will take notice that we the Arbitrators in said Cause will, on the 4th day of December A. D. 1861, at 10 o'clock A.M. in the Town of Victoria in Huron County Illinois, at the Office of Miles Cook, proceed to hear the evidence & determine and try said Cause when & where you can appear with your witnesses if you desire.

November, 10th 1861.

(Signed)

John Cafferty
M. C. Habbell
John Arnold"

upon the back of which is the following Return & Filing Receipt:

State of Illinois }
Huron County } ss. M. C. Habbell, being
duly sworn, deposes & says he delivered a true copy of the above notice to Charles

R. Smith, on the 19th day of November
A. D. 1861. -

Subscribed & sworn to
before me, this 8th day of November
A. D. 1861
Chas Cook, Justice of the Peace"

"Filed Feb. 4, 1861
J. W. Lewis clk"

Copy of Award and filing thereon. To wit:

"State of Illinois
Knox County } ss.

Crownd Smith
vs.
Charles P. Smith Arbitration

We John Arnold, John
Lafferty, and W. C. Hubbell, arbitrators
appointed in said cause, after having
been duly sworn according to law, and
having given both parties, more than ten
days notice of the time and place of hearing
said cause, and after hearing all the
evidence of both Plaintiff and Defendant,
who were present, with their witnesses,
before us, and the argument of counsel,
we do award and determine, that Crow-
nd Smith shall recover of Charles P. Smith

and that Charles P. Smith shall pay Leonard Smith the sum of Three Hundred and Fifty Dollars, and all the costs of this Arbitration, and also that Charles P. Smith shall pay all costs made in said Cause in the Circuit Court of Knox County in said State.

Given under our Hands and Seals this 4th day of December AD 1860,

John Arnold. *J.A.*

M. C. Hubbell. *M.C.H.*

John Lafferty. *J.L.*

upon the back of said Award is the following tenor:

"We John Arnold, John Lafferty, and M. C. Hubbell do hereby certify that we served & delivered a true copy of the foregoing Award upon Charles P. Smith Leonard Smith, this 10th day of Decem. 1860.

M. C. Hubbell

John Arnold

John Lafferty"

also, the following tenor:

"M. C. Hubbell comes before me Geo. W. Marshall, an acting Justice of the Peace, in and for said Knox County, and under oath, says that he has left a copy with Charles P. Smith of the within instrument of writing, on the 10th day of December 1860, and showed Leonard

Smith, this Instrument at the same
 time - W. C. Hoobell, "
 " Given under my hand and seal
 this 25th day of January 1861.
 Geo. W. Marshall J. P. S. H. "

Copy of Pleading, to wit:
 " Filed Feb. 4, /61
 D. Mc Lewis
 CLK "

By direction of Defendants Counsel
 the following paper is copied, to wit:

" State of Illinois
 Hunt County 3rd ss.

Courard Smith vs. Abbott,
 Charles Smith vs. Arbitration
 of the John Arnold, W. C. Hoobell, &
 John Hafferty, Arbitrators appointed in said
 cause, after being duly sworn, having
 heard all the proof of both parties & the
 argument of Counsel do award & deter-
 mine that Courard Smith shall recover
 of Charles P. Smith, & that Charles P. Smith
 shall pay Courard Smith the sum of
 Two Hundred & Eighty Dollars, and all
 the costs of this Arbitration via the Circuit
 Court. Given under our hands

15 ~~Recd. this 21st day of December A.D. 1858,~~

~~John Arnold *J.A.*
John Lafferty *J.L.*
W. C. Hubble *W.C.H.*~~

~~All above is a true copy of the
award made in the above entitled
cause by us,~~

~~John Arnold,
John Lafferty
W. C. Hubble"~~

Copy of Judgment in this cause, to wit:

" State of Illinois, February Term A.D. 1861
Huron County 3rd ss.

Went before the Honorable
Aron Tyler, Judge of the Civil ju-
dicial Circuit of the State of Illinois
at a Court begun and held at the Court
House, in the City of Huronville in said
County on Monday the Eighteenth day of
February in the year of our Lord, one thousand
and Eight Hundred and Sixty one, being
the third Monday of said month -

Present

Honorable Aron Tyler Judge
James H. Stewart State attorney
John H. Lewis clerk
Elijah C. Frost Sheriff

February 20th A. D. 1861."

16th

1 Coourod Smith
 vs.
 9 Charles P. Smith Debtor

This day came the Plaintiff, by his attorney, and moved the Court for award of Judgment, on the Award of Arbitrators Herrin before appointed by this Court, and the Court having heard said motion, and being advised in the premises, it is ordered that said motion be sustained, and that said Plaintiff have Judgment for the Sum of (\$ 350.) Three Hundred and Fifty Dollars, the amount of his debt, and the further Sum of (\$ 50.12) Fifty Dollars and twelve cents, the costs of Arbitration herein, the amount of the Award of said Arbitrators Herrin,

Therefore it is considered by the Court, that the Plaintiff recover of the Defendant, the Sum of (\$ 350.) Three Hundred and Fifty Dollars, the amount of his Debt as aforesaid, and the further Sum of (\$ 50.12) Fifty Dollars and Twelve Cents, the costs of Arbitration herein, as set forth by the Award of Arbitrators Herrin, together with his costs by him in this Suit in this Court expended, and may have Execution therefor -

Thereupon came the Defendant, by Attorney, and excepted to the Rulings of the Court herein, and prayed an

Page 9th

At the September Term 1860,
the following order was entered of Record
Dunt;

" Conrad Smith
vs.
12, Charles P. Smith } Debt,

Oct. 10, 1860,

This day came the
Plaintiff by his attorneys and moved
the Court for judgment on award
of Arbitrators heretofore appointed
herein, and the Court being fully ad-
vised in the premises, it is ordered by
the Court that said motion be over-
ruled"

and also at said Term
the following order in said cause was
entered of Record, Dunt;

" Conrad Smith
vs.
12, Charles P. Smith } October 14th 1860
Debt.

Ordered by the Court,
that the Arbitrators heretofore appointed
herein, proceed & re-hear the matters
submitted to them in this suit, and
make a further award herein, and
report to a subsequent Term of this
Court"

17 Appeal to the Supreme Court, and the Court being advised in the premises, it is ordered that an appeal to the Supreme Court herein, be granted upon the Defendant entering into Bond, with Security to be approved by the Clerk, by agreement, in the sum of Six Hundred Dollars; said Bond, to be filed within thirty Days from the date hereof, and Bill of Exceptions in thirty Days from the "date hereof."

Copy of Bill of Exceptions, to wit:

1 State of Illinois ss. Knox County 3rd Term of said Court
 February Term A.D. 1861
 Conrad Smith vs. Charles P. Smith Deb.

Be it remembered that at the October Term of said Court, A.D. 1858, to wit: on the 21st day of October A.D. 1858 by agreement of parties the cause was referred to John Arnold, John Safferty & M. C. Hubbard, arbitrators, by order of Court, to wit:

53 Conrad Smith vs. Charles P. Smith
 Oct. 21, 1858
 seat.
 This day called the

parties, and their attorneys, and by Agree-
ment on file, it is ordered by the Court,
that this Suit be referred to John Saff-
erty M. C. Hubble & John Arnold, for
arbitration and adjustment, and they,
to make out and file their Report herein
by the first day of the next term of this
Court, until which time this cause
is continued"

That on the day of
A. D. 1859 said Arbitrators filed in the
Office of the Clerk of said Court their
award, in this cause made, which
is in the words and figures following to-
wit: "

The original award, not being on file, an
among papers in cause, but the following is a
copy of paper, purporting to be a copy
of said award to wit:

Copy "State of Illinois, Debt,
Hunt County, vs. Arbitration,
Courad Smith vs. Charles P. Smith
W. John Arnold, M. C. Hubble & John Safferty arbi-
trators, appointed in said cause, after being duly sworn
and having heard all of the proof of both parties & the argu-
ment of Counsel, do award & determine that Courad
Smith shall receive of Charles P. Smith & that Charles P.
Smith shall pay Courad Smith the sum of Two
Hundred & Eighty four dollars, & all the costs of this arbi-
tration & in the Circuit Court, shown under our hands
& seals this 21st day of December,
A. D. 1858 -

John Arnold
John Safferty
M. C. Hubble

* The above is a true copy of the award
made in the above entitled cause
by us,
John Arnold
John Safferty
M. C. Hubble

"That on the 23rd day of March A.D. 1859 Plaintiff served notice on the Defendant, that he should move for judgment on the Award aforesaid, at the June Term ~~of~~ of said Court, A.D. 1859 which notice is in the words and figures following to-wit:

"State of Illinois,
Hux County 3rd ss.

Corrad Smith

vs
Charles Smith
Hux Circuit Court
June Term A.D. 1859
Arbitration

Mr. Charles Smith, the above named Defendant will take notice that on the first day of said Term of Court, or as soon thereafter as Counsel can be heard, we will apply for judgment on the Award of the arbitrators in said cause, at which time and place you can appear, and object if you choose.

March 23rd 1859 Douglas & Craig
Attys for Plaintiff

I accept service of the above notice, on me, this 23rd day of March A.D. 1859,
Charles R. Smith

which notice was filed as follows,

"Filed June 10, 1859.

C. Ann, CLK"

"That at the June Term of said Court, A.D. 1859, Plaintiff moved the Court for judgment on the Award, which

20th

which motion is in the words and figures following to wit: "

"

State of Illinois,
Knox County 3^d

Sup. Circuit Court,
June Term, A.D. 1859

Courad Smith

vs.

Charles P. Smith } award

and now comes the
Pla. and moves the Court, for
Judgment on the Award in said Cause,
Douglas W. Craig
attys for Pla. "

"That at said June Term of said
Court, A.D. 1859, Suit on the 11th day of
June A.D. 1859, the Respondant came into
by his Counsel and moved the Court, to set
aside said Award, which motion is in
the words and figures, ^{following} to wit: "

"State of Illinois, Sup. Circuit Court
Knox County 3^d June Term A.D. 1859
Courad Smith
vs. award

21

Charles R. Smith } The Respondent moves the Court to set aside the award, for the following reasons to wit:

1st The arbitrators never made and reported to this Court, any award, according to law,

2^d Because the award was not ~~set~~ made and reported to this Court, at the term next after the same was referred to them as required by law.

3^d Because the award does not show that the arbitrators were sworn by any officer authorized to administer the oath to them, nor what oath was administered, and what by the oath taken they were bound to decide upon.

4th Because no copy of the award was delivered to the parties.

Tyler & Sanford
Attys for Resp^t

"Filed June 13, 1859.

C. Wms. CLK"

That said motion & cross motion remained pending & undetermined in said Court, till September Term A.D. 1860, of said Court, to wit; till October 10, 1860, when said Court overruled said motion for judgment on said award, which order of said Court overruling said motion for judgment

in said Award, & in the following words & figures to wit:

12) Courard Smith vs. Charles P. Smith
Oct. 10, 1860, Sept.

This day came the Plaintiff by his attorney, and moved the Court for judgment on Award of Arbitrators heretofore appointed herein, and the Court being fully advised in the premises, it is ordered by the Court that said motion be overruled.

Defendants Counsel admitted said Award, one of said Arbitrators served a copy of said Award, on said Defendant on the 2^d day of February A.D. 1861, and Plaintiffs Counsel admitted that no copy of said Award, was served before that ~~day~~ time, viz: Feb. 2^d, 1860, copy of Bill of Exceptions filed Oct. 17, 1860, C. Ann. CLK. Smith;

Courard Smith vs. Charles P. Smith
In the House C. C., Sept. Term, 1861,

Be it remembered that this day came the Plaintiff and filed his motion herein & have this cause re-committed to the Arbitrators for further examination, & adjudication which

motion is as follows, wit'

Commence here

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State of Illinois
Harris County 3rd Dist. Court
October Term 1860

Leosrod Smith vs. Rebt. an Award
Charles D. Smith Arbitration

Whereas the Court, on the
11th day of October 1860, overruled
Plff's motion for Judgment on the
Award, for the reason that no copy
of said Award was served on Defendants,
in the time required by Law; now
comes the Plaintiff and moves the Court,
to order the Arbitrators heretofore appoint-
ed to hear & determine said cause, to
again proceed & hear said cause &
report their award to the Court, accor-
ding to Law.

Rogers & Craig
Attys for Plff

And the Court upon hearing
Sustained the motion, and ordered said
Cause to be re-committed, against the
objections of the Defendant, to which de-
cision the Defendant then & there excepted
in open Court, at the time the same was
made, and as the same does not ap-
pear of Record, it is ordered that this Bill
of Exceptions be signed and Sealed, and
made a part of the Record.

Oct. 17, 1801

C. N. Powell *Sub.*

"Filed Oct. 17, 1801

C. Arms. C.R."

"a Copy of said Order was served on
said Arbitrators, which copy, and
the Service thereon endorsed is in the
words and figures, following, to wit:

Conrad Smith

vs

Debt

Charles Smith

Ordered by the Court that,
the Arbitrators heretofore appointed
herein proceed to rehear the matters
submitted & show in this suit, and
make further award herein, and
report at a subsequent Term of this Court,

State of Illinois }
Knox County } ss.

I Cephas Cross
Clerk of the Circuit Court, within and
for said County and State, do hereby
certify that the foregoing is a true copy
of the Order of said Knox County Circuit
Court, made in said Cause on the 17th
day of October A.D. 1860 at the September
Term of said Court.

Given under my hand
the Seal of said Court at my Office in
Knoxville this 1st day of November
A.D. 1860

[Signature]

Cephas Cross,
Clerk

Endorsement on back of same,
"We accept Service of a true copy
of the above order & cer. on us this 11th the
day of November A.D. 1860.

John Arnold
Niles Habbell
John Saffert

Filed Feb. 4. / 61
J. H. Lewis CLK

Notice of Arbitrators served on the Defendant that they would hear & determine said cause on the 9th day of December A.D. 1861 which notice is in the words and figures following to wit;

"State of Illinois
Knox County 3rd ss.

Coourad Smith

vs. Debt.

Charles P. Smith } Mr. Charles P. Smith,

You will take notice that the arbitrators in said cause, will on the 9th day of December A.D. 1861, at 10 o'clock AM, in the Town of Victoria in Knox County Illinois, at the Office of Gillesbook proceed to hear the evidence witnesses, and try said cause, when & where you can appear with your witnesses if you desire. November 10, 1861,

John Cafferty
W. C. Hoabell
John Arnold,"

State of Illinois
Knox County 3rd ss.

W. C. Hoabell being duly sworn, deposes and says he delivered a true copy of the above notice to Charles P. Smith on the 19th day of November A.D. 1861

Subscribed & sworn to } W. C. Hoabell
before me this 8th day of December A.D. 1861

Gillesbook Justice of the Peace
Filed Feb. 11, 1861 J. H. Lewis clerk

26th

That on the 4th day of February
AD 1861 said Arbitrators filed the award
of said Arbitrators, dated Decr. 7, 1860
and the Affidavit of Wm. Hubble therein
indorsed, with the clerk of said Court,
which award and Affidavit are in the
words & figures following to-wit;

" State of Illinois
Henn County

Leourd Smith

vs.

Charles P. Smith Arbitration,
Wm. John Arnold, John
Lafferty and W. C. Hubble, Arbitrators
appointed in said cause, after having
been duly sworn, according to Law, and
having given both parties more than
ten days notice of the time & place of
hearing said cause, and after hearing
all the evidence of both Plaintiff and
Defendant, who were present with their
witnesses before us, and the arguments
of counsel we do award and determine
that Leourd Smith, shall recover
of Charles P. Smith, and that ~~said~~
Charles P. Smith shall pay Leourd
Smith the sum of three Hundred
Dollars and Fifty Dollars, and all
the costs of this Arbitration, and
also that Charles P. Smith shall pay

27th

all costs, made in said cause in the
Circuit Court of Knox County, in said
State, Given under our hands and
Seals this 14th day of December 1860
John Arnold (Jr)
M. C. Habbell (Jr)
John Saffery (Jr) "

"The John Arnold, John Saffery,
and M. C. Habbell, ^{arbitrators} do hereby certify
that we served and delivered a true
Copy of the foregoing Award upon Charles
P. Smith & Leonard Smith this 10th
day of December A. D. 1860,

M. C. Habbell

John Arnold

John Saffery "

"M. C. Habbell comes before me, Geo.
H. Marshall, an acting Justice of the
Peace in and for said Knox County,
and under oath says that he has
left a copy, with Charles P. Smith,
of the within Instrument of Writing, on
the tenth day of December 1860, and
showed Leonard Smith this Instru-
ment at the same time,

M. C. Habbell,

Given under my hands and Seal
this 25th day of January 1861.

Geo. H. Marshall (Jr) "

27th

all costs, made in said cause in the
Circuit Court of Knox County, in said
State, Given under our hands and
Seals this 14th day of December 1860
John Arnold (Seal)
M. C. Habbell (Seal)
John Saffery (Seal) "

"We John Arnold, John Saffery,
and M. C. Habbell, ^{arbitrators} do hereby certify
that we served and delivered a true
Copy of the foregoing Award upon Charles
P. Smith & Leonard Smith this 10th
day of December A. D. 1860,

M. C. Habbell

John Arnold

John Saffery "

"M. C. Habbell comes before me, Geo.
H. Marshall, an acting Justice of the
Peace in and for said Knox County,
and under oath says that he has
left a copy, with Charles P. Smith,
of the within Instrument of Writing, on
the tenth day of December 1860, and
showed Leonard Smith this Instru-
ment at the same time,

M. C. Habbell,

Given under my hands and Seal
this 25th day of January 1861.

Geo. H. Marshall (Seal) "

28th

"Filed Feb. 4, 1861
J. H. Lewis Ck."

That at the February Term ^{of said Court} AD 1861, AD 1861, on the 21. day of February AD 1861 came said Plaintiff & filed in said cause his motion for judgment on said last mentioned award, which motion is in the words & figures following, to-wit:

State of Illinois
Hux County 3rd

Hux Circuit Court
February Term AD 1861

Conrad Smith 2nd

Arbitrators

vs.
Charles P. Smith 2nd

And now comes the Plaintiff & moves for judgment on the award filed in said cause by John Lafferty, John Arnold, & M.C. Hebble, arbitrators on 4th day of Feb. 1861. Douglas & Craig
Attys for P. & D.

29

That on the same day, to-wit; on the 31st day of February, A.D. 1861 came the said Respondant and filed in said Cause his Motion to set aside the award, & his reasons for the same, which motion & reasons are in the words and figures following, to-wit;

"State of Illinois,
County of Duob 3^d S.

Leosrod Smith vs. New Circuit Court
Charles P. Smith 3^d Feb. Term A.D. 1861
award

The Respondant comes & moves the Court to set aside the award for the following reasons to-wit;

1st Because this Cause was ^{once} submitted to arbitrators, & the award set aside & the case, over a term afterwards, against the objections of the Def^t, was again submitted to the same arbitrators

2^o Because the Award, now presented by the Plaintiff, which he asks Judgment upon, was made without authority of law

3^o 30

Because the Arbitrators did not give
the Resp. a copy of the Award,

4th

Because the Award was obtained
by undue means, and the Arbitra-
tors were guilty of misconduct
and misbehavior,

5th

Because the Award is otherwise
insufficient & uncertain -

R. H. Sanford
Attorney Resp.

"Filed Feb. 21, /01"

J. Lewis clk"

"On the 4th day of February
A. W. S. P. served written notice
on the Resp. that on the first day
of Feb. Term a. W. S. P. of Knox Circuit
Court, as soon thereafter as Counsel
could be heard, Plaintiff would move
the Court for judgment on said Award,
which notice is in the words and
figures following to-wit:

31st

"State of Illinois
Jesse
Jesse Circuit Court
Conrad Smith - February Term 1861
Charles^r Smith } Arbitration
and now comes the Plain-
tiff's answer for judgment on
the award filed in said
Cause by John Lappat, John
Arnold, and M. C. Hubble
arbitrators, on 4th day of Feb,
1861;

Royless Craig
Att'y for Pla. "

That Respondent in support of his motion & set aside said last mentioned Award, did on the 25th day of February A.D. 1861, file in said Cause the written affidavits of Sandy Kusow, & wit; Giles Cook's affidavit which is in the words & figures following to wit;

"State of Illinois
 Duex County J. S. Giles Cook
 being sworn do say,
 that on the 4th day of December A.D.
 1860, I was present at an Arbitration
 between Leonard Smith and Charles
 P. Smith at the Office of Mr. Niel
 in the Town of Victoria in said County
 before John Arnold, M. C. Koubell
 & John Safferty, Arbitrators, and
 that said Arnold was so drunk,
 during said Arbitration that in my
 opinion he was wholly unfit to act as
 an arbitrator, or to transact any business
 of importance — Giles Cook,

Subscribed and sworn to before me,
 this 18th day of January February A.D.
 1861 R. H. Sanford,

"Master in Chancery"

"Filed Feb. 25th 1861

J. H. Lewis Clk"

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Isaac Copley's affidavit, which is in the words & figures following to-wit:

"State of Illinois
 Knox County 3rd 1/2 I, Isaac Copley,
 being first duly sworn do say that on the 14th day of Decr. A.D. 1860, I was present at an arbitration between Leonard Smith and Charles R. Smith at the Office of Dr. John W. Neal, in the Town of Victoria in the County of Knox and State of Illinois before John Arnold, M. C. Houbbell & John Safely arbitrators and that said Arnold one of the said Arbitrators was so drunk during said Arbitration, that in my opinion he was wholly unfit to act as an arbitrator or to transact any business of importance.

Isaac Copley"

Subscribed and sworn to before me, this 14th day of February A.D. 1861

Giles Cook Justice of the Peace

David Tripp's affidavit, which is in the words and figures following, to-wit:

"State of Illinois
 Knox County 3rd 1/2 I, David Tripp,
 being first duly sworn do say, that on the 7th day of December A.D. 1860, I was present at an arbitration, between

between Leonard Smith and Charles
 P. Smith at the office of Dr. John
 M. Neal in the Town of Victoria in the
 County of Knox and State of Illinois
 before John Arnold, M. C. Hubbell
 and John Safferty Arbitrators, and
 that said Arnold, one of said Arbitrators
 was so drunk during said
 Arbitration that in my opinion he
 was wholly unfit to act as an Arbitrator,
 or to transact any business of importance

David Tripp,
 Subscribed and Sworn to before me
 this 14th day of February AD 1861,
 Giles Cook Justice of the Peace
 "Filed Feb. 25, /61
 J. H. Lewis CLK"

John Pecker's Affidavit, which is
 in the words & figures following to wit:
 "State of Illinois
 Knox County 3rd ss. I, John Pecker,
 being first duly sworn do say, that
 on the 4th day of December AD 1860, I
 was present ^{as a witness} at an Arbitration between
 Leonard Smith & Charles P. Smith
 at the Office of Dr. Neal, in the
 Town of Victoria in the County of
 Knox & State of Illinois, before John Ar-
 nold, M. C. Hubbell & John Safferty,
 Arbitrators, and that said Arnold

one of said Arbitrators was so drunk during said Arbitration, that in my opinion he was wholly unfit to act as an arbitrator, or to transact any business of importance. John Becker,

Subscribed and sworn to before me, this 14 day of February A.D. 1861.

Giles Cook Justice of the Peace,
"Filed Feb. 25/61. J. H. Lewis, clk"

C. P. Sausbury & J. J. Knapp's affidavit, which is in the words and figures following to wit:

State of Illinois,
Knox County 300 We, Charles P. Sausbury and John J. Knapp, being first duly sworn do say that on the 4th day of December A.D. 1860, we were present at an Arbitration between Conrad Smith & Charles P. Smith at the Office of Mr. John M. Neal, in the town of Victoria in the County of Knox and State of Illinois, before John Arnold, W. C. Hobbell & John Lafferty, Arbitrators, and that said Arnold, one of said Arbitrators was so drunk during said Arbitration that in our opinions he was wholly unfit to act as an Arbitrator or to transact any business of importance.

C. P. Sausbury
Subscribed & sworn to before J. J. Knapp

This 14th day of February A.D. 1861. Giles Cook, Justice of the Peace
"Filed Feb. 25/61. J. H. Lewis, clk"

Charles P. Smith's Affidavit,
with a paper attached thereto, pur-
porting to be a copy of said last men-
tioned Award, in the words & figures
following to wit: & marked Exhibit "A":

"State of Illinois }
Knox County } ss.

Leovard Smith

vs

Arbitration,

Charles P. Smith

We John Arnold
John Lafferty and Wm. Hubble, Ar-
bitrators, appointed in said cause after
having been duly sworn, according to Law,
and having given both Parties more
than ten days notice, of the time & place,
of hearing said cause, and after hearing
all the evidence of both Plaintiff and Defendant,
who were present, with their witnesses, before
us, and the Argument of Counsel, we do
award and determine, that Leovard Smith
shall recover of Charles P. Smith, and that
Charles P. Smith shall pay Leovard Smith
the sum of Three Hundred & Fifty
Dollars, and all the costs of this Arbitration
and also that Charles P. Smith shall pay all costs
made in said cause, in the Circuit Court of
Knox County in said State. Given under our
Hands & Seals this 7th day of December A.D. 1860.

John Arnold (S)
J. C. Hubble (S)

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marked, "Exhibit 'A'" John Lafferty Seal
 "Courrod Smith"
 vs
 Charles P. Smith "Copy"

"State of Illinois
 Knox County ss. I Charles P. Smith
 being first duly sworn, on oath say that
 the paper and instrument in writing, here-
 to attached, marked exhibit "A", and
 purporting to be a copy of an award made
 by John Lafferty, in, &c. Hassell & John
 Arnold, is the only instrument, that
 has been served on me, or given to me,
 by said arbitrators, or any other person
 as a copy of said award, by them made
 in the case of Courrod Smith vs affiant,
 in the Knox Circuit Court, State of Illinois,
 Charles P. Smith

Subscribed and Sworn to
 before me, this 18th day of
 February A.D. 1861.

P. H. Sanford
 Master in Chancery"

"Filed Feb. 25/61
 J. H. Lewis, clk"

Plaintiff produced the following Affidavits in writing as rebutting testimony to wit: Chas. Craig's Affidavit which is in the words and figures following, to wit:

P. H. Sanford's Affidavit in the words and figures, following to wit:

"State of Illinois,
Knox County, ss. Knox Circuit Court,
February Term AD 1861.
Comrod Smith
vs. Deb.
Charles P. Smith

P. H. Sanford one of Defts attorneys, being first duly sworn, on oath states, that he, as attorney for said Defendant, did on the 7th day of December AD, 1861, object before John Cafferty, John Arnold & M. C. Keubbell, arbitrators, appointed in this cause, to their acting as such Arbitrators for the reason, that they were appointed without his consent. & were not legally appointed, said objection was made before any Evidence was produced before said Arbitrators, Subscribed & sworn to before me, this 25th day of February AD 1861
P. H. Sanford
A. Tyler

"Filed Feb. 25/61

J. H. Lewis clk."

Plaintiff produced the following Affidavits in writing, as rebutting testimony in writ;

Aulorraig's Affidavit, which is in the words and figures following, to wit:

"State of Illinois
Knox County, ss.

Leandro Smith

vs

Award

Charles P. Smith

A. M. Craig, being duly sworn, deposes and says, he saw the arbitrators, John Arnold, W. C. Hubble, & John Safferty, sign the award, and copy of award, delivered to Charles P. Smith both of which are now here shown to the Court. Both of said papers were signed in my presence on the day of their date.

A. M. Craig,

Subscribed & sworn

to before me, this 26th day of Feb'y A.D.,

" 1861.

"Filed Feb. 26/61

J. W. Lewis CLK."

J. W. Lewis CLK"

John Safferty's Affidavit in the words and figures following to wit:

"State of Illinois
Knox County, ss.

Feb. Term A.D. 1861

Coourad Smith

vs.
Charles P. Smith } award

John Lafferty, being duly sworn deposes and says, on the 8th day of November, A. D. 1861, as deponent is informed & believes, a true copy of the award made in said cause, was delivered to Coourad Smith & Charles P. Smith.

John Lafferty—
Subscribed & sworn to before me this 11th day of Feb, A. D. 1861.

L. Douglas Co. Judge & Ex. J. J.

"Filed Feb. 11/61

J. H. Lewis CLK"

Plaintiff also produced George A. Charles as a witness on the stand, who being first duly sworn, testified as follows,

I was present at an Arbitration between Coourad Smith & Charles P. Smith in Victoria on the 7th day of November A. D. 1861, before John Arnold, John Lafferty and Mr. W. Habbell as arbitrators — John Arnold, one of the Arbitrators was a good deal fuddled — can't say whether he was too drunk to do business or not. Some people do business better, when some in liquor, Cross Examined,

Arnold was so drunk at that

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time, that I should not want him to do any business for me - I think that he was drunk, that he was not in a fit condition to do business of importance

It was admitted on the trial, that both parties appeared by themselves and Counsel before the Arbitrators. Dec. 7, 1800,

that the foregoing Evidence is all the Evidence produced on the trial of said cause, that afterwards, on the 26th day of February A.D. 1801 the said Court after hearing all the Evidence in case, & argument of Counsel, rendered Judgment on the said last award mentioned, against the objections of the Defendant, to which Judgment, and the rendition of the same, the Defendant then and there excepted and objected in open Court, and as the foregoing does not appear of Record, it is ordered that said this Bill of Exceptions be signed & sealed & made a part of the Record,

March ~~Oct.~~ 27th 1801.

Q. N. Powell, *Great Seal*

Filed March 28, 1801.

J. H. Lewis, clk. J. M. Wilson
Rep. clk.

Copy of Appeal Ind. C.

"Ind

Know all men by these presents, that we Charles P. Smith, as

"Approved by me, this 19th day of March
A.D. 1861
J. H. Lewis, Clerk"

Principal and Principal S. Parneyan, as
Security are held and firmly bound unto
Conrad Smith in the Penal Sum of Six
Hundred Dollars, (\$600.00) for the payment
of which well and truly to be made we bind
ourselves, our Heirs, executors, administrators
and assigns jointly by jointly, severally
and firmly by these Presents -

Witness our Hands & Seals at
Knoxville this Nineteenth Day of March
A.D. 1861 - The Condition of this
Obligation is such, that, whereas the
said Conrad Smith lately recovered a
Judgment, against the said Charles
P. Smith in the Circuit Court, within
and for the County of Knox and State
of Illinois, and whereas the said Ch-
arles P. Smith, has prayed and obtained
an appeal from said Judgment, to the
Supreme Court of said State -

Now if the said Charles P. Smith
shall pay said Judgment, Costs, Interest
and all damages in case said Judgment
shall be affirmed, and shall duly and
diligently prosecute said appeal, then
this obligation shall be void; but other-
wise shall be and remain in full force &
virtue -

Charles P. Smith (Seal)
J. L. Parneyan (Seal)

"Filed March 19th 1861
J. H. Lewis, Clerk"



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State of Illinois
 Hunt County 3^d Dist.
 I, John H. Lewis
 Clerk of the Circuit Court, in and for
 said County, do hereby certify that
 the foregoing is a true and complete
 Copy of the Record and Proceedings
 in the foregoing case of Abner Smith
 against Charles P. Smith, so far as
 the same appears from the Files and
 Records of my Office,

In Testimony whereof I
 have hereunto set my hand and
 the Seal of said Court, at my
 Office, in the City of Knoxville
 this Tenth Day of April a. d. 1861
 John H. Lewis Clerk
 Pr. J. W. Gilson,
 Deputy Clerk



OK July 10, 00

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State of Illinois
Knox County vs Knox Circuit Court

Coorod Smith vs
Charles F. Smith

It is agreed by & between the parties to this suit that a pluries summons was issued in said Cause & duly served on the Defendant & that Plaintiff filed in said Court in this Cause his declaration in debt in due form, & that before any pleas were filed in said Cause the Cause was referred to the arbitrators John Arnold, John Lafferty & M. C. Hubbell. And as said pluries summons & declaration are lost so as to not form a part of the record it is agreed that neither party shall be prejudiced for want of a copy of said pluries summons & declaration in the copy of the record in this Cause sent to the Supreme Court of said State —

Tyler Sanford
att'y for Dfndt.
Singer & Co
att'y for Pls

Charles P Smith } In the Supreme Court of the
vs } State of Illinois. 3rd Grand
Commod Smith } Division April J. 1861
Appeal from New

And now comes the said Charles P Smith & says that
in the record & proceedings aforesaid and in the
judgment aforesaid manifest error hath intervened
to his injury in this

1st Because the Court erred in entering judgment
against the Plaintiff on the Oword

2 The Court erred in recommending the case
How Weald
for Aff in Error

Appellee joins in Error meaning that he looks
for appellee

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Charles P Smith

vs
Commod Smith

Copy Record

Filed April 18. 1861
J. Leland
Clerk