

No. 8762

Supreme Court of Illinois

Job Smith

vs.

Wm. Douglass

In the Gallatin Circuit Court Com-
-menced and holden at Shavann
-town on the first Monday of July
A D 1853. Hon Samuel S. Marshall
Presiding.

William Douglass v {
Job Smith } appeal

Summons before J. P.
State of Illinois {
Gallatin County } J. P.

The People of the State of Illinois
to any Constable of said County greeting
you are hereby commanded to sum-
-mon Job Smith to appear before me
at my office in Shavann town on the
22^d day of Feby 1853. at 2^d o'clock
P.M. to answer the complaint of
William Douglass for a failure
to pay him a certain demand
not exceeding one hundred doll-
-ars and hereof make due return
at the law directed. Given under
my hand & seal this 15 day of
Feby A D 1853. John S. Hardin J. P.
"indorsed on Back a et \$5."

Justice Cost - - - 15c

Served by reading the within to Job
Smith Feb 19. 1853. J. S. Hardin J. P.

Ally account,

Robt Smith

To William Douglass Dr
To Cash pd Across Tally \$5.00

Cost Bond,

William Douglass v. { Before John J. Har
Robt Smith } - in Justice Peace

We do hereby enter myself
Security for Cost in the above case
Feb'y 22^d. 1853. J. S. N. Hardin
G. C. Colvard

Transcript of J. R.

William Douglass v. { Cost,
Robt Smith } account \$5.00

Summons issued on the 15th
day of Feb'y 1853. ~~2 o'clock P.M.~~ made
returnable on the 22^d day of Feb'y 1853.
2 o'clock P.M. and was returned, and
- used served by reading the within
to Robt Smith Feb 19 - 1853. (Served)
J. S. N. Hardin, C. G. C. (Sudgt)
This Cause is continued to 26 Feb'y 2
o'clock P.M. The parties this day appe-
- and. Evidence heard and Judgment
is given against the defendant for
Five dollars and Cost Feb'y 22^d
1853. Hardin

Cost

Justice Hardin Cost
For Spring served & docketing
For printing & subs
containing

68
75

Justice Hardin Cost	
For Opening Summ. & Docketing	31
For Opening 5 Subps	95-
For Continuance	13
Cost Bond	25-
For 20 attes	12
Judgt & Transcript	1.25-
	\$ 3.00

Constable Robinson	
Swing Subps	162
Constable Hardin	
Swing Subps & Summs	\$ 2.50

State of Illinois

Yallabush County

I John J Hardin a Justice of the peace for County of Yallabush do hereby certify that the above is a true copy of the proceedings & judgement in the suit William Douglass v. Job Smith as appears from my Docket, and the enclosed papers and all the papers in said suit give in due my hand and seal this 16th June 1853.


John J Hardin J.P.

Appual Bonds

Know all men that we Job Smith are bind and firmly bound unto William Douglass in the Appual sum of fifty 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 lawfully
-rally and firmly by these presents
witness our hands and seals this 10
day of March A.D. 1853. ~ The con-
-dition of the above obligation is such
that whereas the said William
Wright did on the 22^d day of
February A.D. 1853. before John
Harden a Justice of the Peace for
the County of Gallatin recover a
Judgment against the above
bounden Job Smith for the sum
of eight dollars & 33 cents from
which Judgment the said Job
Smith has taken an appeal to
the Circuit Court for the County of
Gallatin aforesaid and State of
Illinois ~ Now if the said Job
Smith 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.

Job Smith 

W. J. Hager 

approved by me at my office this 10
day of March A.D. 1853.

John Harden J.P.

Appeal Return

"Filed 17th June 1853. J. Hall Clerk."

Appeal Summons.

State of Illinois }
Cattolani County } Jot.

The People of the State of Illinois
to the Sheriff of said County Greeting,
we command you to summon
William Douglas if to be found
in your County to appear before
the Circuit Court of said County
on the first day of the next term
thereof to be holden at the Court Hou-
se in Shawanton on the first wed-
nesday in the month of July next
to answer to an appeal obtained
by Jot Smith from a Judgment
rendered against said Jot Smith
in favor of said William Douglas
before John J. Hardin Esq. a Justice
of the Peace of said County on the
26th day of February A.D. 1853. for
the sum of \$5. and all cost of
suit and hereof make due return
to our said Court as the law directs

Witness J. Hall Clerk of our said
Seal of } Court and the Judicial Seal
Court } thereof at Shawanton this
17th day of June A.D. 1853.
J. Hall Clerk
William Douglas not found in the County
A. Nicholson S. G. C. Ill.

Order of Court 26th July 1853.

William Douglass v }
 Jot Smith. } appeal

On this day came the parties by their attorneys and submits this Cause to the Court, proofs being heard and the Court being advised in the premises, finds for the plaintiff the sum of \$5.00. It is therefore ordered and adjudged that the plaintiff recover of the defendant the aforesaid sum of \$5.00 as also his cost in this behalf, and the defendant comes and moves the Court for a new trial - which motion is by the Court overruled, and execution awarded &c.

Bill of exceptions

William Douglass v }
 Jot Smith. } appeal

July Term of the Gattalai
Circuit Court A.D. 1853.

Be it Remembered that upon the trial of this Cause the plaintiff introduced Amos Tally as a witness who was sworn as such witness and testified that he (the witness) had sold a quantity of corn to the said defendant that he (the witness) refused to let the defendant have said corn unless he would pay him \$5.00 in advance.

that said defendant asked the plaintiff
to be his security for the payment of
the same which the said plaintiff
agreed to do. That afterwards sometime
between the first of April and the middle
of May 1852, said plaintiff as
the security of the said defendant
and for him paid to the said wit-
ness the said five dollars that some-
time in July 1852, and during the
term of the Gallatin Circuit Court
held in that month and year he
heard the defendant expressly agree
to and with the said plaintiff to
pay him the plaintiff said five
dollars so paid as aforesaid, this
was all the testimony offered by the
plaintiff.

The defendant then introduced John S.
Harden as a witness, who was sworn
as such witness and testified that some-
time in February 1853, and a few days
before the commencement of this suit
before the Justice of the Peace the plain-
-tiff and defendant requested said
witness and one Robert Richman to
arbitrate the matter in reference to the
five dollars mentioned as above by
the said witness Zally that it was
agreed by and between the said plain-
tiff and the said defendant that
each should make his statement

before said witness and the said
Kirkham and as witness understood
it that their finding should be final
in the premises and finding upon
both parties said witness further
testified that the said plaintiff and
the said defendant at the time be-
fore mentioned appeared in person
before the ^{said} witness and the said Kirkham
and made their respective statements
in regard to the liability of the defend-
ant to pay the plaintiff said five
dollars paid by said plaintiff to D
Tally as aforesaid, and that after
hearing said statement said witness
and the said Kirkham agreed and
determined that said defendant was
not bound or liable to pay the said
plaintiff said five dollars or any
other amount, and that said find-
ing and determination of said wit-
ness and the said Kirkham in the
premises was announced to the said
plaintiff and the said defendant at
that time & plaintiff did not express
himself satisfied with such determi-
nation & witness upon cross exam-
ination testified that a few days after
the arbitration above mentioned the
said plaintiff commenced the suit
against the said defendant before
said witness (who was a Justice of the Peace)

for the recovery of said five dollars that said
suit was afterwards tried before said witness
(as such Justice of the Peace) who determined
the same in favor of the said plaintiff
and against the said defendant and
rendered a judgement for said plai-
ntiff for five dollars, which in the same
Cause now on trial having been appealed
to this Court, Witness further testified
that there was no evidence before him
(as such Justice of the Peace) in regard to
said Arbitration the defendant then
introduced Nicolas Leaty as a witness
who was sworn as such witness and
testified that he was present when the
said plaintiff and the said defen-
dant agreed to submit their settle-
ment in reference to the payment of
the said five dollars to John V. Hardin
and Robert Richman and that they
the said plaintiff and the said def-
endant mutually agreed to abide
by and be governed by whatever the
said Hardin & Richman might
decide that according to the facts
in controversy were stated respectively
by the said parties the said plai-
ntiff and the said defendant, and
submitted to the said Hardin and
Richman who decided that the said
defendant was not ~~bound~~ bound
or liable to pay the said plaintiff
the said five dollars or any other

amount & he further testified that this arbitration took place the day before the said plaintiff commenced this suit against the said defendant.

This was all the testimony offered & received upon the trial of this suit whereupon the Court entered a judgment in favor of the said plaintiff and against the said defendant for five dollars and all cost of suit. The said defendant thereupon moved the Court for a new trial.

Reason for the following causes

- 1st The finding of the Court was contrary to the testimony,
- 2^d The finding of the Court was contrary to the law,
- 3^d The finding of the Court should have been for the defendant and not for the plaintiff.

And the Court being sufficiently advised in the premises overruled said motion.

To which opinion of the Court in overruling said motion for a new trial the said defendant then and there excepted, and he prays that this his bill of exceptions may be signed, sealed and made a part of the record herein which is accordingly done.

Samuel S. Marshall

Filed 6th Aug 1855. D. H. Hall, Clk.

State of Illinois
Gallatin County & S.S.

I Wm Hall Clerk of the Circuit Court
for said County do certify that the fore-
going ~~the~~ papers contain a full, true
and perfect copy of the records
and files of said Court in the
before entitled cause wherein
William Douglas is plaintiff &
Jot Smith is defendant in an
action of appeal from a Justice
of the Peace, all of which appears
from the records and files of said
Court.

Given under my hand
and seal of said Court at
Shawmutown this 15th day
of September A.D. 1853.

Wm Hall Clerk

Judgment	— — —	\$5.00
Cost in Suit		30.57
Transcript of Record		3.88

Mr. Douglass

vs.

Job Smith

Errata Gallatin,

And the said defendant by Mr. Bentley
his attorney says there is no error in the said ^{Record} and judgment
aforesaid.

Milton Bentley, Atty
for Def. in Erra.

Job Smith
vs
William Douglass

~~Job Smith~~

copy of Record
from Gallatin Cir
Court,

Filed the 17th day
November 1853

J. D. Preston, Clerk

\$100.

And the said Plaintiff in Error complains
says that in Record and Judgment aforesaid
there is manifest Error in this

1st The Court should have rendered a judge-
ment for the Plaintiff in Error, and
not for the Defendant in Error.

2nd The finding of the Court was clearly
against the Testimony

Cary & Montgomery
Attys. for Job Smith.

Job Smith

vs

William Douglass

In the Supreme Court
1st Grand Division

at Mt. Vernon, Ills.

Hugh B. Montgomery being
first duly sworn, upon his oath & states
that he is informed and verily believes, that
William Douglass the above named Defendant
is not a resident of the state of Illinois,
but where the said William Douglass now
resides, this affiant is not advised.

Subscribed & sworn to
before me this 21st day
of November 1854.

Hugh B. Montgomery

Finney D. Preston J.C.

By A. Johnston D.C.

[Faint vertical handwriting]

[Faint vertical handwriting]

No 5

Job Smith

by

W Douglas

Filed 21. Nov. 1854

J. D. Preston Clk

By A. Johnston D.C.

Job Smith
vs.
Wm. Haysler

Case to Gallatin,

Brief for Plaintiff in Error.

- 1st An arbitration if fairly conducted is final,
- 2^d An agreement to arbitrate need not be in writing,
1 Bacon's Abr. 306. 38 Law Library 72-4. 1 U. S.
Dig. Supplement. 135- See 40. 41. 46. 47.
- 3^d The Statute regulating arbitrations is cumulative,
and does not deprive parties of submitting matters
in controversy according to the rules of the common law.
- 4th An agreement by which parties agree to abide the
decision of one or more persons is an agreement to
arbitrate.

Smith

w.

Douglas,

Chief of P. Off.

Douglas and Smith before a justice of the peace, in February, 1853. He rendered judgment for \$5, and Smith appealed to the Circuit Court. The cause was heard by the Circuit judge on the following evidence. The plaintiff proved by Tally, that he sold Smith a quantity of corn for \$5, but refused to let him take it away until payment was received; Smith then asked Douglas to go security for him, and he agreed to do so; in May, 1852, Douglas paid witness for the corn; and in July following, witness heard Smith promise to pay Douglas the amount thus advanced. The defendant then proved by the justice, that shortly before this suit was commenced, the plaintiff and defendant requested him and Kirkham to arbitrate the matter in reference to the \$5 paid to Tally; they agreed that each should make his statement of the transaction, and that the decision of the arbitrators should be final and conclusive; they then made their respective statements, and the witness and Kirkham decided that the defendant was not liable for the amount paid by the plaintiff to Tally, and made known this decision to the parties; the plaintiff was not satisfied with the award, and brought this suit before the witness; it was decided in his favor, because no evidence was introduced of the arbitration. Another witness gave the same testimony respecting the arbitration. On this evidence, the Court affirmed the judgment of the justice.

As a general rule, a parol submission to arbitration is valid. And such is the effect of a parol award as to the matters submitted. It may be that

a submission and award should be in writing, where a writing is required to pass the title to the thing in contest; but in all other cases, a verbal submission and award will effectually conclude the parties. Such a submission, however, cannot be made a rule of court; nor can judgment be entered on the award. But the award may be enforced by action, or set up by way of defence. With these exceptions, the legal effect of a verbal submission and award is the same as those in writing. *Wells v. Linn*, 15 *Newell*, 99; *Evans v. McKusey*, 6 *Sittell*, 262; *Jepson v. H. & F. Iron Manufactory*, 1 *New Hampshire*, 68; *Titus v. Seantling*, 4 *Blackford*, 89; *Martin v. Chapman*, 1 *Alabama*, 278; *McMullen v. Mayo*, 3 *Smedley & Marshall*, 293; *Winne v. Eldredge*, 1 *Chandler*, 219. Ch. 7, U. S. has no application to this class of cases. It relates solely to cases in which the award is to be made the judgment of a court. It does not abridge the common law right of parties to adjust their differences by arbitration.

In this case, the parties voluntarily submitted the matter in difference between them to arbitration; and the same was fully heard and determined by the arbitrators. The award was a full and final adjustment of the controversy. It has all the force of an adjudication, and effectually concludes the parties from again litigating the same subject matter. There is nothing in the evidence to impeach the award. Neither fraud nor misconduct in the arbitrators is alleged. A mere error of judgment on their part, as to the law or the facts of the case, will not vitiate this award. *Merritt v. Merritt*, 11 *Illinois*, 565. The judgment will be entered.

Smith v. Douglas.

Opinion.

Treat.

Copied

Know all men by these presents that we Job
Smith and D. S. Hazen are held and
privily bound unto William Douglas in
the sum of One hundred dollars lawful
money &c - for the payment of which well
and truly to be made we bind our-
selves our heirs Executors & Administrators
jointly severally and privily by these
presents, signed by our hands and
sealed with our seals this the 28th day
of November A. D. 1853 -

The Condition of the foregoing
is, that whereas the said William
Douglas at the July term of the Circuit
Court of Gallatin Circuit, A. D. 1853 &
in the said Court obtain a judgment
against the said Job Smith for
the sum of five dollars together with
costs of the proceeding, from which
said judgment the said Job Smith
has excepted and prosecuted his writ
of error to the Supreme Court of
Illinois - Now if the said Job
Smith shall prosecute his said writ
with success or shall pay whatever the
said Court may determine against
him upon the hearing or dismissal
of said cause - then and in that case
this above obligation to be void otherwise
to remain in full force

Given under our hands
~~and~~ seals this 28th day of November } Job Smith Seal
A. D. 1853 - }

D. S. Hazen Seal

John Smith

vs

William Douglas

Bond

Filed Dec 1st 1853

F D Sustances

by JTB any

Sharonston, Ills.

12th - January 1854

Dear Sir;

I find that the Surplices in
the case of Job Smith vs. Douglass has
been mislaid. Please give again &
send me by return mail. Don't
fail & oblige me. The Bond I believe
is on file

Yours truly

Hugh B. Montgomery

William Douglass } Gallatin Circuit
vs. Appeal } Court 1843
Job Smith }

In this case the Statute of Frauds does not apply for two reasons

1st The agreement as between Plaintiff below and defendant below does not come under the Statute of Frauds. But had Jolly, the witness named in the record of this case, sued said Douglass, Douglass might successfully have plead said Statute (the ^{said} agreement not being in writing)

2^d Smith's agreement to pay Douglass after he did pay Jolly said \$5 (as is shown in the bill of exceptions) takes the case at any rates out of the Statute of Frauds, and Douglass then had a right of action against Smith for money paid at his request or for money paid for his use and benefit

The Arbitration relied upon in this case by Plaintiff in error, is no defence to this action for several reasons

1st It was no arbitration at all; the evidence does not show that ^{there} was any written agreement signed, sealed, and witnessed, whereby said Plaintiff & defendant agreed to submit to such arbitration, as is required by Section

1st Revised Statutes of page 5-6, 1845. Nor does it show that ~~that~~ said Arbitrators were sworn before & acted in said premises, as is required by 4th Section of ~~the~~ Revised Statute 1845. page 5-6 and the 6th section page 5-7 of said Statute requires that the award of arbitrators must be drawn up in writing and signed by them

and a true copy thereof must without delay be given to each of the parties.

This was not done in this case.

It was merely announced to the parties; and Douglass ^{the deft. in error} did not express himself satisfied with such arbitration. And in fact the evidence ~~shows~~ of Lentz the witness introduced by the defendant below shows that the said Douglass was not satisfied with said pretended arbitration; for he proves that Douglas, the very next day after the finding of said arbitration, commenced this action against Smith. Further had the justice Hardin who was one of said arbitrators known that there was an arbitration relative to the same matter in controversy, he would not have ~~if~~ ^{not} entertained said cause. But he as ^{one of the} arbitrators aforesaid not having been sworn, looked upon the whole as a farce, and therefore he as justice of the peace the next day after said finding as arbitrator, ~~he~~ entertained jurisdiction of said matter and at the hearing of the cause gave judgment for Douglass for said ~~in~~ in controversy. This arbitration is no arbitration but a mere farce; and ~~the hearing for said cause~~ ought not to bar Douglass his action. The witness ~~Hardin~~ proves that there was no evidence produced before him when he heard this cause as justice of the peace of the said award & arbitration.

If there were such an arbitration as would have barred the Defendant in error his action, ought not Smith have plead it before the Justice in the first instance? was it not too late to set up such plea in the Circuit; especially in a case like this in which the Justice was one of the arbitrators and could easily have assisted Smith in getting the evidence of said award?

The Statute is the rule of arbitration, and speaks all Common Law on the subject I think ^{in our state} and ought to be reasonably if not literally complied with ~~in every~~.

Milton Berkey for deft in error

Wm Douglas

20

John Smith
Appears error
from Gallatin

founder of dept in error

No 5

November 1854

Job Smith

v

William Douglas

Appeal from Galtatin

Opinion by

Just. C. J.

8762

Judgment reversed.