#### Young *vs.* Starkey *et al.*

A. and the defendants submitted certain matters in difference between them to the arbitration of the plaintiff, under an agreement, to which, however, the plaintiff was neither party nor privy, that the defendants should pay the plaintiff, for his-services as arbitrator, in the event that his award should be for a less amount than was claimed by the defendants to be due to them from A., and that in case the award should be for a larger amount, then, that A. should pay the plaintiff' for his services. The award being for a greater amount than was claimed by the defendants from A.: *Held,* nevertheless, in an action against the defendants to recover payment for the services of the plaintiff as arbitrator, that they, equally with A.r were liable to the plaintiff, and that he was entitled to recover upon a promise made by the defendants to pay him for his services, in case he would deliver to them the award, which he did.

Appeal from tie district court of tie district of San Francisco. Tie facts are stated in tie opinion of tie court.

--——■—-—-, for plaintiff.

*Horace* Hawes, for defendants.

*By the* Court,

Bennett, J.

The action veas brought to recover for services rendered by the plaintiff, as arbitrator. Tie defendants and one Bring agreed to submit certain matters in difference between them to the decision of the plaintiff The agreement between the defendants and Bring contained, among other provisions, the following :—

“ In the event of the award of the said Charles B. Young “ in favor of Starkey, Janion *&* Co. being less than the amount w they now claim, then they, the said Starkey, Janion *&* Co., “ agree to pay the said Charles B. Young for the said exami- “ nation and adjustment, and *vice versa,* should the award in t! favor of the said Starkey, Janion *& Co.* be more than the “ amount they now claim, then the said David Bring agrees to “ pay the said Charles B. Young for the said examination and “ adjustment.” This agreement was signed by Bring and by [\*427](#p427)Starkey, Janion & Co., tlie defendants, but the plaintiff was no party to it. The defendants afterwards addressed a note to the plaintiff, informing him of the submission, but not saying any thing in regard to the payment for his services, or by whom such payment waste be made. The plaintiff proceeded to examine the complicated accounts submitted t<> him, and came to the conclusion that a larger sum was due from Dringto the defendants than they had claimed, and drew up his award to that effect. lie informed the defendants that the award was ready, but declined to deliver it, unless the defendants would undertake to pay him. The defendants accordingly promised to see him paid, and he delivered to them the award.

Upon their subsequently refusing to pay, this action was brought to recover the value of the plaintiff’s services.

It is claimed by the defendants that their undertaking was void within the statute of frauds, because it was not in writing.

Tie are inclined to look upon the promise of the defendants as an original undertaking, and consequently not within the statute of frauds. The ^hnntiff was under no obligation to deliver the award, until he received a compensation for his services as arbitrator, and the promise of the defendants to pay hitn, in case he would deliver it, was supported by a valid consideration. The undertaking was to pay for the services of the plaintiff a reasonable compensation in case the plaintiff would part with a right which he then had.

But it is not necessary to put the case upon this ground. The plaintiff was neither party nor privy to the agreement between the defendants and Bring, and is in no way bound by it to look to Bring alone for pay for his services. That agreement gives the defendants a claim upon Bring for any amount they shall be compelled to pay for the award, but it extends no further. The defendants, equally with Bring, are liable to the plaintiff\* for his services, and both parties are liable for the whole amount. The promise of the defendants, therefore, was a promise to pay a debt for which they were already liable, and not a promise to answer for the debt of another. I think the judgment should be affirmed.

Ordered accordingly.