ROBINSON *vs.* SWIGART.

Under our statute, where an obligation is assigned, it is subject to any set-off held, by the obligor against the obligee before the assignment, as held in Smith *v.* Capers, *ante.*

The verdict in this case being contrary to the evidence, falls within the rule of *Drennen v. Brown,* 5 *Eng. Rep.* 138, and a new trial is directed.

Appeal from Johnson Circuit Court.

On the 26th September, 1850, Willam S. Swigart, assignee of Reuben W. Brown, sued Edward Robinson, before a justice of the peace of Johnson county, on a writing obligatory, executed by Robinson to Brown, on the 6th day of December, 1849, for

$35, payable first of April, 1850, and assigned by Brown to Swigart on the 9th August, 1850.

The defendant filed an off-set as follows:

"1850. Reuben W. Brown, in acc't,

Edward Robinson, Dr.

To board from the 12th May, 1850, till the 10th September following, at $7 per month	$27.50
To washing the same time at $1 per month	4.00
To keeping horse 16 weeks at $1 per week	16.00
To amount assumed to pay Swigart	
To amount of order on S. J. Howell	8.75
	52.25"

Judgment in favor of the plaintiff before the justice, and appeal to the circuit court of Johnson county, by defendant. The case was submitted to a jury at March term, 1851, (Hon. A. B. Greenwood, J., presiding,) and verdict and judgment in favor of appellee (Swigart) for the amount of the obligation sued on. Appellant (Robinson) moved for a new trial on the ground that the verdict was contrary to law and evidence, which was overruled, and he excepted, and took a bill of exceptions setting out the evidence.

On the trial, the appellee read in evidence the obligation sued on, and the assignment endorsed thereon, above described, and closed.

Neil, a witness for appellant, testified that on the 1st day of May, 1850, he was at the house of appellant, and continued to remain there until after the 10th of September, 1850. That about the 12th May, 1850, Reuben Brown came to the house of appellant, and continued there until about the 1st of September, 1850; that he, Brown, during that time ate at the table of appellant; and had his washing done there; that he had his horse there all the time he stayed; that said Brown claimed to be a relation of appellant's wife, and was acknowledged by appellant and his family to be a relation; that during said time said Brown was there, he

went about with the other boys, and done but little, being unable to do work.

Witness had boarded out for many years, and thought that $7.00 per month for board, $1 per month for washing, and $1 per week for keeping and finding a horse, was not more than the same was worth—but knew nothing of the prices for the same in this State. He was an old acquaintance of appellant, and he stayed, ate, slept and had his washing done at the house of said appellant several months without charge.

Dorsey, a witness for appellant, testified that he had paid $7.50 per month in town for board, $1 per month for washing, and $1 per week for horse feed—that if he was to board in the country, and get good fare, he would be willing to pay $5 per month therefor—that washing was worth $1 per month; horse feed $1 per week.

Seth J. Howell, witness for appellant, testified that on the 29th July, 1850, said Brown produced to him the following order:

July 29th, 1850.

Mr. S. J. Howell, Sir—Please let Mr. Reuben W. Brown have eight dollars and seventy-five cents, and charge the same to my account, and oblige yours, &c.

(Signed) EDWARD ROBINSON.''

Which witness paid to Brown in merchandise, and appellant afterwards settled for the same. That Brown, at the time the order was presented, said something to witness about appellant owing him, Brown.

Littleberry Robinson, witness for appellant, testified that he paid $100 per year, each, for keeping stage horses—which was all the evidence.

Appeal by Robinson to this court.

F. W. & P. TRAPNALL, for appellant, cited 4 *Ark.* 559. 3 *sec., ch.* 15, *Dig. Drennen v. Brown,* 5 *Eng.* 138.

Mr. Justice SCOTT delivered the opinion of the court.

The only question of law in this case, was settled in the case

of *Smith v. Capers,* at this term, and as we think this cause is within the rule of *Drennen v. Brown,* (5 *Eng. R.* 138,) we shall reverse the judgment, and remand the cause.