# EVANS v. BLAKENEY.

Case No. 4,553.

{1 Cranch, C. C. 126.}[1]

Circuit Court, District of Columbia.

June Term, 1803.[2]

EVIDENCE—VARYING WRITTEN AGREEMENT BY PAROL—LOST INSTRUMENT—CONTRACTS—JOINT PERFORMANCE BY TWO IN NAME OF ONE.

1. If it be agreed that the plaintiff's work shall be measured and valued agreeably to the customary mode in Alexandria, and if it has been so measured and valued, and such measurement and valuation be reduced to writing, the defendant cannot give parol testimony to prove that the plaintiff's work was not worth so much as was certified by the report of those who measured and valued it.
2. If the measurement and valuation of work be reduced to writing, parol evidence of the contents of that writing cannot be given, unless the writing be lost or destroyed or not in the power of the party.
3. If the plaintiff contract to do work on certain terms, and it be done by plaintiff and another, the plaintiff may recover for the whole in his own name.

{See note at end of case.}

Assumpsit, on a written agreement, by which the plaintiff and defendant, one being a bricklayer and the other a carpenter, and each being about building a house for himself, agreed to do the work in his trade to the other's house: "Each work and materials to be measured and valued agreeable to the customary mode in Alexandria, and whatever balance there may be on either side, at any time they choose to have the work and materials valued, is to be paid in cash on demand. (Signed) Abel Blakeney. Jno. Evans." The defendant offered to prove, by parol testimony, that the work done by lie plaintiff was not worth so much as the valuers had alleged. The plaintiff objected, that if he proved that the work and materials were measured and valued agreeably to the customary mode in Alexandria, and that according to such measurement and valuation, such a balance was due, it is conclusive; and THE COURT were of that opinion, and refused to receive such evidence. It appeared, from the testimony of the witness, that the valuers had reduced the result of their valuation to writing and delivered it to the parties.

THE COURT decided that parol testimony could not be admitted of the contents of that paper, without showing it to be lost, &c. The plaintiff produced and offered in evidence a writing signed by one Bishop, and McLane, the witness, in which they state that, having been called upon by Evans and Burford, to measure and value, &c., they find a balance of £54. 10s. 1d. due from Blakeney to Evans and Burford. The defendant objected, that this does not appear to be an award between the same parties. But THE COURT overruled the objection, and permitted it to be read in evidence. Verdict and judgment for the plaintiff.

[NOTE. This case was taken to the supreme court on writ of error, and was presented on the transcript of the record without argument. In respect to the single question presented for adjudication, the court remarked that "the meaning of the agreement was that each party should procure the work to be done, and not that they should do it personally." The judgment was affirmed, with 10 per cent. damages and costs. Blakeney v. Evans, 2 Cranch (6 U. S.) 185.]

[1] [Reported by Hon. William Cranch, Chief Judge.]

[2] [Affirmed in 2 Cranch (6 U. S.) 185.]