

Case No. 5,144.

FRYE v. SCOTT.

{3 Cranch, C. C. 294.}¹

Circuit Court, District of Columbia.

May Term, 1828.

CONDITION OF ARBITRATION-BOND—AWARD.

When the condition of an arbitration-bond is to abide by the award of J. P. and S. B. (“and a third person to be chosen by them in case they should not agree upon an award,”) the award need not state why it is signed by the three arbitrators, nor that the third person was appointed in writing; nor that the two named had disagreed before they appointed the third.

{This was an action at law by Nathaniel Frye, Jr., against Jesse Scott.}

Debt for \$200, the penalty of an arbitration-bond to abide by the award “of Jacob Paine and Samuel Boucher, and a third person to be chosen or agreed upon by them, in case they should not agree upon an award, or any two of them.”

Mr. Worthington and R. P. Dunlop, objected that the award, which was signed and sealed by the three arbitrators, did not state why it was made by three when only two were named in the bond; and that there was no written evidence of the appointment of Frederick Perley, the third person who signed the award; and cited *Caldw. Arb. 42*, and *Still v. Halford, 4 Camp. 17*.

Mr. Hellen, contra. Perley was not an umpire, but an arbitrator with the others, and equally within the submission.

THE COURT (nem. con.) overruled the objections, saying that it was not necessary that the appointment of Perley, by the two other arbitrators should be in writing; nor that the award should state that the two had disagreed before they appointed Perley. These facts may be proved by parol. Verdict and judgment for the plaintiff.

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