Statement of the case.

As the evidence offered, and overruled by the court, could not have established a defence to the case made by the plaintiff below, the court did not err in refusing to receive it.

JUDGMENT AFFIRMED WITH COSTS.

BAYNE v. MORRIS.

1. Where an award made under submission by parties plaintiff and defendant to that effect, awards that one party shall pay to the other a certain sum on one day specified, another sum on another day specified, and that to secure the payments he shall give a bond in a penal sum, and the party against whom the award is made refuses to do any of the things awarded, an action of debt will lie against him even although the time when both sums of money were awarded to be paid has not yet arrived. The right of action is perfect on the party's refusal to give the bond.
2. The power of arbitrators is exhausted when they have once finally determined matters before them. Any second award is void.

BAYNE & MORRIS having differences with each other, agreed to refer them to arbitrators, who besides being authorized to determine the *amount to be paid*, were authorized to award *upon what terms, as to time and security*, the payment should be made. On the 23d of January, 1858, the arbitrators made an award, and on the 26th of the same month made *a second one*. Both were received in evidence on the trial below, although the pleadings were framed solely with reference to the last one. This adjudged that Morris should pay to Bayne one sum on the 28th of July, 1858; a second sum on the 20th of January, 1859; and a third sum on the 20th of January, 1860; and that to secure the payment of these sums he should give to Bayne a *bond* with penalty and surety. No bond being given, Bayne, on the 28th of January, 1858, *that is to say, before any of the sums awarded to be paid had fallen due*, sued Morris in an action of debt; the declaration setting forth, that "the defendant hath not given the said plaintiff the said bond for the security of the payments aforesaid, although often thereto requested; nor hath he paid the said money nor any part thereof, but the same to pay hath refused; whereby an action hath accrued to the said plaintiff to have

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the said sums of money *or* satisfactory security for the payment of the same, to the damage," &c.

The court below (the Circuit Court for the District of Maryland), instructed the jury that if the suit was brought before either of the sums of money became due, the plaintiff could not recover, and the correctness of this ruling was the point, on error, here.

No considerable objection was taken below to the validity of the second award, that, to wit, of 26th of January.

Mr. Brent for the plaintiff in error, and Mr. Wallis contra.

Mr. Justice DAVIS, after stating the case, delivered the opinion of the court:

The court did not pass on the validity of the award as it should have done; but directed the jury to find against the plaintiff, on the ground that the action was premature, neither of the sums awarded to be paid being due when suit was brought.

It is clear that Bayne instituted his action because Morris would not give the security he was required to by the award. And on principle and authority, he had a right to sue when Morris refused to perform any material part of the award. The parties to the submission chose to say to the arbitrators, "If you order anything to be paid, by one to the other, you must settle *how* the payment is to be secured." The arbitrators did decide on the very point submitted to them, and direct the kind of security to be given, and on Morris's failure to give the bond as required he was in default, and a cause of action accrued. He had no right to say to Bayne, "Wait until the instalments are due, and then I will elect whether or not to keep the award." The provision for security was equally valid as the order for the payment of money; and it may be nearly as important. The right of action was as perfect, on Morris's refusal to give the penal bond, as it would have been after the credit allowed by the award had expired.

Where goods are sold on credit, and the purchaser agrees to give his note for them, and refuses to do so, it has been held that an action will lie before the credit expires, and that

the measure of damages is the price of the goods.* The court below, therefore, erred in charging the jury that the right to sue was in abeyance until the time limited by the award for the payment of the money had expired.

Inasmuch as this case is to be remanded, it is proper to say, that in the opinion of the court, the award of the 26th of January is inoperative and void. Arbitrators exhaust their power when they make a final determination on the matters submitted to them. They have no power after having made an award to alter it; the authority conferred on them is then at an end.†

Bayne can, if so advised, amend his pleadings and test the correctness of the first award; which not being properly in the case has not been considered by the court, and no opinion is therefore given on the question of its validity.

JUDGMENT REVERSED AND VENIRE AWARDED.

BURR v. THE DES MOINES RAILROAD AND NAVIGATION COMPANY.

1. Although this court will give judgment, on error, upon an agreed statement of facts or case stated, if it be signed by counsel and spread upon the record at large, as part thereof, yet it will not do so, except upon that which is professionally and properly known as a case stated; that is to say, upon a case which states facts simply; not one which presents, instead of facts, evidence from which facts may or may not be inferred.
2. Legal presumption being in favor of a judgment regularly rendered, the court, where it does not reverse, nor dismiss for want of jurisdiction, might, in regard to a case which it refused to consider on evidence adduced, affirm simply. However, a case being before it, and having been argued on its merits, where counsel on both sides erroneously supposed that they had brought up a case stated, when *in fact* they brought up nothing but a mass of evidence, and where they erroneously supposed, also, that they would obtain an opinion and judgment of this

* 2 Parsons on Contracts, 485–6; Cort et al. *v.* The Ambergate Railway Company, 6 English Law and Equity Reports, 237; Hanna *v.* Mills, 21 Wendell, 90; Rinehart *v.* Olwine, 5 Watts & Sergeant, 157; Mussen *v.* Price, 4 East, 147; Dutton *v.* Solomonson, 3 Bosanquet & Puller, 582.

† Russell on Arbitration, 135.