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Recommended Citation

James M. Mullen, *Arbitration Under Maryland Law*, 2 Md. L. Rev. 326 (1938)

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ARBITRATION UNDER MARYLAND LAW

By JAMES MORFIT MULLEN*

Since time immemorial, governments have provided means, either in the person of the Sovereign himself, or in the form of courts, for the settlement of disputes between subjects. No citation of authorities is necessary for the statement, that neither before, nor after the dispute, none of the parties can enforce arbitration without either some controlling statute or an agreement requiring this method of disposition of the controversy. Furthermore, it is a settled principle of Maryland law, and one generally applied in the United States, that, in the absence of an applicable statute, no agreement *in advance* of a dispute to submit the *entire* controversy to arbitration can oust the courts of their jurisdiction, and either party to such a contract can ignore it and proceed to enforce his rights through the courts.¹ But, if the parties under such an agreement do submit to arbitration, the award so made is binding and enforceable.²

Probably the origin of such stipulations is the provision long used in charter parties that disputes thereunder must be submitted to arbitration, if either of the parties so elect. This provision has been held by the American courts not to oust the courts of jurisdiction.³

There is, in Maryland, a limitation to the proposition just stated in that while such an agreement to submit the entire controversy to arbitration is invalid—" . . . it is allowable to the parties to make such agreements in reference to preliminary and incidental matters of dispute, so long as they retain the right to appeal to the Courts for the determination of any substantive question of liability."⁴

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¹ Brantly, *Contracts* (2nd ed.) 227; *Contee v. Dawson*, 2 Bland 264 (1830); *Allegre v. Maryland Ins. Co.*, 6 H. & J. 408, 14 Am. Dec. 289 (1823); 5 C. J. 20.

² *Contee v. Dawson*, *Supra* note 1.

³ 58 C. J. 150; Poor, *Charter Parties*, Sec. 15.

⁴ Brantly, *Contracts* (2nd ed.) 227.

This distinction is illustrated by an early decision of the Court of Appeals.⁵

In that case there was an action on the common counts to recover for a sum due on a mortgage. The mortgage provided, however, that the advances which the mortgage was given to secure, should be determined and ascertained by two named arbitrators. The point was made that as the action was upon an arbitration and award, there was no count in the declaration under which it was admissible, and that there should have been a count on the award, or on an account stated.

The Court held this point was not well-founded, and in reaching its conclusion made a distinction between an arbitration and the mere ascertainment of an incidental or collateral matter. Judge Spence said:

“There is a distinction between a submission by parties of matters in controversy, to the judgment of two or more individuals, who are to decide the controversy, and a reference of a collateral, incidental matter of appraisement, or calculation, or the submission of a particular question, forming only a link in the chain of evidence, not calculated to put an end to controversy.⁶

“We hold that the reference in this case was a mere matter of calculation and ascertainment, as to the amount of money which had been advanced by Glenn to Randall, which the mortgage was intended to secure; that the reference and ascertainment did not merge the original contract; and that as an admission of the defendant, it was admissible in evidence, under the pleadings in this cause of the amount due the plaintiff.”⁷

A more common illustration of the principle just stated is the customary provision in fire policies, that, in case the insured and the company shall disagree as to the amount of loss or damage, either party may demand an arbitration as to such amount. This end is accomplished by the appointment of an appraiser by each party, and if the appraisers disagree, they shall submit their differences to an umpire. A conclusion reached in this manner by two of the three persons so named, determines the amount of loss or

⁵ *Randall v. Glenn*, 2 Gill 430 (1844).

⁶ *Ibid.*, 2 Gill 430, 438.

⁷ *Ibid.*

damage. Such a provision is uniformly held valid and enforceable, and, unless waived, is a condition precedent to resort to the courts.⁸

Construction contracts customarily contain a provision that measurements of quantities, orders for extra work, and the like shall be certified to by the architect or engineer in charge. There has been considerable litigation on this subject in Maryland. A discussion of these cases would unnecessarily prolong this article. They are not within its scope.⁹ It should be said, however, that the architect or engineer has no power or authority to give certificates in defiance of the terms of the contract itself.¹⁰

It is also the law of Maryland that a provision in a contract giving the architect or engineer these powers, does not give him the right to construe the contract itself, and thus to oust the courts of jurisdiction, unless the contract plainly so requires.¹¹

In some jurisdictions, on account of the congested condition of the civil courts, statutes have been passed providing, in substance, that parties may stipulate in a written agreement for the submission to arbitration of any future dispute arising under the contract. Machinery is provided for the method of arbitration, and for the enforcement of the award by a court procedure, which does not necessitate re-trying the issue submitted to arbitration. Such a statute has been in force for many years in New York State, and, on account

⁸ 26 C. J. 416; Brantly, Contracts (2nd ed.) 228; Connecticut Fire Ins. Co. v. Cohen, 97 Md. 294, 55 Atl. 675, 99 Am. St. Rep. 445 (1903); Home Ins. Co. v. Schiff's Sons, 103 Md. 648, 64 Atl. 63 (1906).

⁹ The earlier decisions collected and classified in Brantly, Contracts (2nd Ed.) 310.

¹⁰ City of Baltimore v. Ault, 126 Md. 402-426, 94 Atl. 1044 (1915); City of Baltimore v. Talbot, 120 Md. 354, 366-7, 87 Atl. 974 (1913).

¹¹ Aetna Indemnity Co. v. Waters, 110 Md. 673, 690-1, 73 Atl. 712 (1909): "We will now consider whether, under a proper construction of the contract, the Concrete Company was bound to construct the disputed ceiling. We agree with the appellant that the provision in the contract that the architect's decision as to the true construction and meaning of the *drawings* and *specifications* shall be final, does not take from the Court and confer upon the architect the power to construe the *contract* itself. The law is clear that the common right of resort to the Courts for the determination of the rights of parties or the settlement of disputes between them will not be taken away by inference or implication or anything short of a distinct agreement to waive it. No such agreement is found in the contract before us which in terms limits the architect's authority to determining the meaning and construction of the drawings and specifications prepared by him, but does not submit to his decision the contract rights of the parties."

of the notorious delay in having the normal civil case litigated in the New York courts, that statute has, in practice, been frequently resorted to.¹²

Similarly, the United States Congress has passed a law along the lines of the New York statute, making substantially the same provisions for a stipulation in a contract pertaining to interstate commerce and maritime transactions under which either party may compel the arbitration of any dispute under the contract.¹³

Arbitration, as a method of settling disputes without recourse to the civil courts in those jurisdictions where the work of the courts is not so congested, may not be the most expeditious way of settling the controversy. In many cases the final result is that the recalcitrant party, defeated in the arbitration, may require enforcement of the award through the courts. It may be suggested, therefore, that in Maryland, where there are at present no delays in the work of the courts, the best arbitration may be secured by an original application to the courts.

It is also said that in New York State, and in cases where the Federal statute on compulsory arbitration applies, satisfactory results have been obtained.¹⁴ Whatever may be the merits of arbitration as opposed to resort originally to the courts for settlement of disputes between individuals, as the Maryland courts are usually abreast of their dockets, there has been enacted in this State no general legislation providing that a stipulation made in advance of a dispute between individuals compels the submission of the entire controversy to arbitration. There is, however, a statute seeming to compel arbitration in the single instance of tobacco classification by State Inspectors.

In considering this matter, to settle the terminology, we shall follow the current practice of calling the agreement to arbitrate, "the submission", and the result of the arbitrators' proceedings and deliberations, "the award".

¹² New York Laws, 1920, Ch. 275; McKinney's Consolidated Laws of New York, Ch. 72.

¹³ 2 Fed. Code Ann. 445; U. S. C. A. Title 9.

¹⁴ See, in general, Isaacs, *Two Views of Commercial Arbitration* (1927), 40 Harv. L. Rev. 929; and Sturges, *A Treatise on Commercial Arbitrations and Awards*.

ARBITRATION UNDER AGREEMENTS MADE AFTER DISPUTES
ARISE AND BEFORE SUIT IS FILED

Though with the single exception of tobacco classifications, there is no statute in Maryland compelling arbitration *before* the disputes arise, it is the law of Maryland that when, *after* a dispute arises, the parties do enter into an agreement to submit the matter to arbitration, the agreement will be enforced. The law gives every intendment to this disposition of disputes between individuals; it construes arbitration agreements liberally, and will enforce the award after it is made, without reviewing the merits of the controversy.¹⁵ It will be intended that all matters submitted have been decided by the arbitrator, unless the contrary appears, and it will also be intended that he has not exceeded his authority.¹⁶

There is no decision in Maryland determining whether a submission need be in writing, but it is believed that the general authorities without the State would control. These hold that an agreement to submit a pending dispute to arbitration need not be in writing unless the subject matter of the suit (such as an agreement to convey land) is one itself requiring a writing.¹⁷ As will be noted below, a different rule applies to arbitration of cases pending in court.

The arbitrators, of course, have no authority beyond the terms of the submission. This is illustrated by a late decision of the Court of Appeals.¹⁸ Here it is held that an arbitration agreement as to the interests of the parties in certain companies or land, did not give the arbitrators the right to pass upon the functions of one of the parties as a real estate broker. In *O'Ferrall v. DeLuxe Sign Co.*,¹⁹ an arbitrator to pass on accounts was held to have no authority

¹⁵ *Dominion Marble Co. v. Morrow Bros.*, 130 Md. 255, 100 Atl. 292 (1917); *O'Ferrall v. DeLuxe Sign Co.*, 153 Md. 544, 149 Atl. 290 (1930); *McDonald v. Real Estate Board*, 155 Md. 377, 142 Atl. 261 (1928); *Roberts v. Consumers Can Co.*, 102 Md. 362, 62 Atl. 585, 111 Am. St. Rep. 377 (1905); *Sisson v. Baltimore*, 51 Md. 83 (1879); *Md. and Del. R. R. Co. v. Porter*, 19 Md. 458 (1863).

¹⁶ *Caton v. McTavish*, 10 G. & J. 192 (1838); *Ebert v. Ebert*, 5 Md. 353 (1854); *Garitree v. Carter*, 16 Md. 309 (1860).

¹⁷ 3 Williston, *Contracts* (Rev. Ed.), Sec. 1928; 5 C. J. 34, 35.

¹⁸ *Pumphrey v. Pumphrey*, 172 Md. 323, 191 Atl. 235 (1937).

¹⁹ *Supra* note 15.

to consider a letter raising a question of law. Unless the submission submits questions of law to the arbitrators, they usually have no right to pass upon such questions. The award may be excepted to, on the ground that the arbitrators determined a question of law, if upon the face of the award, this fact appears.²⁰ But an award cannot be impeached for an erroneous judgment upon the facts.²¹

When a bond is given to guarantee the performance of the award, the terms of the bond cannot change the terms of the submission.²² A second agreement of arbitration supersedes a former incomplete one, and no rights can be asserted under the first agreement.²³ When, from the nature of a submission, the judgment of arbitrators may be influenced or enlightened by the production of evidence, the parties are entitled to notice of the time and place of the proceedings of the arbitrators to investigate the matter, otherwise the award is invalid and void.²⁴

The arbitrators are not required to follow court rules of practice, nor of evidence; but they cannot act unfairly. In a Maryland case²⁵ in point there was a dispute as to the sale of cans. Litigation in law and equity had been instituted by the parties. A written agreement was entered into submitting to three arbitrators "the whole dispute between" the parties. The submission provided for the machinery of the submission and for an award in writing signed by a majority of the arbitrators. A suit was filed in equity to set aside the award. The question before the court was the right of the arbitrators to reject certain depositions. The Court said:

"It has been settled by a long line of decisions that, as arbitrations are intended to compose disputes in a simple and inexpensive manner, whenever the parties

²⁰ *Ibid*; *State v. Williams*, 9 Gill 172 (1850); *Hewitt v. State*, 6 H. & J. 95, 14 Am. Dec. 259 (1823); *Witz v. Tregallas*, 82 Md. 351, 33 Atl. 718 (1896).

²¹ *Cromwell v. Owings*, 6 H. & J. 10 (1823); *Ebert v. Ebert*, *supra* note 16.

²² *Armstrong v. Robinson*, 5 G. & J. 412 (1833).

²³ *Shafer v. Shafer*, 6 Md. 518 (1854).

²⁴ *Bushey v. Culler*, 26 Md. 534 (1867); *Emery v. Owings*, 7 Gill 488, 48 Am. Dec. 580 (1849); *Bullitt v. Musgrave*, 3 Gill 31 (1845); *Wilson v. Boor*, 40 Md. 483 (1874); *Rigden v. Martin*, 6 H. & J. 403 (1823).

²⁵ *Roberts v. Consumers Can Co.*, 102 Md. 362, 62 Atl. 585, 111 Am. St. Rep. 377 (1905).

to one have had a full and fair hearing the award of the arbitrators, will be expounded favorably and every reasonable intendment made in its support.²⁶ . . . In such cases it is conceded that the Court will not look into the merits of the matter and review the findings of law or fact made by the arbitrators nor substitute its opinion or judgment for theirs, but will require the parties to submit to the judgment of the tribunal of their own selection and abide by the award.

“The favor which the Courts accord to awards of arbitrators is however, predicated upon the assumption that in the conduct of the arbitration the parties to the controversy had a full and fair hearing, and that the award is the honest decision of the arbitrators and involves no mistake so gross as to work manifest injustice or furnish evidence of misconduct on their part.”²⁷

It was held that the arbitrators are not governed by the strict rules of evidence applying to courts of law. The depositions were taken before a Notary Public and after notice, and as the arbitrators in making their conclusions refused to consider the depositions, the award was set aside by the equity court.

The award need not show the right to notice and the right to the appointment of an umpire upon the disagreement of the referees. This may be proved by testimony *dehors* the award.²⁸

When arbitrators upon differing are authorized to call in an umpire, they may do so before or after the disagreement.²⁹ The submission and the award are the best evidence of what was said by the parties before the arbitrator. No evidence of what the parties said before the arbitrators is admissible to defeat the award.³⁰ If the submission re-

²⁶ *Ibid*, 102 Md. 362, 368, citing: *Lewis v. Burgess*, 5 Gill 129 (1847); *Caton v. McTavish*, *supra* note 16; *Ebert v. Ebert*, *supra* note 16; *Garitee v. Carter*, *supra* note 16; *Bullock v. Bergman*, 46 Md. 270, 278 (1877); *Witz v. Tregallas*, *supra* note 20.

²⁷ *Supra* note 25, 102 Md. 362, 368-9, citing: 3 Cyc. 743; *Roloson v. Carson*, 8 Md. 208, 221-2 (1855); *Wilson v. Boor*, *supra* note 24; *Burchell v. Marsh*, 17 How. 344, 15 L. Ed. 96 (1854).

²⁸ *Rigden v. Martin*, *supra* note 24.

²⁹ *Ibid*.

³⁰ *Willard v. Horsey*, 22 Md. 89 (1864).

quires the award to be sealed, its absence vitiates the award.³¹

Agency questions may arise in connection with submissions to arbitration, but are not properly within the scope of this comment.³² An award may be oral unless required by the terms of the submission to be in writing.³³ An award when it is made in accordance with the terms of the submission is binding. It is not subject to review and can be attacked only for palpable error, corruption of arbitrators, fraud or the like.³⁴

An award must determine all questions submitted, and must be final. It must leave no matters for future determination except ministerial matters, such as an arithmetical calculation. If the award does not answer these qualifications, it is invalid and may be set aside.³⁵

The award must not exceed the terms of the submission. If the award does attempt to decide some matter not covered by the submission, and if the *ultra vires* part can be separated from the rest of the award, the valid portion will be sustained, otherwise the award is void *in toto*.³⁶

Where after a hearing by arbitrators was had, the arbitrators received a statement from one of the parties containing new and different items of claim from any presented at the hearing and without the knowledge of the other party, the award will be set aside, and equity will enjoin a suit at law on the award.³⁷

Arbitrators, like jurors, have the privilege of consultation in private for the purpose of making their award. The courts have a strong inclination to sustain awards, and a mistake to set it aside must be gross and manifest. Errors of judgment are not enough to set aside the award.³⁸

³¹ Price v. Thomas, 4 Md. 514 (1853).

³² Bullitt v. Musgrave, *supra* note 24; Sisson v. Baltimore, *supra* note 15.

³³ O'Ferrall v. DeLuxe Sign Co., *supra* note 15.

³⁴ This is discussed generally in 5 C. J. 179-190. See also Witz v. Tregallas, *supra* note 20.

³⁵ Archer v. Williamson, 2 H. & G. 62 (1827); Carter v. Calvert, 4 Md. Ch. 199 (1851); Griffith v. Jarrett, 7 H. & J. 70 (1826); Witz v. Tregallas, *supra* note 20.

³⁶ Ebert v. Ebert, *supra* note 16; Armstrong v. Robinson, *supra* note 22; Garitee v. Carter, *supra* note 26; Caton v. McTavish, *supra* note 16; Cromwell v. Owings, *supra* note 21; Bullitt v. Musgrave, *supra* note 24.

³⁷ Sisk et al. v. Garey, 27 Md. 401 (1867).

³⁸ Roloson v. Carson, *supra* note 27.

It is held in Maryland that unless the terms of the submission provides differently, all of the arbitrators must join in the award. Usually, however, as will be seen from the Maryland authorities, when two arbitrators and an umpire are appointed to adjudicate the dispute, a majority may sign and the award is valid and binding.³⁹

An award when made may be sued upon at law. The Code of Public General Laws provides a form of declaration for suits of this kind.⁴⁰ When a cause of action that has been submitted to arbitration is sued upon, the arbitration and the award as a defense must be specially pleaded.⁴¹ When it is desired to set aside an award because it is defective, or because of improper practices of the arbitrators, or in the procuring of the award, proceedings to set it aside must be brought in equity.⁴²

MARYLAND STATUTES AS TO ARBITRATION

These are several Maryland statutes as to arbitration. Only one of them requires the submission of a future dispute to arbitration without the consent of both parties. These statutes deal with: 1. Arbitration of pending cases;⁴³ 2. Arbitration of claims in connection with decedents' estates;⁴⁴ 3. Arbitration of labor disputes; 4. Arbitration of tobacco classification disputes.

1. Arbitration of pending suits under the Maryland Statute.

Sections 50 to 55, of Article 75, of the Code of Public General Laws provide for arbitration of "any cause instituted in any of the courts of this State" by rule of court and by consent of the parties, and for entry of judgment on the award.

The history of this law, which was originally enacted in 1778,⁴⁵ and of the previous methods of arbitrating suits in

³⁹ *Witz v. Tregallas*, *supra* note 20; *Harryman v. Harryman*, 43 Md. 140 (1875).

⁴⁰ Md. Code, Art. 75, Sec. 28 (23).

⁴¹ *Kerr v. Co-operative Improvement Company*, 129 Md. 469, 99 Atl. 708 (1816).

⁴² *B. & O. R. R. v. Canton Co.*, 70 Md. 405, 417-8, 17 Atl. 394 (1889).

⁴³ Md. Code, Art. 75, Secs. 50-53.

⁴⁴ Md. Code, Art. 93, Sec. 266.

⁴⁵ Md. Acts 1778, Ch. 21.

court, is fully set out in the case of *Shriver v. State*.⁴⁶ In that case, after the award had been made in a pending suit under the statute, the party winning the award applied for a judgment thereon in the Frederick County court. This, the court held, the plaintiff was entitled to have. Judge Chambers, stated⁴⁷ that, prior to the Act of 1778, submissions to an award of a pending action by rule of court were familiar to the law since its earliest history, and were usually enforced by attachment for contempt. This procedure was effectuated by an English statute,⁴⁸ which the court, in the case just referred to, held was in effect in Maryland; but the Maryland Act of 1778, changed the method of enforcing the award from attachment by contempt to furnishing as a method of enforcing the award such appropriate remedy as the terms of the award might require.

The court held that the Act of 1778 as a remedial law was designed to facilitate the administration of justice and was entitled to a liberal interpretation. In this connection Judge Chambers said:⁴⁹

“In the case before us, the cause had been instituted in the usual way by a writ, the arbitrators named, and the extent of their authority defined. The question then as to what were proper subjects of reference, is to be determined by the principles of common law, and not by the Statute of William, or the Act of 1778. We think the cases referred to in the argument abundantly prove, that all matters of litigation, whether of law or of equity jurisdiction, whether claims for specific articles of property, real, personal or mixed, or sums of money; whether such claims be by the party, who, in the suit pending, or in the case to be made a rule of Court by written agreement, may be plaintiff or defendant, can be the subjects of reference, and when the award is made and returned to Court, pursuant to the Act of 1778, a judgment thereon is by that Act required.

“If the award be returned in a common law Court, and directs that to be done, which by the ordinary terms

⁴⁶ 9 G. & J. (1837).

⁴⁷ *Ibid*, 9 G. & J. 1, 11.

⁴⁸ 9 and 10 William III, C. 15.

⁴⁹ *Supra* note 46, 9 G. & J. 1, 13.

of judgment of common law Courts may be directed, and to enforce which, therefore, the known executory writs will be the appropriate process, such writs will be issued to execute the judgment.

“Thus if the award directs payment of money, the delivering over of the possession of lands, or the restoration of a chattel, the writs of *feri facias*, *habere facias possessionem*, or *retorno habendo*, might be an adequate and proper means of enforcing the judgment on that award, and the judgment must be in favor of the party entitled, whether plaintiff or defendant. If the award should direct a matter, for the enforcement of which the usual writs of execution will not avail, such as the execution of an instrument of writing, then, from the necessity of the case, the attachment must be resorted to, as before the Act of 1778.”

In connection with this statute, it should be observed that in Baltimore City the rules of court provide for submission of pending suits to arbitration. The common law cases are governed by Rule 34 of the Supreme Bench of Baltimore City.

While Article 75, section 50, does not in terms specify that the submission of a pending case shall be in writing; yet, as the rules of court for Baltimore City⁵⁰ require all agreements in relation to proceedings in the case to be in writing, the effect is, that the submission of the pending case in the law courts of Baltimore City must be in writing.

There have been a number of decisions in the Court of Appeals as to procedure and other matters of arbitration under this statute. It is important, however, to observe the terms of Section 51 as follows:

“Such award shall remain four days in court during its sitting after the return thereof before any judgment shall be entered thereon, and if it shall appear to the court within that time that the same was obtained by fraud or malpractice in, or by surprise, imposition or deception of the arbitrators, or without due notice to the parties or their attorneys, the court may set aside such award and refuse to give judgment thereon.”

⁵⁰ Rule 28 for Common Law Courts.

The remaining sections of this portion of Article 75⁵¹ make miscellaneous provisions for such things as continuing the case until the award is made; for the appointment of new arbitrators upon the death or refusal to act; placing a time limit of eight months upon consideration by the arbitrators, and for service of the award upon the losing party.

While these sections are contained in the Pleading and Practice section of the Code pertaining only to law cases, yet Section 50 provides for arbitration "of any cause instituted in any of the courts of this State".

The first sections of the statute may be said to indicate no intention to include equity cases within the operation of the statute, however broad the language. Moreover, there has been a decision by Chancellor Bland to the effect that the statute pertains only to law cases.⁵²

The Chancellor pointed out in the course of his opinion, however, that while there had been no statutory regulation of references of equity suits to arbitration, yet it has been held by the equity courts to be within the regular scope of their powers to pass an order, with the consent of the parties, referring any suit then pending to arbitration and to enforce the award.

The only effect, therefore, of not having the statute include equity cases would be that some of the details for the regulation of the methods of arbitration would not apply to equity cases. The statute does not apply to questions arising after a judgment has been entered.⁵³ And there is a difference between the reference of a law case for an accounting and for an arbitration under Article 75, section 50.⁵⁴

It has been held in connection with Article 75, section 50, (differing from the Orphans' Court arbitration statute) that the court has no power to appoint new arbitrators, nor to re-submit the matter to the same arbitrators after setting aside an award.⁵⁵

⁵¹ Secs. 52-55.

⁵² *Phillips v. Shipley*, 1 Bland 516 (1828). But see *Caton v. McTavish*, *supra* note 16; and *Shriver v. State*, *supra* note 46.

⁵³ *State v. Jones*, 2 Gill 49 (1844).

⁵⁴ *Wisner v. Wilhelm*, 48 Md. 1 (1877).

⁵⁵ *Harryman v. Harryman*, *supra* note 39; *Calvert v. Carter*, 18 Md. 73 (1861).

When a cause has been submitted under Article 75, section 50, the arbitrators may consider all matters within the submission, whether actually averred in the pleadings, or which by appropriate amendment could be included in the pleadings.⁵⁶

ARBITRATION OF CLAIMS IN ORPHANS' COURT

The essential features of this procedure are set out in Article 93, section 266, as follows:

“The several Orphans' Courts of this State shall have power, with the consent of both parties, to be entered on their proceedings, to arbitrate between a claimant and an executor or administrator, or between an executor and a person against whom he has a claim, or the dispute may by the parties be referred to any person or persons approved by the Orphans' Court.”

It is to be noted that the arbitration must be “with the consent of both parties”. It may be by the judges themselves, or by some other person to be approved by the judges.

The statute applies only to claims involving decedents' estates, and not to those contracted by an executor or administrator in his individual capacity.⁵⁷ The statute has no application when the judges act as individuals on matters not within the scope of the act.⁵⁸ An award made under the statute must be ratified by the Court unless this defect is cured by acts of the parties.⁵⁹

If the arbitrators take action beyond the proper scope of their functions, such as the allowance of usurious interest on the claim, the award may be excepted to in the Orphans' Court. An appeal may be taken and the error rectified in the Court of Appeals. The Orphans' Court has authority under the statute⁶⁰ to remand the case to the arbitrator to pass on other elements of the claim.⁶¹

⁵⁶ *Ing v. State*, 8 Md. 287 (1855).

⁵⁷ *Browne v. Preston*, 38 Md. 373 (1873).

⁵⁸ *Strite v. Reiff*, 55 Md. 92, 94 (1880); *State v. McCarty*, 64 Md. 253. 1 Atl. 116 (1885).

⁵⁹ *Dement v. Stonestreet*, 1 Md. 116 (1851).

⁶⁰ Md. Code, Art. 93, Sec. 267.

⁶¹ *Woods v. Matchett*, 47 Md. 390 (1877).

ARBITRATION OF LABOR DISPUTES

The Maryland statutory law contains a plethora of provisions with regard to settlement of labor disputes. These are found in two different parts of the Code.⁶² As is the case in most other provisions of the Maryland statutory law with regard to arbitration, none of these provisions is effective without the consent of the parties. One of them has, however, a provision for publicity to act *in terrorem* against the party in default.

1. *Corporate Employers.* While Article 7 is headed "Arbitration and Award", it pertains only to disputes between corporations and their employees. The first section provides that whenever controversy shall arise between a Maryland corporation in which the State is interested, and a person in its employ, which, in the opinion of the Board of Public Works, shall tend to impair the usefulness or prosperity of the corporation, the Board of Public Works is given the power to get a statement of the grounds of the controversy, and in their judgment they may propose settlement by arbitration. If the parties to the controversy agree, the Board of Public Works may provide in due form for the arbitration of the controversy, but if either party refuses to submit to arbitration, it is the duty of the Board of Public Works to investigate the controversy and make a report to the next General Assembly.

The remaining sections of Article 7 (sections 2 to 7 inclusive) pertain to disputes between corporations and any person in their employment or service. No Maryland cases have been located in which these *other* sections of Article 7 have been construed, but it seems to be plain that while the first section pertains only to corporations in which the State is interested, the remaining sections of the article provide generally for arbitration of disputes between corporations and their employees.

These sections (2 to 7) provide in detail for arbitrating such disputes as are covered by them, but, as in other cases, it is essential to the operation of the statute that the contesting parties shall agree. It seems unnecessary to go into all

⁶² Md. Code, Art. 7 (in full); and Md. Code, Art. 89, Secs. 4-12.

of the details of these sections further than to say that the arbitration may be made by a judge or justice of the peace to whom the offended party may complain, and such judge or justice of the peace, if the parties agree, may either act solely, or propose arbitrators, not less than two nor more than four, who together with the judge or justice of the peace shall have power to hear and determine the dispute.

When the dispute is determined, the judge may award execution as upon verdict, confession or non-suit. Costs may be taxed and shall be paid equally by the parties. The award remains in court for four days before judgment is entered thereon and may be set aside if "obtained by fraud, or malpractice in or by surprise, imposition or deception of the arbitrators, or without due notice to the parties or their attorneys." It is to be observed that the grounds for excepting to the award are in exactly the same phraseology as those provided in Article 75, Section 51, for the arbitration of cases pending in court.

2. *Strikes or Lockouts.* The second type of labor arbitration is provided by Article 89, sections 4 to 12 inclusive, containing provisions for the arbitration between employers of labor, whether a person, firm or corporation, and their employees, involving ten or more persons, which controversy may result in a strike or lockout. This act was originally passed in 1904.⁶³ While, as in all other cases, in order for the arbitration to be effective, it must be assented to by both parties, the Chief of the Bureau of Industrial Statistics is given the right to investigate the dispute, and witnesses can be summoned before the President of the Board. If the parties agree to arbitration, machinery is provided therefor, but if the parties will not agree to arbitration, then the Chief of the Bureau of Industrial Statistics, or the person deputized by him, is directed to proceed to investigate the controversy with authority to summons both parties before him, and having ascertained which party is, in his judgment, in fault, he shall publish a report over his official signature in some daily newspaper, assigning the responsibility or blame for the controversy.

⁶³ Ch. 671; Md. Code, Art. 89, Secs. 4-12.

ARBITRATION OF TOBACCO CLASSIFICATIONS

Sections 22, 23 and 50 of Article 48, with amendments,⁶⁴ provide for the arbitration or claims in connection with the sampling of tobacco. There are apparently no decisions of the Court of Appeals. The arbitration provided for seems to be compulsory.

⁶⁴ Md. Code Supp., Art. 48, Secs. 22-23.