submission to arbitration is a parol submission, and cannot be made a rule of Court, there being a clear distinction between a general agreement to refer any matter of dispute and an actual *reference **619** of a subject which has become a matter of dispute, *Ex parte* Glaysher, 34 L. J. Exch. 41.

When submission can be made rule of Court—Revocation.—The submission cannot be made a rule of Court, unless the parties expressly say so and insert it in the submission, King v. Joseph, 5 Taunt. 452.[7] But technicalities are not much regarded, and it has been held that if the agreement is to make *the award*, instead of the submission, a rule of Court, it is good enough, Soilleux v. De Herbst, 2 B. & P. 444; *In re* Story, 7 A. & E. 602; and so a submission indorsed on an arbitration bond, but not signed, is sufficient, Barnes, 55. So it is of no consequence that a reference was not made a rule of Court until after award made, Fetherstone v. Cooper, 9 Ves. Jun. 67. In King v. Joseph *supra* it was determined, that after the agreement to make the submission a rule of Court was executed and the rule obtained, the authority to make it a rule of Court could not be revoked, and the defendant may be attached for contempt for then revoking the submission, R. v. Hardey *supra*;[8] but, as without the agreement, it cannot be made a rule of Court at all, the authority may be revoked before the rule is obtained, and after the revocation the submission must not be made a rule of Court. Gibbs C. J. further held there that if one party covenants to perform an award, he cannot, by revoking the authority, relieve himself of an action on the covenant, and if the arbitrators go on and make the award, the Court will not set it aside, for that would deprive the other party of his action; and so of a penalty, which cannot be revoked. But this is shown to be a mistake in 2 Wms. Saund. 133 e, n. *d*, Coppin v. Hurnard, and it is there said that there is no use in the existence of the award after revocation, as it is on the breach of the agreement to submit to, and not on the breach of that to perform an award, that the party must proceed. And in such a case the Court will not grant an attachment, but will leave the party to his action. In Hemming v. Swinnerton, 5 Hare, 350, it was also decided that a submission may be made a rule of Court after the award has been made; and after the last day of the term following the publication of the award, and when it is no longer open to an objection on the ground of corruption or undue practice, there is no objection to making the submission a rule of Court. It was observed "that the question originally raised was, whether the submission could be made a rule of Court after the award had been made, and this, it was held, might

---

[7] *In re* Rouse, L. R. 6 C. P. 212.

[8] But the revocation of the submission is none the less good. *In re* Rouse, L. R. 6 C. P. 212. Cf. Browne v. Preston, 38 Md. 381. It is even doubtful in such case whether the party revoking can be punished if he revokes before an arbitrator has been named. And where an agreement for submission has been signed and one of the parties refuses to appoint an arbitrator in accordance with its terms, the court has no power to order him to do so. *In re* Smith, 25 Q. B. D. 545.