

award; but it is held that the fact of notice must not be excluded from the jury, at least where from the nature of the case the judgment of the arbitrator may be influenced by evidence adduced on one side or the other, and see *Young v. Reynolds*, 4 Md. 375; *Bushey v. Culler*, 26 Md. 534. An exception to this is where the necessity of notice is avoided by express agreement,¹⁴ or the parties appoint a time and place for the arbitrator to hear and determine the matters in controversy, Md. & Del. R. R. Co. v. *Porter*, 19 Md. 458. But it is no ground of objection, that the solicitor of one of the parties takes upon him to say that he cannot attend at the time the arbitrators appoint; he must attend if they make a reasonable appointment, *Fetherstone v. Cooper*, 9 Ves. Jun. 67. An arbitrator has, it seems, no power to administer an oath, and the English practice is to have the witnesses sworn by the Judge. But under our Act of Assembly, "and the approved custom" of the Court, as it is called, Courts of Law, in their rule of reference, have given power to the referees to examine evidence on oath, by consent of both parties, *Contee v. Dawson*, 2 Bl. 276. Otherwise it does not appear to be absolutely necessary that the evidence before him should be taken on oath, for *both* parties may waive it, *Wakefield v. Llanelly R. & D. Co.* 34 Beav. 245, and in *Ridout v. Pye*, 1 B. & P. 91, the Court refused to set aside an award because the witnesses were not examined on oath, where no such objection was made at the time of their examination. Arbitrators have the most extensive discretion as to the mode of conducting the inquiry before them; they may conveniently take the examination of a sick or infirm person at his own house; and the Court refused to set aside an **623** award, because an arbitrator had *declined to permit a stranger to be present, for the purpose of assisting the defendant's attorney with practical hints for the conduct of the defence, which the attorney's ignorance of farming operations rendered necessary, *Tillam v. Copp*, 5 C. B. 211, but see *Haigh v. Haigh*, 3 De G. F. & J. 157. So arbitrators may, in general, refuse to hear counsel, *In re Macqueen*, 9 C. B. N. S. 793, following *Collier v. Hicks*, 2 B. & Ad. 663, a case in reference to justices of the peace, where Parke B. lays it down that, in the absence of ancient usage to the contrary, every tribunal has a discretion as to who shall be admitted to appear as advocates before it. So the arbitrators may, or may refuse to, postpone the reference, to give one of the parties an opportunity to produce a material witness, unless the circumstances show misconduct on their part, *Ginder v. Curtis*, 14 C. B. N. S. 723.

On the other hand, in *Proctor v. Williams*, 8 C. B. N. S. 386, the Court set aside an award, where one of the parties withdrew from the reference, in consequence of the arbitrator (a layman) insisting, in spite of the party's protest, on having a lawyer at his elbow to assist him

within the prescribed time, and the party whose deposition is so rejected protests such action, the award will be set aside; and he does not lose his right to attack it by failing to withdraw his submission before the award is made. *Roberts v. Consumers' Co.*, 102 Md. 362.

¹⁴ The parties may waive notice or the case may be of such a character as to require none. *Wilson v. Boor*, 40 Md. 483; *Boor v. Wilson*, 48 Md. 313.