from time to time with his advice. And it is a general rule, that the arbitrator must show any paper or document he receives from one side to the other, and admit and require proof of its charges, Cromwell v. Owings, 1 H. & J. 10. And an award was set aside, where the arbitrators in the absence of one of the parties examined the books of the other, without requiring, or obtaining any proof by the oath of witnesses or otherwise of the correctness of the charges, Emory v. Owings, 7 Gill, 488. So in Roloson v. Carson, 8 Md. 208, where the arbitrators read an affidavit of one of the parties without previous notice to the other and in his absence, the Court said that it might be very proper to set aside an award because an *ex parte* affidavit of that kind had been read, and that they would not consider such an objection removed, even were the arbitrators to testify that the affidavit had no influence upon their decision. However there, the prayer objected to assumed that the affidavit had no effect upon the award. And the Court very properly said that the prayer was equivalent to saying that the mere reading of such a paper would avoid an award, though the parties had agreed that it produced no possible effect. And the Courts incline to set aside an award, where the arbitrators take instructions from either party; or talk with one in the absence of the other, see Barton v. Knight, 2 Vern. 514;[15] Fetherstone v. Cooper *supra*, from which it also appears that, though it be indelicate for the solicitor of one of the parties to *prepare* the award, it is no ground for setting it aside. So an usage that an umpire in a dispute may, if he see fit, look at a sample produced by one of the parties, without communication with the other, and communicate with witnesses without notice to the parties and make his award without giving the parties or their arbitrators a chance to be heard, is contrary to equity and justice, and an award made in that way cannot be supported, *In re* Brook, 33 L. J. C. P. 246. And where an arbitrator, having power to appoint an accountant not objected to by any of the parties, appointed one without communicating with the parties, however proper a person he was, it was held bad, *In re* Tidswell, 33 Beav. 213.

Selection of third arbitrator or umpire.—Where two arbitrators are appointed a provision is generally inserted in the submission, that they may, in case of disagreement, select a third person either as umpire, or to join with them in the reference, the decision of a majority to be the effective decision. The arbitrators may choose a third person before they disagree, and this is the course recommended by some judges. In Rigden v. Martin, 6 H. & J. 403, the terms of the submission of a bill in equity were that if the arbitrators disagreed they were to choose a third party, and they or any two of them, after adjusting the dispute, to return an award, &c. They appointed a third person without it appearing that they disagreed, and the award was in general terms not setting out the submis-

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[15] Before two arbitrators had selected a third in consequence of disagreement, counsel for one of the parties had appeared before the two arbitrators in the absence of counsel for the other party. There was nothing to show that injury was caused thereby. The award was held valid. Witz v. Tregallas, 82 Md. 351.