umpire, afterwards join him in making the award, this does not vitiate it; it is in law the award of the umpire only, who may take what advice, opinions or assessors he will, and *e converso* the umpire's signing the award does not vitiate it, it would still be the award of the original arbitrators who may take what advice, &c., they will. In Winteringham v. Robertson, 27 L. J. Exch. 301, the submission was to two arbitrators, with power to them if they should not agree to appoint a third person as umpire, or to concur and join with them in considering and determining all or any of the matters referred. The Court held that the arbitrators had power to appoint such third person before any difference had arisen, or any proceedings taken on the reference, and that was the proper course; such third person is not a third arbitrator but an umpire.[17] He is to sit with the original arbitrators and hear and consider the matters referred, and not merely those on which they do not agree. It is enough to enable him to act, that on the conclusion of the evidence they arrive at different opinions on some of the matters referred, nor need he, if the time for making the award has expired, wait to see if they ever could agree; *non-agreement* is disagreement. And on the other hand, their sitting with him till the time has expired, and not repudiating his authority is a tacit exercise of their power to enlarge the time for making the award, so as to enable him to make it. See also Mr. Pinkney's reasons for setting aside the award in Tillard v. Fisher, 3 H. & McH. 118, 1°, that an umpirage cannot be as to part of the matters referred; he must examine the whole, and if it appear that he did not, the award will be bad; 2°, that if the act of the umpire is thus bad, so will be the act or award of the arbitrators; it will be either a decision of only part of the subjects referred, or else the mere appointment of an umpire, which cannot serve to found the judgment of the Court; 3°, that the parties are entitled to notice of the umpire's proceedings, and, 4°, that under the Act of Assembly and the general practice, an award by an umpire alone is not lawful, but he must join with one of the arbitrators; and this was insisted to be the established usage of the Courts in this State by such counsel as Messrs. Luther Martin and Shaaff in Goldsmith v. Tilly, 1 H. & J. 361. As to the mode of selection: where two arbitrators were to select a third person, and each named a different person, and refused to give up his nominee, whereupon they drew lots, the selection was held bad, and one of the parties to the reference entitled to revoke his submission; for the appointment of the third person must be an act of the will and judgment of the two, and a matter of choice not of chance, Steam Shipping Co. v. Crosskey, 8 C. B. N. S. 397, where most of the authorities are collected in the argument; and see *In re* Cassell, 9 B. & C. 624. Where, however, arbitrators, having such a power of selection, named different persons, but each preferring his own choice, though not disapproving of the other's, tossed up, and the award was made by the person so chosen and the arbitrator who had chosen him, the award was supported, Neale v. Ledger, 16 East, 51. Notice of the appointment of the umpire and of the time of his attendance must be given to the parties, as upon proceedings by the original arbitrators, Selby v. Gibson, 1 H. & J. 362 *n.*

[17] Cf. Home Ins. Co. v. Schiff, 103 Md. 648.