

625 Arbitrator cannot delegate his authority.—*An arbitrator may not delegate his authority, *Archer v. Williamson*, 2 H. & G. 62, but he may submit a material question affecting the merits of the case to another, and, after hearing his opinion, adopt it as his own. But an objection to an award good on its face that the arbitrators had made their award without exercising their own judgments, but according to the opinion of a third person, by whose judgment they had previously agreed to be bound, cannot be taken on the plea of *nul tiel agard*, (though such a plea puts in issue not merely the making of the award, but the making of a good and valid award as to the premises referred,) but must be raised on a motion to set aside the award; it is one of a sort which ought to be brought forward while the matter is fresh, in the manner and in the time prescribed by the Stat. of W. 3, in cases that fall within its provisions, or by the practice of the Courts in other cases within their summary jurisdiction, *Whitmore v. Smith*, 7 Hurl. & N. 509; *Roberts v. Eberhardt*, 3 C. B. N. S. 482.

In *Md. & Del. R. R. Co. v. Porter*, 19 Md. 458, the parties and the arbitrators had requested a third person to prepare the draft of the award. He submitted it to the counsel of one of the parties who desired an additional clause to be added, which was done upon the understanding that if, upon examination of the submission, it should be consistent with its terms, the memorandum was to stand, otherwise not. The draftsman of the award afterwards considered the memorandum inconsistent with the submission, and without communication with any of the parties erased it, and it was then submitted to the arbitrators for signature, and the award was upheld.

All arbitrators must be present at meetings.—On a reference to three arbitrators or any two of them, an award made by two in the absence of and without finally consulting the third cannot be supported.¹⁸ All the arbitrators must be present at every meeting, and the witnesses and par-

¹⁸ The award to be binding must be concurred in by all of the arbitrators, unless it be otherwise provided in the submission, in which case *it must appear* that all the arbitrators heard the parties, as well those who did not, as those who did concur in the decision. *Harryman v. Harryman*, 43 Md. 140. In *Witz v. Tregallas*, 82 Md. 351, the submission provided that "the majority decision shall be the unanimous decision." After several meetings between the three arbitrators, two of them agreed upon the award, and the third refused and withdrew. The majority then wrote and signed the award and submitted it to the third arbitrator who refused to sign. It was held valid.

Where from dissension of the arbitrators the award fails, the reference is at an end and the court has no power, unless given by statute or agreement, to appoint new arbitrators. Ordinarily it has no power to refer the matter back to the same arbitrators after setting aside their award unless such power be one of the terms of submission, and even in such case this will not be done where it is apparent that the arbitrators do not agree and that the reference will ultimately fail. *Harryman v. Harryman*, *supra*.