276 any *controversy to arbitration will oust the proper Courts of justice of their jurisdiction in the case. *Tattersall* v. *Groote*, 2 *Bos. & Pul.* 132; *Allegre* v. *Insurance Company*, 6 *H. & J.* 413; *Platt on Covenants*, 146.

A covenant never to sue for an existing demand, like a release of all suits, to avoid circuity of action, is construed to be an entire release of the demand itself; since the being divested of all power to enforce a right in a Court of justice, where alone rights can be enforced, is, in effect, the being stripped of all right whatever. *Co. Litt.* 165. An agreement to forbear to sue, under a certain penalty, until an arbitration has been had may give the party injured a right to recover the penalty. But as a Court of equity cannot decree a specific performance of a contract for the reference of a dispute to arbitration, the parties must be allowed to bring their case before the proper tribunals of the country; and this will appear to be the more necessary when the imbecile and improvident nature of the domestic forum is considered. *Street* v. *Rigby*, 6 *Ves.* 818.

Arbitrators, according to the English law, have no power to enforce the attendance of witnesses, or to administer an oath to those who do attend; they can only decide upon the admissions of the parties, or on such testimony as may be voluntarily offered to them. *Street* v. *Rigby*, 6 *Ves.* 821. But under our Act of Assembly, 1778, ch. 21, s. 8, "and the approved custom of the Court," as it is called, the Courts of law in their rule, referring a case then depending, have given power to the referees to examine evidences on oath by the consent of both parties. 2 *Harr. Entries*, 156, 229. And here, as in England, this Court has always been in the habit of entering decrees upon and enforcing awards by virtue of its own orders in cases then depending. *Ormond* v. *Kynnersley*, 1 *Cond. Chan. Rep.* 325; *Haggett* v. *Walsh*, 2 *Cond. Chan. Rep.* 68; *Phillips* v. *Shipley*, 1 *Bland*, 516. (*h*) There are, how-

(*h*) GARDNER *v.* DICK.—This bill was filed on the 25th day of October, 1750, by Jeremiah Gardner and Daniel Legg, assignees of Daniel Dodson, who was assignee of John Peele, a bankrupt, now deceased, against James Dick, James Mowat, and James Nicholson, executors of William Peele, deceased, and William Cummings and Richard Snowden. The bill alleges, that Samuel Peele and William Peele were largely indebted to John Peele, and being so indebted, William Peele conveyed the greater part of his personal estate, consisting chiefly of negroes, to the defendants, Cummings and Snowden, with intent to defraud his creditors. Whereupon it was prayed, that the defendants, executors of William Peele, might be made to account for the assets which had come to their hands; that the conveyance to Cummings and Snowden might be set aside; that they also might be compelled to account, and that the assets might be applied to the satisfaction of the debt due to the plaintiffs.

The executors put in a joint and separate answer, in which they made some statements as to the assets which had come to their hands; denied