PHILLIPS *v.* SHIPLEY.

There is no legislative enactment relative to the reference of suits depending in Chancery to arbitration. Such a reference cannot be withdrawn or revoked without the sanction of the court. There must be a decree upon an award which is fair and unambiguous upon its face; and as to which there is no proof of malpractice, &c.

This bill was filed on the 25th of January 1828, in Baltimore County Court, by *Isaac Phillips* jun'r. and *William Shipley* jun'r. against *Richard A. Shipley*, to have an account of a joint concern, in which they had been engaged, in building certain houses in the city of Baltimore; and for relief, &c. On the same day, and without any answer having been put in by the defendant, it was, by consent, ordered, that the matter in dispute be referred to the arbitrament of *Daniel Kreber*, *Joseph Jameson*, and *Henderson P. Low*, or any two of them. On the 31st of May following the arbitrators, *Jameson* and *Low*, made and returned an award.

The plaintiffs filed a *caveat* or exceptions against the passing of any decree upon this award, in which they assign various reasons; chiefly, that they had revoked the authority of the arbitrators before the award was made; that it was uncertain and ambiguous upon its face; and that it was obtained by fraud and malpractice in the arbitrators who made it. After which the parties filed sundry affidavits in relation to these exceptions; and on the 8th of July 1828, under the act of 1824, ch. 196, the proceedings were removed to and filed in this court.

18*th November*, 1828.—Bland, *Chancellor*.—This case standing ready for hearing, and the solicitors of the parties having been fully heard, the proceedings were read and considered.

It is quite obvious, that the acts of Assembly which allow cases to be referred to arbitrators relate only to actions *depending* in a court of *common law*;(*a*) and whether the English statute relative to the determining of differences by arbitration ever was in force here does not appear to have been clearly ascertained.(*b*) But even if that statute were to be taken as a part of our law, it is yet doubtful whether it could be executed in cases to which it was

(*a*) October 1778, ch. 21, s. 8 & 9; 1785, ch. 80, s. 11.—(*b*) Kilty Rep. 9 & 10, Will. 3, c. 15; West *v.* Stigar, 1 H. & McH. 247, & 4 H. & McH. 490.