MASTERSON v. KIDWELL.

Case No. 9,269.

[2 Cranch, C. C. 669.][1]

Circuit Court, District of Columbia. May Term, 1826.

ARBITRATION AND AWARD—NOTICE TO PARTIES—REVOCATION—MOTION TO SET ASIDE—WHEN MADE.

1. Upon the submission of a cause to arbitration by consent of parties and rule of court, the arbitrators are not bound to give notice to the parties of the time and place of making their award.
2. After submitting a cause to arbitration by rule of court, neither party can revoke his submission without consent of the other.
3. Notice of the filing of the award may be given to the attorney-at-law of the opposite party.
4. Want of notice is no ground of exception, but of a motion to set aside the award.
5. Quaere, whether a motion to set aside an award must not be made within four days after notice of the filing of the award.

This cause was, by consent of the parties and a rule of court submitted to arbitrators, who made their award, which was filed, and notice of the filing was given to Mr. Swann, the attorney-at-law of the defendant, who filed exceptions to the award: (1) Because the arbitrators made the award at a time and place of which the defendant had no notice. (2) That before the award the defendant had revoked his submission. (3) That notice of the award was served only upon the defendant's attorney-at-law.

1st. The parties must have notice of every meeting of the arbitrators. Rigden v. Martin, 6 Har. & J. 406; Kyd, Awards, 29, 31, 34, 96. No time was given to the defendant to produce his evidence. 2d. Before the award was made, viz. on the 15th of December, the defendant revoked his submission and gave notice thereof to the arbitrators; notwithstanding which, without any notice to the defendant of their intention to proceed, they made an award on the 20th. Kyd, Awards, 112, 113. The submission is only an authority, not a contract. If the submission be by bond, it may be revoked, and the arbitrators cannot proceed; but the party revoking will be liable upon his bond. If the submission be by rule of court, and he revokes, he may be attached, but the arbitrators have no authority to make an award. Kyd, Awards, 29, 33.

Mr. Marbury, contra. The want of notice is not the ground of exception, although it may

be of a motion to set aside the award; but then it must be supported by affidavit. Exceptions must be for matter apparent on the face of the award. But a motion to set aside the award is now too late. It should be made within four days after notice of the award. Rigden v. Martin, 6 Har. & J. 403; Kyd, Awards, 29, 34; Oxley v. Oldden, 1 Dall. [1 U. S.] 430. Neither party has a right to revoke a submission made under a rule of court. It would be a contempt of the court Under the act of assembly of Maryland (1785) c. 80, § 11, notice to the attorney-at-law is sufficient. The parties are not entitled to notice of the time and place of making up their award.

Mr. Swann, produced the defendant's affidavit stating the facts, which he considered as evidence of malpractice of the arbitrators, and moved to amend his exceptions by stating their improper conduct.

But THE COURT overruled all the exceptions and ordered the judgment to be entered upon the award. CRANCH, Circuit Judge, wishing for time to look at, and consider the papers, gave no opinion.

[The defendant filed a bill in equity to stay the judgment at law. A preliminary injunction was granted. Upon final hearing the court decided that the bill lacked equity, in that the complainant had a complete and adequate remedy at law. Injunction dissolved. Case No. 7,758.]

[1] [Reported by Hon. William Cranch, chief Judge.]