

WHAT IS AN ARBITRATOR?

honest man appointed to a duty for which he is wholly unfit.

We believe that by the mass of our people the true position of an arbitrator is utterly misunderstood. The common mode of settling a dispute is "to leave it to two men." Each disputant appoints "his friend," whom he fully expects to look wholly to his interests, to object to everything that bears against him, and to consent to nothing that may prejudice him, and the friend so appointed is generally too ready to do all this most faithfully. His opponent does just the same, and instead of two honest men sitting down to decide uprightly and impartially on the facts, without reference to the parties, we have two advocates each striving with might and main to stand by the man who named him, and with no chance of making an award except by calling in some third person, at increased expense, to turn the scale in favour of one or the other.

Now almost universal as this is in practice, it is, to say the least of it, a monstrous perversion of plain duty. An arbitrator, no matter by whom appointed, is to all intents and purposes a judge, and if he be an honest man and know his duty, he should feel as much shocked at leaning to one side or the other, or favouring one man above the other, as he would be if he saw a judge in court exhibiting favour or partiality. But this, the only true and honest view of an arbitrator's duty, seems to be little understood.

Numerous instances have occurred, and are occurring among us, of the strange misconception that prevails. Arbitrators are heard talking of "their clients," meaning those who named them, just as the lawyer speaks of the person who retained his services. Men in good social position, who would be highly indignant at the imputation of dishonesty or ignorance, so speak, and what is worse, so act on arbitrations, not seeking even to disguise their advocacy of their client's interests; and yet beyond all shadow of doubt such men are either wholly ignorant of their duties or too dishonest to regard their proper performance. Instances are known of such men admitting that they bargained for a commission or percentage on whatever amount they could get awarded to the "client"! Between such and the judge who takes a bribe to pervert his judgment, there is no moral distinction whatever.

Awards have been made, intelligible on no principle deducible by an impartial mind from the facts in evidence. In the case of contests between individuals and public companies, the results are sometimes ludicrous, were it not for the serious consequences involved. Compensation has been, before now, awarded for a strip of land to an amount exceeding what any man, in his senses, would give as the price of the whole property from which the strip was taken. In these instances are of rare occurrence compared with the numberless cases between individuals occurring daily throughout the country.

Besides, men dead to the plainest dictates of duty, are generally too much alive to their own interests. The one is frequently the effect of the other. Men who scruple not to gain all they can, honestly or dishonestly, for those who employ them, seldom forget themselves. The consequence is, in many cases, not only awards outrageously unjust, but saddled with huge bills of costs in the shape of arbitrators' fees, modestly assessed by the arbitrators themselves.

It is well to call attention to this state of things. We believe there are many really honest and respectable men who misconduct themselves as arbitrators from mere ignorance of duty. The prevailing idea seems to be that an "experienced" arbitrator's duty, as it generally is his practice, is on the one side to get the largest possible sum of his friend, if the friend be seeking compensation, or on the other hand if the friend be resisting payment, to strive hard to reduce the amount to the smallest sum, or to resist it altogether.

The evil is one of a most serious kind, and any person who can succeed in attracting public attention to it will deserve the thanks of all. As a large portion of the evil results from misconception, it is only necessary, so far as honest mind is concerned, to explain the true position of the case. The legislature is constantly providing for the settlement of disputes by arbitration, and it is of the highest importance that men should rightly understand that an arbitrator is not an advocate or a partizan bound to stand by his client, but that he is a judge, bound to decide with rigid impartiality, and that if he favour one side more than another, or needlessly heap expenses on either party to the reference, he does not act the part of an honest man.