no rights, can give no standing in court, either at law or in equity. We think then that this is a question of Maryland law, which has been settled by the courts of Maryland, and should not now be disturbed; that in conformity with decisions of those courts, the recording of the deed of manumission in this case, within the time prescribed by the statute of 1796, was an indispensable prerequisite to confer any rights on the petitioners in the court below, or to give them any standing in a court of law or equity; that in accordance with this interpretation of the statute, the Circuit Court should have given the instruction asked for by the counsel for the defendants; that in refusing to give such instruction that court has erred, and therefore its decision should be reversed.

In reference to the agreement signed by counsel and annexed to the record in this case, and by which all the powers that a court of equity could properly exert in aid of instruments defectively executed were conceded to the Circuit Court as if sitting as a court of equity, we remark that the grounds presented by that agreement are entirely covered by the opinion above expressed of the absolute nullity of the deed in question, it being no more within the powers of a court of equity than it is within those of a court of law, to set up and establish that which is illegal or wholly void.

ORDER.

This case came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia, holden in and for the county of Washington, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Circuit Court in this cause be and the same is hereby reversed, with costs, and that this cause be and the same is hereby remanded to the said Circuit Court, with directions to award a *venire facias de novo*.

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*83] *THE ALEXANDRIA CANAL COMPANY, PLAINTIFF IN ERROR, *v.* FRANCIS SWANN, DEFENDANT.

Where a case is removed from Alexandria county to Washington county, in the District of Columbia, whatever defences might have been made in Alexandria county, either as to the form of the action or upon any other ground, or whatever would have been a bar to the action, may all be relied upon in the new forum.

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But the mode of proceeding, by which the rights of the parties are determined, must be regulated by the law of the court to which the suit is transferred.

A reference to arbitrators, therefore, which is sanctioned by the laws of Maryland, governing Washington county, is not to be overthrown because it is not sanctioned by the laws of Virginia, governing Alexandria county.

The validity of the reference, and of the proceedings and judgment upon it, must be tested by the laws of Maryland.

Although the charter of a company does not, in terms, give the power to refer, yet a power to sue and be sued includes a power of reference, that being one of the modes of prosecuting a suit to judgment.[1]

So, also, a power to agree with a proprietor for the purchase or use of land, includes a power to agree to pay a specified sum or such sum as arbitrators may fix upon.

It is immaterial whether the power of reference is lodged in the president and directors or in the stockholders assembled in general meeting; for the entire corporation is represented in court by its counsel, whose acts, in conducting the suit, are presumed to be authorized by the party.

Where the order of reference provides for the appointment of an umpire, it is no error if he is appointed before the referees had heard the evidence and discovered that they could not agree.

Where the agreement for reference contained a clause, providing that upon payment of damages to the owner of the land he should convey it to the other party, it was proper for the umpire to omit all notice of this. It was not put in issue by the pleadings, nor referred to the arbitrators.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the District of Columbia, in and for the county of Washington. It originated in the county of Alexandria, and was removed to the county of

[1] APPROVED. *Heckers* v. *Fowler*, 2 Wall., 128.

There no longer exists any doubt that a corporation may be a party to a submission, and several cases have affirmed the proposition. *Brady* v. *Mayor of Brooklyn*, 1 Barb. (N. Y.), 584; *Attorney-General* v. *Clements*, 1 Turn. & R., 58. In the latter case the award was enforced against a corporation.

The greatest difficulty is, who has power to submit to the reference? In England it is said that the reference must be an act of the corporate body. *Russell on Arbitration*, 20 (4th ed.). "A dean without the chapter, a mayor without his commonalty, the master of a college or hospital without his fellows, cannot submit to an award, for the submission has the force of a contract, and they cannot contract without them. [Citing Bac. Ab. Arb. C., Ed. IV., 13.] But where the body corporate properly enter into a submission, the award is binding upon them." Id., 20.

In the principal case, counsel agreed to the submission. In *Wood* v. *Auburn & Rochester R. R. Co.*, 8 N. Y., 160, it was held that an agent and subagent, having repeatedly made submission, had power to bind the corporation by a submission. The directors of an insurance company entered on their books a proposal to arbitrate a disputed claim, and also entered a request to the claimant to join with the secretary in selecting the arbitrators; and it was held that the secretary had power to execute a submission for the company under the corporate seal, that was binding on the company. *Madison Ins. Co.* v. *Griffin*, 3 Ind., 277; see *Indiana Central R'y Co.* v. *Bradley*, 7 Ind., 49; *Proprietors of Fryeburg Canal* v. *Frye*, 5 Greenl. (Me.), 38. In Connecticut it is held that the selectmen of a town cannot submit the town affairs to an arbitration. *Griswold* v. *North Stonington*, 5 Conn., 367; *contra*, *Dix* v. *Town of Dummelston*, 19 Vt., 262; *Boston* v. *Brazer*, 11 Mass., 447; *Shawneetown* v. *Baker*, 85 Ill., 563.

Washington under an act of Congress providing for such removals.

The circumstances of the case are so fully set forth in the opinion of the court, that it is unnecessary to do more than refer to it for a statement of the facts.

The cause was argued at December term, 1845, by *Mr. Bledsoe* and *Mr. Coxe*, for the plaintiff in error, and by *Mr. William T. Swann* and *Mr. Jones*, for the defendant in error. At the present term the court gave its opinion.

Mr. Bledsoe, for the plaintiff in error, contended,—

1. That there was no legal or valid reference.
2. That there was no legal or valid award.
3. That there was no legal or valid judgment.

1. The president and directors had no power under their charter to submit a case to arbitration. The rule is well settled that they have no power except under the charter. 5 Conn., 568; 2 Cranch, 158; Angell & A. Corp., 200, 201, 229, 242; *7 Cranch, 299; 14 Johns. (N. Y.), 118; 12 Id., *84] 241; 15 Wend. (N. Y.), 256; 7 Cow. (N. Y.), 462; 1 Id., 513; 12 Wheat., 58.

The charter (Davis's Laws, 558) says, that where land is to be taken, the company may agree as to the price. But if no agreement can be made, they are to apply to justices of the peace, who are to call a jury. But in that case the whole twelve must agree.

The thirteenth section of the act thus pointing out the mode of condemning land, none other was justifiable. The seventeenth section gives the company the right to enter upon land, and therefore they cannot be guilty of a trespass.

One party cannot bind another by agreeing to arbitrate. Wat., Part., 445; 3 Bing., 101; 11 Eng. Com. L., 52; Story, Part., 169; 1 Pet., 222, 228.

The attorney here has undertaken to make the president and directors do things which are not justified by law.

In England, where property is taken for public use, the party has no remedy; and in this case the remedy given by the charter is exclusive. 11 Mass., 364, 365, 368; 20 Johns. (N. Y.), 735; 4 Wend. (N. Y.), 347, 367, 370; 4 N. H., 547; 2 Johns. (N. Y.), 283; 7 Johns. (N. Y.) Ch., 315; 1 N. H., 339.

Mr. Bledsoe then examined the terms and mode of arbitration.

Mr. William T. Swann, for the defendant in error, made the following points:—

1. It will be necessary to consider any part of the record prior to the submission of the case to arbitration; as the submission in such a case, under a rule of the court, operates as a waiver of all exceptions (if any could be conceived), or as a release of all errors anterior to the rule.

2. No exceptions having been taken in the court below to the award, the grounds of the appeal are unknown; nor can any, by the counsel in this case, be conceived. But if any objections could be presented, it is now too late; they should have been presented either by motion or exception in the court below.

3. In this case the award is supported by a recital of various matters of procedure under the arbitration in the award itself, by the certificate of two of the arbitrators, and by affidavits proving such matters of procedure in the case. This is a support far beyond what the law requires. A simple award of a sum of money under the submission, without any recital of such facts in the award, and without any proof of them, is sufficient; any omission or irregularity in regard to such extrinsic matters being brought forward by motion in the court below to set aside the award.

Mr. Swann then examined the record, and contended that the arbitration was according to law. The other matters of defence, he said, cannot be alleged here. There is no special plea in *Washington county, and we do not admit the facts upon which the argument rests. The charter [*85 does not give the remedy spoken of to the party aggrieved, because he cannot originate the process of summoning a jury, &c. 4 Gill & J. (Md.), 147; 4 Wend. (N. Y.), 667, 672.

If the company have power to enter land without condemnation, it ought to have been specially pleaded.

A submission of a cause to arbitration disembarrasses it of legal questions. 1 Wash., 320; 10 Mass., 215; 8 Serg. & R. (Pa.), 3; 4 Hen. & M. (Pa.), 216; 5 Binn. (Pa.), 177. The statute of Maryland, passed in 1778, ch. 21, §§ 8, 9, points out the mode of proceeding by arbitration. It is a common law process, too. The power to refer is a necessary incident to the power to be sued. If the company are sued they can defend themselves in any manner known to the laws. The submission in this case was by the company itself, and not by the president and directors only. The attorney in court represented the whole company.

Mr. Jones, on the same side.

If they object to the award they should have moved, in the court below, to set it aside. Otherwise it is presumed to be right. It is too late to urge the objections in an appellate court, because, as the court below never passed a judgment upon the point, it would make this a court of original jurisdiction. 2 Sch. and L., 712. When the cause was removed, it was to be tried by *lex fori*, of which arbitration is a part. It is denied that the president and directors had any power to submit the case. But how does it appear that the president and directors did it, and not the company? A corporation can only appear by its corporate name. This suit was so brought and they appeared to it. So the power of the attorney is denied. But will the court presume that he acted without authority? A corporation is liable for a tort. 16 East, 5; Ang. & A. Corp., 328, 329; 8 Pet., 117.

Mr. Coxe, for plaintiff in error, in reply and conclusion, examined the history of the law of arbitration, and the statutes of Virginia and Maryland; and then contended that an action of trespass *quare clausum fregit* would not lie against a corporation. He then examined the authorities cited by *Mr. Jones*. If the corporation kept within their charter they were not suable, of course. If they went beyond it, and appointed agents to do things not justified by law, the agents are responsible. A suit only lies against the employer when the agent is acting within the scope of his authority. This suit was brought in Alexandria, where the corporation appeared by attorney and filed pleas. When it was removed to Washington an amended declaration was filed, but it was
*86] not a *substitute for the old one, because the old one remained in court, and so did the former pleas.

Mr. Coxe then contended that the reference was improper and illegal, and cited Kyd, Corp., 45, and commented on the charter of the company.

Mr. Chief Justice TANEY delivered the opinion of the court.

This case is brought here by writ of error from the Circuit Court for Washington county, in the District of Columbia. The suit was originally brought in Alexandria county by the defendant in error, against the plaintiff; and upon the motion of the former was removed to Washington county under the provisions of the act of June 24, 1812, § 3. The points raised in the argument make it proper to state the pleadings more fully than is usually necessary.

It was an action of trespass for breaking and entering the plaintiff's close, situate in the county of Alexandria. The suit was brought in July, 1839. The declaration contained but one count, in the usual form, stating the trespass to have been committed on divers days and times between the 1st of January, 1835, and the commencement of the suit.

The defendant pleaded,—first, not guilty; second, the statute of limitations; and third, that the canal company entered under the authority of the act of Congress, for the purpose of making the canal; and that it is ready to satisfy any damages to which the plaintiff is entitled, when they shall be ascertained in the mode pointed out in the act of incorporation.

After these pleas were put in, and before any replication was filed or issue joined, the cause was removed to the Circuit Court for the county of Washington, by an order passed on the 12th of November, 1841, upon the motion of the defendant in error. The case was continued in that court without any alteration in the pleadings until November term, 1842, when an amended declaration was filed. This declaration consisted of a single count, and differed from the original one only in undertaking to set out the abuttals of the close in which the trespass was alleged to have been committed. The defendant in the Circuit Court pleaded not guilty to this declaration, upon which issue was joined and a jury sworn; but before a verdict was rendered a juror was withdrawn by consent, and upon the motion of the parties by their attorneys the matter in variance between them was by a rule of Court referred to four arbitrators named in the order of reference. The reference was made upon certain terms specified in a written agreement filed in the case, setting forth the manner in which the arbitrators were to be selected and the damages calculated, with power to the referees to choose an umpire, if they or a majority of them could not agree.

*The arbitrators, before they entered upon an examination of the case, appointed an umpire, who afterwards made his award, and thereby awarded that the defendant (in the District Court) should pay to the plaintiff the sum of six thousand nine hundred and sixty eight dollars and seventy five cents, in full satisfaction of all the matters of damage and value submitted to his umpirage. This award was filed September 21, 1843, and notice of it regularly served on the plaintiff in error; and thereupon a judgment was entered for the amount awarded on the 17th of January, 1844. It is upon this judgment that the present writ of error is brought. [*87

It appears from the record that no objection was taken to the award in the Circuit Court, nor any affidavits filed to impeach it. Several depositions were filed by the defendant in error, which are not material to this decision, except in one particular, which will be hereafter noticed, on account of an objection to the award founded upon it.

The reference to arbitrators and the proceedings thereon, and the judgment given by the court below, were all under and intended to be pursuant to the acts of assembly of Maryland of 1788, ch. 21, § 9, and 1785, ch. 30, § 11. It is admitted that these proceedings were not authorized by the laws in force in Alexandria county; and it is objected by the plaintiff in error that, inasmuch as no judgment could have been lawfully rendered upon these proceedings in Alexandria county, no judgment ought to have been rendered upon them in Washington; that the removal of a case under the laws of Congress is a mere change of *venire;* and that the rights of the parties are still to be tried according to the laws and modes of proceeding recognized and established in the Circuit Court for the county in which the suit was originally instituted.

Undoubtedly, whatever rights the canal company had in Alexandria county, and whatever defences it might there have made, either as to the form of the action or upon any other ground, it might still rely upon them in the new *forum;* and whatever would have been a bar to the action in Alexandria county would be equally a bar in Washington. The question here, however, is not upon the rights of the respective parties, but upon the mode of proceeding by which they were determined; and this must evidently be regulated by the law of the court to which the suit was transferred. For after the removal took place the action, according to the act of Congress, was pending in Washington county, to be there prosecuted and tried, and the judgment of that court to be carried into execution. And as the act neither directs nor authorizes any change in its practice or proceedings in removed cases, it follows that they must be prosecuted and tried like other actions in that court, and could not lawfully be prosecuted and tried in any other manner. In impanelling a jury, for example, for the trial of the facts, it could not put aside
*88] the jurors required by law to attend that court, and *direct a panel of twelve to be summoned for the particular case, pursuant to the law of Virginia. Nor could it deny to either party the right to strike off four names from the list of twenty, according to the law of Washington county,

although the rule is otherwise in the county of Alexandria.[1] And upon the same principles the selection of arbitrators, the proceedings before them, and the legal effect of their award, could be no more influenced by the law upon that subject, on the other side of the Potomac, than the summoning, striking, and impanelling of a jury. The validity of the reference, therefore, and of the proceedings and judgment upon it, must depend upon the law of Maryland and not upon the law of Virginia. And if the judgment given by the Circuit Court was authorized by the former, it cannot be impeached upon the ground that such proceedings would not have been lawful in Alexandria county.

Trying the case upon these principles, it is very clear that as no objection was taken to the award in the Circuit Court, the judgment upon it was correct and must be affirmed in this court, unless some substantial objection appears on the face of the proceedings or in the award itself.

It has been urged, however, that it is apparent, on the face of the proceedings, that the arbitrators committed a mistake in the law; that the record shows the acts complained of to have been done in execution of the power conferred on the company to construct a canal; and that under the act of Congress they had a right to enter upon any land they deemed necessary for that purpose, leaving the damages to be afterwards ascertained in the mode pointed out by the law; and that consequently an action of trespass will not lie.

But it is very clear that this question of law was not before the referees or the court; nor was it in any way involved in the decision of either. For if the plaintiff in error could have justified the entry upon the ground suggested, the justification ought to have been pleaded. And as this was not done, the question as to the legal sufficiency of this defence

[1] By a statute in Indiana, in civil cases tried before a justice of the peace, each party had the right to make four peremptory challenges to jurors called to by the cause. Such cases were appealable to the Circuit Court, and were there tried *de novo*. In the Circuit Court, in cases first commenced there, each party had only three peremptory challenges. On the appeal of a case from a justice of the peace to the Circuit Court, it was held that either party had only three challenges in the latter court, and that the practice of the justice's court, except as to the pleadings, was superseded by that of the Circuit Court. *Vanschorick* v. *Farrow*, 25 Ind., 310; and this was held to be so even though the statute allowing the appeal provided that the case on appeal should be "tried under the same rules and regulations prescribed for trial before justices." It was held that the phrase quoted related, not to the organization of any part of the court, but to the trial in the legal sense of that term. *Kerschner* v. *Cullen*, 27 Ind., 184.

was not referred to the arbitrators nor decided upon by their award.

It is said, however, that it *was* pleaded. This is true as relates to the pleadings filed to the original declaration. But an amended declaration was subsequently filed, and to this the plaintiff in error pleaded anew. The amended declaration was not an additional count to the former one, but was itself the entire declaration substituted for the former. And it was evidently so regarded by all parties at the time. For the plaintiff in error renewed his plea of not guilty, which he had put into the former one,—omitting, however, his former pleas of limitation and justification; and these two must have been understood to be waived, for there was no replication to either of them, nor any issue joined upon them, formal or informal. The questions, therefore, which would have arisen *89] on these pleas, *were not in issue,—were not referred by the written agreement,—and consequently could not have been considered or decided by the arbitrators.

Neither can the objection be maintained which has been taken to the power of the company under its charter to refer such a question of damage. The corporation was a party to the action in court, and it might lawfully take any step that an individual might take, under like circumstances, to bring it to final judgment. And a trial by arbitrators, appointed by the court with the consent of both parties, is one of the modes of prosecuting a suit to judgment as well established and as fully warranted by law as a trial by jury.[1]

But independently of this principle and of the pendency of a suit, the thirteenth section of the act of Congress authorizes the canal company to agree to a reference. It provides that the president and directors may agree with the proprietor for the purchase, or for the use and occupation of the land for temporary purposes; and it does not confine the power to an agreement specifying a particular sum of money. On the contrary, it authorizes an agreement in general terms. And if the company agree to pay such sum as arbitrators may award, this agreement is as clearly within the words and intention of the law as if a specific sum had been fixed upon by the parties. We therefore see no objection to the reference in this case, nor to the agreement by which it was made.

We do not think it necessary to inquire whether the power to direct the proceedings in the suit and assent to the refer-

[1] Approved. *Heckers* v. *Fowler*, 2 Wall., 128. Cited. *Town of Lyons* v. *Lyons Nat. Bank*, 19 Blatch., 286; s. c., Fed. Rep., 374. See also 1 Russ. & G. (Nov. Sc.), 115, 116.

ence belonged to the president and directors, or to the stockholders assembled in general meeting. The corporation, however governed in this particular, was the party defendant in court, and was represented by its counsel, and his acts are presumed to be authorized by the party in conducting the suit. This has long been the settled law of Maryland, which is the law of Washington county.

It is true that in this case the agreement for the reference is signed by the counsel who had appeared for the canal company in Alexandria, but who did not appear on the record in the Circuit Court for Washington. Yet the attorney who did appear joined in the motion for the reference, received notice of the award after it was returned, and made no objection to the authority under which the arbitrators had been appointed. It is too late to make it here, even if it would have been available in the Circuit Court. But as the attorney on the record must have united in the motion for the reference, it is very clear that the objection would have been untenable there, as well as here.

We see nothing, therefore, in the pleadings or proceedings anterior to the order of reference, which can impeach the correctness of the judgment in the court below. It remains only to examine whether there is any thing liable to objection in the proceedings of the referees or in the award returned by the umpire.

*The authority of the umpire has been objected to, because it appears, by the affidavits filed by the defendant in error, that he was appointed before the referees had heard the evidence and discovered that they could not agree. But whatever doubts may have been once entertained upon this question, it is now well settled both upon principle and authority that the appointment is good. And indeed it has been said by this court that it is more expedient to appoint the umpire in the first instance, as was done here, than to wait until the evidence was all heard and the arbitrators had finally differed. 8 Pet., 178. [*90

The umpire, therefore, being regularly appointed, the remaining question is upon the sufficiency of his award. There was no dispute as to the title to the land, and upon the issue joined in the case; therefore, the only matter in controversy was, whether the acts complained of had been committed, and if they had, what damage was the defendant in error entitled to recover. This was the only matter in variance referred. The written agreement filed by the parties states the principles upon which they mutually agreed that the amount of damages should be calculated; and the award of the umpire

ascertains and awards the amount upon the principles mentioned in the agreement. His award is upon the subject-matter referred. It covers the whole controversy submitted to him, and nothing more; and upon that it is certain and final.

There is indeed in the written agreement for the reference a clause which provides that, upon the payment for the damages awarded, the defendant in error should convey to the company the land selected for permanent occupation; and the umpire has taken no notice of this agreement to convey. We think he very properly omitted to notice it, for it was not put in issue by the pleadings, nor proposed to be referred in the argument filed. On the contrary, the duty of the arbitrators was limited to the question of damage. The value of this land was indeed one of the items they were required to consider in calculating the amount of damage; but they had no power to award how or when it should be conveyed. Nor does the right of the canal company to the conveyance depend in any degree upon the award or direction of the arbitrators concerning it. Their right is absolute by the agreement, upon the payment of the damages awarded; and the conveyance may be enforced like any other right acquired by contract.

Upon the whole, we are of opinion that there is no error in the judgment of the Circuit Court; and it must therefore be affirmed, with costs.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia, holden in and for the county of Washington, and was *argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said Circuit Court in this cause be and the same is hereby affirmed, with costs and damages at the rate of six per cent. per annum.

*91]

HENRY D. BRIDGES, JOHN K. MABRAY, JAMES N. HARPER, AND STERN SIMMONDS, LATE MERCHANTS AND PARTNERS IN TRADE, UNDER THE NAME, FIRM, AND STYLE OF BRIDGES, MABRAY, AND COMPANY, PLAINTIFFS IN ERROR, *v.* WILLIAM ARMOUR, HENRY LAKE, AND FELIX WALKER, LATE MERCHANTS AND PARTNERS IN TRADE, UNDER THE NAME, FIRM, AND STYLE OF ARMOUR, LAKE, AND WALKER, DEFENDANTS IN ERROR.

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