ARBITRATION BOARDS.—BY HON. DANIEL J. RYAN.

Arbitration is the adjudication by private persons appointed to decide a matter or matters in controversy, on a reference made to them for that purpose, either by agreement of disputants, or by the order or suggestion of a court of law. When the subject to be decided is one of work or wages, or both, arising between employer or employe, it is industrial arbitration. The proceeding is generally called a submission to arbitration; the persons appointed to decide are termed a board of arbitrators or referees, and their opinion or adjudication of the subject-matter before them is called an award. Boards consist usually of an even number of members, and when they fail to agree they call upon a third person, who is known as the umpire. His decision expresses the award. One of the auxiliaries to arbitration is the effort to promote harmony and an agreement between the disputants before their contest is subjected to the formal inquiry and decision of arbitration; this is known as conciliation. With these prefatory and explanatory words an examination will be made into the methods and worth of industrial arbitration.

I do not claim that courts of arbitration, even when based upon the voluntary action of labor and capital, are a complete panacea for all the ills of trade and industry. As long as men have passions, there will be "wars and rumors of war," but I do claim that they will in a wonderful degree dispense with those disastrous agencies now used in the settlement of trade disputes.

There is a distinction to be made in the beginning between statutory arbitration and voluntary arbitration. The former applies to arbitration, the awards of which have the force of judgments of courts. In fact such a board of arbitration is a court for the time being, having full power to subpœna witnesses and enforce its judgments as a court of record. Voluntary arbitration is an entirely different system. As the term indicates, there is no authority of law unless it be in the method of erecting the boards. Its awards have not the force of judgments, and it rests upon the honor of the disputants, rather than upon the writ of the sheriff, to carry them into effect. All the experience and history on this question is uniformly to the effect that the only successful arbitration between labor and capital in the past has been purely voluntary. For years

there have been upon the statute books of many of the States laws providing for arbitration of disputes, but they have never been applied in labor troubles. Boards with a justice of peace air about them, and clothed with powers of compulsion, fines and commitment, have never been considered by contesting employer and employe as a safe or judicious forum to submit their case. In England since the fifth year of the reign of George IV. (1824) there has been in force a statute providing for arbitration in industrial disputes. Under it tribunals with compulsory powers and processes were created, but it still remains a dead letter and has been especially objectionable both to employers and employed.

The opinions of those who have been close observers of this matter are of interest as bearing on the subject. In this country no man has given the question of arbitration a broader and deeper investigation than Mr Joseph D. Weeks, of Pittsburg. In 1878 he was appointed a special Commissionnr of the State of Pennsylvania to proceed to England and examine in person the methods and operations of the system of voluntary arbitration, now a settled question in that country. His comprehensive and able report to Governor Hartranft in December, 1878, contains the result of his full examination. He says: "The voluntary feature of these boards is one to which I desire to call particular attention. Both Mr. Mundella and Mr. Kettle, to whom the cause of arbitration and conciliation in England owes much that it is, and who represent somewhat diverse views on the subject, agree that these boards should be voluntary and not compulsory. Though there are acts of Parliament, which provide compulsory legal powers by which either side can compel the other to arbitrate on any dispute, these powers have never, in a single instance, so far as I could learn, been used; but the large number of differences that have been settled by arbitration in Great Britain in the last eighteen years have all been voluntary in their submission and in the enforcement of the award." Prof. W. Stanley Jevons, the eminent English economist, speaking of arbitration, says: "All available evidence tends to show that successful boards of arbitration must be purely volunteer bodies. * * * * * * In all probability success will be best obtained in the settlement of trade disputes by keeping lawyers and laws as much at a distance as possible. There must be spontaneous, or at least volunteer, approximation of the parties concerned. It is a

question not of litigation, but of shaking hands in a friendly manner and sitting down to a table to talk the matter over. The great evil of the present day is the entire dissension of the laborer and the capitalist; if we once get the hostile bodies to meet by delegates around the same table, on a purely volunteer and equal footing, the first great evil of dissension is in a fair way of being overcome." And Judge Rupert Kettle, a strong advocate of arbitration, contends "that, according to the spirit of our laws and the freedom of our people, any procedure, to be popular, must be accepted voluntarily by both contending parties."

Voluntary arbitration then may be regarded as the only practicable method of settlement if the parties arbitrate at all. Any other system can be seen at a glance to be inoperative. While decrees of statutory boards could be enforced against the employers, they would as a rule be ineffectual against the workmen. Unfortunately, the latter are ofttimes proof against the execution of judgments. But when it is left purely to the honesty and fair play of both sides the chances for success are improved wonderfully. Lack of the world's goods does not necessarily mean lack of honor. The great mass of workmen who would agree to arbitrate could safely be relied upon to abide the awards. This objection against voluntary tribunals of arbitration can not be sustained, for the instances are few where either party has put their honor behind them and refused to abide the award. The power of public opinion is also great in sustaining a just award.

Boards in every instance consist of an equal number of workmen and capitalists or employers. Out of this body there may be appointed a committee of inquiry or a board of conciliation. This latter board takes cognizance of individual disputes and is wholly informal. It deals with lesser troubles, it gives no decision on any given matter, because no subject is ever referred to them for settlement. They are the good Samaritans of the Board of Arbitration. As their name indicates they are conciliators. If they fail by friendly urging and inquiry to bring harmony, the matter in discussion goes before the arbitrators to be acted on formally. When the dispute finally reaches the arbitrators, the claims of the workingmen are stated by their Secretary; and the objections, or vice versa, by the employers through their Secretary. The matter is then one of judgment, reason and justice. The parties are pre-

sumed to meet as friends and as equals. As well might there be no meeting at all if the assembling is in any other spirit. And this is one signal characteristic of success in arbitration, that under it, the parties meet as arbitrators before they become enemies. Hence the necessity of having the board erected before any strike or dispute occurs. In time of harmony prepare for the "winter of discontent." In prosperity is the time to prepare for the antagonism of labor and capital. When hard times come and the competition of labor within itself is great, it is almost impossible for the industrial classes to procure their just concessions from capital. They become enemies, and enemies can never arbitrate; friends always can.

The man who works is equal to him for whom he works. The difference, if any, between them is in the qualities of their individual manhood, and not in any positions they occupy. The failure of the first board of arbitration in South Staffordshire, England, was due to the fact that the employers never realized this. They met, were seated comfortably at the table with pens, ink and paper, and installed their chairman; the workmen were shown to a bench at the side of the room and seated as if they were in court awaiting to be tried, rather than few citizens, assembled to agree upon a contract which was important to them as to their employers. Under our American ideas such an affair would not settle anything.

After the erection of a board, a matter of vital importance is the selection of an umpire. This like the board itself, should be settled upon before the contest ripens into the heat of a litigation. Who he should be, his qualities and capacities form the gravest question in voluntary arbitration. Must he have a familiar and practical knowledge of the subject matter in dispute? Experience in this proves nothing. Some of the best umpires in this country and in England have been men devoid of any practical knowledge of the trade in which the dispute occurred. Thomas Hughes, M. P., Thomas Brassey, M. P., Henry Crompton and Rupert Kettle have been among the most trusted and successful umpires in English arbitration, but none of them have been practically connected with manufacturing or mining trades in which their judgment has always been received. They have had the confidence of the disputing parties and have given their reference the strictest and most impartial investigation. Just as successful arbitrators were men who

have been extensive manufacturers, as A. J. Mundella and others. The workingmen in England call those who decide upon knowledge not acquired practically, "stranger referees," and they have been strangely prejudiced against them, but are beginning to view the matter differently, so that it makes but little difference at this time. The cause of antipathy to "stranger referees" is principally one of class, a feeling that there is a lack of sympathy for the laborer. This objection in this country would hardly arise, as both parties would demand good judgment and honesty, and would have no fears as to prejudice.

The umpire is distinctively a judge. If a man will not put himself through a course of study on the subject of his decision, there is no reason why he should not give as fair and as competent a judgment as if he were engaged all his life in the business. Courts of law are the daily examples of men dealing in practical things with a theoretical knowledge. This is notably the case in patent litigation. Questions of the most practical and scientific machinery are decided with justice and competency. The principal quality desired in an umpire is integrity and level headedness, with an intelligent conception of what he is to pass upon.

It is not desirable here to lay down any principle or basis on which awards can be made. That is a duty peculiarly attached to each individual case of arbitration. The Board having met, are supposed to be within honest reach of every fact and all information that will give them light in an honest investigation. If the dispute be one of wages, assuredly the basis becomes the ability of the manufacturer to pay, the condition of the market and the demands of the workmen. To agree upon a basis is the very object of a board of arbitration. Mr. Weeks in his report referred to concerning this, says: "As a matter of information it may be said that in the practical operation of the boards, while all the facts relative to prices, competition demand and supply, both of labor and products, are considered, wages are generally based on the selling price of the article produced. Mr. Kettle, in a noted arbitration in the coal trade, found a certain date at which the wages paid for work about the colliery were satisfactory to both sides. This became the ideal, and served to fix in a general way, a ratio of wages to prices that would be a satisfactory one to both parties. Due notice was taken of any changes that had occurred that should serve

to increase or diminish this ratio, such as reduction in the hours of labor, increased expense from mine inspection laws, etc.; and the arbitrator in his award endeavored to approximate this ratio as near as could be done without injustice or injury." This of course necessitates an examination of the books and business of the employer. For this reason, it has been strenuously objected to. But the objection as compared with the result at issue is certainly captious. No investigation that would reveal transactions necessary to business success is demanded. The question of simply what was the selling price at a time agreed upon, is all the board would require to be answered. Any confidential imparting of information would certainly be regarded by the board, representing, as it is supposed, the honorable element of labor and capital.

After all, it will be asked, may not the Board of Arbitration and umpire make a mistake, perhaps against the wageworker, and perhaps against the employer? Certainly. But is there as much likelihood of error in the decision by arbitration as there is in the violent and blind impulses of a strike or a lockout? As long as candid and cool investigation is superior to rash and unreasonable action, thus long will arbitration be less fruitful of mistakes than strikes. Under the control of voluntary arbitration, facts and figures of business take the place of malevolence and mere assertion, and where a board would err once, a strike would err three times. Besides no board or umpire, such as would be selected by intelligent workmen and employers, could make a grossly serious mistake. And such a departure as might even sometime be made—and to err is a parcel of our humanity—would only equal a short time in amount of wages. Even presuming an error, is not that far superior to a strike? Boards of Arbitration can not operate so as never to commit an error, but they commit fewer errors than contests of force. The force of public opinion in sustaining the justice of an award of a board, is an important aid to the system of voluntary arbitration. In this labor would have the advantage, for invariably in strikes, where justice is on the side of the worker, the opinion of an enlightened and reading American public has been with him. This feeling that the arbitrators themselves would have to face the bar of public sentiment and hear the reflex judgment on their award, would be the most potent factor in prompting them to weigh candidly, justly and carefully all that comes before them.

This would, of course, be cumulative to their own independence, integrity and ability.

In order to be of the most advantage, the tribunals should be permanent, having a continued existence, and ready at any time to take jurisdiction of a dispute. In this way the best material may be obtained for the board, and its judgments will be calmer. To select the arbitrator from the participants of a struggle, manifestly is an impediment to a fair judicial hearing. The most successful boards of arbitration are those that have been permanent and held stated meetings at regular intervals. This periodical assembling of employes and employed to discuss small differences perhaps or questions of social advantage to each is a very valuable feature. It gives both parties a knowledge of their demands, necessities and expenditures. The facing of capital and labor as companions and friends is of equal benefit and interest to each. Many of the disputes in the industrial world can be attributed to lack of information in the party originating the struggle, while a social contact and a mutual interchange of conditions and abilities will make labor just in its demands and temper capital in its claims. And thus by moderation, forbearance and peace can dwell between them and more be obtained by both sides than if disputes were summarily created.

The submission, discussion and decision of industrial questions to voluntary boards of arbitration is purely a matter of business; and is clearly the best plan devised by the wit of man to avoid unnecessary destruction and loss to labor. No other system recommends itself in which "a fair price for a fair day's work" is arrived at on as just basis and by as reasonable a method. The conflicts of suspicion and distrust between manufacturer and employes render the first periods of boards of arbitration trying, and at times, discouraging. Opposition growing out of "matters of sentiment" are generally foolish and intangible and furnish no proper cause for the exercise of the peace-making power. At the same time they are apt to be the source of disputes. The best remedy for this unfortunate condition of things is the friendly contact and association of representative workmen and employers, that necessarily follows from the operations of voluntary tribunals.

The arbitration which ii clothed with the power of the power of the law in its methods of deciding and in enforcing its awards, has some ardent and intelligent advocates. Some friends of arbi-

tration have claimed that a legal power to enforce the award is fully necessary to a completeness in voluntary arbitration; others, equally sincere and desirous of its success, have maintained that to make arbitration anything but voluntary would be to make it inoperative. There are now in existence three laws in England relating to arbitration, and all providing for a legal enforcement of the award. The first of these, before referred to, was passed in 1824, and the others in 1867 and 1872. These latter acts were originated by Lord St. Leonards and Mr. A. J. Mundella, M. P., respectively. They embody the compulsory processes in a court of arbitration, as well as some minor provisions as to method of appointment, time of meeting, etc. Execution upon goods and chattels, as well as imprisonment, are the compulsory manners of enforcing awards. These acts have not been taken advantage of, and they are not regarded with much favor by manufacturers or workmen. The bright instances of the success of arbitration have uniformly been those purely voluntary. The rigors of the law have not in any case been called into play to enforce an award. That "aggregate honor of individuals, which our French neighbors call 'esprit de corps,'" is the power which sustains the decrees of voluntary boards.

There is no question but that where all the proceedings have been voluntary, that some awards which can be equally enforced upon capitalists and workmen, would be improved by conferring legal process. Instances have occurred where awards have been repudiated and rejected, but as compared with those acted upon and sustained, their number is few. In some cases where the feeling has been strong, upon the publication of an adverse award, there has been sulking and disappointment among workmen, but the whole line of experience confirms the statement that awards, satisfactory or otherwise, have been acted on. The management of Boards should be to eliminate from their decisions all feeling of conquest or defeat. The business aspect of the arbitration and the desire to promote harmony and good will should be steadfastly adhered to.

The history of labor, especially of England and France, is the brightest testimony to the success of voluntary arbitration. Its unqestioned benefits and harmonizing influence seem to have given labor renewed confidence in its own intellectual strength, while

capital has multiplied its successes with justice and generosity.

One incident in the development of industrial arbitration is worth recording, for it sheds a volume of light upon its advantages. Eighteen years ago the North of England iron district was in a state of anarchy, resulting from the social struggles of labor against capital. A terrible conflict about wages paralyzed the trade. The capital invested in the enormous mines and iron lay idle for months. "Crowds of hungar-smitten workmen begged for bread in the streets, or savagely denounced the capitalists who were trying to starve them into submission." There had been strikes and lockouts in this region before that of 1866, but that year saw the most horrible of all. After four months of idleness, ruin and disaster for all concerned, the workmen were compelled to work at their employers' terms. An ill-natured, malevolent era of peace followed. The revival trade in 1869 brought on the old symptoms of past strife, and, filled with fear and disgust, workman and owner waited for the storm to burst. But both were saved by the establishment of a board of arbitrators, which has existed successfully ever since. By this simple but effective method the iron trade of the North of England rid itself forever of the curses of strikes and lockouts. And there is now no fewer than 100,000 wageworkers in that region practically secured against industrial trouble by the adoption of the principle of voluntary arbitration.