Title:
Undated letter (around 1600) to Sir Nathaniel Bacon

Additional Information:
printed in Roebuck, Derek, The English Inheritance — What the First American Colonists Knew of Mediation and Arbitration, 2016 (2) Journal of Dispute Resolution at 325 et seq., with reference to the historic source

Content:

One undated letter must suffice to show in detail how a submission worked and how arbitration was valued then [around 1600]:

Good Sir Nathaniel Bacon, mortal men should not have immortal suits, and suits commenced by fathers and continued by their children in an unchristian and uncharitable succession do often times ravel up and undermine the fathers’ estates before they die, and in the end do utterly undo their heirs by descent, when they be dead, a cross and a curse, that contention by God’s wrathful ordinance brings with it, which you in your wisdom and experience hath seen to fall upon divers families. Not far off – sic obdurit cor Pharaonis [‘so he hardened Pharaoh’s heart’ Exodus 7.13 and 14] - through the which, by excessive fees disbursed upon exceeding lawyers, both Mr Bulwer’s family and mine, shall hereafter fare the worse, for prevention whereof at the first, before any suit was set on foot between him and me, I for my part made an overture of peace unto him, above 10 years since, to submit all intended controversies to any men of worth and wisdom in all Norfolk to decide and censure the same.

But Mr Bulwer then, before the walking spirit of the lands in question was any wise conjured, utterly refused that my peace offering, saying that he would not put his coat to dyeing, to never a man in England. But now of late (and somewhat too late for us both) he hath changed his mind and out of his own voluntary, (the pleasiest motive that may be), it hath pleased him to come walking unto me in the pathway of peace, protesting to embrace that peace now which long since was offered unto him, before any money was spent, or rather spoiled, at law. Requesting at my hands a submission and a compromise of all matters in difference betwixt us, to some men of worship in the country (lawyers excepted, the minters of other men’s coin, out of their true owners’ purses into their own). Gladly I con-descended to this his motion, as proceeding from God, and did put upon him first to choose one for himself and I would second it, suit and sort another of like quality and condition. He, for him, chose Sir Nathaniel Bacon, a knight in his opinion without exception. And I, purposing to choose one that was omni exceptione major [above all objection] and in all respects suitable and sortable that never would dissent in judgment, nor jar in the proceeding, chose for me your worship to be the judge, the justicer and honorarius arbiter of all our controversies. At which my seconding choice Mr Bulwer was so well pleased that presently off went our hats, on went our hands and hearts to a pacification, which was the first time that ever we two shook either hands or hearts together, making you by mutual and reciprocal consent our judge, if you please to assume that office upon you, beati pacifici, exuenda est persona amici, et induenda judicis [the blessed peacemaker must doff the character of friend and don that of judge] to end as in a moment ten years tedious and costly suits, thereby to give better satisfaction to Mr Bulwer, concerning his supposed right and title to the lands in question by delivering your opinion therein, than either the Lord Chancellor or the high court of the Chancery by decree, injunction and commission could do, or than I can do by paying 200 marks out of the said lands to his sister for her marriage portion, and by spending in suit or otherwise 400 marks more in toto paid and spent out of my poor purse, twice as much money as the recovered lands be worth. Thus stand I, de damno vitando [for avoidance of loss], a loser at the close, although I got somewhat at the crush. Thus contendeth he, de irreparabili damno [in relation to loss which cannot be recovered], for lawyers have irrevocably got his money. Omnia vestigia antrorsum, nulla retrorsum, opera et impena perit [if every track leads forward, none back, then the toils and the costs have vanished]. Fearing tediousness I submit myself to your censure, and you and yours I do recommend to the protection of the Almighty, to gather with my duty remembered to the good Lady
Bacon. ¹⁶⁹

¹⁶⁹ BACON PAPERS V, supra note 17, at 113-14.