

No. XV.

An Act to make Arbitrations more effectual.
 [23rd December, 1867.]

ARBITRATIONS
 FACILITATION.

WHEREAS it is expedient to render references to Arbitration more effectual Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

1. The word Rule in this Act applied to a Rule of Court shall be taken to include any Order made by a Judge of the same Court The word Umpire shall be taken to mean equally a third Arbitrator where the reference in question is to three Arbitrators And unless the context requires a different construction the word Award shall also be taken to include an Umpirage and the word Arbitrators to mean equally an Umpire or single Arbitrator And every power by this Act given to the Supreme Court may be exercised by any Judge thereof subject to appeal to the Court as in the ordinary case of an Order made by a Judge.

Definition of terms
&c.

2. The authority of Arbitrators appointed in pursuance of any Rule of any Court having competent jurisdiction or in pursuance of any instrument in writing whether already or hereafter made whereby the parties or any of them agree that any differences between them shall be referred to Arbitration shall not unless such Rule or instrument otherwise provides be revocable by any party without leave of the Court by which such Rule was made or by the Supreme Court and the Arbitrators shall proceed with the reference notwithstanding any such revocation and make an award although the person revoking shall not attend the reference.

Certain references
not to be revoked
without leave of
Court.

3. Whenever the parties to any such instrument have agreed as aforesaid and any of them or any person claiming under them shall nevertheless commence an action or suit against the other parties or any of them or against any person claiming under them in respect of any matter agreed to be referred it shall be lawful for the Supreme Court on application by the defendant upon being satisfied that no sufficient reason exists why the matter ought not to be referred to Arbitration according to such agreement and that the defendant is ready to concur in all acts necessary for causing such matters so to be decided to make a Rule staying all proceedings in such action or suit on such terms as to costs and otherwise as to such Court may seem fit Provided that any such Rule may at any time be discharged or varied as justice may require.

Actions commenced
after agreement to
refer may be stayed.

4. If in any case of Arbitration the document authorizing the reference provides that it shall be to a single Arbitrator and all the parties do not after differences have arisen concur in the appointment of one or if where the parties or two Arbitrators may appoint an Umpire they do not appoint one then any party may serve the remaining parties or the Arbitrators as the case may be with a notice to concur in appointing or to appoint as the case may be an Arbitrator or Umpire and if within fourteen days after service of such notice no Arbitrator or Umpire be appointed it shall be lawful for a Judge of the Supreme Court to appoint an Arbitrator or Umpire as the case may be who shall have the like power to act in the reference and make an award as if he had been appointed by all parties And the like notice may be served and the like appointment by a Judge be made

On failure of parties
Judge may appoint
Arbitrator or
Umpire.

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made where any appointed Arbitrator or Umpire shall die or refuse to act or become incapable of acting unless the document authorizing the reference shews that in such case the vacancy was not meant to be supplied.

When reference is to two Arbitrators and one party fails to appoint.

5. When any reference is to two Arbitrators one appointed by each party it shall be lawful for either party in case of the death refusal to act or incapacity of any Arbitrator appointed by him to substitute a new Arbitrator unless the document authorizing the reference shews that the vacancy was not meant to be supplied and if on such a reference one party fails to appoint an Arbitrator either originally or by way of substitution for fourteen days after the other party shall have appointed an Arbitrator and have served the party so failing with notice to make an appointment the one Arbitrator appointed may act alone in the reference and an award made by him shall be binding on both parties Provided that the Supreme Court may allow the failing party to make an appointment notwithstanding the expiration of the fourteen days on such terms as shall seem just.

Power to appoint Umpire.

6. When any reference is to two Arbitrators and the document authorizing it does not exclude an Umpire or provide otherwise for the appointment of one the two Arbitrators may appoint an Umpire at any time within the period during which they have power to make an award unless called upon by notice as aforesaid to make the appointment sooner And where a reference is to three Arbitrators the award (unless the document authorizing it provides otherwise) may be made by any two of them notwithstanding any dissent by the third Arbitrator.

Award to be made in three months unless parties or Court enlarge time.

7. Arbitrators shall in every case make their award (unless the document under which they act limits a different time) within three months after they shall have been appointed and have entered on the reference or shall have been called upon to act by notice in writing from any party Provided that the parties may by consent in writing enlarge the term and where no period is stated for such enlargement the period shall be deemed one month and in every case where an Umpire is appointed it shall be lawful for him to enter on the reference in lieu of the Arbitrators if the latter have allowed their time or extended time to expire without making an award or shall have delivered to him a notice in writing stating that they cannot agree.

Power to enlarge time for making awards.

8. It shall be lawful for the Supreme Court in all cases whatsoever of reference to Arbitration from time to time as occasion may require to enlarge the time for making any award for any sufficient cause And upon any such enlargement being so made the time for making the award shall be enlarged accordingly.

Rule to deliver possession of land pursuant to award.

9. When any award directs that possession of any land or tenement shall be delivered to any party either forthwith or at any future time or declares that any party is entitled to the possession of any land or tenement it shall be lawful for the Supreme Court to order any party to the reference in possession of such land or tenement or any person in possession claiming under him to deliver possession of the same to the party entitled thereto pursuant to the award and the order to deliver possession shall have the effect of a judgment in ejectment against such party or person and execution may issue and possession be delivered by the Sheriff accordingly.

Submission to Arbitration may be made a Rule of Court.

10. Every reference to Arbitration by consent in writing may be made a Rule of the Supreme Court on the application of any party unless the agreement contains words purporting that the parties intend that the submission should not be so made Provided that it shall not be necessary in any case to make the Order of a Judge a Rule of Court but the like proceedings may be taken upon any such Order as might be taken on a Rule of Court of the same tenor.

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11. In all cases of reference to Arbitration under any authority whatsoever it shall be lawful for the Supreme Court to make an Order or issue a Commission for the examination of any party to such reference or any witness whose evidence by reason of absence or intention to depart from the Colony or illness age distance of residence or other cause would otherwise be liable to be lost and to give all such directions as to the time place and manner of examination and other matters connected therewith as such Court shall think fit And every such Order or Commission may be made or issued in like manner as Orders are made or Commissions issued for the examination of witnesses in any cause in the said Court in its Common Law jurisdiction or as near thereto as may be.

In all cases of Arbitration orders may be made for obtaining evidence.

12. It shall also be lawful for the Supreme Court in any case of reference to Arbitration to make an Order *ex parte* directing any party or witness to attend before the Arbitrators or before any person authorized to take his evidence at any reasonable time and place and then and there to be examined and produce documents touching the matters of the reference And the said Court may give all such directions as to all matters connected therewith as such Court shall think fit And every such Order may be enforced and disobedience thereto punished by the Court in like manner as in the case of an Order made in a cause depending therein and any party or witness disobeying without lawful excuse shall also be liable to damages in an action at the suit of the party requiring his attendance in like manner as persons subpoenaed as witnesses in a cause pending in the said Court and disobeying their subpoenas are liable Provided that every person whose attendance is so required shall be entitled to the like conduct money and payment for expenses as upon a trial in the said Court.

Attendance of witnesses may be enforced.

13. It shall be lawful for the Arbitrators in any reference and for every person authorized to take the examination of parties or witnesses under any such Order or Commission to take the evidence of the parties and witnesses upon oath or on affirmation in cases where affirmation is allowed by law to be administered in an action And if upon such oath or affirmation any person shall wilfully give any false evidence he shall be deemed guilty of perjury.

Power to examine witnesses on oath or affirmation.

14. Provided always that no person shall be compelled under any such Order or by any Arbitrators to answer any question or produce any document that he would not be compelled to answer or produce at a trial or to attend and be examined on more than two consecutive days.

Witnesses to have same protection as on trials.

15. All evidence taken under any such Order or Commission shall be received by the Arbitrators saving all just exceptions in like manner as evidence taken under any Order or Commission made or issued by the said Court in a cause pending therein is received at the trial of such cause.

Evidence taken under Orders &c. to be received.

16. In every case of reference to Arbitration howsoever authorized in which an application is made to the Supreme Court to set aside the award the Court shall have power at any time to remit such award and the matters referred or any of them to the reconsideration and redetermination of the Arbitrators upon such terms as to costs and otherwise as to the said Court may seem proper And the Arbitrators shall thereupon have power within the time limited by the Court if any and if none be limited then within three months next following to reopen the matters so remitted and to make a new award or supplement or otherwise amend the award previously made as they shall think right.

Power to send back awards.

17. The Act third Victoria number four and sections two to eight inclusive of the Common Law Procedure Act of 1857 are hereby

3 Vic. No 4 repealed and sections 2 to 8 of 20 Vic. No. 31.