

No. XXXII.

An Act to amend and consolidate the law relating to Arbitration. [31st March, 1892.] ARBITRATION.

WHEREAS it is expedient to amend and consolidate the law relating to Arbitration: 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:—

References by Consent out of Court.

1. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a Judge, and shall have the same effect in all respects as if it had been made an order of Court.

2. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Act, so far as they are applicable to the reference under the submission.

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Power to stay proceedings where there is a submission.

3. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that Court to stay the proceedings, and that Court or a Judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

Power for the Court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

4. In any of the following cases:—

- (a) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator :
- (b) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy :
- (c) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him :
- (d) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy :

Any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

If the appointment is not made within seven clear days after the service of the notice, the Court or a Judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

Power for parties in certain cases to supply vacancy.

5. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—

- (a) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place ;
- (b) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent :

Provided that the Court or a Judge may set aside any appointment made in pursuance of this section.

Powers of arbitrator.

6. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

- (a) to administer oaths to or take the affirmations of the parties and witnesses appearing ; and
- (b) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court ; and

(c)

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(c) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

7. Any party to a submission may sue out a writ of subpœna *ad testificandum*, or a writ of subpœna *duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action: 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 Court.

Witnesses may be summoned by subpœna.

Proviso.

8. The time for making an award may from time to time be enlarged by order of the Court or a Judge, whether the time for making the award has expired or not.

Power to enlarge time for making award.

9. (I) In all cases of reference to arbitration the Court or a Judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

Power to remit award.

(II) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

10. (I) Where an arbitrator or umpire has misconducted himself, the Court may remove him.

Power to set aside award.

(II) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

11. An award on a submission may, by leave of the Court or a Judge, be enforced in the same manner as a judgment or order to the same effect.

Enforcing award.

References under Order of Court.

12. In any cause or matter (other than a criminal proceeding by the Crown),—

Power to refer in certain cases.

(a) If all the parties interested who are not under disability consent: or,

(b) If the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the Court or a Judge, conveniently be made before a jury or conducted by the Court through its other ordinary officers; or,

(c) If the question in dispute consists wholly or in part of matters of account;

the Court or a Judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before an arbitrator agreed on by the parties, or before a referee appointed by the Court or a Judge for the purpose.

13. (I) In all cases of reference under an order of the Court or a Judge in any cause or matter, the referee or arbitrator shall be deemed to be an officer of the Court, and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by Rules of Court, and subject thereto as the Court or a Judge may direct.

Powers and remuneration of referees and arbitrators.

(II) The report or award of any referee or arbitrator on any such reference shall, unless set aside by the Court or a Judge, be equivalent to the verdict of a jury.

(III) The remuneration to be paid to any referee or arbitrator to whom any matter is referred under order of the Court or a Judge shall be determined by the Court or a Judge.

14. The Court or a Judge shall, as to references under order of the Court or a Judge, have all the powers which are by this Act conferred on the Court or a Judge as to references by consent out of Court.

Court to have powers as in references by consent.

General.

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Power to compel attendance of witness, and to order *habeas corpus* to issue.

15. (i) The Court or a Judge may order that a writ of subpœna *ad testificandum* or of subpœna *duces tecum* shall issue to compel the attendance before a referee, or before any arbitrator or umpire, of a witness wherever he may be within the jurisdiction.

(ii) The Court or a Judge may also order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before a referee, or before any arbitrator or umpire.

Statement of case pending arbitration.

16. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a Judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

Judges may make general rules and orders.

17. The Judges of the Supreme Court, or any two of them, may, from time to time, make general rules and orders for carrying the purposes of this Act into effect.

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

18. In all cases of reference to arbitration under any authority whatsoever it shall be lawful for the Court, or a Judge thereof, 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 or Judge 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: Provided further that any person authorized to take the examination of parties or witnesses under any such order or commission shall take the evidence upon oath, or on affirmation in cases where affirmation is allowed by law to be administered in an action.

Witnesses to have same protection as on trials.

19. No person shall be compelled under any such order or by any arbitrator to answer any question he would not be compelled to answer at a trial.

Evidence taken under orders, &c., to be received.

20. 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 Court or a Judge in a cause pending therein is received at the trial of such cause.

Costs.

21. Any order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

Penalty for perjury.

22. Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open Court, and may be dealt with, prosecuted, and punished accordingly.

Government to be bound.

23. This Act shall apply to any arbitration to which the Government of the Colony is a party.

Application of Act to references under statutory powers.

24. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration, or with any rules or procedure authorized or recognized by that Act.

Saving for pending arbitrations.

25. This Act shall not affect any arbitration pending at the commencement of this Act, but shall apply to any arbitration commenced after the commencement of this Act under any agreement or order made before the commencement of this Act.

Repeal.

26. (i) The enactment described in the Second Schedule to this Act is hereby repealed, but this repeal shall not affect anything done

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or suffered, or any right acquired or duty imposed or liability incurred, before the commencement of this Act, or the institution or prosecution to its termination of any legal proceeding or other remedy for ascertaining or enforcing any such liability.

(II) Any enactment or instrument referring to any enactment repealed by this Act shall be construed as referring to this Act.

27. In this Act, unless the contrary intention appears,—

Definitions.

“Submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not;

“Court” means the Supreme Court, or a Judge thereof;

“Judge” means a Judge of the Supreme Court;

“Rules of Court” means Rules made as hereinbefore provided.

28. This Act may be cited as the “Arbitration Act, 1892.”

Short title.

SCHEDULES.

THE FIRST SCHEDULE.

PROVISIONS TO BE IMPLIED IN SUBMISSIONS.

a. If no other mode of reference is provided, the reference shall be to a single arbitrator.

b. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

c. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

d. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

e. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

f. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

g. The witnesses on the reference shall, if the arbitrators or umpire thinks fit, be examined on oath or affirmation.

h. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

i. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

THE SECOND SCHEDULE.

ENACTMENT.

Year and Number of Act.	Title of Act.	Extent of Repeal.
31 Vic. No. 15 ...	An Act to make Arbitration more effectual ...	The whole Act.