

ARBITRATION – SOME HISTORICAL ASPECTS

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Arbitration is, of course, a long established institution. History records many instances of arbitration. Arbitration was sometimes used to settle disputes between kings and princes.

Holdsworth in his History of English Law, Vol. V, p. 37, says that:

'Henry II in 1177 arbitrated between the kings of Castile and Navarre; Louis IX of France in 1264 arbitrated between Henry III and his barons; and Edward I in 1291 arbitrated between the thirteen competitors to the thorne of Scotland.'

It appears that in those turbulent centuries arbitration was somewhat more successful than conferences because Holdsworth also says:

'Sometimes attempts were made to settle disputes by a conference; but mutual distrust – justified by such events as the assassination of the Duke of Burgundy at Montereau – prevented this method from being much used.'

Holdsworth states at p.130 that in the 16th century:

'In the numerous mercantile and maritime cases which came before the Council there is usually a direction that they were to be settled by arbitration; and among the arbitrators there were usually merchants.'

It is clear that in the 17th century merchants in many cases preferred to take their cases to arbitration. This is apparent from two statutes passed in 1698 in both the English and the Irish Parliaments.

You may find much with which you agree in the clear and elegant words of the Act passed by the Irish Parliament in 1698 which gave facilities for the enforcement of awards obtained in arbitrations. That Act had the short titles:

'An Act for determining Differences by Arbitration'

and was worded as follows:

'WHEREAS it hath been found by experience, that references made by rule of court hath contributed much to the ease of the subject, in determining controversies, because the parties become thereby obliged to perform the award of arbitrators chosen by themselves, under the penalty of imprisonment for their contempt, in case they refuse to perform the same: now for promoting trade, and rendering the awards of arbitrators the more effectual in all cases, for the final determination of controversies referred to them by merchants and traders, or others, containing

matters of account or trade, or other matters; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present Parliament assembled, and by authority of the same, That from and after the first day of March which shall be in the year of our Lord one thousand six hundred ninety eight, it may be lawful for all merchants, traders and others, desiring to end by arbitration any controversy, sute, or quarrel, controversies, sutes, or quarrels, for which there is no other remedy by personal action or sute in equity, to agree that their submission of the matter to the award or umpirage of any person or persons should be made a rule of any of his Majesty's courts of record, which the parties shall chuse, and to insert such their agreement, in their submission, or the condition of the bond or promise, whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons; which agreement being so made, and inserted in their submission or promise, or condition of their respective bonds, shall or may, upon producing an affidavit thereof made by the witnesses thereunto, or any one of them, in the court of which the same is agreed to be made a rule, and reading and filing and said affidavit in court, be entered of record in such court; and a rule shall be thereupon made by the said court, that the parties shall submit to, and finally be concluded by, the arbitration or umpirage, which shall be made by arbitrators or umpire pursuant to such submission: and in case of disobedience to such arbitration or umpirage, the party neglecting or refusing to perform or execute the same, or any part thereof, shall be subject to all the penalties, by the course and practice of such court usually inflicted on such as contemn a rule of the said court, made in a cause depending therein, and the court on motion shall issue process accordingly; which process shall not be stopped or delayed in its execution by any order, rule, command, or process of any other court, either of law or equity, unless it shall be made appear on oath to such court, that the arbitrators or umpire misbehaved themselves, and that such award, arbitration, or umpirage, was procured by corruption or other undue means.

II. And be it further enacted by the authority aforesaid, That any arbitration or umpirage, procured by corruption or undue means, shall be adjudged and esteemed void and of none effect, and accordingly be set aside by any court of law or equity; so as complaint of such corruption or undue practice be made in the court, where the rule is made for submission to such arbitration or umpirage, before the last day of the next term after such arbitration or umpirage made and published to the parties; any thing herein contained to the contrary notwithstanding.'