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VICTORIÆ REGINÆ.

A.D. 1891.

No. 510.

An Act for amending and consolidating the Law relating to Arbitration.

[Assented to, October 14th, 1891.]

BE it Enacted by the Governor of the Province of South Australia, by and with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, 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 thereof, and shall have the same effect in all respects as if it had been made an order of Court.

Submission to be irrevocable and to have effect of 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.

Provisions implied in submissions.

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, before taking any step in the proceedings, apply to that Court to stay the proceedings; and that Court, or a Judge or Special Magistrate thereof, if satisfied that there is no sufficient reason why the matter should not be referred

Power to stay proceedings where there is a submission.

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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 days after the service of the notice, the Court or a Judge thereof 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 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

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

6. The arbitrators or umpire shall, unless the submission expresses a contrary intention, have power— Powers of arbitrator.

(a) To administer oaths to or take the affirmations of the parties and witnesses appearing; and

(b) To state their award as to the whole or part thereof in the form of a special case for the opinion of the Court; and

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

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

8. (1) In all cases of reference to arbitration the Court or a Judge thereof 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.

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

9. (1) Where an arbitrator or umpire has misconducted himself, the Court may remove him. Power to remove arbitrator and set aside award.

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

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

References under Order of Court.

11. (1) Subject to rules of Court and to any right to have particular cases tried by a jury, the Court or a Judge thereof may refer any question arising in any action, cause, or matter (other than a criminal proceeding) for inquiry or report to any special referee. Reference for report.

(2) The report of a special referee upon such reference may be adopted wholly or partially by the Court or a Judge thereof, and if so adopted may be enforced as a judgment or order to the same effect.

12. In any action, cause, or matter (other than a criminal proceeding)— Power to refer in certain cases.

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

(b) If

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(b) If the action, 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 thereof may at any time order the whole action, cause, or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an officer of the Court.

Powers of referees and arbitrators.

13. (1) In all cases of reference to a special referee or arbitrator under an order of the Court or a Judge in any action, cause, or matter, the special 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 thereof may direct.

(2) The report or award of any special referee, arbitrator, or officer shall, unless set aside by the Court or a Judge thereof, be equivalent to the verdict of a jury.

Remuneration.

(3) The remuneration to be paid to any special 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 thereof.

General.

Proceedings to be continued in same Court.

14. After any application or other proceeding shall have been made or taken in any Court, all future proceedings in respect to the same arbitration shall be taken and made in the same Court.

Costs not recoverable.

15. No party taking proceedings in the Supreme Court which might have been taken before a Local Court shall recover the cost of such proceedings.

Proceedings may be removed from Local Court to Supreme Court.

16. The Supreme Court and a Judge thereof shall have the same power to remove any proceedings from a Local Court into the Supreme Court, and to remit any matter in any proceedings for trial in a Local Court, as if such proceedings were an action for the subject-matter of the arbitration.

Appeals from order of Local Court.

17. Every order and decision of a Local Court or Special Magistrate (whether in an action or in the matter of an arbitration upon a submission) upon an application—

(a) To appoint an arbitrator or umpire:

(b) To set aside the appointment of any arbitrator to act as sole arbitrator:

(c) To

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- (c) To remove an arbitrator or umpire:
 (d) To set aside an award: or
 (e) To remit matters to the reconsideration of the arbitrators or umpire:

shall be subject to the like appeal as a judgment in an action in respect of the subject-matter of the arbitration.

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

19. (1) Any party to a reference or arbitration, whether under a submission or an order of a Court or Judge, may sue out a writ of subpœna *ad testificandum* or a writ of subpœna *duces tecum*, or a summons to witnesses (according to the Court having jurisdiction), 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. Witnesses may be summoned.

(2) The Court or a Judge thereof may order that a writ of *habeas corpus ad testificandum* shall issue, or may (according to the Court having jurisdiction) make an order, under section 249 of the "Local Courts Act, 1886," to bring up a prisoner for examination before a special referee, or before any arbitrator or umpire. Power to order *habeas corpus* to issue.

20. 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, except as hereinbefore provided. Statement of case pending arbitration.

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. Costs.

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. Penalty for perjury.

23. 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 authorised or recognised by that Act. Application of Act to references under statutory powers.

24. This Act shall not affect any arbitration pending at the commencement of this Act, but shall apply to any arbitration commenced Saving for pending arbitrations.

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commenced after the commencement of this Act under any agreement or order made before the commencement of this Act.

Repeal.

25. (1) Upon the passing of this Act the Acts of the Imperial Parliament of Great Britain described in the first part of the Second Schedule to this Act shall, to the extent in the said schedule mentioned, cease to be in force in the Province of South Australia.

(2) The Acts of the Parliament of South Australia described in the second part of the Second Schedule to this Act are hereby repealed to the extent therein mentioned.

(3) Nothing contained in this section shall affect anything done or suffered, or any right acquired or duty or liability imposed or 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.

(4) Any Act or instrument referring to any Act described in the Second Schedule to this Act shall be construed as referring to this Act.

Rules may be made.

26. Rules of Court may be made for carrying this Act into effect.

Definitions.

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

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

“Court”—

(a) In the application of this Act to any action and proceeding in any Court, means such last-mentioned Court;

(b) In the application of this Act to every arbitration pursuant to a submission where it shall appear by the submission or be proved that the matters in dispute are within the jurisdiction of a Local Court, means and includes—

(1) The Supreme Court of South Australia; or

(2) The Local Court having jurisdiction to the amount or value of property in dispute nearest to the place where the arbitration is being conducted; or

(3) The Local Court which would have had jurisdiction in an action in respect of the subject-matter of the arbitration if such action were brought by the party taking proceedings in the matter of the reference:

(c) In the application of this Act to every other case, means the Supreme Court of South Australia.

“Judge”

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“Judge” means and includes a Judge of the Supreme Court of South Australia, and the Special Magistrate of a Local Court.

“Rules of Court” means and includes rules of the Supreme Court made by the proper authority under the “Supreme Court Act, 1878,” and rules made by the proper authority under section 28 of the “Local Courts Act, 1886.”

28. This Act may be cited as the “Arbitration Act, 1891.”

Short title.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

KINTORE, Governor.

SCHEDULES.

THE FIRST SCHEDULE.

*Provisions to be Implied in Submissions.***First Schedule.**

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 think 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.

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THE SECOND SCHEDULE.

Acts Repealed.

Second Schedule.

Session and Chapter of Imperial Act, and Year and Number of South Australian Act.	Title or Short Title.	Extent of Repeal.
9 Will. III. c. 15.	FIRST PART. An Act for determining differences by arbitration.	The whole Act.
3 & 4 Will. IV. c. 42.	An Act for the further amendment of the law and the better advancement of Justice.	Sections thirty-nine to forty-one, both inclusive.
1855-6, No. 24	SECOND PART. The Supreme Court Procedure Act, 1855.	Sections two to eleven, both inclusive.
1866-7, No. 20	The Equity Act, 1866.	Sections one hundred and nineteen to one hundred and twenty-two, both inclusive.
1878, No. 116	Supreme Court Act, 1878.	Sections twenty-six, twenty-seven, and twenty-eight.
1886, No. 386	Local Courts Act, 1886.	Sections one hundred and twenty-one and one hundred and twenty-two.