

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed as now printed, is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.  
Legislative Council,  
10th July, 1890.

Hon. Sir F. Whitaker.

ARBITRATION.

ANALYSIS.

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A BILL INTITULED

AN ACT for amending and consolidating the Enactments relating to Arbitration. Title.

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

- 1. The Short Title of this Act is "The Arbitration Act, 1890." Short Title.
- 2. This Act shall commence and come into operation on the first day of January, one thousand eight hundred and *ninety-one*. Commencement.
- 3. In this Act, unless the context otherwise requires,— Interpretation.
  - " Court " means the Supreme Court of New Zealand :
  - " Judge " means a Judge of such Supreme Court :
  - " Rules of Court " means rules of the Court of Appeal of New Zealand, or of the said Supreme Court, made by the proper authority under this Act :
  - " Submission " means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

## REFERENCES BY CONSENT OUT OF COURT.

Submission to be irrevocable, and to have effect as an order of Court.

4. 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. 5

Provisions implied in submissions.

5. 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.

Power to stay proceedings where there is a submission.

6. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in the 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. 10 15 20

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

7. 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: 25
- (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: 30
- (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: 35

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. 40

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. 45

8. 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: 50

(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:

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

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

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

Powers of arbitrator.

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10. 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.

Witnesses may be summoned by *subpœna*.

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11. 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.

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12. (1.) 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.

(2.) 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.

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13. (1.) Where an arbitrator or umpire has misconducted himself the Court may remove him.

(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.

Power to set aside award.

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14. 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.

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

Power to refer in certain cases.

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- (a.) If all the parties interested who are not under disability consent; or,
- (b.) 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 an officer of the Court.

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Powers and remuneration of referees and arbitrators.

16. (1.) In all cases of reference to an arbitrator under an order of the Court or a Judge in any cause or matter the 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 5 direct.

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

(3.) The remuneration to be paid to any arbitrator to whom any 10 matter is referred under order of the Court or a Judge shall be determined by the Court or a Judge.

Court to have powers as in references by consent.

17. 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 15 Court.

Court of Appeal to have powers of Court.

18. The Court of Appeal of New Zealand shall have all the powers conferred by this Act on the Court or a Judge thereof under the provisions relating to references under order of the Court.

#### GENERAL.

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Power to compel attendance of witness in any part of New Zealand, and to order *habeas corpus* to issue.

19. (1.) 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 any arbitrator or umpire of a witness wherever he may be within New Zealand.

(2.) The Court or a Judge may also order that a writ of *habeas 25 corpus ad testificandum* shall issue to bring up a prisoner for examination before any arbitrator or umpire.

Statement of case pending arbitration.

20. Any 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 30 any question of law arising in the course of the reference.

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.

Arbitrator or umpire entitled to remuneration.

22. An arbitrator or umpire shall be entitled to a reasonable 35 remuneration for his services as such arbitrator or umpire, and if the parties to the submission do not agree as to the amount to be paid, or as to the mode and time of payment, a Judge may, on a summary application to him for that purpose, fix and determine all or any of such matters.

Exercise of powers by Registrars and other officers.

23. The power of making, altering, or revoking rules from time to time under "The Court of Appeal Act, 1882," and "The Supreme Court Act, 1882," shall respectively extend and apply to all matters and things for which it may be necessary to make rules for the purpose of giving effect to this Act in the said Court of Appeal or 45 the Supreme Court.

Penalty for perjury.

24. Any person who wilfully and corruptly gives false evidence before any 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. 50

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25. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which Her Majesty the Queen, in right of the Crown, is a party; but nothing in this Act shall empower the Court or a Judge to order any proceedings to which Her Majesty is a party, or any question or issue in any such proceedings, to be tried before any arbitrator or officer without the consent of Her Majesty, or shall affect the law as to costs payable by the Crown.

Crown to be bound.

26. 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.

27. 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.

Saving for pending arbitrations.

28. (1.) The enactments described in the *Second Schedule* to this Act are hereby repealed to the extent therein mentioned; but this repeal shall not affect anything done 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.

Repeal.

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

## SCHEDULES.

Schedules.

### 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 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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## SECOND SCHEDULE.

### ENACTMENTS REPEALED.

#### *Imperial Acts.*

9 Will. III., c. 15.—“ 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.” *In part*, namely, sections thirty-nine to forty-one both inclusive.

#### *New Zealand Act.*

1866, No. 18.—“ The Supreme Court Practice and Procedure Amendment Act, 1866.” So much thereof as is unrepealed, *i.e.*, sections twelve to eighteen both inclusive.