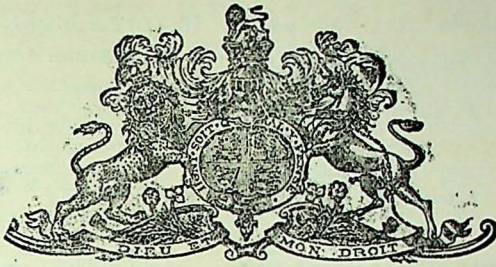


THE



# Bombay Government Gazette.

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Separate paging is given to this Part, in order that it may be filed as a separate compilation.

## PART VI.

### BILLS OF THE GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd September, 1898:—

No. 8 of 1898.

#### *A Bill to amend the Law relating to Arbitration.*

WHEREAS it is expedient to amend the law relating to arbitration by agreement without the intervention of a Court of Justice; It is hereby enacted as follows:

Short title, extent and commencement.

1. (1) This Act may be called the Indian Arbitration Act, 1898.

(2) It extends to the whole of British India; and  
(3) It shall come into force at once.

2. This Act shall apply only in cases where, if the subject-matter submitted to arbitration were the subject of a suit, the suit could be instituted in a Presidency-town:

Application.

Provided that the Local Government may, by notification in the local official Gazette, declare this Act applicable in any other local area as if it were a Presidency-town:

3. Sections 523 to 526 of the Code of Civil Procedure are hereby repealed as regards the Presidency-towns, and shall be repealed as regards any local area to which this Act may hereafter be applied by notification under the last foregoing section, with effect from the date of such notification:

Repeal.

Provided that nothing in this Act shall affect any arbitration pending in a Presidency-town at its commencement or in any local area at the date of its application as aforesaid, but shall apply to every arbitration commenced after the commencement of this Act or the date of its application, as the case may be, under any agreement previously made.

[52 and 53  
Vict., c. 49.  
s. 25.]

4. In this Act, unless there is anything repugnant in the subject or context,—

(a) "the Court" means, in the Presidency-towns, the High Court and, elsewhere, the Court of the District Judge; and

(b) "submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

5. A submission, unless a different intention is expressed therein, shall be irrevocable except by leave of Court.

[Ibid., s. 1.]

6. A submission, unless a different intention is expressed therein, shall be deemed to include the provisions set forth in the first schedule, in so far as they are applicable to the reference under submission.

[Ibid., s. 2.]

7. The parties to a submission may agree that the reference shall be to an arbitrator or arbitrators to be appointed by a person designated therein.

Reference to arbitrator appointed by third person.



*Illustration.*

The parties to a submission may agree that any dispute arising between them in respect of the subject-matter of the submission shall be referred to an arbitrator appointed by the Calcutta Chamber of Commerce.

[52 & 53 Vict., c. 49, s. 5.] Power for the Court in certain cases to appoint an arbitrator, umpire or third arbitrator.

8. (1) 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.

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

[111, s. 6.] 9. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed therein,—

(1) 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 ;

(2) 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 a written 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 may set aside any appointment made in pursuance of this section.

10. (1) The arbitrators or umpire acting under a submission shall, unless a different intention is expressed therein,—

- (a) have all the powers of a Civil Court in respect of the summoning and examining of witnesses and the issuing of process for the production of documents ;
- (b) have power to state a special case for the opinion of the Court on any question of law involved ; and
- (c) have power to correct in a submission or award any clerical mistake or error arising from any accidental slip or omission.

(2) Every proceeding before an arbitrator or arbitrators under this Act shall be deemed to be a judicial proceeding with the meaning of the Indian Penal Code.

11. (1) When the arbitrators or umpire have made their award, they shall sign it and, at the request of any party thereto or any person claiming under him, cause it, or a signed copy of it, to be filed into the Court, and notice of the filing shall be given to the parties to the submission.

(2) Where the arbitrators or umpire state a special case under Section 10, sub-section (1), clause (b), the Court shall deliver its opinion thereon ; and such opinion shall be added to, and shall form part of, the award.

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

13. (1) The Court may from time to time remit the award to the reconsideration of the arbitrators or umpire.

(2) Where an award is remitted under sub-section (1), the arbitrators or umpire shall, unless the Court otherwise directs, make a fresh award within three months after the date of the order remitting the award.

14. (1) An award on a submission, on being filed in the Court in accordance with the foregoing provisions, shall be enforceable as if it were a decree of the Court :

Provided that, where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set aside the award.

(2) An award may be conditional or in the alternative.

*Illustration.*

A dispute concerning the ownership of a diamond ring is referred to arbitration. The award may decree that the party in possession shall pay the other party rupees one thousand, the said sum to be reduced to rupees five, if the ring is returned within fourteen days.



[*Ibid.*, s. 11 (1)] 15. Where an arbitrator or umpire has mis-  
Power to remove arbitra- conducted himself the  
tor or umpire. Court may remove him.

[*Ibid.*, s. 20.] 16. Any order made under this Act may be  
Costs. made on such terms as to  
costs or otherwise as the  
authority making it thinks fit.

[New.] 17. The forms set forth in the second schedule,  
Forms. or forms similar thereto,  
with such variations as  
the circumstances of each case require, may  
be used for the respective purposes there men-  
tioned, and, if used, shall not be called in ques-  
tion.

Power for High Court to 18. The High Court  
make rules. may make rules consistent  
with this Act as to—

- (a) the filing of awards and all proceedings  
consequent thereon or incidental thereto;  
(b) the filing and hearing of special cases and all  
proceedings consequent thereon or incidental  
thereto; and,  
(c) generally, all proceedings in Court under  
this Act.

I of 1877. 19. In section 21 of the Specific Relief Act,  
1877, after the words  
Amendment of Section 21, "Code of Civil Proce-  
Act I, 1877. dure" the words and  
figures "and the Indian Arbitration Act, 1899,"  
shall be inserted, and for the words "a contro-  
versy" the words "present or future differences"  
shall be substituted.

[52 & 53, 20. The provisions of this Act shall be binding  
Vict., c. 49, on the Crown.  
s. 23.]

### THE FIRST SCHEDULE.

(See Section 6.)

*Provisions to be implied in submissions.*

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

II. 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.

III. 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.

IV. 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.

V. 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.

VI. The parties to the reference, and all persons  
claiming through them respectively, shall, subject to  
*the provisions of any law for the time being in force*,  
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 pos-  
session 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.

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

VIII. 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.

IX. The costs of the reference shall be in the dis-  
cretion 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.

(See Section 17.)

FORM I.

*Submission to single arbitrator.*

In the matter of the Indian Arbitration Act,  
1899:—

Whereas differences have arisen and are still sub-  
sisting between A. B. of and C. D. of ;

Now we, the said A. B. and C. D., do hereby agree  
to refer all matters in difference between us to the  
award of X. Y.

(Signed) A. B.

C. D.

Dated the 189 .

FORM II.

*Submission of particular dispute to single arbitrator.*

In the matter of the Indian Arbitration Act,  
1899:—

Whereas differences have arisen and are still sub-  
sisting between A. B. of and C. D. of  
concerning

Now we, the said A. B. and C. D., do hereby agree  
to refer the said matters in difference to the award  
of X. Y.

(Signed) A. B.

C. D.

Dated the 189 .

FORM III.

*Appointment of single arbitrator under agreement to  
refer future differences to arbitration.*

In the matter of the Indian Arbitration Act,  
1899:—

Whereas, by an agreement in writing, dated the  
day of , 18 , and  
made between A. B. of and C. D. of  
, it is provided that differences arising be-  
tween the parties thereto shall be referred to an  
arbitrator as therein mentioned;



And whereas differences within the meaning of the said provision have arisen and are still subsisting between the said parties ;

Now we, the said parties, A. B. and C. D., do hereby refer the said matters in difference to the award of X. Y.

(Signed) A. B.  
C. D.

Dated the \_\_\_\_\_, 189 .

FORM IV.

*Enlargement of time by arbitrator by endorsement on submission.*

In the matter of the Indian Arbitration Act, 1899, and an arbitration between A. B. of \_\_\_\_\_ and C. D. of \_\_\_\_\_ :—

I hereby enlarge the time of making my award in respect of the matters in difference referred to me by the within (or above) submission until the day of \_\_\_\_\_ 189 .

(Signed) X. Y.,

Dated the \_\_\_\_\_, 189 . Arbitrator.

FORM V.

*Special case.*

In the matter of the Indian Arbitration Act, 1899, and an arbitration between A. B. of \_\_\_\_\_ and C. D. of \_\_\_\_\_ :—

The following special case is, pursuant to the provisions of section 10, sub-section (1), clause (b), of the said Act, stated for the opinion of the

\* :—

\* Here specify the Court.

(Here state the facts concisely in numbered paragraphs).

The questions of law for the opinion of the said Court are :—

First, whether \_\_\_\_\_

Secondly, whether \_\_\_\_\_

(Signed) X. Y.,

Dated the \_\_\_\_\_, 189 . Arbitrator.

FORM VI.

*Award.*

In the matter of the Indian Arbitration Act, 1899, and an arbitration between A. B. of \_\_\_\_\_ and C. D. of \_\_\_\_\_ :—

Whereas in pursuance of an agreement in writing, dated the \_\_\_\_\_ day of \_\_\_\_\_, 189 , and made between A. B. of \_\_\_\_\_ and C. D. of \_\_\_\_\_, the said A. B. and C. D. have referred to me, X. Y., all matters in difference between them (or as the case may be) ;

Now I, the said X. Y., having duly considered the matters submitted to me, do hereby make my award as follows :—

I order—

(1) that \_\_\_\_\_

(2) that \_\_\_\_\_

(Signed) X. Y.,

Dated the \_\_\_\_\_, 189 . Arbitrator.

STATEMENT OF OBJECTS AND REASONS.

THIS Bill has been drawn on the lines of the English Arbitration Act of 1889, and is the outcome of certain representations received from the Chambers of Commerce at Rangoon, Karachi and Cawnpore. The proposal thus made has been circulated for opinion and has elicited very general support, including that of the Bengal, Madras and Bombay Chambers of Commerce, the Bengal National Chamber of Commerce and the British Indian Association.

2. The case for legislation is based upon the inadequacy of the existing law. The provisions on the subject, which are now to be found in the Contract and Specific Relief Acts, amount to this, that, if a person who has contracted to refer to arbitration any dispute that may arise between him and another, refuses to do so, his contract will be a bar to his afterwards bringing a suit in respect of the matter which he originally agreed so to refer. These provisions are, however, of a negative kind and ineffective in practice, for the recusant party has, as a rule, only to remain inactive in order to be bound and the reach of the other party. The Code of Civil Procedure, no doubt, aims at what is required, but the sections in point are defective in that—

(1) they have been held to apply only to disputes which have arisen at the time of the agreement to refer, and not to disputes which may arise in the future ; and

(2) they require the agreement to refer either to name the particular arbitrator or to leave the Court to appoint one.

3. The first of these defects has been to some extent removed by the recent Full Bench ruling of the Bombay High Court in the case of *Fazulbhoj Mehrali Chinoy v. The Bombay and Persia Steam Navigation Company, Limited*, I. L. R. 20 Bom. 232, in which it was held that the Code does apply to future disputes. But the second defect remains, with the result that the case of an agreement to refer, for example, "to the arbitration of a person to be nominated by the Bengal Chamber of Commerce," is apparently unprovided for. Moreover, it is uncertain whether the other High Courts will follow the Bombay Judges, while the ruling of the latter itself shows that the provisions of Chapter XXXVII of the Code, which it is proposed to supersede, require revision in view of the many conflicting decisions regarding them which are to be found in the Law Reports.

4. The measure is drawn so as to apply in the first instance to the Presidency-towns alone and to be capable of further extension should that be deemed desirable.

(Signed) M. D. CHALMERS.

J. M. MACPHERSON,

Secretary to the Government of India.

The 31st August 1898.