

THE EXTENSION TO IRELAND OF THE ARBITRATION ACT, 1889.

BY CHARLES A. STANUELL, ESQ., M.A.

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ARBITRATION may perhaps be defined as the mode of settling disputes and adjusting difficulties by other tribunals than the ordinary law courts of a country. It would not serve any useful purpose to inquire into its origin, it is probably as old as commerce and trade. It is so natural that merchants and traders should have their own tribunals conversant with their particular usages, that it does not seem to have occurred to Governments generally to interfere with them up to quite modern times.

As a matter of fact, the first British statute connected with arbitration is only 200 years old. It does not deal with the procedure of an arbitration, and simply provides that, as it had been found increasingly difficult to have arbitrations enforced, it should be open to the parties to apply to the ordinary law courts to have the awards converted into rules or orders of Court, and enforceable by the same means. The procedure in question was laid down in England by the 9 William III., c. 15, re-enacted in Ireland by the 10th William III., c. 14, and the statute is practically a one-clause Act devoted to this single subject.

The statute did not define what constituted an arbitration, that is to say, what were its essential requirements, and this omission provided the Courts of the period with abundant opportunities for dealing with awards, so that in the course of time the law became in some respects settled by successive judicial utterances, and the correct forms of submission to arbitration, the rules of procedure, the obtaining of evidence, and the form of award which would, in vulgar language, "hold water," became known to some extent, and these *dicta* of the Judges were, in England, consolidated into a Code by the Act of 1889.

In Ireland these *dicta* have never been thus consolidated, they are scattered to this day over hundreds of legal decisions, which are themselves scattered over 200 years of time. I counted 334 leading cases on arbitration cited in Judge Wiley's Judicature Act, each dealing with technical points, and which had to be balanced one against the other in considering cases of arbitration. It follows that arbitration proceedings,

which were originally intended for small difficulties and to obviate expense, have become highly technical and full of pitfalls.

I must here point out an exception which appears to have led to a mistake. When I say that there is no arbitration code, I mean that in Ireland there is no general code applicable to commercial and trading disputes, or to arbitrations generally, but there is a mode of procedure for acquiring land for railways and other purposes, laid down by the Lands Clauses Act, 1845, and the Irish Railway Acts, 1851 and 1860, which has been incorporated with the various Acts connected with laborers' cottages and similar undertakings.

This system, however, relates solely to the acquisition of *land* for various purposes, such as drainage, water supply, reservoirs, etc., but arbitration in its wide sense of commercial, financial and trading business depends to this day upon "case-made" law founded on the old statute of 10th William III, c. 14, and there is no code systematising arbitration procedure for commercial and trade purposes in Ireland. I may mention that the old English Act of 9 William III., c. 15, was repealed by the Arbitration Act of 1889.

On the other hand the English law on the subject as codified by the Arbitration Act, 1889, has a regular code of rules and regulations for submitting cases to arbitration, appointment of arbitrators, rules of procedure before them, and forms of award, and, as we shall see later on, the general reports from business centres in England are greatly in its favour.

It is perhaps a little singular that Ireland was excepted from the Arbitration Act of 1889, for there was for many years a celebrated Dublin Arbitration Court called the "Ouzel Galley."

As many people know, this Court or Association originated in the law-suits which arose in connection with a Dublin ship or galley, called the "Ouzel," which was captured by pirates in the Mediterranean, but which eventually got free and returned to Dublin.

The then Courts of Law attempted to deal with the conflicting claims of owners, crews, freighters, consignees, salvors, etc., but failed utterly, and at last the proceedings were referred to arbitration in 1707, early in the reign of Queen Anne, and a satisfactory decision was arrived at. So pleased were the merchants and others, that they made the curious court permanent, and it retained its character for a long time, but gradually it became a convivial club more than anything else, and eventually was dissolved in 1888, exactly one year before the English Arbitration Act was passed.

Nothing was done by Parliament up till 1889 to amend the general law of arbitration as related to commercial matters

and other general business. It was still based upon "Case Law," the general results of the 334 more or less conflicting cases and decisions I have already alluded to, and was proverbial for uncertainty and expense.

This uncertainty still remains the characteristic of Irish arbitrations, other than those under the Lands Clauses Act and Irish Railways Acts, but in the year 1889 the merchants and traders of England succeeded in obtaining a general Act codifying the various legal decisions hitherto only to be found by wading through volumes of legal decisions.

Most unfortunately, as it seems to me, this Act does not apply to Ireland, and we are left to the uncertainties of Case Law. How this occurred I am completely at a loss to understand, possibly the Irish members opposed the idea, forgetting that the old Irish "Ouzel Galley" had been a most successful national Irish institution, but, whatever the reason, Ireland was excepted from the operation of the statute, and it would hardly serve any useful purpose to inquire into the reason. We must only accept the fact, and seek to apply a remedy.

I now propose to give a short summary of the English Act:—

Section 1 provides that "a submission is to be irrevocable, and may be entered to have effect as an order of the Court," that is, the marginal note of the section.

In Ireland the loser often tries to set aside the proceedings on some technical point.

By the second section various provisions are attached to all submissions, that is to say, implied, whether actually inserted in the submission or not; it is well to mention them, as uncertainty on these points is the great defect in the Irish system.

1. Unless otherwise stated, the reference is to one arbitrator.
2. If the submission be to two, they may at any time before the award appoint an umpire.
3. The arbitrator's award is to be made within three months unless he extend the time.
4. If the arbitrators announce that they cannot agree, the umpire may forthwith take up the case.
5. He is to make his award within one month from the expiration of the original time, but may extend it.
6. The parties and those under them are to submit to examination, and produce papers, etc., in evidence.
7. The arbitrators may call witnesses, etc.
8. The award is final and binding.
9. The arbitrator has power to award costs and tax and settle them.

In Ireland these provisions are not implied in this complete form, and the submission requires high technical skill in drafting.

Section 3 enacts that where the submission provides for a reference to an official referee, he is to determine the reference.

There is no such procedure in Ireland.

Section 4 prevents a third party from taking legal proceedings in respect of a matter already the subject matter of arbitration proceedings, unless with the leave of a Court, or Judge.

Section 5 provides that where the parties cannot agree as to arbitrators or umpire, one party may apply to the Court to name an arbitrator or umpire.

Section 6 provides for a vacancy occurring.

Section 7 defines the powers of the arbitrator.

Section 8 provides for summoning witnesses.

Section 9 allows the time for completing an award to be extended by an application to a Court. This provision is necessary owing to the provisions of Section 2 limiting the time.

Section 10 enables a Court to refer an award back to arbitrators. This is also necessary because, by Section 1, a submission to arbitration is irrevocable.

Section 11 provides for setting aside an award if an arbitrator or umpire misconduct himself.

Section 12 provides for enforcing an award.

Sections 13 to 17, both inclusive, deal with another provision of the Act, which is of the utmost value in technical cases. They provide that a Court may refer a matter requiring expert knowledge to a special referee, who may determine the matter, and unless set aside by a Court or a Judge his decision is equivalent to the verdict of a jury.

This procedure is exceptionally valuable in commercial, financial, and shipping cases, all of which abound with usages and technical expressions incomprehensible to the ordinary jurymen. The verdict of a jury in such cases under the existing Irish system is well-nigh a matter of chance.

These 17 Sections practically exhaust the Act. It will be sufficient to mention the subjects with which the remaining Sections deal.

18 and 19.—Witnesses.

20.—Costs.

21.—Powers of junior officials of the Courts.

22.—Penalties for perjury.

23.—The rights of the Crown.

24.—Extends the Act to every arbitration past or present except so far as the Act is inconsistent with the old.

25.—A saving clause for actual pending arbitrations.

26 to 30.—These provide for the repeal of old Acts, Definitions, the extent of the Act, the date of commencement of the Act, and the Short Title.

It will be seen from this summary that the English Act abolishes all the "Case Law" which had gradually grown up in that country, and substitutes a complete Code. As already mentioned, in Ireland there is no Code, and all the old cases which formerly affected England still affect Ireland and lead to great confusion, uncertainty and expense.

From 1889 no change was made in Ireland, but in 1909 the matter was brought before the Dublin Chamber of Commerce, at which the general good working of the English Act was referred to, and a resolution was proposed :—

"That the Government be requested to extend to Ireland the principle of the Arbitration Act, 1889, being a consolidation Act codifying the law as to arbitration."

An amendment was moved :—

"That the matter be referred to the Council, and that they be requested to consider the question, and to take such steps as they thought necessary,"

and this amendment was accepted and passed.

The Council thereupon proceeded to ascertain the views of various authorities, including Chambers of Commerce, as to the working of the English Act.

So far as I know, the only place which gave an unfavorable answer was Birmingham ; it was that there were but few cases heard. The Bradford Chamber not only stated that the Act worked well, but they forwarded a copy of their Report for the last year, showing that their Chamber had dealt during that period with 35 cases very satisfactorily and cheaply, and the Secretary forwarded a very concise printed form containing a draft submission, appointment of arbitrators, award, etc.

Anyone who has had personal experience, as I have, of the settling either a submission, appointment or award to comply with the requirements of the Case Law of Ireland, will understand the immense saving of time and trouble and expense due to the English Act.

The Newcastle Chamber has a regular mode of procedure based on the Act of 1889, with printed rules, of which they sent a copy, and the Manchester and Sheffield Chambers both reported favourably.

The London Chamber forwarded a mass of information, including the rules of their Court, and a variety of particulars, all testifying to the complete success of the procedure, and Sir Albert Rollit, the President, wrote strongly in favour of the institution and the success which had attended its efforts.

On the other hand, the Belfast Chamber, which had been asked for their opinion of the present state of the law in

reference to arbitration proceedings in Ireland, reported that it was most unsatisfactory.

Armed with these replies, among others, the Council of the Chamber of Commerce then applied to the Lord Lieutenant to extend the English Act of Parliament to Ireland, with such provisions as were necessary to render it suitable to this country. As a matter of fact, these are of the most trivial character, the only really troublesome matter would be the schedule of Acts of Parliament, which would have to be repealed, commencing with the original Irish Act of the 10th William III., c. 14, though even this would not involve anything like a day's work. I have actually prepared it myself, so I am speaking from personal experience.

I am not fully acquainted with the correspondence which ensued, but matters culminated with a letter from the Under-Secretary, which is published in the Report of the Council of the Chamber of Commerce for the present year, and which is as follows :—

“Dublin Castle, 21st July, 1909.

“SIR,

“I am directed by the Lord Lieutenant to acknowledge the receipt of your letter of the 7th instant, in reference to the application of the Dublin Chamber of Commerce for a change in the law of Arbitration in Ireland, and to state that the Chamber of Commerce *appear to be under a complete misapprehension in supposing* that the procedure in Ireland in Arbitration Cases is based upon a statute of 1698. The Common Law Procedure Act, 1856, incorporated by the Judicature Act, 1877 (Section 60), *provides a complete code of Arbitration Law*, which His Excellency is advised has worked with as much smoothness and as little expense as can be expected from any system. The Irish Government, therefore, can see no advantage to be obtained by extending the English Act of 1889 to Ireland.”

It is not necessary for my present purpose to enter upon the question whether this letter be accurate. In the opinion of very many people, the sections of the Common Law Procedure Act which are referred to do not provide any code for the conduct of commercial and trading arbitrations, but the old Act of 10 William III., c. 14 is still unrepealed, and is the basis of Irish procedure.

The complaint of the Dublin Chamber of Commerce was that commercial arbitrations were unsatisfactory and expensive. They found that in England there was a Codifying Act, and learned on inquiry that it worked satisfactorily, and thereupon they applied that it should be extended to Ireland.

It follows that the assurance that the Common Law Procedure Act "provides a complete code of Arbitration Law"—which is not admitted to be accurate—is of no importance, for the real question is whether the system in force in Ireland is satisfactory, and that is the very point which the Dublin Chamber denies, an opinion which is shared by the Belfast Council.

In fact, what they wish for is to have the English system of procedure at arbitrations with a simple concise set of rules for the submission, the appointment of arbitrators, and the obtaining of an award within a definite time which would be final and binding, subject of course to any question of fraud or other defect which could be dealt with in the Courts under the provisions of the Common Law Procedure Act mentioned in the letter of the 21st July, 1909, already quoted.

I do not know the terms of the reply of the Chamber of Commerce; it is evident that there was one, because the Council's Report contains another letter from the Under-Secretary:—

"Dublin Castle, 30th October, 1909.

"SIR,

"In reply to your further letter of the 19th inst., on the subject of the law relating to arbitration in Ireland, I am directed by the Lords Justices to acquaint you, for the information of the Dublin Chamber of Commerce, that while the Irish Government are prepared to consider any detailed statement of fact and argument which may be brought to their notice, they do not, as at present advised, see any reason to alter the opinion expressed in the letter addressed to you from this office on the 21st July last."

Here the matter rests so far as the application to the Lord Lieutenant stands

It will simplify matters very much if I now explain what the Common Law Procedure Act, incorporated in the Judicature Act, and referred to in the letter of the 21st July, really does contain. The sections are too long to read in full, but I have printed them in full as an appendix, so that all can read them for themselves, and I need only summarise the Sections. As I have already mentioned, they are Sections 6 to 20, both inclusive, and Section 38 of the Common Law Procedure Act, 1856, more than 50 years old. The rest of the Act deals with other subjects.

The 6th Section, under the heading of "power to refer matters of account," gives power to a Judge or Court, when a matter consists wholly or partly of matters of account, to submit them to an Arbitrator, or to the Master of the Court, or to an Assistant Barrister, the name by which County

Court Judges were known fifty years ago. This was, however, merely the work of going through the account and checking the tots, and neither gave nor implied any judicial power.

Indeed, the next section, the 7th, to which the marginal note is "special case: trial of question of fact," directs that if any particular item of allowance or disallowance appears to depend upon a question of law, the Judge or Court may direct this point to be tried as a special case without involving the rest of the account.

Section 8 still further limits matters, for it provides that if the Arbitrator, Master of the Court, or Assistant Barrister find a similar difficulty about an item, he may submit a special case to the Court upon it.

It will be seen by those who are acquainted with legal practice that the functions of the Arbitrator, Master of the Court or Assistant Barrister are limited in every way, no step can be taken except those of mere routine.

The 9th Section is of some importance, as it introduces a new procedure. It gives power to a Judge on the trial of an issue of fact to refer questions arising thereon, which involve matters of account, to an Arbitrator, or to the Master of the Court, or the Assistant Barrister, upon such terms as to costs as the Judge thinks reasonable, while he proceeds to deal with the general matter.

Curiously enough, it has been held that this Section, the only one which seems to possess any real power of arbitration as now understood, has been held to apply only when the Judge has been sitting *without a jury*, not to jury cases.

The next four Sections, 10, 11, 12, 13, provide for this new procedure, which has nothing to say to arbitration proceedings.

The 10th Section, though headed "proceedings before arbitrator," merely provides that in case of any proceedings before an Arbitrator, Master of the Court, or Assistant Barrister arising under the 9th Section, that is to say, any case of compulsory arbitration by direction of a Judge, the proceedings are to be the same as "upon a reference made by consent under a rule of court or judge's order," in other words, the compulsory arbitration laid down by the 9th Section is to be treated like all other arbitrations.

The 11th Section enables the Court to send back a compulsory award under the 9th Section to the arbitrator for re-consideration "upon such terms as to costs and otherwise as to the said Court or Judge may seem proper."

The 12th Section provides that a *compulsory* award is to stand unless challenged within the first seven days of the next sittings.

Finally, the 13th Section in like manner provides for the enforcing of a compulsory reference.

The 14th Section goes back to the main subject, the marginal reference being "Staying proceedings contrary to agreement to refer." It is exceedingly long and technical, but substantially it provides that if, after an arbitration be commenced, one of the parties back out and begins legal proceedings, the Court may stay such proceedings.

Unfortunately, however, the jurisdiction of the Court is not ousted absolutely by this Section. It is discretionary with the Court to stay the arbitration proceedings, and I think I may fairly say that the Courts have shown a tendency to exercise this discretion very freely.

The 15th provides that on the failure of parties to appoint an arbitrator, umpire, or third arbitrator, the Court may do so on the application of any party.

Section 17 enables two arbitrators to name an umpire, or is supposed to do so.

Section 18 directs an award to be made in three months, unless the parties or a Court enlarge the time.

Section 19 provides that in giving possession of land or premises possession is to be delivered by the sheriff as in the case of a judgment in ejectment.

Section 20, the marginal note of which is "submission in writing may be made a rule of court," provides that every agreement or submission to arbitration by consent, whether by deed under seal or in writing, can be made a rule of court. It was inserted to remedy an exception taken against the old Act of 10 William III., c. 14, as to the agreements which could be converted into rules or orders of Court, that they must be under seal.

Finally, Section 38 provides for an appeal to a higher Court in respect of judgments by a lower Court on special cases, already provided for by the Sections I have referred to.

You will gather from this summary of the Common Law Procedure Act that it does not codify the law of arbitration procedure. It does not lay down the excellent provisions contained in the English Act which I have already given, and upon which the English Chambers have pronounced such a favorable opinion, and it leaves untouched as regards Ireland all the faults of the "Case Made" law of Ireland based on the unrepealed Act of the 10th William III., c. 14. I have already pointed out that the old English Act of the 9th William III., c. 15, was repealed by the English Arbitration Act of 1889.

The system of acquiring land under the provisions of the Lands Clauses Act, 1845, and Irish Railways Acts, 1851 and 1860, would, of course, be reviewed under the procedure, as mentioned in the letter of the 21st July, 1909, but this is not what the Chamber asked for. What they desired was a *commercial* system, and they were told that their request

was based upon a serious misapprehension, and on remonstrating again they were informed that "the Irish Government did not, as at present advised, see any reason to alter the opinion expressed in their letter of the 21st July, 1909."

I may mention here that I have naturally in the course of my varied business had considerable experience of arbitration proceedings in this country, both under the Lands Clauses Act and under the Act of William III. I have no complaint to make against the procedure under the Lands Clauses Act, which is so widely used in connection with Laborers' Cottage sites, but my experience of commercial arbitrations is different. The procedure is unsatisfactory from the submission to the taking up of the award, in other words, from beginning to end, and in the last case I had, my clients had to defend their award in the Law Courts against a whole series of frivolous objections at a cost of £300, and three months further delay, while the taxed costs were within a fraction of £1,000.

It may be said that, as a lawyer, I ought not to complain of high legal charges. That is a question of opinion. Speaking personally, I have a great objection to seeing money wasted. Further, I do not believe that expensive law is any more favorable to the solicitor's profession than to the public. In fact, I consider that our interests are identical, and that it would be far better for us to have a simple procedure which would be popular and often resorted to than an occasional case replete with trouble, delay and expense.

There is another aspect, almost a national one. The old "Ouzel Galley," with its traditional past and antiquity, was an institution of the days of old, a hundred years before the Union.

We are talking a great deal now-a-days of our wish to improve the trade and commerce of Ireland, and "encourage home industries" has become a kind of catch-word in every part of the country.

I confess, however, that I fear that we are somewhat backward in putting our words and theories into action. I suggest that it would be a practical step to call for the extension of the Arbitration Act of 1889 to Ireland, and at the same time re-establish the ancient "Ouzel Galley." There are still surviving members of the crew, and if we only had the English Arbitration Act extended to this country, there would be nothing to prevent the old Society from being reconstructed and made a working institution for the benefit of our industries and commerce.

I am not a politician, but I think if some of my numerous friends in Parliament, without distinction of party, wanted

to restore an old Irish institution, they might very well call for the codification of Irish Arbitration Law and the reconstruction of the famous "Ouzel Galley."

APPENDIX.

COMMON LAW PROCEDURE ACT, 1856. SECTIONS 6-20, & 38.

Incorporated by Section 60 of the Judicature Act, and thereby made applicable to all Divisions of the High Court.

SECTION VI.

Power to refer matters of account.

If it be made to appear at any time after the issuing of the writ, to the satisfaction of the Court or a Judge upon the application of either party, that the matter in dispute consists wholly or in part of Matters of Mere Account which cannot conveniently be tried in the ordinary way, it shall be lawful for such Court or Judge, upon such Application, if they or he think fit, to decide such matter in a summary manner, or to order that such Matter, either wholly or in part, be referred to an arbitrator appointed by the parties or to the Master of the Court, or, in Country Causes, to the Assistant Barrister of any County or Riding, upon such Terms as to Costs and otherwise, as such Court or Judge shall think reasonable; and the Decision or Order of such Court or Judge, or the Award or Certificate of such Referee, shall be enforceable by the same Process as the finding of a Jury upon the Matter referred.

SECTION VII.—SPECIAL CASE.

Trial of question of fact.

If it shall appear to the Court or a Judge that the Allowance or disallowance of any particular Item or Items in such account depends upon a question of law fit to be decided by the Court, or upon a Question of Fact fit to be decided by a Jury, or by a Judge, upon the consent of both Parties, as hereinbefore provided, it shall be lawful for such Court or Judge to direct a Case to be stated, or an Issue or Issues to be tried; and the decision of the Court upon such Case, and the finding of the Jury or Judge upon such Issue or Issues, shall be taken.

and acted upon by the Arbitrator, Master or Assistant Barrister, as the case may be, as conclusive.

SECTION VIII.

Arbitrator may state Special Case.

It shall be lawful for the Arbitrator, Master, or Assistant Barrister, upon any compulsory Reference under this Act, or upon any Reference by Consent of Parties where the Submission is or may be made a Rule or Order of any of the Superior Courts of Law or Equity at Dublin, if he shall think fit and it is not provided to the contrary, to state his Award, as to the whole or any part thereof, in the Form of a Special Case for the Opinion of the Court, and when an Action is referred, Judgment, if so ordered, may be entered according to the opinion of the Court.

SECTION IX.

Power of Judge at Trial of Issue to refer.

If upon the trial of any Issue of Fact by a Judge under this Act it shall appear to the Judge that the questions arising thereon involve Matter of Account which cannot conveniently be tried before him, it shall be lawful for him, on the application of either party, to order that such Matter of Account be referred to an Arbitrator appointed by the Parties, or to the Master of the Court, or, in Country Causes, to the Assistant Barrister of any County or Riding, upon such Terms, as to Costs and otherwise, as such Judge shall think reasonable; and the Award or Certificate of such Referee shall have the same effect as herein before provided as to the Award or Certificate of a Referee before Trial; and it shall be competent for the Judge to proceed to try and dispose of any other Matter in question not referred in like manner as if no reference had been made.

SECTION X.

Proceedings before Arbitrator.

The proceedings upon any such Arbitration or Reference as aforesaid shall, except otherwise directed hereby, or by the Submission or Document authorizing the Reference, be conducted in like manner, and subject to the same Rules and Enactments, as to the Power of the Arbitrator, Master

of the Court, or Assistant Barrister, and of the Court, the Attendance of Witnesses, the Production of Documents, enforcing or setting aside the Award, and otherwise, as upon a Reference made by Consent under a Rule of Court or Judge's Order.

SECTION XI.

Power of Court to Remit to Arbitrator.

In the case of any such Arbitration or Reference as aforesaid, the Court or a Judge shall have power at any time, and from Time to Time, to remit the Matters referred, or any or either of them, to the re-consideration and re-determination of the said Arbitrator or Referee, upon such Terms, as to costs and otherwise, as to the said Court or Judge may seem proper.

SECTION XII.

Application to set aside Award.

An Application to set aside any Award made on a Compulsory Reference under this Act shall and may be made within the first Seven Days of the Term next following the publication of the Award to the parties, whether made in Vacation or Term; and if no such Application is made, or if no Rule is granted thereon, or if any Rule granted thereon is afterwards discharged, such Award shall be final between the parties.

SECTION XIII.

Enforcing Award within time for setting aside.

Any Award made upon a compulsory reference under this Act may, by authority of a Judge, on such Terms as to him may seem reasonable, be enforced at any Time after (Seven days from) the Time of Publication, notwithstanding that the Time for moving to set it aside has not elapsed.

SECTION XIV.

Staying Proceedings contrary to Agreement to Refer.

Whenever the parties to any Deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them

or any of them shall be referred to Arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence any Action at Law or Suit in Equity against the other Party or Parties, or any of them, or against any Person or Persons claiming through or under him or them in respect of the Matter so agreed to be referred, or any of them, it shall be lawful for the Court in which the Action or Suit is brought, or a Judge thereof, on Application by the Defendant or Defendants, or any of them, before Appearance and Defence or Answer, upon being satisfied that no sufficient reason exists why such Matters cannot be or ought not to be referred to Arbitration according to such Agreement as aforesaid, and that the Defendant was at the time of the bringing of such Action or Suit and still is ready and willing to join and concur in all Acts necessary and proper for causing such Matters so to be decided by Arbitration, to make a Rule or Order staying all Proceedings in such Action or Suit, on such Terms, as to Costs and otherwise, as to such Court or Judge may seem fit ; provided always that any such Rule or Order may at any time afterwards be discharged or varied as Justice may require.

SECTION XV.

On failure of parties to appoint, Court may appoint an Arbitrator, Umpire, or third Arbitrator.

If in any case of Arbitration, the Document authorising the Reference provide 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 ; or, if any appointed Arbitrator refuse to act, or become incapable of acting, or die, and the Terms of such Document do not show that it was intended that such vacancy should not be supplied, and the Parties do not concur in appointing a new one ; or, if where the Parties or two Arbitrators are at liberty to appoint an Umpire or third Arbitrator, such Parties or Arbitrators do not appoint an Umpire or third Arbitrator ; or, if any appointed Umpire or third Arbitrator refuse to act, or become incapable of acting, or die, and the Terms of the Document authorising the Reference do not show that it was intended that such Vacancy should not be supplied, and the Parties or Arbitrators respectively do not appoint a new one ; then in every such instance any Party may serve the remaining Parties or the Arbitrators, as the case may be, with a written notice to appoint an Arbitrator, Umpire, or third Arbitrator respectively ; and if, within seven clear days after such notice shall have been served no Arbitrator, Umpire

or third Arbitrator be appointed, it shall be lawful for the Court or any Judge of any of the Superior Courts of Law or Equity at Dublin, upon Application of the Party having served such notice as aforesaid, to appoint an Arbitrator, Umpire, or third Arbitrator, as the case may be, and such Arbitrator, Umpire and third Arbitrator respectively 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.

SECTION XVI.

Where Reference to two Arbitrators and one Party fails to appoint the other may appoint Arbitrator to work alone.

When the Reference is, or is intended to be, to two Arbitrators, one appointed by each Party, it shall be lawful for either Party, in the case of the death, refusal to act, or incapacity of any Arbitrator appointed by him to substitute a new Arbitrator, unless the Document authorizing the Reference show that it was intended that the vacancy should not be supplied; and if on such a Reference one Party fail to appoint an Arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other Party shall have appointed an Arbitrator, and shall have served the Party so failing to appoint with notice in writing to make the appointment, the Party who has appointed an Arbitrator may appoint such Arbitrator to act as sole Arbitrator in the Reference, and an Award made by him shall be binding on both Parties, as if the Appointment had been by consent; provided, however, that the Court or a Judge may revoke such appointment on such terms as shall seem just.

SECTION XVII.

Two Arbitrators may appoint Umpire, when.

When the Reference is to two Arbitrators, and the Terms of the Document authorizing it do not show that it was intended that there should not be an Umpire, the two Arbitrators may appoint an Umpire at any time within the period during which they have power to make an Award, unless they be called upon by notice as aforesaid to make the appointment sooner.

SECTION XVIII.

Award to be made in three months unless Parties or Court enlarge Time.

The Arbitrator acting under any such Document or Compulsory Order of Reference as aforesaid, or under any Order referring the Award back, shall make his award under his hand, and (unless such Document or Order respectively shall contain a different Limit of Time), within three months after he shall have been appointed and shall have entered on the Reference or shall have been called upon to act by notice in writing from any Party, but the Parties may by consent in writing enlarge the Term for making the Award; and it shall be lawful for the Court of which such Submission, Document or Order is or may be made a Rule or Order, or for any Judge thereof, for good cause to be stated in the Rule or Order for Enlargement from time to time to enlarge the Term for making the Award; and if no period be stated for the Enlargement in such Consent or Order for Enlargement, it shall be deemed to be an Enlargement for one month; and in case where an Umpire shall have been appointed it shall be lawful for him to enter on the Reference in lieu of the Arbitrators, if the latter shall have allowed their Time or their Extended Time to expire without making an Award or shall have delivered to any party or to the Umpire a notice in writing stating that they cannot agree.

SECTION XIX.

Rule to deliver possession of land pursuant to Award, how enforced

When any Award on any such Submission, Document, or Order of Reference as aforesaid directs that Possession of any Lands or Tenements capable of being the subject of an Action of Ejectment shall be delivered to any Party, either forthwith or at any future Time, or that any such Party is entitled to the possession of any such Lands or Tenements, it shall be lawful for the Court of which the Document authorizing the Reference is or is to be made a Rule or Order to order any Party to the Reference who shall be in possession of any such Lands or Tenements, or any person in possession of the same claiming under or put in possession by him since the making of the Document authorizing the Reference, to deliver Possession of the same to the Party entitled thereto, pursuant to the Award, and such Rule or Order to deliver Possession shall have the effect of a Judgment in Ejectment

against every such Party or Persons named in it, and Execution may issue, and Possession shall be delivered by the Sheriff as on a Judgment in Ejectment.

SECTION XX.

Submission in writing may be made Rule of Court.

Every Agreement or Submission to Arbitration by Consent, whether by Deed or Instrument in Writing not under Seal, may be made a Rule of any one of the Superior Courts of Law or Equity at Dublin, on the Application of any Party thereto, unless such Agreement or Submission contain words purporting that the Parties intend that it should not be made a Rule of Court ; and if in any such Agreement or Submission it is provided that the same shall or may be made a Rule of one in particular of such Superior Courts, it may be made a Rule of that Court only ; and if when there is no such provision a case be stated in the Award for the opinion of one of the Superior Courts, and such Court be specified in the Award, and the Document authorizing the Reference, have not before the publication of the Award to the Parties been made a Rule of Court, such Document may be made a Rule only of the Court specified in the Award ; and when in any case the Document authorizing the Reference is or has been made a Rule or Order of any one of such Superior Courts, no other of such Courts shall have any jurisdiction to entertain any Motion respecting the Arbitration or Award.

SECTION XXXVIII.

Error on Judgment on Special Case. Repealed.