

CHAPTER 7. No. 1.

ARBITRATION.

Ordinance
No. 5—1939.

AN ORDINANCE RELATING TO ARBITRATIONS.

Commencement.

[4th May, 1939.]

Short title.

1. This Ordinance may be cited as the Arbitration Ordinance.

Interpreta-
tion.

2. In this Ordinance—

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

“ Court ” means the Supreme Court or a Judge thereof;

“ reference ” means a reference under an order made by the Court;

“ rules of court ” mean rules of the Supreme Court made under the Judicature Ordinance.

*References by consent out of court.*Arbitration
agreement
irrevocable
having effect
as order of
Court.

3. An arbitration agreement, unless a contrary intention is expressed therein, shall be irrevocable except by leave of the Court and shall have the same effect in all respects as if it had been made an order of Court.

Provisions
implied in
arbitration
agreements.
1st Schedule.

4. An arbitration agreement, unless a contrary intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule hereto, so far as they are applicable to the reference under the arbitration agreement.

Arbitration
agreement
not to be

5. (1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased

or any other party, but shall in such an event be enforceable by or against the personal representative of the deceased.

discharged by death of party thereto.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

6. (1) Where it is provided by a term in a contract to which a bankrupt is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as relates to any such differences.

Provisions in case of bankruptcy.

(2) Where a person who has been adjudged bankrupt had before the commencement of the bankruptcy become a party to an arbitration agreement and any matter to which the agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, then, if the case is one to which subsection (1) of this section does not apply, any other party to the agreement or, with the consent of the committee of inspection, the trustee in bankruptcy, may apply to the Court for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

7. If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in the Court against any other party to the arbitration agreement, 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 the Court to stay the proceedings, and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and

Power to stay proceedings where there is an arbitration agreement.

willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

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

8. (1) In any of the following cases—

(a) where an arbitration agreement 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, or

(b) if an appointed arbitrator refuses to act, or is incapable of acting or dies, or is absent from the Colony, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy, or

(c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, or where two arbitrators are required to appoint an umpire, and do not appoint him, or

(d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting or dies, or is absent from the Colony, and the arbitration agreement 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 powers to act in the reference and make an award as if he had been appointed by consent of all parties.

Provisions on the appointment of two arbitrators.

9. Where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless the arbitration agreement expresses a contrary intention—

(a) if either of the appointed arbitrators refuses to act, or is incapable of acting or dies, or is absent from the Colony, the party who appointed him may appoint a new arbitrator in his place; or

(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:

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

10. (1) Where an arbitration agreement provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

Provisions on the appointment of three arbitrators.

(2) Where an arbitration agreement provides that the reference shall be to three arbitrators to be appointed otherwise than as mentioned in subsection (1) of this section, the award of any two of the arbitrators shall be binding.

11. (1) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award.

Arbitrators and umpires to use due dispatch.

(2) An arbitrator or umpire who is removed by the Court under this section shall not be entitled to receive any remuneration in respect of his services.

(3) Subject to the provisions of subsection (2) of section 18 and to anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.

(4) For the purposes of this section, "proceeding with a reference" includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

Power of court to give relief where arbitrator is not impartial or dispute referred involves question of fraud.

12. (1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the arbitration agreement or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator by reason of his relation towards any other party to the agreement or of his connection with the subject referred might not be capable of impartiality.

(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred as provided in subsection (1) hereof and a dispute which so arises involves the question whether any such party has been guilty of fraud, the Court shall, so far as may be necessary to enable that question to be determined by the Court, have power to order that the agreement shall cease to have effect and power to give leave to revoke any arbitration agreement made thereunder.

(3) In any case where by virtue of this section the Court has power to order that an arbitration agreement shall cease to have effect or to give leave to revoke an arbitration agreement, the Court may refuse to stay any action brought in breach of the agreement.

Where arbitrator is removed or appointment of arbitrator is revoked.

13. (1) Where an arbitrator (not being a sole arbitrator), or two or more arbitrators (not being all the arbitrators) or an umpire who has not entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

(2) Where the appointment of an arbitrator or arbitrators or umpire is revoked by leave of the Court, or a sole arbitrator or all the arbitrators or an umpire who having entered on the reference is or are removed by the Court, the Court may, on

the application of any party to the arbitration agreement, either—

(a) appoint a person to act as sole arbitrator in place of the person or persons removed; or

(b) order that the arbitration agreement shall cease to have effect with respect to the dispute referred.

(3) A person appointed under this section by the Court as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the arbitration agreement.

(4) Where it is provided (whether by means of a provision in the arbitration agreement or otherwise) that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders (whether under this section or under any other enactment) that the agreement shall cease to have effect as regards any particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

14. At any time after the appointment of an umpire, however appointed, the Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, order that the umpire shall enter on the reference in lieu of the arbitrators and as if he were a sole arbitrator.

When umpire is the sole arbitrator.

15. The arbitrators or umpire acting under an arbitration agreement shall, unless the arbitration agreement 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 correct in an award any clerical mistake or error arising from any accidental slip or omission.

16. Any party to an arbitration agreement may sue out a writ of *subpoena ad testificandum* or of *subpoena 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 subpoena.

Enlargement
of time for
making
award.

17. 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.

Power to
remit award
for recon-
sideration.

18. (1) In all cases of reference to arbitration the Court may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

(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.

Power to set
aside award.

19. (1) Where an arbitrator or umpire has misconducted himself or the proceedings, the Court may remove him: Provided that before making any such order the arbitrator or umpire may, if the Court so directs, be given an opportunity of showing cause against such order.

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

Enforcing
award.

20. An award on an arbitration agreement may, by leave of the Court, be enforced in the same manner as a judgment or order of the Court to the same effect and in such case judgment may be entered in terms of the award.

Interest on
awards.

21. A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

Provision as
to costs.

22. (1) Any provision in an arbitration agreement to the effect that the parties or any party thereto shall in any event pay their or his own costs of the reference or award or any part thereof shall be void and this Ordinance shall in the case of an arbitration agreement containing any such provision have effect as if that provision were not contained therein:

Provided that nothing herein shall invalidate such a provision when it is part of an agreement to submit to arbitration a dispute which has arisen before the making of such agreement.

(2) If no provision is made by an award with respect to the costs of the reference, any party to the reference may

within fourteen days of the publication of the award or such further time as a court may direct apply to the arbitrator for an order directing by and to whom such costs shall be paid, and thereupon the arbitrator shall after hearing any party who may desire to be heard amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

23. Section 37 of the Solicitors Ordinance (which empowers a court before which any proceeding is being heard or is pending to charge property recovered or preserved in the proceeding with the payment of solicitors' costs), shall apply as if an arbitration were a proceeding in the Court, and the Court may make declarations and orders accordingly.

Application of section 37 of the Solicitors Ordinance to costs in arbitration.

24. (1) The statutes of limitation shall apply to arbitrations as they apply to proceedings in the Court.

Limitation of time for commencing arbitration proceedings.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of the statutes of limitation both as originally enacted and as applying to arbitrations, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purpose of this section and for the purpose of the statutes of limitation as applying to arbitrations, an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other party or parties a notice requiring him or them to appoint an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

(4) Any such notice as is mentioned in subsection (3) of this section may be served either—

(a) by delivering it to the person on whom it is to be served; or

(b) by leaving it at the usual or last known place of abode in the Colony of that person; or

(c) by sending it by post in a registered letter addressed to that person at his usual or last known place of abode in the Colony,

as well as in any other manner provided in the arbitration agreement. Where a notice is sent by post in manner prescribed by paragraph (c) of this subsection, service thereof shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

(5) Where the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may, on such terms (if any) as the justice of the case may require, but without prejudice to the foregoing provisions of this section, extend the time for such period as it thinks proper.

(6) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the dispute referred, the Court may further order that the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the statutes of limitation for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(7) For the purposes of this section, "the statutes of limitation" include any enactment limiting the time within which any particular proceeding may be commenced.

References under order of court.

Reference for
enquiry and
report.

25. (1) Subject to rules of court, and to any right to have particular cases tried with a jury, the Court may refer to an official or special referee for enquiry or report any question arising in any cause or matter, other than a criminal proceeding by the Crown.

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

26. In any cause or matter (other than a criminal proceeding by the Crown)— Reference for trial.

(a) if all the parties interested who are not under disability consent; or

(b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Court 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 may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator agreed on by the parties, or in default of agreement, before an official referee or officer of the Court.

27. (1) In all cases of reference to an official or special referee or arbitrator, the official or special referee or arbitrator shall be deemed to be an officer of the Court, and subject to rules of court shall have such authority and conduct the reference in such manner as the Court may direct. Powers and remuneration of referees and arbitrators.

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

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

28. The Court shall, in relation to references, have all the powers which are by this Ordinance conferred on the Court as to references by consent out of court. Court to have powers as in references by consent.

29. The Full Court shall, on an appeal, have all such powers as are conferred by the provisions of this Ordinance on the Court in relation to references.

General.

Power to
compel
attendance of
witness.

30. (1) The Court may order that a writ of *subpoena ad testificandum* or of *subpoena duces tecum* shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire of a witness in the Colony.

Habeas
Corpus.

(2) The Court may order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an official or special referee or arbitrator or before an umpire.

Additional
powers of
court.
2nd Schedule.

31. (1) The Court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of any of the matters set out in the Second Schedule hereto as it has for the purpose of and in relation to an action or matter in the Court:

Provided that nothing in the foregoing provision shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters aforesaid.

(2) Where relief by way of interpleader is granted and it appears to the Court that the claims in question are matters to which an arbitration agreement to which the claimants are parties applies, the Court may direct the issue between the claimants to be determined in accordance with the agreement.

(3) Where an application is made to set aside an award the Court may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application.

Statement of
case by
arbitrator or
umpire.

32. (1) An arbitrator or umpire may, and shall if so directed by the Court, state—

(a) any question of law arising in the course of the reference, or

(b) an award or any part of an award,

in the form of a special case for the decision of the Court.

(2) A special case with respect to an interim award or with respect to a question of law arising in the course of a

reference may be stated, or may be directed by the Court to be stated, notwithstanding that proceedings under the reference are still pending.

(3) An appeal shall lie to the Full Court from any decision of the Court under this section, but no appeal shall lie on any case stated under paragraph (a) of subsection (1) of this section without leave of the Court or of the Full Court.

33. Any order made under this Ordinance may be made on such terms as to costs, or otherwise, as the authority making the order thinks just. Costs.

34. (1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded, and further that the fees demanded shall be taxed by the Registrar of the Court and that out of the money paid into Court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation and that the balance of the money (if any) shall be paid out to the applicant. Taxation of arbitrator's or umpire's fees.

(2) An application for the purposes of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.

(3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review under this section.

35. This Ordinance shall, except as herein expressly mentioned, apply to any arbitration to which His Majesty in right of the Crown, or any officer of the Government in respect of any act or omission by him or by his department, is a party, but nothing in this Ordinance shall empower the Court to order any proceedings to which His Majesty is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent in writing of the Governor. Crown to be bound.

Application of Ordinance to references under statutory powers.

36. This Ordinance shall apply in relation to every arbitration under any other enactment passed before or after the coming into operation of this Ordinance as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Ordinance is inconsistent with the other enactment regulating the arbitration or with any rules or procedure authorised or recognized by that other enactment.

Saving for pending arbitrations.

37. (1) This Ordinance shall not affect any arbitration which has commenced before the date of the coming into force of this Ordinance but shall apply to any arbitration commenced after the coming into operation of this Ordinance under any agreement or order made before the coming into operation of this Ordinance.

(2) For the purposes of this section, an arbitration shall be deemed to have commenced when one party to the arbitration agreement serves on the other party or parties a notice requiring him or them to appoint an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

SCHEDULES.

FIRST SCHEDULE.

(Section 4.)

Provisions to be implied in Arbitration Agreements.

1. If no other mode of reference is provided, the reference shall be to a single arbitrator.
2. If the reference is to two arbitrators, the two arbitrators may appoint an umpire immediately after they are themselves appointed.
3. If the arbitrators have delivered to any party to the arbitration agreement, 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.
4. If the parties to an arbitration agreement between whom differences have arisen are unable to agree as to the terms upon which such differences shall be submitted to arbitration, any party may apply by originating summons to a Judge in Chambers to settle the terms of reference.
5. 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 during the proceedings on the reference the arbitrators or umpire may require.

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

7. 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.

8. 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.

9. The arbitrators or umpire shall have the same power as the Court to order specific performance of any contract other than a contract relating to land or any interest in land.

10. The arbitrators or umpire may, if they think fit, make an interim award.

SECOND SCHEDULE.

(Section 31.)

Matters in respect of which the Court may make Orders.

1. Security for costs.
2. Discovery of documents and interrogatories.
3. The giving of evidence by affidavit.
4. Examination on oath of any witness before an officer of the Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction.
5. The preservation, interim custody or sale of any goods which are the subject-matter of the reference.
6. Securing the amount in dispute in the reference.
7. The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of the purposes aforesaid any persons to enter upon or into any lands or building in the possession of any party to the reference, or to authorising any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence.
8. Interim injunctions or the appointment of a receiver.