

P. L. 1875, 29.

An act to authorize citizens of this state to take apprentices bound to them outside of this state.

Approved March 17, 1875.

Citizens of this state authorized to take apprentices bound to them outside of this state.

16. SEC. 1. That citizens of this state may take and enter into indentures executed outside of this state whereby minors are bound to them to serve in this state, and that in all such cases parties binding said minors, and the masters or mistresses of said apprentices, shall be entitled to the same remedies against each other as if the said indentures had been duly executed in this state.

Arbitration.

1. Submission made rule of court.
2. When and how award set aside.
3. Proceedings upon report made.
4. Referees to be sworn.

5. Process for witnesses and referee's fees
6. Arbitrators to be sworn.
7. Process for witnesses before arbitrators.

Rev. 158, 654.

An act for regulating references and determining controversies by arbitration.

R. S. 113.

Approved April 15, 1846.

Submission made rule of court.

1. It shall and may be lawful for all persons(*a*) who are desirous of ending, by arbitration, any controversy, suit, quarrel or matter in contention, for which there is no other remedy but by personal action, or suit in equity, to agree, that their submission of the suit to the award or umpirage of any person or persons(*b*) shall be made a rule of any of the courts of record of this state, which the parties shall choose, and to insert such their agreement in their submission, or the condition of the bond, or promise, whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons; (*c*) which agreement, being so made and inserted in their submission, or promise, or condition of their respective bonds, shall or may, upon producing an affidavit thereof, made by the witnesses(*d*) thereunto, or any one of them, in the court of which the same is agreed to be made a rule, and reading and filing the said affidavit in court, be entered of record in such court, and a rule shall thereupon be made, by the said court, that the parties shall submit to, and finally be concluded by, the arbitration or umpirage which shall be made concerning them by the arbitrators or umpire pursuant to such submission; and in case of disobedience to such arbitration or umpirage, the party refusing or neglecting to perform and execute the same or any part thereof, shall be subject to all the penalties of contemning a rule of court, when he is a suitor or defendant in such court, and the court, on motion, shall issue process accordingly, which process shall not be stopped or delayed in its execution by any order, rule, command or process of any other court, either of law or equity, unless it shall be made to appear on oath or affirmation to such court, that the arbitrators or umpire misbehaved themselves, and that such award, arbitration or umpirage was procured by corruption or other undue means. (*e*)

Proof to be made.

Performance of award enforced.

How process stayed.

(a) An administrator may lawfully submit claims against the estate to arbitration, *Crum v. Moore*, 1 *McCart*, 436. *McKeen v. Oliphant*, 3 *Harr*, 442. See *Stewart v. Richey*, 2 *Harr*, 164.

(b) If referred to three persons, all must act, *Moore v. Ewing*, *Coze* 144. *Hoff v. Taylor*, 2 *South*, *829. *Hoffman v. Hoffman*, 2 *Dutch*, 175. But if two sign the award it is sufficient, and it is not necessary that it should appear upon the face of the award that the third arbitrator was present, *Rogers v. Tatum*, 1 *Dutch*, 282. *Hoffman v. Hoffman*, 2 *Dutch*, 175. See *Smith v. The Trenton Del. Falls Co.*, 2 *Harr*, 5. An agreement by the parties to substitute other arbitrators, in the place of those first named, is obligatory, *McClure v. Gulick*, 2 *Harr*, 340. When a new arbitrator is chosen by the original arbitrators, either party has the right to adduce additional testimony. *West Jersey Railroad Co. v. Thomas*, 6 *C. E. Gr.* 205. 8 *C. E. Gr.* 432. 9 *C. E. Gr.* 567.

(c) After the submission, it is too late to except to the form of action, or to anything in the process or declaration,

Hazen v. Addis, 2 *Gr.* 333; or after the award is made, *Smith v. Minor*, *Coze* 16.

(d) The affidavit must be made before an officer of the court mentioned in the submission, *Hazen v. Addis* 2 *Gr.* 333. An affidavit taken before a justice of the peace is insufficient, *Anonymous*, 3 *Hal.* 176. See *Ruckman v. Ransom*, 6 *Vr.* 566. A submission may be made a rule of court even after award made, *McClure v. Gulick*, 2 *Harr*, 340. After the rule is entered the submission is irrevocable, *Ferris v. Munn*, 2 *Zab.* 161. See *Freeborn v. Denman*, 3 *Hal.* 119.

(e) The award must be certain, mutual and final upon all the matters submitted, *McKeen v. Oliphant*, 3 *Harr*, 442. *Hazen v. Addis*, 2 *Gr.* 336. An award for *l. s. d.* sterling, payable in bills of exchange, or so much current money as will purchase such bills, is good, *Warder v. Whitall*, *Coze* 84. Technicalities are unnecessary. *Coze v. Lundy*, *Coze* 255. The bad will be separated from the good, so that the award may stand, *Hoagland v. Veghle*, 3 *Zab.* 92. *Rogers v. Tatum*, 1 *Dutch*, 281. When claims against a party, both in his own

2. Any arbitration or umpirage, procured by corruption or undue means, shall be judged and esteemed void and of none effect, and accordingly be set aside by any court of law or equity,^(a) so as complaint of such corruption or undue practice be made in the court where the rule is made for submission to such arbitration or umpirage, before the last day of the next term after such arbitration or umpirage has been made and published to the parties.^(b)

How set aside.

3. Whenever a cause shall be referred by rule of court to referees, the report or award of such referees, or of the major part of them, if confirmed by the court, shall be final, and conclude the parties; and if any sum be thereby found for the plaintiff or plaintiffs, judgment shall be entered and execution issued for the same, with costs, if, by law, the plaintiff or plaintiffs would have recovered costs, had a verdict passed in the same cause for the sum so reported to be due; but if the referees, or the major part of them, report that there is not anything due to the plaintiff or plaintiffs, and the report be confirmed, then judgment shall be entered against the plaintiff or plaintiffs, that he, she or they take nothing by his, her or their writ, bill or plaint, and the defendant or defendants shall, in such case, have judgment for and recover his, her or their costs against the plaintiff or plaintiffs, if, by law, the defendant or defendants would have been entitled to costs, had a verdict passed in the same cause for him, her or them; and if the referees, or the major part of them, report any sum to be due to the defendant or defendants, and the report be confirmed, then judgment shall be entered and execution issued against the plaintiff or plaintiffs, for the sum so reported to be due to such defendant or defendants, with costs, if, by law, the defendant or defendants would have been entitled to costs, had a verdict in the same cause passed against him, her or them.

Proceedings upon report made.

4. In every cause referred by rule of court, each referee shall, before he proceeds to the business of the reference, take an oath or affirmation faithfully and fairly to hear and examine the cause in question, and make a just and true report according to the best of his skill and understanding; which oath or affirmation any judge of any court of record,

Referee to be sworn.

right and in a representative character, are submitted, the award should show in what character the amount awarded is to be paid, *Hoffman v. Hoffman*, 2 *Dutch*. 175. See *Bell v. Price*, 2 *Zab*. 579. An award cannot operate as a conveyance of lands, *Den, Snedekers v. Allen*, *Pen.* *35. But the arbitrators may award that one party execute a conveyance of lands to the other, *Inlay v. Wilkoff*, 1 *South*. *132, or that one party deliver the possession of land to the other, *Den, Cranmer v. Taylor*, *Pen.* *876. *Coze v. Lundy*, *Coze* 2-5. See *Green v. Lundy*, *Coze* 435. A clause in the submission, "that the award be ready to be delivered to the parties, or such of them as shall demand the same, on or before, &c." is performed if the award be signed within the time specified, neither party calling for it, *Martin v. McCormick*, 5 *Vr.* 23. A court of equity will not set aside an award because not delivered in time, when the delivery was restrained by injunction at the suit of the party making the objection, *West Jersey Railroad Co. v. Thomas*, 8 *C. E. Gr.* 432. Papers or documents delivered by the arbitrator with the award are considered as part of it. *Bell v. Price*, 2 *Zab*. 578. See *Taylor v. Sayre*, 4 *Zab*. 647.

I. An award may be set aside for mistakes of law.

1. Exceeding the submission, *Young v. Young*, 2 *Hal. Ch.* 450. *Hazen v. Adtis*, 2 *Gr.* 333. *Westcott v. Somers*, 4 *Hal.* 99. *Smith v. Trenton Del. Falls Co.*, 2 *Harr.* 5. *Ruckman v. Ransom*, 6 *Vr.* 565. *Veghte v. Hoagland*, 2 *Stock*. 45. *Hoagland v. Veghte*, 3 *Zab*. 92. See *Rogers v. Tatum*, 1 *Dutch*. 281.

2. Declining to arbitrate part, *Richards v. Drinker*, 1 *Hal.* 307. *Harker v. Hough*, 2 *Hal.* 428. *Smith v. Demarest*, 3 *Hal.* 195. *Davison v. Johnson*, 1 *C. E. Gr.* 113. Although the award omit to decide a matter expressly submitted, if accepted by the parties and acts have been done to give it effect, it must stand, *Cross v. Cross*, 2 *C. E. Gr.* 288.

3. Admitting illegal evidence, *Fennimore v. Childs*, 1 *Hal.* 386. *Eyre v. Fennimore*, *Pen.* *932. See *Livingston v. Combs*, *Coze* 42.

4. Or rejecting competent evidence, *Burroughs v. Thorne*, 2 *South*. *777. See *Jessup v. Cook*, *Coze* 105. *Schenck v. Cuttrell*, 1 *Gr. Ch.* 297.

5. Proceeding without giving one of the parties an opportunity to be heard, *West Jersey Railroad Co. v. Thomas*, 6 *C. E. Gr.* 205.

6. Refusing a proper adjournment, *Coryell v. Coryell*, *Coze* 385.

7. Where the mistake is apparent on its face, or by the statement of the arbitrator, *Bell v. Price*, 2 *Zab*. 579. *Taylor v. Sayre*, 4 *Zab*. 648. But if the arbitrators decide against

law, not by mistake, but of purpose, in order to make a just award, it will not be disturbed, *West Jersey Railroad Co. v. Thomas*, 6 *C. E. Gr.* 205. *Ruckman v. Ransom*, 8 *C. E. Gr.* 118.

II. Mistakes of fact.

1. Uncertainty, *Sheppard v. Stiles*, 2 *Hal.* 90. *McKeon v. Allen*, 2 *Harr.* 506. See *Rogers v. Tatum*, 1 *Dutch*. 281.

2. Miscalculation, *Hoagland v. Veghte*, 2 *Stock*. 45. *Bell v. Price*, 2 *Zab*. 579. See *Richardson v. Lanning*, 2 *Dutch*. 130.

3. Apparent on the face of the award, *Green v. Lundy*, *Coze* 435. *Schenck v. Voorhees*, 2 *Hal.* 383. *Sherron v. Wood*, 5 *Hal.* 7.

III. Corruption.

Atkinson v. Townley, *Coze* 388. *Stoll v. Price*, 1 *Zab*. 32; 2 *Zab*. 578. *West Jersey Railroad Co. v. Thomas*, 8 *C. E. Gr.* 431; 9 *C. E. Gr.* 567.

If no costs are mentioned in the award, none can be allowed, *Anonymous*, *Pen.* *228. *Anderson v. Exton*, 1 *South*. *173(a).

Proceedings in an action on the arbitration bond, *Thompson v. Harvey*, *Pen.* *894. *Sheppard v. Stiles*, 2 *Hal.* 90. *Harker v. Hough*, 2 *Hal.* 428. *Sherron v. Wood*, 5 *Hal.* 7. On the award, *Richards v. Drinker*, 1 *Hal.* 307. *Hugg v. Collins*, 3 *Harr.* 294, and *Hoffman v. Hoffman*, 2 *Dutch*. 175. *Hoagland v. Veghte*, 3 *Zab*. 92. *Inlee v. Flagg*, 2 *Dutch*. 368. *Ruckman v. Ransom*, 6 *Vr.* 565. *Davison v. Johnson*, 1 *C. E. Gr.* 113. On an attachment, *McDermot v. Butler*, 5 *Hal.* 158. *McClure v. Gulick*, 2 *Harr.* 340, 435. Costs on such attachment, *McDermot v. Butler*, 5 *Hal.* 63. See *Magennis v. Parkhurst*, 3 *Gr. Ch.* 433.

An appeal lies from an order of the circuit court, refusing to set aside an award, *James v. Stiles*, 2 *Vr.* 490. *Ford v. Potts*, 1 *Hal.* 368. See *Jessup v. Cook*, *Coze* 105. *Taylor v. Sayre*, 4 *Zab*. 648.

A *certiorari* will not lie where the submission has not been made a rule of court, *Whitehead v. Gray*, 7 *Hal.* 36. *Sherron v. Wood*, 5 *Hal.* 7.

(a) Equity will not interfere after the submission has been made a rule in another court, *West Jersey Railroad Co. v. Thomas*, 6 *C. E. Gr.* 205. The rules for setting aside an award are the same in law and equity, *Bell v. Price*, 1 *Zab*. 32. *Hartshorne v. Cuttrell*, 1 *Gr. Ch.* 297. *Williams v. Winans*, 7 *C. E. Gr.* 573.

(b) A party has until the last day of the term succeeding the publication of an award, to except to it, *Den, Pancoast v. Curtis*, 1 *Hal.* 415.

or any justice of the peace^(a) of this state is hereby authorized and required to administer.^(b)

Process for witnesses.

5. In every cause referred by rule of court, process of subpoena may issue out of such court to convene witnesses before the referees, and the said witnesses shall be examined on oath or affirmation; which oath or affirmation the referees in the said cause are hereby authorized to administer; and there shall be allowed to every such referee, one dollar for every day necessarily spent in the business of the reference, besides a reasonable allowance for his expenses, which, in the first instance, shall be paid by the prevailing party, and shall afterwards be allowed to such party in the taxation of costs where costs are recoverable.

Referees' fees.

Arbitrators sworn.

6. In cases of arbitration, every arbitrator shall, before he proceeds to the business submitted to him, take an oath or affirmation of the like nature with that hereinbefore prescribed to be taken by referees, and to be administered in like manner.^(c)

Process for witnesses before arbitrators.

7. In all cases of arbitration, it shall be lawful for any justice of the peace within the county wherein such arbitration may be, to issue subpoenas for witnesses to appear before the arbitrator or arbitrators, and for him or such arbitrator or arbitrators to swear or affirm such or any other witnesses before the same; and if any such witness shall not appear when so subpoenaed, or if appearing, shall refuse to be sworn or affirmed and give evidence, he shall be liable to the same fines and penalties as he would be by law for such default or refusal, if committed in any court of record in this state.

(a) An arbitrator may be sworn before a master in chancery, *Ruckman v. Ransom*, 6 Vr. 565.
(b) Referees must be sworn, *Brown v. Lanning*, Pen. *139. *Reeves v. Goff*, Pen. *143. *Parker v. Crammer*, Pen. *271. *Crammer v. Mathis*, Pen. *550. *Swayze v. Riddle*, Pen. *660. *Little v. Silverthorne*, Pen. *680.

(c) Arbitrators must be sworn, *Thompson v. Harvey*, Pen. *894. *Inslee v. Flagg*, 2 Dutch. 368. *Combs v. Little*, 3 Gr. Ch. 310. But not before fixing the time and place of sitting, *Ruckman v. Ransom*, 6 Vr. 565. See *Ford v. Potts*, 1 Hal. 388. *Johnson v. Ketchum*, 3 Gr. Ch. 364.

Assignment.

I. ASSIGNMENT—HOW TO BE MADE, AND ITS EFFECT.

1. Of assignments and preferences.
2. Debtors inventory and list of creditors.

II. DUTIES OF, AND PROCEEDINGS BY, ASSIGNEE AND EXCEPTION TO CLAIMS.

3. Assignees' notice, inventory and bond.
4. Deed of assignment to be recorded.
5. List of creditors to be filed, and notice given.
6. Exceptions, notice and hearing.
7. May be tried by jury.
8. Dividends to be made. Final account.
9. Goods reserved to debtor.
10. Rent to be paid.
11. Landlord may distrain.

12. Lands of debtor, how sold.
13. Powers of assignees.
14. Proceedings in case of death of assignee.
15. In case of death of surety.
16. Court may order new security.
17. Inventory to be recorded.
18. Commissions and allowance.
19. Fees of judges, &c.

III. EFFECT OF ASSIGNMENT UPON CREDITORS.

20. When creditor barred.
21. What debts discharged.
22. Debts not due allowed.

IV. GENERAL PROVISIONS.

23. Assignees, how compelled to proceed.

Rev. 674.

Harr. 211.

R. S. 316.

P. L. 1842, p. 90.

" 1855, p. 58, 250

" 1856, p. 166.

" 1858, p. 35.

" 1863, p. 5.

" 1870, p. 54.

Of assignments by debtors.

An act to secure to creditors an equal and just division of the estates of debtors who convey to assignees for the benefit of creditors.

Revision—Approved March 27, 1874.

I. Assignment, how to be made, and its effect.

1. That every conveyance or assignment, made by a debtor or debtors, of his, her or their estates, real or personal, or both, in trust to the assignee or assignees, for the creditors of such debtor or debtors, shall be made for their equal benefit, in proportion to their several demands, to the net amount that shall come to the hands of said assignee or assignees for distribution; ^(a) and all preferences of one creditor over the other, or

(a) If the debtor execute the assignment, annex the inventory and list of creditors and deliver it to the assignee, who receives it, the assignment is complete and the estate vested in the assignee, although the deed was not acknowledged, *Scull v. Reeves*, 2 Gr. Ch. 84. The assignment must be for the equal benefit of all the creditors, and create no preference, *Varnum v. Camp*, 1 Gr. 326. *Brown v. Holcomb*, 1 Stock. 297. *Fairchild v. Hunt*, 1 McCart. 367. But if the

preferences are not made in and by the deed of assignment, they will not invalidate the assignment, *Garretson v. Brown*, 2 Dutch. 425. It conveys all the debtor's property, real and personal, whether embraced in the inventory or not, *Garretson v. Brown*, 2 Dutch. 425. *Hays v. Doane*, 3 Stock. 84. Whatever rights the debtor may have in the property of his wife, will pass, *Ontcall v. Van Winkle*, 1 Gr. Ch. 513. The equity of redemption in mortgaged premises will vest, *Van*