CHAPTER 14.

An Act to amend the law relating to arbitrations and to make provision for other matters connected therewith. [17th May 1934.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

GENERAL AMENDMENTS OF THE LAW RELATING TO ARBITRATION.

Arbitration agreement not to be discharged by death of party thereto.

1.—(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.

(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.

Provisions in case of bankruptcy

2.—(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.

(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 having jurisdiction in the bankruptcy proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and that 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.

Power of Court where arbitrator is removed or appointment of arbitrator is revoked.

3.—(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 has 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.

Provisions on the

4.—(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. 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 the foregoing subsection, the award of any two of the arbitrators shall be binding.

5.—(1) The following paragraph shall be substituted for paragraph (*b*) of the First Schedule to the principal Act (which sets out certain provisions which are to be implied in an arbitration agreement unless the contrary intention is expressed therein) :— Provisions relating to umpires.

> "(*b*) if the reference is to two arbitrators, the two arbitrators shall appoint an umpire immediately after they are themselves appointed":

and in paragraph (*c*) of section five of the principal Act after the word "arbitrator" there shall be inserted the words "or where two arbitrators are required to appoint an umpire."

(2) 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.

6.—(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 ten of the principal Act 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 the expression "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.

Amendment of Sch. 1 of principal Act.

7. The following provisions shall be added at the end of the First Schedule to the principal Act :—

" (*j*) 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 :

" (*k*) the arbitrators or umpire may, if they think fit, make an interim award."

Additional powers of Court.

8.—(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 First Schedule to this Act 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.

9.—(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) A decision of the Court under this section shall be deemed to be a judgment of the Court within the meaning of section twenty-seven of the Supreme Court of Judicature (Consolidation) Act, 1925 (which relates to the jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the Court), but no appeal shall lie from the decision of the Court on any case stated under paragraph (*a*) of subsection (1) of this section without the leave of the Court or of the Court of Appeal.

15 & 16 Geo. 5. c. 49.

Entry of judgment in terms of award.

10. Where leave is given under section twelve of the principal Act to enforce an award in the same manner as a judgment or order, judgment may be entered in terms of the award.

Interest on awards.

11. 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.

12.—(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 the principal Act 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 or a judge 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.

Taxation of arbitrator's or umpire's fees.

13.—(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 taxing officer 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.

(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 of taxation under this section.

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

14.—(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 submission 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 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 submission 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 a submission, the Court may refuse to stay any action brought in breach of the agreement.

Amendment of s. 11 of principal Act.

15. Section eleven of the principal Act (which empowers the Court to remove an arbitrator and set aside an award) shall be amended by the insertion of the words "or the proceedings" after the words "has misconducted himself" in both places where those words occur in the said section.

MISCELLANEOUS.

Limitation of time for commencing arbitration proceedings.

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

(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.

57 & 58 Vict. c. 60.

(3) In subsection (3) of section four hundred and ninety-six of the Merchant Shipping Act, 1894 (which requires a sum deposited with a wharfinger by an owner of goods to be repaid unless legal proceedings are instituted by the shipowner), the expression "legal proceedings" shall be deemed to include arbitration.

(4) For the purpose of this section and for the purpose of the statutes of limitation as applying to arbitrations and of the said section four hundred and ninety-six of the Merchant Shipping Act, 1894, as amended by this section, 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.

(5) Any such notice as is mentioned in subsection (4) 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 England 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 England;

as well as in any other manner provided in the arbitration agreement; and where a notice is sent by post in manner prescribed by paragraph (*c*), 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.

(6) 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.

(7) 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.

(8) For the purposes of this section the expression "the statutes of limitation" includes any enactment limiting the time within which any particular proceeding may be commenced.

Application of s. 69 of 22 & 23 Geo. 5. c. 37 to solicitors' costs in arbitrations.

17. Section sixty-nine of the Solicitors Act, 1932 (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.

Amendment of s. 16 of Agricultural Holdings Act, 1923. 13 & 14 Geo. 5. c. 9. 51 & 52 Vict. c. 43.

18. The following subsections shall be inserted after subsection (5) of section sixteen of the Agricultural Holdings Act, 1923:—

"(5A) Sections one hundred and ten, one hundred and eleven and one hundred and twelve of the County Courts Act, 1888 (which provide for the issue of summonses to witnesses in County Court actions and the enforcement of such summonses and the bringing up of prisoners to give evidence in such actions) shall apply to any arbitration under this Act as if that arbitration was an action or matter in the County Court.

(5B) The High Court may order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before any arbitrator appointed under this Act, if the prisoner is confined in any prison under process in any civil action or matter."

Saving for pending arbitrations.

19. Subject as hereinafter provided, the provisions of this Act shall not affect any arbitration which has been commenced within the meaning of section sixteen of this Act before the date on which this Act comes into operation, but shall apply to any arbitration so commenced after the said date under an arbitration agreement made before the said date:

Provided that nothing in this section shall affect the operation of the provisions of this Act amending the Agricultural Holdings Act, 1923.

Application to statutory arbitrations.

20. This Act, except the provisions thereof set out in the Second Schedule to this Act, shall apply in relation to every arbitration under any other Act passed before

or after the commencement of this Act, as if the arbitration were pursuant to an arbitration agreement and as if that other Act were an arbitration agreement, except in so far as this Act is inconsistent with that other Act or with any rules or procedure authorised or recognised thereby :

Provided that this Act shall not apply to any arbitration to which the principal Act does not apply and no provision of this Act which expressly amends a provision of the principal Act shall apply to any arbitration to which that provision of the principal Act does not apply.

Short title, interpretation, application, extent, repeal and commencement.

21.—(1) This Act may be cited as the Arbitration Act, 1934.

(2) In this Act, unless the context otherwise requires :—

52 & 53 Vict. c. 49.

The expression " the principal Act " means the Arbitration Act, 1889 :

The expression " arbitration agreement " means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

(3) References in this Act and in the principal Act to an award shall include references to an interim award.

14 & 15 Geo. 5. c. 39. 20 & 21 Geo. 5. c. 15.

(4) This Act shall be construed as one with the principal Act, and the principal Act, the Arbitration Clauses (Protocol) Act, 1924, and the Arbitration (Foreign Awards) Act, 1930, and this Act may be cited together as the Arbitration Acts, 1889 to 1934.

(5) This Act shall not apply to Scotland or Northern Ireland.

(6) The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(7) The Act shall come into operation on the first day of January, nineteen hundred and thirty-five.

SCHEDULES.

FIRST SCHEDULE.

MATTERS IN RESPECT OF WHICH THE COURT MAY MAKE ORDERS. Section 8.

(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 land or building in the possession of any party to the reference, or 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.

SECOND SCHEDULE.

PROVISIONS OF ACT WHICH DO NOT APPLY TO STATUTORY ARBITRATION. Section 20.

Subsection (1) of section one.
Section two.
Section three.
Subsection (2) of section eight.
Subsection (1) of section twelve.
Section fourteen.
Section sixteen.

Section 21.

THIRD SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
52 & 53 Vict. c. 49.	The Arbitration Act, 1889.	Paragraph (*b*) of section seven; section nineteen; paragraphs (*c*) and (*e*) of the First Schedule, and in paragraph (*d*) of that schedule the words "have "allowed their time or ex- "tended time to expire with- "out making an award or."
10 & 11 Geo. 5. c. 81.	The Administration of Justice Act, 1920.	Section sixteen.

CHAPTER 15.

An Act to empower statutory water undertakers to give and to take supplies of water in bulk.

[17th May 1934.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Supply of water in bulk.

1.—(1) Subject to the provisions of this Act any statutory water undertakers may enter into and carry into effect agreements with any other statutory water undertakers for the giving by the one and the taking by the other of a supply of water in bulk.

(2) An agreement under this Act—

(*a*) may provide for the giving and taking of the supply for any period and on any terms and conditions and either within or beyond the limits of supply of the supplying undertakers;