

ARBITRATIONS; DAMAGES; WITNESSES; SUPREME COURTS ACT, 1840

ACT NO. IX. OF 1840

(Rep., Act 10 of 1877)

[20th April, 1840.]

*Passed by the Right Hon'ble the Governor General of India in Council, on the 20th April, 1840.*

**An Act** for amending the law administered in Her Majesty's Courts of Justice with reference to Arbitrations, Damages, and interested Witnesses.

**I.** Whereas it is expedient to extend to the Territories of the East India Company certain provisions of the Statute 3d and 4th William IV. Chap. 42, whereby remedies have been applied for the uncertainty and imperfections heretofore incident to Arbitrations, for the insufficient damages to which injured parties were limited by the technical forms of certain actions, and for the obstruction to justice frequently occasioned by reason of the legal incompetency of witnesses to give evidence in consequence of having some interest in the event of the suit to which their testimony relates;

It is hereby emanated, that, in order to render the rejection of witnesses on the ground of interest less frequent, if any witness shall be objected to in any of Her Majesty's Courts of Justice as incompetent on the ground that the verdict or judgment in the action on which it shall be proposed to examine him would be admissible in evidence for or against him, such witness shall nevertheless be examined, but in that case a verdict or judgment in that action in favor of the party on whose behalf he shall have been examined be admissible in evidence against him or any one claiming under him.

**II.** And it is hereby enacted, that the Court on the trial of any issue, or on any inquiry of damages, in any suit before any of Her Majesty's Courts of Justice may, if it shall think fit, give damages in the nature of interest over and above the value of the Goods at the time of the conversion or seizure in all actions of trover or trespass de bonis asportatis and over and above the money recoverable in all actions on policies of assurance made after the passing of this Act.

**III.** And it is hereby enacted, that the power and authority of any arbitrator or umpire appointed by or in pursuance of any rule of Court, or Judge's order, or order of reference, in any action now brought or which shall be hereafter brought, or by or in pursuance of any submission to reference containing an agreement that such submission shall be made a rule of any of Her Majesty's Courts, shall not be revocable by any party to such reference without the leave of the Court by which such rule or order shall be made, or which shall be mentioned in such submission, or by leave of a Judge, and the arbitrator or umpire shall, and may, and is hereby required to proceed with the reference notwithstanding any such revocation, and to make such award, although the person making such revocation shall not afterwards attend the reference, and that the Court, or any Judge thereof may from time to time enlarge the term for any such arbitrator making his award.

**IV.** And it is hereby enacted, that when any reference shall have been made by any such rule or order as aforesaid, or by any submission containing such agreement as aforesaid, it shall be lawful for the Court by which such rule or order shall be made, or which shall be mentioned in such rule or order shall be made, or which shall be mentioned in such agreement, or for any Judge by rule or order to be made for that purpose to command the attendance and examination of any person to be named, or the production of any documents to be mentioned in such rule or order, and the disobedience to any such rule or order shall be deemed a contempt of Court, if, in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the Arbitrators, or by the Umpire, before whom the attendance is required, shall also be served either together with or after the service of such Rule or Order: Provided also, that the application

made to such Court or Judge for such Rule or Order shall set forth the place where such witness is residing at the time, or satisfy such Court of Judge that such person cannot be found: Provided also, that no person shall be compelled to produce under any such Rule or Order any writing or other document that he would not be compelled to produce at a trial, or to attend at more than two consecutive days to be named in such Order.

V. And it is hereby enacted, that when in any Rule or Order of reference, or in any submission to arbitration containing an agreement that the submission shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath it shall be lawful for the Arbitrators or Umpire, or any one Arbitrator, and he or they are hereby authorized and required to administer an oath to such witnesses, or to take their affirmation in cases where affirmation is allowed by law instead of oath, and if upon such oath or affirmation any person making the same shall willfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall be prosecuted and punished accordingly.

VI. And it is hereby enacted, that this Act shall take effect in Calcutta from the day of its passing, and at Madras and Bombay after the expiration of thirty days from such day, and in the Straits Settlements after the expiration of sixty days from such day.

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