

# A BILL

## To make more effectual provision for obtaining Evidence in Arbitrations.

[MR. JOHNSON ;—30 August, 1866.]

**W**HEREAS it is expedient to make further provision for enabling Preamble.  
the parties in references to Arbitration to obtain evidence on  
such references Be it therefore enacted by the Queen's Most Excellent  
Majesty by and with the advice and consent of the Legislative Council  
5 and Legislative Assembly of New South Wales in Parliament assembled  
and by the authority of the same as follows:—

1. In all cases of reference to Arbitration under or in pursuance In all cases of  
Arbitration orders  
&c. may be made  
for obtaining  
evidence.  
of the directions or provisions of any statute whether compulsory or  
otherwise or under or in pursuance of any Rule or Order of any Court  
10 of competent jurisdiction and in all cases where the parties to any deed  
or instrument in writing whether already or hereafter to be made or  
executed or any of them shall have agreed or shall hereafter agree  
that any existing or future differences between them or any of them  
shall be referred to Arbitration it shall be lawful for the Supreme  
15 Court or any Judge thereof upon the application of any party to any  
such reference to make an Order or grant and issue a Commission for  
the examination of any party to such reference or any witness or  
witnesses whose evidence by reason of absence or intention to depart  
from the Colony or illness age distance of residence or other cause  
20 would otherwise be liable to be lost And to give and make all such  
directions and provisions as to the time place and manner of such  
examination and all other matters connected therewith as such Judge  
or Court shall think fit And such Order or Commission shall and may  
be made or granted and issued under the like circumstances and in  
25 like manner as by the practice of the Court for the time being orders  
are made or Commissions granted or issued for the examination of  
parties or witnesses in any cause in the said Court in its Common Law  
jurisdiction or as near thereto as may be.



The attendance of witnesses may be enforced.

2. It shall also be lawful for the Supreme Court or any Judge thereof upon the application of any party to any such reference to make an order *ex parte* directing any party thereto or any witness or witnesses to attend before the Arbitrator or Arbitrators or Umpire in any such reference or before any Commissioner or Commissioners or 5 other person or persons authorized or directed under any Order or Commission to take his or their evidence at any convenient time and place in the Colony to be examined and give evidence and to produce any documents touching the matters of the reference And to give and make all such directions and provisions as to all or any matters 10 connected therewith as such Court or Judge shall think fit And every such order shall be obeyed and may be enforced and disobedience thereto punished by the said Court in like manner as in case of an Order made thereby in a cause depending therein and any party or witness disobeying the same without lawful excuse shall also be liable 15 to answer in an action at the suit of the party requiring his attendance in like manner as persons duly subpoenaed as witnesses to give evidence in a cause pending in the said Court and disobeying their subpoenas are or may be liable Provided always that every person whose attendance shall be so required shall be entitled to the like conduct 20 money and payment for expenses and loss of time as upon a trial in the said Supreme Court.

Witnesses entitled to expenses.

Power to examine witnesses on oath or affirmation.

3. It shall be lawful for the Arbitrator or Arbitrators or Umpire in any such reference and every Commissioner or other person authorized or directed to take the examination of parties or witnesses 25 by or under any such Order or Commission to take the examinations and evidence of the parties and witnesses upon oath or in cases where affirmation is allowed by law instead of oath upon affirmation to be administered by the Arbitrator or Arbitrators or any of them or by the Umpire or by the Commissioner or Commissioners or other person 30 or persons authorized or directed to take such examination or any of them And if upon such oath or affirmation any person making the same wilfully and corruptly give any false evidence every person so offending shall be deemed and taken to be guilty of perjury.

False evidence perjury.

Witnesses to have same protection as on trials.

4. Provided always that no person shall be compelled by or 35 under any such order or by any Arbitrator or Arbitrators or Umpire to answer any question or to produce any document that he would not be compelled to answer or produce at a trial or to attend to be examined for more than two consecutive days at one time.



5. All evidence taken under any such Order or Commission shall be received by the Arbitrator or Arbitrators or Umpire as the case may be saving all just exceptions in like manner as evidence taken under Orders or Commissions made or granted or issued by or  
5 out of the said Court or by a Judge thereof in a cause pending therein are received at the trial of such cause.

Evidence taken under Orders &c. to be received by Arbitrators.

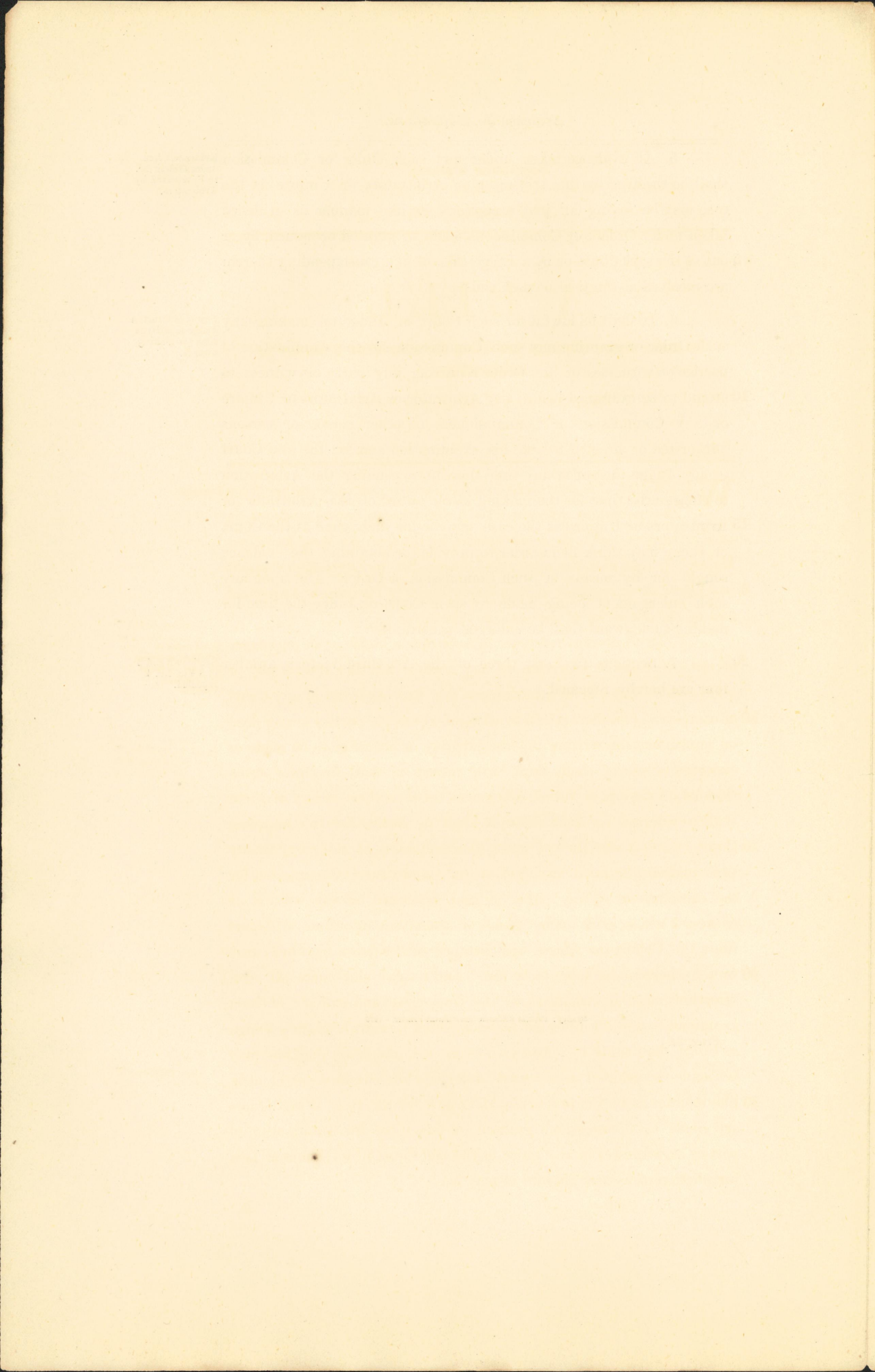
6. It shall be lawful for such Court or Judge on making any such Order or granting any such Commission for the examination of parties or witnesses or any Order requiring any party or witness to  
10 attend to be examined before any Arbitrator or Arbitrators or Umpire or any Commission or Commissioners or other person or persons authorized or directed to take his examination and for the said Court or any Judge thereof at any time thereafter pending the Arbitration to enlarge the time for the making of the award of the Arbitrator or  
15 Arbitrators or Umpire as the case may be for such time as the Court or Judge may think fit in order to provide for obtaining the evidence sought for by means of such Commission or Order And upon any such enlargement being made by such Court or Judge the time for making such award shall be enlarged accordingly.

Power of Court or Judge to enlarge time for making awards.

20 7. Sections two and three of the Act third Victoria number four are hereby repealed.

Sections 2 and 3 of 3 Vic. No. 4 repealed.







Legislative Council.

30<sup>o</sup> VICTORIÆ, 1866.

---

---

## A BILL

*(As amended in Committee of the Whole Council.)*

**To make Arbitrations more effectual.**

---

---

**W**HEREAS it is expedient to make provision to render references Preamble.  
to Arbitration more effectual Be it therefore enacted by the  
Queen's Most Excellent Majesty by and with the advice and consent  
of the Legislative Council and Legislative Assembly of New South  
5 Wales in Parliament assembled and by the authority of the same as  
follows:—

1. The power and authority of any Arbitrator or Arbitrators Certain references to  
or Umpire appointed by or under or in pursuance of any rule or Arbitration not to be  
order of any Court or Judge having competent jurisdiction or by or revoked without  
10 under or in pursuance of any deed or instrument in writing whether leave of Court.  
already or hereafter to be made or executed whereby the parties  
thereto or any of them shall have agreed or shall hereafter agree that  
any existing or future differences between them or any of them shall  
be referred to Arbitration shall not unless such rule order deed or  
15 instrument shall otherwise provide be revocable by any party to such  
reference without the leave of the Court or Judge by which such rule  
or order shall be made or by the Supreme Court or a Judge thereof  
and the Arbitrator or Arbitrators or Umpire shall and may and is and  
are hereby required to proceed with the reference notwithstanding any  
20 such revocation and to make an award although the person making  
such revocation shall not afterwards attend the reference.



If action commenced after agreement to refer to arbitration Court or Judge may stay proceedings.

2. Whenever the parties to any such deed or instrument as aforesaid have agreed or shall agree thereby as aforesaid 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 matters so agreed to be referred or any of them it shall be lawful for the Supreme Court or any Judge thereof on application by the defendant or defendants or any of them after appearance and before plea 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.

On failure of parties or arbitrators Judge may appoint single arbitrator or umpire.

3. If in any case of arbitration as aforesaid the document authorizing 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 shew 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 authorizing the reference do not shew that it was intended that such a 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 concur in appointing or to appoint (as the case may be) an Arbitrator Umpire or third Arbitrator respectively and if within fourteen clear days after such notice shall have been served no Arbitrator Umpire or third Arbitrator be appointed it shall be lawful for any Judge of the Supreme Court upon summons to be taken out by 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.

When reference is to two arbitrators and one party fails to appoint.

4. When any such reference as aforesaid 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 shew 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 fourteen 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 said Court or any Judge thereof may revoke such appointment on such terms as shall seem just.



5. When any such reference as aforesaid is to two Arbitrators and the terms of the document authorizing it do not shew that it was intended that there should not be an Umpire or provide otherwise for the appointment of an Umpire the two Arbitrators may appoint an Umpire at any time within the period during which they have the power to make an award unless they be called upon by notice as aforesaid to make the appointment sooner.

Two Arbitrators  
may appoint Umpire.

6. The Arbitrator acting under any such document as aforesaid or under any rule or order referring the award back shall make his award under his hand and (unless such document or rule 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 a notice in writing from any party but the parties may by consent in writing enlarge the term for making the award And if no period be stated for the enlargement in such consent or in any rule or order of the Supreme Court or a Judge thereof made for such enlargement it shall be deemed to be an enlargement for one month and in any 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.

Award to be made in  
three months unless  
parties or Court  
enlarge time.

7. When any award made on any such submission or document 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 such party either forthwith or at any future time or awards that any such party is entitled to the possession of any such lands or tenements it shall be lawful for the Supreme Court 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 the document authorizing the reference to deliver possession of the same to the party entitled thereto pursuant to the award and the rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it and execution may issue and possession shall be delivered by the Sheriff as on a judgment in ejectment.

Rule to deliver  
possession of land  
pursuant to award.

8. Every agreement or submission to Arbitration by consent by deed or instrument in writing may be made a Rule of the Supreme Court 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.

Submissions to  
arbitration may be  
made a Rule of  
Court.

9. In all cases of reference to Arbitration under or in pursuance of the directions or provisions of any statute whether compulsory or otherwise or under or in pursuance of any such Rule or Order or under or in pursuance of any such deed or instrument in writing as aforesaid it shall be lawful for the Supreme Court or any Judge thereof upon the application of any party to any such reference to make an Order or grant and issue a Commission for the examination of any party to such reference or any witness or witnesses whose evidence by reason of absence or intention to depart from the Colony or illness age distance of residence or other cause would otherwise be liable to be lost And to give and make all such directions and provisions as to the time place and manner of such examination and all other matters connected therewith as such Judge or Court shall think fit And such Order or Commission shall and may be made or granted and issued under the like circumstances and in like manner as by the practice of the Court for the time being orders are made or Commissions granted

In all such cases of  
Arbitration orders  
&c. may be made  
for obtaining  
evidence.

or



or issued for the examination of parties or witnesses in any cause in the said Court in its Common Law jurisdiction or as near thereto as may be.

The attendance of witnesses may be enforced.

10. It shall also be lawful for the Supreme Court or any Judge thereof upon the application of any party to any such reference to make an order *ex parte* directing any party thereto or any witness or witnesses to attend before the Arbitrator or Arbitrators or Umpire in any such reference or before any Commissioner or Commissioners or other person or persons authorized or directed under any Order or Commission to take his or their evidence at any convenient time and place in the Colony to be examined and give evidence and to produce any documents touching the matters of the reference And to give and make all such directions and provisions as to all or any matters connected therewith as such Court or Judge shall think fit And every such order shall be obeyed and may be enforced and disobedience thereto punished by the said Court in like manner as in case of an Order made thereby in a cause depending therein and any party or witness disobeying the same without lawful excuse shall also be liable to answer in an action at the suit of the party requiring his attendance in like manner as persons duly subpoenaed as witnesses to give evidence in a cause pending in the said Court and disobeying their subpoenas are or may be liable Provided always that every person whose attendance shall be so required shall be entitled to the like conduct money and payment for expenses and loss of time as upon a trial in the said Supreme Court. 5  
10  
15  
20  
25

Witnesses entitled to expenses.

Power to examine witnesses on oath or affirmation.

11. It shall be lawful for the Arbitrator or Arbitrators or Umpire in any such reference and every Commissioner or other person authorized or directed to take the examination of parties or witnesses by or under any such Order or Commission to take the examinations and evidence of the parties and witnesses upon oath or in cases where affirmation is allowed by law instead of oath upon affirmation to be administered by the Arbitrator or Arbitrators or any of them or by the Umpire or by the Commissioner or Commissioners or other person or persons authorized or directed to take such examination or any of them And if upon such oath or affirmation any person making the same wilfully and corruptly give any false evidence every person so offending shall be deemed and taken to be guilty of perjury. 30  
35

False evidence perjury.

Witnesses to have same protection as on trials.

12. Provided always that no person shall be compelled by or under any such order or by any Arbitrator or Arbitrators or Umpire to answer any question or to produce any document that he would not be compelled to answer or produce at a trial or to attend to be examined for more than two consecutive days at one time. 40

Evidence taken under Orders &c. to be received by Arbitrators.

13. All evidence taken under any such Order or Commission shall be received by the Arbitrator or Arbitrators or Umpire as the case may be saving all just exceptions in like manner as evidence taken under Orders or Commissions made or granted or issued by or out of the said Court or by a Judge thereof in a cause pending therein are received at the trial of such cause. 45

Power of Court or Judge to enlarge time for making awards.

14. It shall be lawful for such Court or Judge in all cases of reference to Arbitration at any time and from time to time as occasion may require to enlarge the time for the making of the award of the Arbitrator or Arbitrators or Umpire as the case may be for such time or times as the Court or Judge may think fit in order to provide for obtaining the evidence sought for by means of any such Commission or Order as aforesaid or for any other good cause And upon any such enlargement being made by such Court or Judge the time for making such award shall be enlarged accordingly. 50  
55

Not necessary to make order of Judge a rule of Court.

15. It shall not be necessary in any case whatsoever of reference to Arbitration by consent of parties to make the order of a Judge of



of the Supreme Court a Rule of such Court but the like proceedings may in every such case be had and taken upon any such order as might be had and taken on a Rule of such Court of the same tenor.

16. In every case of reference to Arbitration in which an application shall be made to the Supreme Court to set aside the award the Court shall have power at any time and from time to time to remit the matters referred or any or either of them to the reconsideration and re-determination of the Arbitrator or Arbitrators or Umpire as the case may be upon such terms as to costs and otherwise as to the said Court may seem proper.

Power to send back to arbitrator.

17. The Act third Victoria number four and sections two three four five six seven and eight of the Common Law Procedure Act of 1857 are hereby repealed.

3 Vic. No. 4 repealed and sections 2 3 4 5 6 7 and 8 of 20 Vic. No. 31.



