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PART VI.

**Bills introduced into the Council of the Governor-General of India
and Bills published before introduction in that Council.**

GOVERNMENT OF INDIA.
LEGISLATIVE ASSEMBLY DEPARTMENT.

NOTIFICATION.

Simla, the 24th July 1939.

No. F. 131-I/39-A.—Under rule 18 of the Indian Legislative Rules, the Governor-General has been pleased to order the publication in the *Gazette of India* of the following Bill, together with the Statement of Objects and Reasons relating thereto, and the Bill and the Statement of Objects and Reasons are accordingly published for general information.

I. A. BILL NO. 34 OF 1939.

A Bill to consolidate and amend the law relating to Arbitration.

WHEREAS it is expedient to consolidate and amend the law relating to arbitration in British India;

It is hereby enacted as follows:—

CHAPTER I.

INTRODUCTORY.

Short title, extent and commencement.

Act, 1940.

1. (1) This Act may be called the Indian Arbitration

(2) It extends to the whole of British India.

(3) It shall come into force on the 1st day of July, 1940.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

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

(b) "reference" means a reference of a particular difference, whether to one or more arbitrators or an umpire, and whether made by the Court, the parties or appointed arbitrators.

CHAPTER II.

ARBITRATION WITHOUT INTERVENTION OF A COURT.

3. An arbitration agreement, unless a different intention is expressed therein but subject to the provisions of this Act, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.

4. The parties to an arbitration agreement may agree that any reference thereunder shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or as the holder for the time being of any office or appointment.

5. The authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the arbitration agreement.

6. (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 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 affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

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

(2) Where a person who has been adjudged an insolvent had before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then if the case is one to which sub-section (1) does not apply, any other party to the agreement or the receiver may apply to the Court having jurisdiction in the insolvency proceedings 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.

(3) In this section the expression "receiver" includes an Official Assignee.

8. (1) In any of the following cases—
Power of Court to appoint arbitrator or umpire.

(a) Where an arbitration agreement provides that the reference shall be to one or more arbitrators, and all the parties do not, after differences have arisen, concur in any of the appointments; or,

(b) if any appointed arbitrator or umpire neglects or refuses to act or is incapable of acting, or dies or is removed, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or the arbitrators, as the case may be, do not supply the vacancy; or

(c) where the parties or the arbitrators are required to appoint an umpire and do not appoint him;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or in supplying the vacancy.

(2) If the appointment is not made within seven clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties.

9. Where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed in the agreement,—
Power to party to appoint new arbitrator or, in certain cases, a sole arbitrator.

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

(b) if one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after receipt of a notice in writing to make the appointment from the other party, such other party having appointed his arbitrator before giving the notice, 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 Court may set aside any appointment as sole arbitrator made under clause (b) and either, on sufficient cause being shown, allow further time to the defaulting party to appoint an arbitrator or pass such other order as it thinks fit.

10. (1) Where an arbitration agreement

provides that a reference shall be to three arbitrators, one to be appointed by each party and the third, by the two appointed arbitrators, 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.

(2) Where an arbitration agreement provides that a reference shall be to three arbitrators to be appointed otherwise than as mentioned in sub-section (1), the award of the majority shall prevail.

(3) Where an arbitration agreement provides for the appointment of more arbitrators than three, the award of the majority, if any, shall prevail, or if the arbitrators are equally divided in their opinions, the award of the umpire shall prevail.

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.

2. The Court may remove an arbitrator or umpire who has misconducted himself or the proceedings.

(3) Where an arbitrator or umpire is removed under this section, he shall not be entitled to receive any remuneration in respect of his services.

(4) For the purposes of this section the expression "proceeding with the reference" includes, in a case where reference to the umpire becomes necessary, giving notice of that fact to the parties and to the umpire

12. (1) Where the Court removes an

umpire who has not entered on the reference or one or more arbitrators (not being all the arbitrators), the Court may, on the application of any party to the arbitration agreement, appoint persons to fill the vacancies.

(2) Where the appointment of an arbitrator or arbitrators or an umpire is revoked by leave of the Court, or where the Court removes an umpire who has entered on the

reference or a sole arbitrator or all the arbitrators, the Court may, on the application of any party to the arbitration agreement, either—

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

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

(3) A person appointed under this section 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 arbitration agreement.

13. The arbitrators or umpire acting

under an arbitration agreement shall, unless a different intention is expressed in the agreement, have power to—

(a) administer oath to the parties and witnesses appearing;

(b) state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case on such question for the opinion of the Court;

(c) correct in an award any clerical mistake or error arising from any accidental slip or omission;

(d) administer to any party to the arbitration such interrogatories as may, in the opinion of the arbitrators or umpire, be necessary.

14. (1) When the arbitrators or umpire

have made their award, they shall sign it and shall give notice to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) Where the arbitrators or umpire state a special case under clause (b) of section 13, the Court shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award.

Power of Court to modify award. **15.** The Court may by order modify or correct an award—

- (a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
- (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

16. (1) The Court may from time to time remit the award or any matter referred to arbitration to the reconsideration of the arbitrators or umpire upon such terms as it thinks fit—

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred; or
- (b) where the award is so indefinite as to be incapable of execution; or
- (c) where an objection to the legality of the award is apparent upon the face of it.

(2) Where an award is remitted under sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court.

(3) An award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed.

17. Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such

decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.

18. (1) Notwithstanding anything contained in section 17 Power of Court to pass interim orders. at any time after the filing of the award, whether notice of the filing has been served or not, upon being satisfied by affidavit or otherwise that a party has taken steps to defeat, delay or obstruct the execution of any decree that may be passed upon the award, or that speedy execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary.

(2) Any person against whom such interim orders have been passed may show cause against such orders, and the Court, after hearing the parties, may pass such further orders as it deems necessary and just.

19. Where an award has become void under sub-section (3) of section 16 or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.

20. (1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have seisin over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.

CHAPTER III.

ARBITRATION WITH INTERVENTION OF A COURT WHERE THERE IS NO SUIT PENDING.

21. (1) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court.

(5) Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the provisions of Chapter II so far as they can be made applicable.

CHAPTER IV.

ARBITRATION IN SUITS.

22. (1) Where in any suit all the parties interested agree in writing that any matter in difference between them in the suit shall be referred to arbitration, they may at any time before judgment is pronounced apply to the Court for an order of reference.

(2) Every such application shall be in writing and the arbitration agreement or a copy thereof shall accompany the application.

23. The arbitrator shall be appointed in such manner as may be agreed upon between the parties to the arbitration agreement.

24. (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall in the order specify such time as it thinks reasonable for the making of the award.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this Act, deal with such matter in the suit.

25. Where some only of the parties to a suit apply to have the matters in difference between them referred to arbitration in accordance with, and in the manner provided by, section 22, the Court may, if it thinks fit, so refer such matters to arbitration (provided that the same can be separated from the rest of the subject-matter of the suit) in the manner provided in that section, but the suit shall continue so far as it relates to the parties who have not joined in the said application and to matters not contained in the said reference as if no such application has been made, and an award made in pursuance of such a reference shall be binding only on the parties who have joined in the application.

26. (1) The provisions of sections 8, 10, 11 and 12 shall apply to arbitrations under this Chapter:

Provided that the Court may, in any of the circumstances mentioned in those sections, instead of filling up the vacancies or making the appointments, make an order superseding the arbitration and proceed with the suit.

(2) The provisions of sections 13 to 19 (both inclusive) shall apply to arbitrations under this Chapter:

Provided that where the Court makes an order superseding the arbitration under section 19, it shall proceed with the suit.

CHAPTER V.

GENERAL.

27. Save as otherwise provided in this Act, the provisions of this Chapter shall apply to all arbitrations.

28. (1) Unless a different intention appears in the arbitration agreement, the arbitrators or umpire may, if they think fit, make an interim award.

(2) All references in this Act to an award shall include references to an interim award made under sub-section (1).

29. (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.

(2) Any provision in an arbitration agreement whereby the arbitrators or umpire may enlarge the time for making the award shall be void and of no effect.

30. A sum directed to be paid by an award shall, unless the award otherwise directs, bear interest at the rate of six per centum per annum from the date of the award.

31. An award shall not be set aside except on one or more of the following grounds, namely:—

(a) that an arbitrator or umpire has misconducted himself or the proceedings;

(b) that a party has been guilty of fraudulent concealment of any matter which he ought to have disclosed, or has wilfully misled or deceived the arbitrator or umpire;

(c) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;

(d) that an award has been improperly procured or is otherwise invalid.

32. Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.

33. Any person desiring to challenge the existence or validity of an arbitration agreement or an award or to have

the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits:

Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit.

34. Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which proceedings are pending to stay the proceedings; and 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 willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings.

35. (1) No reference nor award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject-matter of the reference, but when legal proceedings upon the whole of the subject-matter of the reference have been commenced between all the parties to the reference and a notice thereof has been given to the arbitrators or umpire, all further proceedings in a pending reference shall, on the expiry of the time for making an application under section 34 or on the rejection of such an application, be invalid.

(2) In this section the expression "parties to the reference" includes any persons claiming under any of the parties and litigating under the same title.

36. Where it is provided (whether 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 Act or any other law) that the agreement shall cease to have effect as regards any particular difference, may further order that the said provision shall also cease to have effect as regards that difference.

37 (1) All the provisions of the Indian Limitation Act, 1908, shall apply to arbitrations as they apply to proceedings in 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 limitation, 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 purposes of this section and of the Indian Limitation Act, 1908, an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated.

(4) Where the terms of an agreement to refer future differences 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 difference 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, extend the time for such period as it thinks proper.

(5) 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 difference 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 Indian Limitation Act, 1908, for the commencement of the proceedings (including arbitration) with respect to the difference referred.

38. (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 in this behalf, 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 shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitrator or umpire by way of fees such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(2) An application under sub-section (1) may be made by any party to the reference unless the fees demanded have been fixed by written agreement between him and the arbitrator or umpire, and the arbitrator or umpire shall be entitled to appear and be heard on any such application.

(3) The Court may make such orders as it thinks fit respecting the costs of an arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

CHAPTER VI.

APPEALS.

39. (1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order:—

An order—

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special case;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
- (vi) setting aside or refusing to set aside an award.

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to His Majesty in Council.

CHAPTER VII.

MISCELLANEOUS.

40. A Small Cause Court shall not take seisin of any arbitration proceedings or of any application arising thereout save on application made

under section 22.

41. Subject to the provisions of this Act and of rules made thereunder—
 Procedure and Powers of Court.

V of 1938.

(a) the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court, and to all appeals, under this Act, and

(b) 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 as it has for the purpose of, and in relation to, any proceedings before the Court:

Provided that nothing in clause (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters.

42. Any notice required by this Act to be served otherwise than through the Court by a party to an arbitration agreement or by an arbitrator or umpire shall be served in the manner provided in the arbitration agreement, or if there is no such provision, 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 British India of that person, or
- (c) by sending it by post in a letter addressed to that person at his usual or last known place of abode in British India and registered under Chapter VI of the Indian Post Office Act, 1898.

VI of 1898.

43. (1) The Court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine as the Court may issue in suits tried before it.

(2) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the reference, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitrator or umpire as they would incur for the like offences in suits tried before the Court.

(3) In this section the expression "processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

44. The High Court may make rules consistent with this Act as to—
 Power to High Court to make Rules.

(a) the filing of awards and all proceedings consequent thereon or incidental thereto;

(b) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto;

(c) the staying of any suit or proceeding in contravention of an arbitration agreement;

(d) the forms to be used for the purposes of this Act;

(e) generally, all proceedings in Court under this Act.

45. The provisions of this Act shall be binding on the Crown.
 Crown to be bound.

46. The provisions of this Act except sub-section (1) of section 6 and sections 7, 12 and 31, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if the other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder.
 Application of Act to statutory arbitrations.

47. The provisions of this Act shall, subject to section 46, apply to all arbitrations and to all proceedings thereunder, and any arbitration award otherwise obtained shall not be enforceable for any purpose and shall not, except on the application of all the parties concerned, be taken into consideration by a Court as a compromise or adjustment of a suit.
 Act to apply to all arbitrations.

48. The provisions of this Act shall not apply to any reference pending at the commencement of this Act, to which the law in force immediately before the commencement of this Act shall, notwithstanding any repeal effected by this Act, continue to apply.
 Saving for pending references.

49. (1) The enactments specified in the Third Schedule are hereby repealed to the extent mentioned in the fourth column thereof.
 Repeals and amendments.

(2) The enactments specified in the Fourth Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof.

THE FIRST SCHEDULE.

(See section 3.)

IMPLIED CONDITIONS OF ARBITRATION AGREEMENTS.

1. Unless otherwise expressly provided, the reference shall be to a sole arbitrator.
2. If the reference is to more than one arbitrator, the arbitrators shall appoint an umpire not later than one month from the latest date of their respective appointments.
3. The arbitrators shall make their award within three months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.
4. If the arbitrators have allowed their time to expire without making an award or have delivered to any party to the arbitration agreement or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference in lieu of the arbitrators.
5. The umpire shall make his award within one month of entering on the reference or within such extended time as the Court may allow.
6. The parties to the reference and all persons claiming under them shall, subject to the provisions of any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in difference 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 may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.
7. The award shall be final and binding on the parties and 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, such 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 legal practitioner and client.

THE SECOND SCHEDULE.

(See section 41.)

POWERS OF COURT.

1. The preservation, interim custody or sale of any goods which are the subject matter of the reference.
2. Securing the amount in difference in the reference.
3. 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 aforesaid purposes any person 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.
4. Interim injunctions or the appointment of a receiver.

THE THIRD SCHEDULE.

[See section 49 (1).]

ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
1	2	3	4
1899	IX ...	The Indian Arbitration Act, 1899.	The whole.
1908	V ...	The Code of Civil procedure, 1908.	Section 89, clauses (a) to (f) (both inclusive) of sub-section (1) of section 104 and the Second Schedule.

THE FOURTH SCHEDULE.

[See section 49 (2).]

ENACTMENTS AMENDED.

Year.	No.	Short title.	Amendments.						
1	2	3	4						
1833	XX ...	The Religious Endowments Act, 1863.	(a) In section 16— (i) for the words and figure "Chapter VI of the Code of Civil Procedure" the words and figures "Chapter IV of the Indian Arbitration Act, 1940" shall be substituted; (ii) for the words and figure "section 312 of the said Code" the words and figure "section 22 of the said Act" shall be substituted. (b) In section 17, for the words and figure "section 312 of the said Code of Civil Procedure" the words and figures "section 22 of the Indian Arbitration Act, 1940" shall be substituted.						
1877	I ...	The Specific Relief Act, 1877.	In section 21— (i) for the words and figure "Code of Civil Procedure and the Indian Arbitration Act, 1893" the words and figure "Indian Arbitration Act, 1940" shall be substituted; (ii) after the words "but if any person who has made such a contract" the words "other than an arbitration agreement to which the provisions of the said Act apply" shall be inserted.						
1908	IX ...	The Indian Limitation Act, 1908.	In the First Schedule— (i) for Article 158 the following shall be substituted, namely:— <table><tr><td>"158. Under the Indian Arbitration Act, 1940, to set aside an award or to get an award remitted for reconsideration.</td><td>Thirty days</td><td>The date of service of the notice of filing of the award."</td></tr></table> (ii) in Articles 159 and 179, for the words "same Code" in the first column the words and figure "Code of Civil Procedure, 1908" shall be substituted; (iii) for Article 178 the following shall be substituted, namely:— <table><tr><td>"178. Under the Indian Arbitration Act, 1940, for the filing in Court of an award.</td><td>Ninty days</td><td>The date of service of the notice of the making of the award.</td></tr></table>	"158. Under the Indian Arbitration Act, 1940, to set aside an award or to get an award remitted for reconsideration.	Thirty days	The date of service of the notice of filing of the award."	"178. Under the Indian Arbitration Act, 1940, for the filing in Court of an award.	Ninty days	The date of service of the notice of the making of the award.
"158. Under the Indian Arbitration Act, 1940, to set aside an award or to get an award remitted for reconsideration.	Thirty days	The date of service of the notice of filing of the award."							
"178. Under the Indian Arbitration Act, 1940, for the filing in Court of an award.	Ninty days	The date of service of the notice of the making of the award.							
1910	IX ...	The Indian Electricity Act, 1910.	In section 52, for the figure "1899" the figure "1940" shall be substituted.						
1913	VII ...	The Indian Companies Act, 1913.	In-section 152— (i) for the figure "1899" in both places where it occurs the figure "1940" shall be substituted; (ii) in sub-section (3) the words "other than those restricting the application of the Act in respect of the subject-matter of the arbitration" shall be omitted.						

STATEMENT OF OBJECTS AND REASONS.

The law of arbitration in British India is at present substantially contained in two enactments, the Indian Arbitration Act, 1899 (IX of 1899) and the Second Schedule to the Code of Civil Procedure, 1908. The operation of the 1899 Act is limited to the Presidency-towns and to such other areas as it may be extended by the appropriate Provincial Government: its scope is confined to "arbitration by agreement without the intervention of a Court". The Second Schedule to the Code of Civil Procedure deals with arbitrations outside the operation and scope of the 1899 Act: it relates for the most part to arbitration in suits, though arbitration without intervention of a Court is also briefly provided for. This Schedule also contains an alternative method whereby the parties to a dispute or any of them may file their arbitration agreement before a Court which after a certain procedure, refers the matter to an arbitrator.

2. The question of amending and consolidating this law is not new. The Civil

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Justice Committee in 1925, recommended several changes in the arbitration law. The Act of 1899, was based largely on the then English law, to which several substantial amendments have been effected by an amending Act of Parliament in 1934 (24 & 25-Geo. 5, c. 1). In 1938 the Central Government placed an officer on special duty to examine the question, and the present Bill is the outcome of this examination. The existing law, the amended English law and the recommendations of the Civil Justice Committee have been scrutinised together, and the present Bill, which seeks to consolidate and standardise the law relating to arbitration throughout British India, in its detail extracts from the sources referred to those principles of law which, it is considered, are most suitable to British India.

3. More detailed explanations of the several clauses of the Bill are contained in the notes on clauses appended.

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NOTES ON CLAUSES.

Clauses 3, 4 and 5 reproduce with minor alterations the provisions of sections 6, 7 and 8 respectively of the 1899 Act, and deal with the terms of arbitration agreements.

Clauses 6 and 7 follow closely sections 1 and 2 of the Arbitration Act, 1934 (24 and 25 Geo. 5, c. 14): their purpose is to standardise the law as to the effect on an arbitration agreement and proceedings of the death or insolvency of a party thereto.

Clause 8 dealing with the Court's power to appoint an arbitrator in certain cases, reproduces with some verbal changes section 8 of the 1899 Act.

Clause 9 amends section 9 of the 1899 Act in the following directions: provision is made to suit mofussil conditions by making it clear that the defaulting party's time for appointing an arbitrator runs only from the receipt of notice, and the proviso is elaborated (a) to make it clear that it is only in the arbitrator's capacity as sole arbitrator (and not as the arbitrator of the party appointing him) that the Court may set aside the appointment, and (b) to permit the Court, on sufficient cause being shown, to allow further time to the defaulting party, or in any event to make such alternative order as it thinks fit.

Clause 10 makes provision for cases in which more than two arbitrators are appointed. The first two sub-clauses follow closely section 4 of the 1934 Act of Parliament.

Clause 11 empowers the Court to remove a dilatory arbitrator or umpire or one who misconducts himself or the proceedings. Section 16 of the 1899 Act and sections 6 and 15 of the 1934 Act of Parliament have been drawn on.

Clause 12 which follows section 3 of the 1934 Act of Parliament makes provisions for the consequences of the removal of arbitrators. (See also clause 36.)

Clause 13 sets out the powers of arbitrators: it is based to some extent on section 10 of the 1899 Act and on paragraph 17 of the Second Schedule to the Code of Civil Procedure 1908.

Clause 14 relating to the procedure in filing an award, reproduces section 11 of the 1899 Act with two small changes in sub-clause (2): the provision of paragraph 10 of the Second Schedule to the Code, requiring that depositions and documents shall accompany the award, is included, and the notice of filing is to be issued by Court and not by the arbitrator as in the 1899 Act.

Clause 15 dealing with the Court's powers to correct an award, reproduces without change paragraph 12 of the Second Schedule to the Code.

Clause 16 deals with the Court's powers to remit an award for reconsideration. Sub-clause (1) repeats with no change paragraph 14 of the Second Schedule to

the Code, and the remaining sub-clauses reproduce the substance of the first sentence of paragraph 15 (1) *ibid*.

Clause 17 follows with minor alterations paragraph 16 of the Second Schedule to the Code. Herein lies one of the substantial points of difference in the existing law under the Code, judgment is entered in accordance with the award and a decree follows. Under the 1899 Act (following the then English law) an award is executable as a decree but is not a decree for all purposes. The 1934 Act of Parliament has changed the English law in this respect, and by this clause it is proposed to standardise the law in the direction of providing that judgment shall be pronounced in the terms of the award and that a decree shall follow.

Clause 18.—In following the Civil Procedure Code, clause 17 seeks to amend the existing law in places where the 1899 Act is in force in another manner. At present under that Act an award is immediately enforceable as a decree, and one High Court has held that it may be executed under section 15 (1) of that Act even though the notice of filing under section 11 (2) has not been given. This position is at variance both with the Code and with the English law, and it is now proposed to make the decree only after the time for challenging the award has expired or when such a challenge if made has been rejected. This clause, taken from the English rules of Court, is a corollary to clause 17 in the sense that it enables the Court to counter in the interval any action designed to defeat the subsequent execution of the decree.

Clause 19 provides that where an award becomes void or is set aside, the Court may supersede the reference and order that the agreement shall cease to have effect with respect to the particular difference referred. The clause generalises the provisions of paragraph 15 (2) of the Second Schedule to the Code.

Clause 20 deals with jurisdiction. It provides that all the matters relating to a single reference shall be before the same Court, and that where there is a choice of forum, it shall be determined by the first application made to a Court in relation to a reference.

Clause 21 is based upon paragraph 17 of the Second Schedule to the Code. It allows the parties to an arbitration agreement or any of them to initiate the reference proceedings with the assistance of the Court.

Clauses 22 to 24 reproduce substantially paragraphs 1 to 3 of the Second Schedule of the Code. They set out the initial steps to be taken for arbitration in a suit.

Clause 25 is a new provision. It is possible that some parties only to a suit may be agreeable to having the differences between them settled by arbitration. This clause will permit this to be done provided that those differences can be separated from the rest of the subject-matter of the suit.

Clause 26 applies with necessary modification certain other provisions of the Bill to arbitrations in suits.

Clause 28 is a new provision, based on the 1934 Act of Parliament, and conferring on arbitrators the power to make an interim award.

Clause 29.—Under the 1899 Act the arbitrators or umpire can themselves enlarge their time for making an award, though it seems that they must do so before the time actually expires. Under the Code it is the Court which has this power. The clause proposes that the power should in all cases vest in the Court only, who may extend the time whether the time has expired or not or whether the award has actually been made or not.

Clause 30 makes necessary provision as to interest when the award makes no provision therefor. It is based on a similar provision in the 1934 Act of Parliament (section 11).

Clause 31 follows paragraph 11 of the Second Schedule to the Code in setting out the grounds on which an award may be set aside.

Clause 32 and 33 provide that an arbitration agreement or award shall be contested only by application and not by suit. This proposal was made by the Civil Justice Committee and is in consonance with the general principle that the law of arbitration should provide simple, speedy and cheap settlement of differences.

Clause 34 deals with the staying of a suit where a reference concerning the subject-matter of the suit and between the same parties is pending. It continues the existing law contained in section 19 of the 1899 Act and paragraph 18 of the Second Schedule to the Code.

Clause 35 relates to the effect of subsequent legal proceedings on a pending reference. Such proceedings will not affect the reference unless (a) they relate to the whole of the referred matter and (b) all the parties to the reference are impleaded in the proceedings. Where these conditions are fulfilled, the legal proceedings will nullify the arbitration proceedings on the expiry of the time within which an application to stay the legal proceedings may be made or on the refusal of such an application.

Clause 36 is based on section 3 (4) of the 1934 Act of Parliament, and supplies an omission in the present Indian law. An agreement may contain a clause that no legal proceedings shall be taken on a certain matter unless the matter has first been made the subject-matter of an award. It is necessary to empower the Court to overrule this provision when the award is set aside or otherwise becomes void.

Clause 37 makes provision as to limitation in arbitration matters and follows closely section 16 of the 1934 Act of Parliament.

Clause 38 deals with disputes as to the arbitrator's fees and costs, and follows generally section 13 of the 1934 Act of Parliament and paragraph 13 of the Second Schedule to the Code. The Court may require the arbitrator to deliver up the award on the deposit into Court of the amount he claims, and may then investigate the claim and grant to the arbitrator such sum as fees as it thinks reasonable.

Clause 39 deals with appeals and replaces that part of section 104 (1) of the Code of Civil Procedure, 1908, which this Bill seeks to repeal.

Clause 40 has the effect of providing that Small Cause Courts shall not deal with arbitrations other than arbitrations in suits before it.

Clause 41 and the Second Schedule deal with procedure. The clause confers generally the same powers as the Court enjoys under the Code of Civil Procedure and with the Schedule adds certain special powers in relation to arbitrations on the lines of section 8 (1) of the 1934 Act of Parliament.

Clause 42 makes provision for the service of notices under the Bill between parties or between arbitrator and parties.

Clause 43 follows paragraph 7 of the Second Schedule to the Code in requiring the Court to assist the arbitrator to enforce the production of evidence and empowering the Court to punish default or contempt before the arbitrators as if it were committed before the Court.

Clause 44 reproduces with small changes section 20 of the 1899 Act and empowers High Courts to make rules.

Clause 45 repeats section 22 of the 1899 Act and binds the Crown.

Clause 46 applies with certain exceptions the provisions of the Bill to statutory arbitrations, and is based on section 20 of the 1934 Act of Parliament.

Clause 47 applies, subject to clause 46, the Bill to all arbitrations, and renders an arbitration award obtained otherwise, unenforceable. The clause replaces section 89 of the Code of Civil Procedure, 1908, which this Bill repeals.

Clause 48 saves references pending at the commencement of this enactment: such references will continue to be governed by the existing law.

The First Schedule follows the First Schedule to the 1899 Act. The main differences are (a) arbitrators are required to appoint an umpire within a month of their own appointment, (b) the power to enlarge the time for making the award is transferred to the Court (*cf.* clause 29), and (c) item VII is omitted as redundant in view of clause 13 (a).

The Third Schedule with clause 49 (1) repeals the existing general arbitration law.

The Fourth Schedule makes certain consequential amendments of which those to the Limitation Act are the most important. The second amendment of the Specific Relief Act, 1877, replaces section 3 of the 1899 Act.

MD. RAFI,

Secy. to the Govt. of India.