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1st Session, 5th Parliament, 18 Victoria, 1854.

BILL.

An Act to promote the settlement of all
Civil Actions by Arbitration, in Up-
per Canada.

Received and Read 1st time, Monday, 25th Sept.,
1854.

Second Reading, Monday, 2nd Oct. 1854.

HON. MR. MERRITT.

QUEBEC :

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

An Act to promote the settlement of Civil Actions by Arbitration, in certain cases, in Upper Canada.

WHEREAS the numerous and complicated interests of commerce and other industrial pursuits give rise to difficulties and disputes which require ability and judgment to determine, and whereas the present mode of selecting Juries for the settlement of these and all other matters of difficulty, in civil cases, is inadequate and unsuited to the important matters at issue: Be it therefore enacted, &c., as follows:

Preamble.

From and after the passing of this Act it shall be lawful for any Defendant, in any action at Law whatsoever, for any sum of money not exceeding one hundred pounds currency (barring all Pleas of the Crown), which may be entered against him, to name two persons to act in his behalf as Arbitrators, within eight clear days after receiving notice of such action or service of a writ of summons therein, from the Plaintiff, his attorney, or agent: And such defendant shall, by himself, his attorney, or agent, notify the said Plaintiff, that he, the said Defendant, is ready to meet the demand of the said Plaintiff, by his Arbitrators so named.

Defendant to appoint arbitrators, within a certain time after notice of service.

II. The said Plaintiff, his attorney or agent, after the receipt of such notice, shall, within eight clear days, name two Arbitrators on his behalf, and notify the said Defendant of such appointment.

Plaintiff to do the same.

III. The said Arbitrators so named by the said Plaintiff and Defendant, who must, before being so appointed have consented to serve in the matter at issue between the said Plaintiff and Defendant, shall, within ten clear days after such appointment nominate and appoint a fifth man as Umpire in the settlement of the matter in issue.

Umpire to be appointed by arbitrators.

IV. If the said Arbitrators so named and appointed do not within the said ten days appoint an umpire, it shall be lawful for either the said Plaintiff or Defendant to make application to the Judge of the County Court (within the local jurisdiction of which such action may be entered) either by himself, his attorney or agent, requiring the said Judge to appoint an Umpire in the said matter in issue, and it shall be the duty of the said Judge, within ten days after such application by either the Plaintiff or Defendant aforesaid, to appoint an Umpire in the case.

In default, Judge of County Court to appoint.

V. It shall be lawful for any Justice of the Peace or Commissioner of the Queen's Bench, to swear the said Arbitrators and Umpire to perform the duties required of them in such case equitably and justly, for which the said Justice or Commissioner shall be entitled to charge one shilling for each person so sworn.

Swearing arbitrators.

VI. The Arbitrators and Umpire so sworn shall form the Court of

Majority may decide the case. Arbitration referred to in this Act, and the decision of the said Arbitrators, or any three of them, shall be final as to the matter so referred to them as aforesaid.

Appointment of time for hearing, &c. VII. After the appointment of the Court of Arbitration, as aforementioned, it shall be lawful for them or any three of them, to fix the time for hearing the parties, their attorneys or agents, and their witnesses, and to notify the said Plaintiff and Defendant thereof, and the time so to be appointed shall be within twenty days of the appointment of the said Arbitrators. 5 10

Taking evidence. VIII. The said Arbitrators shall have full power to examine the Plaintiff and Defendant in any matter in issue, and with their witnesses upon oath, to be administered by any one of the Arbitrators.

Prolonging time for hearing. IX. If it shall appear to the said Arbitrators, on the statement of the Plaintiff or Defendant, or their attorneys or agents, in writing, that the time so fixed by them for hearing and determining the said dispute, is not sufficient, it shall be lawful for the said Arbitrators to extend the time for hearing the same, to such a period as shall to them appear to be just. 15

If the arbitrator cannot agree, they may apply to Court and become a jury in the case under its direction. X. In case the said Arbitrators, or any three of them, shall not be able to agree upon an award in the matter in dispute, it shall be lawful for them, with the consent of both Plaintiff and Defendant, to refer the said matter in issue to any of Her Majesty's Courts of Law having jurisdiction in such cases, and the said Arbitrators shall form the Jury in such Court, to try such case, and shall be subject to all the rules and regulations of such Court, as if the said Arbitrators had never been selected and had never consented to settle such matter of difference. And any verdict rendered by a majority of the said Jury, under the direction of the Judge of such Court, shall be a final settlement of such dispute or matter at issue, without further appeal. 20 25 30

If they will not make application to Court and cannot agree. XI. In case the said Arbitrators, as above, cannot agree to settle the matter so in dispute, and the said Plaintiff and Defendant do not agree to have the matter at issue referred to one of Her Majesty's Courts of competent jurisdiction as aforesaid, the said Arbitrators shall be released from all obligation to settle the said difference, and the said Plaintiff and Defendant shall be at liberty to select other Arbitrators, in like manner as aforesaid, and who shall have the same authority to refer the said matter in difference to any of Her Majesty's Courts of competent jurisdiction, as aforesaid, without the consent of either Plaintiff or Defendant. 35 40

Their remuneration. XII. The said Arbitrators shall be entitled to assess all damages between the said Plaintiff and Defendant, and to make such charge for their services as Arbitrators as any Arbitrators are now entitled to charge by Law. 45

Pending cases excepted. XIII. This act shall not affect the legal decision of any case now pending in any of Her Majesty's Courts in this Province.

Inconsistent enactment repealed. XIV. All Acts or parts of Acts which are inconsistent with this Act shall be and are hereby repealed. 50

Extent of Act. XV. This Act shall apply to that part of this Province called Upper Canada.