

SECTION 47. The said auditors shall annually meet on Annualmeet-  
the first Monday of April, and shall, on oath or affirmation, ings of said  
audit and settle the accounts of the town council, treasurer, auditors.  
street commissioner, and of the overseers of the poor, in  
the same manner, and with like powers, that township  
auditors audit and settle the accounts of supervisors of town-  
ships, within this commonwealth.

SECTION 48. That all laws hereby altered or supplied, Repeal.  
so far as they are inconsistent with this act, are hereby  
repealed.

SECTION 49. That the commissioners of Somerset county, Commiss'rs.  
are hereby authorized to change the location of any portion of Somerset  
of the state road leading from the top of the Allegheny county au-  
mountain, to the Virginia state line, situate between the thorized to  
town of Berlin and Gebhart's, in said county, if deemed change the  
necessary, in order to avoid hills. location of  
the state road

NER MIDDLESWARTH,  
Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,  
Speaker of the Senate.

APPROVED—The sixteenth day of June, A. D. eighteen  
hundred and thirty-six.

JOS: RITNER.

No 186.

## An Act

Relating to Reference and Arbitration.

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### An act relating to Reference and Arbitration.

#### I. OF REFERENCE BY AGREEMENT OF THE PARTIES.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That it shall be lawful for all persons desirous, to end by arbitration, any controversy, suit or quarrel, except such as respect the title to real estate, to agree, in writing, that their submission of the same to the award or umpirage of any person or persons, shall be made a rule of any court of record of this commonwealth, having jurisdiction, which the parties shall choose, and they shall insert such their agreement in their submission, or the condition of the bond or promise whereby they may oblige themselves, respectively, to submit to the award or umpirage of any person or persons.

SECTION 2. When any agreement shall be made as aforesaid, and inserted in the submission, or promise, or condition of the respective bond, the same shall, upon producing an affidavit thereof, made by the witnesses thereto, or any one of them, in the court of which the same is agreed to be made a rule, and filing the said affidavit in court, be entered of record in such court, and a rule shall, thereupon, be made by the said court, that the parties shall submit to, and finally be concluded by the arbitration or umpirage, which shall be made pursuant to such submission.

SECTION 3. It shall be lawful also, for the parties to any suit, to consent as aforesaid, to a rule of court, for referring all matters of fact in controversy in such suit, to referees, as aforesaid, reserving all matters of law arising thereupon for the decision of the court, and the report of such referees, setting forth the facts found by them, shall have the same effect as a special verdict, and the court shall and may proceed thereupon, in like manner as upon a special verdict, and either party may have a writ of error, to the judgment, entered thereupon, as in the case of a judgment entered upon special verdict.

SECTION 4. The party against whom an award shall be made, as aforesaid, may except thereto, within such time as the court, by their rules, shall direct, for either of the following causes, and for no other, viz:

- I. That the arbitrators or umpire misbehaved themselves in the case, or
- II. That they committed a plain mistake in matter of fact, or matter of law, or
- III. That the award was procured by corruption or other undue means.

SECTION 5. If exceptions shall not be filed within the time limited, as aforesaid, or if upon exceptions filed, the court shall confirm the award, the party neglecting or refusing to perform and execute the same, or any part thereof, shall be liable to all the penalties of contemning a rule of court, when he is a suitor or defendant in such court, and the court, on motion, may issue process accordingly, or the said court may, on motion, award an execution, or executions, to carry the same into effect.

SECTION 6. In all cases where the parties to any suit shall, by themselves, their attorneys, or agents, consent to a rule of court, for referring the matters in controversy in such suit, to certain persons, mutually chosen by them, the award of such referees, if made according to the submission of the parties, being approved of by the court, and entered upon the record, shall have the same effect, and shall be deemed and taken to be as available in law as the verdict of a jury, and the party in whose favour such report shall be made, whether plaintiff or defendant, shall have judgment

thereon, and the like process for the recovery thereof, as on a verdict in an action commenced by such party.

SECTION 7. If upon exceptions filed to any award, it shall appear to the court that the referees have made a mistake, in fact or law, it shall be lawful for such court to refer the cause back to the same referees, for such further or other proceedings therein as shall be expedient.

## II. OF COMPULSORY ARBITRATION.

SECTION 8. It shall be lawful for either party in any civil suit or action, his agent or attorney, to enter at the prothonotary's office a rule of reference, wherein he shall declare his determination to have arbitrators chosen, on a day certain, to be mentioned therein, not exceeding thirty days thereafter, for the trial of all matters in variance in the suit between the parties.

SECTION 9. *Provided*, That it shall not be lawful for the plaintiff in any suit, to enter such rule, until after a declaration or statement of the cause of action shall have been filed by him.

SECTION 10. *And provided also*, That no suit or action which shall be set down for trial at any court, shall be referred (except by consent of parties) within thirty days before, nor during the sitting of such court, unless such suit or action shall have been previously continued to the next term.

SECTION 11. It shall be the duty of the prothonotary with whom any such rule shall be filed, to enter the same of record, and to deliver to the party filing the same, a copy thereof, duly certified.

SECTION 12. It shall be the duty of the party, his agent, or attorney entering the rule as aforesaid, to cause a copy of such certified rule to be served on the opposite party, his agent, or attorney, at least fifteen days before the day fixed in such rule for the appointment of arbitrators, and the manner of such service shall be, by delivering such copy to the party personally, his agent or attorney, or if the said party cannot be found, and have no agent or attorney, by leaving such copy at his last place of abode, and in the case of a corporation, such copy shall be served on the president, or other principal officer, cashier, secretary, or chief clerk of the corporation.

SECTION 13. On the day fixed for the appointment of arbitrators, if both parties attend, either in person, or by their agents or attorneys, the arbitrators shall be chosen in the following manner, viz:

I. The number of the arbitrators, which shall be either three or five, shall be fixed by the parties, or if they cannot agree, by the prothonotary: *Provided*, That the parties may agree to refer the cause to any one person whom they shall concur in choosing.

- II. If the number fixed be three, the plaintiff shall then nominate one person, if five, he shall nominate two, and if all, or either, be objected to by the defendant, he shall nominate other persons in place of those objected to, until he shall have nominated six persons for every person so allowed by him to be nominated.
- III. The defendant shall then nominate in like manner, an equal number of persons, subject in like manner, to objection on the part of the plaintiff.
- IV. If the parties agree in the choice of arbitrators, as aforesaid, the umpire shall be chosen as follows: The parties shall nominate alternately, beginning with the plaintiff, seven persons, the opposite party having the right to object to the nomination, and if all the persons thus nominated be objected to, the prothonotary shall nominate a suitable and disinterested person; if he be objected to, he shall name another, and so on, until he shall name seven persons, and if all be objected to, he shall make out a list of five such persons, and the parties shall then strike out alternately, beginning with the plaintiff, until the name of only one person be left, who shall be the umpire.
- V. If the parties cannot agree in the choice of arbitrators, as aforesaid, the prothonotary shall make out a list, containing the names of five suitable and disinterested persons for each of the number of arbitrators, so, as aforesaid, fixed upon, from which list, the parties shall strike out, alternately, beginning with the plaintiff, until the number be left which was fixed, and the persons so selected, shall be the arbitrators.
- VI. If the parties agree as to one or more of the arbitrators, and differ as to one or more, the like proceedings shall be had to supply the deficiency, and complete the number of arbitrators so fixed upon.
- SECTION 14. If only one of the parties attend on the day fixed for the appointment of the arbitrators, the proceedings shall be as follows:
- I. If the party attending be the party by whom the rule of reference was entered, proof shall be made that the notice was duly served on the opposite party, in the manner hereinbefore provided, and the proof of the service shall be the oath or affirmation of the person by whom it was made.
- II. It shall be the duty of the prothonotary, to fix the number of the arbitrators, to nominate, for the absent party, and to object to the nominations made by the party present, if he shall think it necessary.
- III. If in such case, all the persons nominated on either side shall be objected to, the like proceedings shall be had for the choice of arbitrators, as if both parties were present,

except that the duties required to be performed by the prothonotary in such case, shall be performed by the recorder of deeds, the sheriff, coroner, or treasurer of the proper county.

SECTION 15. The day, hour, and place of meeting of the arbitrators, shall be fixed by the parties, if present, and able to agree thereupon, but otherwise, it shall be the duty of the prothonotary to determine the same: *Provided*, That in such case, the day and meeting shall not be less than ten, nor more than twenty days after their appointment.

SECTION 16. It shall be the duty of the party by whom the rule of reference shall have been entered, to procure from the prothonotary a certified copy of the record, containing the names of the arbitrators, and the time and place of their meeting, and to serve a copy of the same on each of the arbitrators, and also on the opposite party, if he reside within the city or county, and if not, upon his agent or attorney, giving at least ten days notice previous to the day of meeting.

SECTION 17. If only one of the parties shall attend on the day appointed for the meeting of the arbitrators, and the arbitrators, or one or more of them, shall attend, the proceedings shall be as follows:

- I. If the party attending be the party by whom the rule of reference was entered, proof shall be made that due notice of the time and place of meeting was given to the opposite party, as hereinbefore provided.
- II. If the party absent shall have been prevented from attending by sickness, or other unavoidable cause, and notice thereof shall be given to the arbitrators or arbitrator present, of the sufficiency of which cause such arbitrators or arbitrator shall judge, an adjournment shall take place, to such subsequent time as the said arbitrators or arbitrator shall fix.

SECTION 18. If the whole number of arbitrators shall not attend on the day appointed for the meeting, the proceedings shall be as follows:

- I. Proof shall be made that due notice of the time and place of meeting was given to the arbitrator or arbitrators absent, as hereinbefore provided.
- II. If both parties be present, either in person, or by their agents or attorneys, the place of the arbitrator or arbitrators absent, may be supplied by the parties aforesaid, if they can agree upon suitable persons.
- III. If the parties shall be unable to agree, the arbitrator or arbitrators present, shall appoint a suitable person or persons to fill the vacancy.

IV. If one of the parties be absent, and no sufficient reason be assigned, as aforesaid, for such absence, it shall be lawful for the arbitrators or arbitrator present, to appoint a suitable person or persons to fill the vacancy.

SECTION 19. When the whole number of the arbitrators shall be assembled, they shall be sworn or affirmed, justly and equitably to try all matters in variance, submitted to them, which oath or affirmation, may be administered to them by any person having authority to administer oaths, or in the absence of such person, by one of their number.

SECTION 20. As soon as the arbitrators shall have heard the evidence and allegations of the parties, they shall proceed to determine the matters in controversy, submitted to them, and they shall make out their award, which shall be signed by all, or a majority of them, and shall transmit the same to the prothonotary, within seven days after they shall have agreed upon the same.

SECTION 21. Arbitrators appointed as aforesaid, shall not be entitled to receive any daily pay, or other compensation, unless they make their report, and transmit the same to the prothonotary, within seven days after they shall have agreed upon the same.

SECTION 22. *Provided*, That if one of the arbitrators aforesaid shall die, or become incapable, or shall refuse to attend to the duties of his appointment, or shall remove or depart from the county, it shall be lawful for the remaining arbitrators, to proceed with the cause, and make an award, if they can agree upon the same; but if they cannot agree thereupon, it shall be lawful for them to appoint an umpire, and the umpire so appointed, together with the said arbitrators, shall proceed with the cause and make an award.

SECTION 23. It shall be the duty of the prothonotary receiving such award, forthwith to enter the same, of record, in the proper docket.

SECTION 24. Every award so entered, shall have the effect of a judgment, with respect to the party against whom it is made, from the time of the entry thereof, and shall be a lien upon his real estate, until reversed upon appeal, or satisfied according to law.

SECTION 25. *Provided*, That the court may, after appeal, allow the plaintiff to suffer a non-suit, with like effect as if the cause had not been referred, as aforesaid, if the special circumstances of the case shall appear to require it.

SECTION 26. It shall be lawful for the court to set aside an award of arbitrators, on due proof—

- I. That the arbitrators misbehaved themselves in the course of the hearings before them.
- II. That the award was procured by corruption, or other undue means.

SECTION 27. Either party may appeal from an award of arbitrators, to the court in which the cause was pending at the time the rule of reference was entered, under the following rules, regulations and restrictions, viz:

- I. The party appellant, his agent, or attorney, shall make oath or affirmation, that "it is not for the purpose of delay such appeal is entered, but because he firmly believes injustice has been done."
- II. Such party, his agent or attorney, shall pay all the costs that may have accrued in such suit or action.
- III. The party, his agent or attorney, shall enter into the recognizance hereinafter mentioned.
- IV. Such appeal shall be entered, and the costs paid, and recognizance filed, within twenty days after the day of the entry of the award of the arbitrators on the docket.

SECTION 28. *Provided*, That if the party against whom any award shall be made as aforesaid, not being the party by whom the rule of reference was taken out, shall apply by petition, to a judge of the court in which such action is depending, and shall therein set forth, that by reason of poverty, he is unable to pay the costs of the suit, as aforesaid, and shall make affidavit of such facts, it shall be lawful for such judge, after due notice to the opposite party, if he shall be satisfied of the truth of the statements in such petition, to make an order, that the appeal of such party in the case, shall be good, although the costs shall not be paid by him, as aforesaid.

SECTION 29. If the plaintiff be the appellant, he shall, by himself, his agent or attorney, with one or more sufficient sureties, be bound in recognizance to the defendant, the condition of which shall be, that if he shall not, in the event of the suit, recover a sum greater, or a judgment more favorable to him than the award of the arbitrators, he shall pay all costs that shall accrue in consequence of said appeal, and one dollar for every day lost by the defendant in attending on such appeal.

SECTION 30. If the defendant be the appellant, he shall, by himself, his agent or attorney, with one or more sufficient sureties, in the nature of special bail, be bound in recognizance to the plaintiff, the condition of which shall be, that if the plaintiff in the event of the suit, shall obtain a judgment for a sum equal to or greater, or a judgment as, or more favorable than the award of the arbitrators, the said defendant shall pay all the costs that may accrue in consequence of the said appeal, together with the sum or value of the property or thing awarded by the arbitrators, with one dollar for every day that shall be lost by the plaintiff in attending to such appeal, or in default thereof, that the said defendant shall be surrendered to the jail of the proper county.

SECTION 31. *Provided*, That in all cases in which executors, administrators, or other persons suing or sued in a representative character, or minors, shall be the party appellant from an award, the appeal shall be good, without payment of costs, or entering in cognizance, as aforesaid, if such appellant shall not have taken out the rule of reference.

SECTION 32. The costs to be paid by the appellant, as hereinbefore required, may nevertheless, be taxed in the appellant's bill, and recovered of the adverse party, if, in the event of the suit, the appellant is entitled to recover costs, agreeably to the provisions of this act.

SECTION 33. No appeal as aforesaid, shall be withdrawn, without the consent, in writing, of the opposite party first had and obtained, and it shall be the duty of the prothonotary to whom such written consent may be delivered, to file the same among the records in the cause.

SECTION 34. If the appeal as aforesaid, shall not be entered within the time hereinbefore limited, it shall be the duty of the prothonotary, at the request of the party in whose favor the award shall have been made, to issue execution, or such other process as may be necessary and proper, to carry into effect the judgment entered upon such award, subject nevertheless, to the provisions of the law concerning the stay of execution upon judgments.

SECTION 35. In all suits or actions in which the prothonotary of the court shall be a party, or in which he may be interested, the duties hereinbefore required to be performed by him, shall be performed by the recorder of deeds, the clerk of the Orphans' court, the sheriff, coroner, or treasurer of the same county.

SECTION 36. If the party by whom a rule of reference shall be entered, his agent or attorney, shall fail to cause a copy of the certified rule, or of the record containing the names of the arbitrators, and of the time and place of meeting, to be served, as is hereinbefore required, he shall, for every such default, forfeit and pay the sum of twenty-five dollars, one half to the use of the county, and the other half to the use of the person who will sue for the same: *Provided*, That nothing herein contained, shall be deemed to deprive the court of the right of setting aside any award obtained without due notice, as aforesaid, or shall interfere with the right of the party to recover such damages as he may have sustained.

SECTION 37. If any person appointed an arbitrator, and residing within the county, having received due notice of his appointment, shall fail to attend and take upon himself the duties of the appointment, unless prevented by sickness, or other unavoidable cause, he shall, for every such default, forfeit and pay the sum of two dollars, to be recovered by either party, who shall first sue for the same: *Provided*,

That no arbitrator shall be compelled to serve on more than ten appointments in any one year.

SECTION 38. On the trial of any cause, after an appeal from an award of arbitrators, it shall not be lawful for the appellant to produce as evidence in court, any books, papers, or documents, which he had in his power to produce at the time of the arbitration, and withheld from the arbitrators, after being required by the arbitrators to produce the same.

### III. GENERAL REGULATIONS RESPECTING REFEREES AND ARBITRATORS.

SECTION 39. Nothing in this act contained, shall be taken to authorize the entering a rule of arbitration in either of the following cases, viz.:

- I. Appeal to a Register court.
- II. Issues directed to any court to ascertain a fact or facts.
- III. Actions upon bail bonds, and recognizances.
- IV. Actions upon penal statutes.
- V. Actions brought by the commonwealth, unless such rule be entered by the Attorney General, or his deputy, with his consent, in writing.

SECTION 40. Referees and arbitrators in every case, as aforesaid, or a majority of them, shall have power—

- I. To require from either party the production of all such books, papers, and documents as they shall deem material to the cause.
- II. To judge of the competency and credibility of witnesses, and the propriety of admitting any written evidence that may be offered.
- III. To administer oaths or affirmations to witnesses.
- IV. To adjourn their meetings from day to day, or for a longer time, and also from place to place, if they shall think proper.
- V. To decide both the law and fact that may be involved in the cause submitted to them.

And each of the arbitrators shall have power to issue subpoenas to witnesses, to appear before them, and if any person who shall have been duly subpoenaed to attend as aforesaid, shall neglect or refuse to attend, a majority of the arbitrators shall have power to issue an attachment against such person, according to the practice of the courts.

SECTION 41. The form of the subpoena in such case, shall be as follows, to wit:

County, ss.

The Commonwealth of Pennsylvania,

To

Greeting:

We command you, that laying all business and excuses aside, you be and appear in your proper person, before A, B, C,

## LAWS OF PENNSYLVANIA,

D, &c. arbitrators (or referees, as the case may be,) appointed to hear and determine all the matters in variance in a certain action, wherein E F is plaintiff, and G H is defendant, at the house of , in , on the day of next, then and there to testify, all and singular, those things which you shall know, on behalf of the plaintiff; (or defendant, as the case may be;) hereof fail not, under penalty of three hundred dollars:

Witness my hand, this day of , A. D.  
Signed, R L, (one of the arbitrators.)  
(or as the case may be.)

SECTION 42. The form of an attachment, shall be as follows:  
County, ss.

The Commonwealth of Pennsylvania,  
To the constable of :

We command you, that you take , late of your county, aforesaid, and have him forthwith before A, B, C, D, &c. arbitrators (or referees, as the case may be,) appointed to hear and determine all matters in variance in a certain action, wherein E F is plaintiff, and G H defendant, at the house of , in , then and there to answer to such matters and things as shall be objected against him, and not depart without leave:

Witness my hand, this day of , A. D.,  
Signed, R I, } Arbitrators.  
E F. }  
(Or as the case may be.)

SECTION 43. Referees or arbitrators, as aforesaid, or a majority of them, shall also have power to punish, by fine, not exceeding twenty dollars, all persons, whether parties, witnesses or others, who shall be guilty of disorderly conduct in their presence, or who shall insult, disturb or interrupt the said referees or arbitrators, when in business, which fine shall be recovered as follows:

SECTION 44. The said referees or arbitrators, or a majority of them, shall make out a certificate, in the following form, viz:—

We, the undersigned referees, (or arbitrators, as the case may be,) do certify, that A B did this day, at , in the county of , before us, conduct himself in a disorderly manner, (or as the case may be,) tending to insult, disturb and interrupt us in the trial of a certain cause, wherein C D is plaintiff, and E F is defendant, for which offence we have fined him, the said A B, the sum of dollars, which sum you are hereby required to collect, according to law:

Witness our hands, this day of , A. D.  
Signed, G H, } Arbitrators,  
J K, } or  
L M. } referees.

SECTION 45. The certificate aforesaid, shall be transmitted to an alderman or justice of the peace of the proper city or county, who is hereby required to make a record thereof, and issue execution to collect the same, in the manner that judgments under one dollar are by law collected, and the sum, when collected, shall be paid by such alderman or justice to the county treasurer, for the use of the county in which the offence may have been committed.

SECTION 46. The prothonotary of the court in which the suit shall be depending, or any alderman or justice of the peace, shall have power to issue subpoenas for witnesses to appear before the arbitrators.

SECTION 47. It shall be the duty of the prothonotary of the proper court, on application by either party, his agent or attorney, to enter a rule, to take the depositions of aged, infirm, going, or absent witnesses, or witnesses out of the commonwealth, to be read in evidence, either before referees or arbitrators, or to the jury, in case of an appeal from an award of arbitrators, in the same manner, and subject to the same rules and regulations, as are now observed in the courts of this commonwealth.

SECTION 48. In every case in which application shall be made by either party, to referees or arbitrators, for the postponement of a meeting or hearing, it shall be lawful for the said referees or arbitrators, or a majority of them, if satisfied of its justice, to require from the party making such application, the payment of the costs of the meeting, including the pay of the arbitrators, and the attendance of witnesses, previous to granting such application, according to the practice of the courts in like cases.

SECTION 49. Every referee and arbitrator, shall be entitled to receive the sum of one dollar for every day necessarily employed by him in the hearing and determination of the cause submitted to him.

SECTION 50. If either party, his agent or attorney, or any other person in his behalf, shall, after the appointment of any referee or arbitrator, attempt to corrupt or influence such referee or arbitrator, by privately endeavouring, either in conversation, by correspondence, or otherwise, to bias his mind or judgment in favour of such party, he shall forfeit and pay a sum not less than fifty dollars, and not more than one hundred dollars, to be recovered by indictment in the court of Quarter Sessions of the proper county, one half of which fine shall be for the use of the prosecutor, and the other half for the use of the proper county, saving to the other party his right to recover such damages as he may have sustained.

SECTION 51. If any referee or arbitrator shall, directly or indirectly, take or receive any gift or gratuity whatever, from either party in the cause, or from any person in his

behalf, to find an award in his favour, or in consideration of having found such award, such referee or arbitrator, shall forfeit and pay ten times the value of the thing so taken, one half to the commonwealth, and the other half to the person that will sue for the same, and shall also be liable to prosecution by indictment, as for a misdemeanor: *Provided*, That nothing herein contained, shall debar the party aggrieved, of his action to recover the damages he shall sustain, in all cases where the penalty aforesaid, shall be recovered at the suit of another person.

**SECTION 52.** The fees to be allowed to constables, and other persons, for services performed, in pursuance of the provisions of this act, shall be the same as the fees allowed by law for similar services, and the like penalty shall be inflicted for neglect of duty, as in other cases.

**SECTION 53.** All fines and forfeitures incurred under any of the provisions of this act, shall, unless it be otherwise provided, be sued for, before an alderman or justice of the peace, in the same manner that debts of equal amount are recoverable.

**SECTION 54.** The provisions of this act relative to compulsory arbitrations, shall not be so construed as to extend to the District court for the city and county of Philadelphia.

**SECTION 55.** This act shall take effect on the first day of September next.

NER MIDDLESWARTH,

Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,

Speaker of the Senate.

APPROVED—The sixteenth day of June, A. D. eighteen hundred and thirty-six.

JOS: RITNER.