R.S. 2A:24-1 et seq. December 11, 1974

LEGISLATIVE HISTORY OF R.S. 2A:24-1 et seq.
(Arbitration and awards)

Cy 1

Laws of 1923, Chapter 134, Bill No. S58
- Introduced by Senator Pierson on Jan. 15, 1923 and referred to Finance Committee. Statement on bill. (Copy of original bill and statement enclosed)
- Second reading - Jan. 29
- Amended on third reading, Feb. 26. (Copy of amendments enclosed)
- Passed Senate, March 15.
- Passed Assembly, March 16.
- Signed by Governor, March 22.

Hearings and Reports

No hearings or reports were located.

Newspapers

Both the Trenton Evening Times and the Newark Evening News dated March 15, 16, 17, 22, 23 (1923) were scanned for discussion of S58. Notice of Governor Silzer's signing was made on page 2, column 2 of Newark Evening News, March 22, 1923.

Newark Public Library examined the contents of files marked "Pierson, Arthur M." which had been clipped from the Newark Evening News (all editions). The indices to these editions were checked also without finding any enlightening material.

Law Journal Articles

46 NJLJ 323 (1923) editorial note of approval for passage of act. (copy enclosed)

45 NJLJ (1922) editorial note. Notice made that a Tribunal of Arbitration was founded by the Arbitration Society of America in hopes of diminishing litigation in New York City. (copy enclosed)

8 Rutgers Law Review 127 (1953-54)
9 RLR 142 (1954-55)
10 Rutgers Law Review 175 (1955-56)
11 RLR 184 (1956-57)
12 RLR 114 (1957-58)

JA/ks

SENATE, NO. 58

STATE OF NEW JERSEY

INTRODUCED JANUARY 15, 1923.

By Mr. PIERSON.

Referred to Committee on Finance.

AN ACT concerning arbitration and awards.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. A provision in a written contract to settle by arbitration a controversy thereafter arising out of the contract or the refusal to perform the whole or any part thereof or an agreement in writing to submit an existing controversy to arbitration pursuant to section two hereof, shall be valid, enforceable and irrevocable, save upon such grounds as exists at law or in equity for the revocation of any contract.

2. Two or more persons may submit in writing to arbitration any controversy existing between them at the time of the agreement to submit, which arises out of a contract or the refusal to perform the whole or any part thereof or the violation of any obligation. They may also so agree that a judgment of a court of record, specified in writing, shall be rendered upon the award, made pursuant to the submission. If the court is thus specified they may also specify the county in which the judgment may be entered. If the writing does not specify, the judgment may be entered in any county.

3. A party aggrieved by the failure, neglect or refusal of another to perform under an agreement in writing providing for arbitration may petition any justice of the Supreme Court or judge of a Circuit Court, holding court for the county where either party resides, or judge of a District Court having jurisdiction of the contro-

versy in question, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. The justice or judge shall hear the parties, and upon being satisfied that the making of the agreement or the failure to comply therewith is not in issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the agreement or the default be in issue an order shall be made directing a summary trial thereof. Where such an issue is raised, the party alleged to be in default may, on or before the return day of the notice of application, demand a jury trial of such issue, and if such demand be made, said justice or judge shall make an order referring the issue or issues to a jury in the manner provided for the trial of actions at law or may specially call a jury for that purpose. If no jury trial be demanded said justice or judge shall hear and determine such issue. If the finding be that no agreement in writing providing for arbitration was made, or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the finding be that a written provision for arbitration was made and there is a default in proceeding thereunder, an order shall be made summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

4. If, in the agreement, provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed, but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then, upon application by either party to the controversy, any justice or judge as aforesaid shall designate and appoint an arbitrator or arbitrators, or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided, the arbitration shall be by a single arbitrator.

5. If any suit or proceeding be brought upon any issue arising out of an agreement providing for the arbitration thereof, any justice or judge as aforesaid, upon

being satisfied that the issue involved in such suit or proceeding is referable to arbitration, shall stay the action until an arbitration has been had in accordance with the terms of the agreement; *provided*, that the applicant for the stay is not in default in proceeding with such arbitration.

6. Any application made under the authority of this act shall be heard in a summary way in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

7. Any arbitrator or arbitrators selected either as prescribed in this act, or otherwise, or a majority of them, if more than one, may require any person to attend before him or them as a witness and in a proper case to bring with him any book or written instrument. The fees for such attendance shall be the same as the fees of witnesses before masters. Summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrator or arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpœnas to testify before a court of record of this State; if any person or persons so summoned to testify shall refuse or neglect to obey said summons upon petition any justice or judge as aforesaid may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner now provided for the attendance of witnesses or the punishment of them in the courts of this State.

8. At any time within three months after the award is made, unless the parties shall extend said time in writing, which award must be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate, and delivered to one of the parties or his attorney, any party to the arbitration may apply to any justice or judge aforesaid, for an order confirming the award; and thereupon said justice or judge must grant such an order, unless the award is vacated, modified or corrected, as prescribed in the next two sections. Notice in writing of the motion must be served upon the adverse party or his attorney five days before the hearing thereof.

9. In either of the following cases the justice or judge must make an order vacating the award, upon the application of any party to the arbitration:

(a) Where the award was procured by corruption, fraud or undue means.

(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehaviors, by the which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award, upon the subject matter submitted, was not made.

Where an award is vacated and the time, within which the agreement required the award to be made, has not expired, the court may, in its discretion, direct a re-hearing by the arbitrators.

10. In either of the following cases the court must make an order modifying or correcting the award, upon the application of any party to the arbitration:

(a) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter affecting the merits of the decision upon the matters submitted.

(c) Where the award is imperfect in a matter of form, not affecting the merits of the controversy.

The order must modify and correct the award, so as to effect the intent thereof, and promote justice between the parties.

11. Notice of a motion to vacate, modify or correct an award must be served upon the adverse party, or his attorney, within three months after award is filed or delivered as prescribed by law for service of notice of a motion in an action. For the purposes of the motion any judge who might make an order to stay the proceedings, in an action brought in the same court, may make an order to be served with

the notice of motion, staying the proceedings of the adverse party to enforce the award.

12. Upon the granting of an order confirming, modifying or correcting an award, judgment may be entered in conformity therewith in the court wherein the justice or judge making the same sits.

13. The party moving for an order confirming, modifying or correcting an award shall at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The submission; the selection or appointment, if any, of an additional arbitrator or umpire, and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit or other paper used upon an application to confirm, modify or correct the award, and a copy of each order made upon such an application.

The judgment may be docketed, as if it was rendered in an action.

14. The judgment so entered has the same force and effect, in all respects, as, and is subject to all the provisions of law relating to, a judgment in an action; and it may be enforced, as if it had been rendered in an action in the court in which it is entered.

15. An appeal may be taken from an order confirming, modifying correcting or vacating an award, or from a judgment entered upon an award, as from an order or judgment in an action.

16. All acts and parts of acts inconsistent with this act are hereby repealed, and this act shall take effect on and after the fourth day of July next after its enactment, but shall not apply to contracts made prior to the taking effect thereof.

STATEMENT.

The purpose of this bill is: (1) to make a clause in a contract providing for arbitration of controversies arising thereunder valid, enforceable and irrevocable just as any other clause of the contract; (2) to make an agreement to submit an existing controvery valid, enforceable and irrevocable, and (3) to provide the procedure by which a party to such arbitration clause or agreement could secure its enforcement.

Amendments

Section 3, line 2, after the word "maintain" strike out the following: "fireproof rooms, vaults, safes,".

Section 3, line 3, before the word "approved" strike out the words "or other"; and after the word "receptacle" strike out the words "made of noncombustible materials".

Section 3, line 5, strike out the word "rooms" and insert the word "receptacles".

Section 3, line 7, after the word "kept" strike out the following: "in the buildings in which they are ordinarily used".

Mr. Blackwell moved that the above amendments to Senate Bill No. 162 be adopted.

Which was agreed to.

Senate Bill No. 162, entitled "A supplement to an act entitled 'An act to establish a public record office,' approved March twenty-sixth, nineteen twenty,"

As amended,

Was taken up on third reading and laid over on motion of Mr. Blackwell.

Senate Bill No. 58, entitled "An act concerning arbitration and awards,"

Was taken up on third reading.

Mr. Pierson asked unanimous consent to amend said bill on third reading.

Which was agreed to.

Amendments to Senate Bill No. 58:

Amend section 3, lines 4 and 5, by striking out words "or judge of a District Court having jurisdiction of the controversy in question."

Line 7, by inserting after "served" the word "personally."

Line 8, strike out the second "the" and insert in lieu thereof the word "such".

Line 15, by inserting after the word "jury" the words "called and impanelled," and striking out the word "or" at the end of line.

Line 16, by striking out words "may specially call a jury for that purpose."

Amend section 7, line 1, strike out all present matter in lines 1, 2, 3, and down to and including the period in line 4, in lieu therefor insert after figure "7" the following: "When more than

one arbitrator is agreed to all the arbitrators shall sit at the hearing of the case, unless, by consent in writing, all parties shall agree to proceed with the hearing with a less number. The arbitrator or arbitrators so sitting may require any person to attend before him or them as a witness and in a proper case to bring with him any book or written instrument."

Mr. Pierson moved the above amendments to Senate Bill No. 58 be adopted.

Which was agreed to.

Senate Bill No. 58, entitled "An act concerning arbitration and awards,"

As amended,

Was taken up on third reading and laid over, on motion of Mr. Pierson.

The following message was received from the Governor by the hands of Mr. Pearse, his Secretary:

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
To the Senate: February 26th, 1923.

I desire to call your attention to the fact that on January 22d I removed the State Highway Commission, and that since that time there has been no Highway Board in existence, and for more than a month State Highway matters have been at a standstill.

On February 13th, after the Legislature, in its wisdom, had authorized the appointment of a new Highway Board, I sent to your body the names of Messrs. Scott, Stewart, Jelin and Kidde, four men of high standing, and thoroughly qualified to fill these important offices, and to see that good roads are built and the money of the State honestly spent. Up to this time no action has been taken by the Senate looking toward their confirmation, although I have heard no well-founded criticism of either their ability or honesty.

May I urge upon you the importance of prompt action, in view of the fact that the first of March is upon us and it is of the highest importance that this board become familiar with its duties and make plans for its work.

Unless these functions are undertaken at once it will have a serious effect upon our road building program during the coming year.

tainty of the swift punishment for crime, there is, nevertheless, an unsettling of the whole situation when so many criminals properly sent to the State Prison have a hope, almost a certainty, of being released on parole or pardoned, long before their term of sentence has expired.

"Mr. President," said Senator McCumber in the Senate one day, "the Senate of the United States, the greatest deliberative body in the world, as I have often heard, has now deliberated five hours and twenty minutes on 4 cents' worth of formic acid, and I wish to know if it is not about time that we voted on it." But they didn't. Senator Hitchcock asked a question that precipitated a partisan discussion, Senator King secured the floor to make a "few remarks," and then followed a general debate filling six pages of the Congressional Record, and all over 4 cents' worth of formic acid. Greatest deliberative body in the world!

From May 24, 1917, when the wood cargo carrier "North Bend," the first vessel to be built under wartime contracts, was turned over to the government by Kruse & Banks, North Bend, Ore., to 1922, the United States Shipping Board constructed 2,312 vessels of various types of 13,636,711 deadweight tons. To-day more than 1,000 of these vessels are laid up, due to the depressing conditions of the world's markets, as well as the inability of the American operator to compete with his foreign competitors from the standpoint of expenses. A trip up the Hudson river shows some 150 of these vessels, all with seamen on, and lying as still and useless as if phantom ships.

The Lawyers' Club of New York City has favored what has been endorsed by many Judges and business men, an open tribunal for the settlement by prominent laymen, acting as arbitrators, of business and other disputes which would otherwise result in litigation and further congestion of Courts. The Tribunal of Arbitration, as it is called, has been founded by the Arbitration Society of America, a recently incorporated body of which Emerson McMillan, a banker, is President; Samuel McCune Lindsay of Columbia University, and Moses H. Grossman, lawyer, Vice Presidents, and Jules S. Bache, Treasurer. They, and those associated with them, hope the Tribunal will diminish litigation in New York City by 75 per cent. and permit the courts to devote their time to the more important legal work which has been so retarded by minor cases. The Tribunal is open for business now. Any one who wishes to take a case to it at its offices at 115 Broadway will be provided with the machinery for settling the dispute at issue. The power of the Tribunal is derived from a law passed in 1920. This provides that any persons who wish to arbitrate a dispute may select an arbitrator to hear their case. They may present it with or without the aid of lawyers, in their own way, with no legal technicalities, and once they agree to do so their decision is irrevocable. The arbitrator has the power of subpoena, the power to render a judgment, financial or otherwise, and there is no appeal. Behind him stand the Courts to render his orders and subpoenas effective. The arbitrator may be anyone selected by the disputants. The endorsement of the society has been so general, say its founders, that already they have pledges of assistance and of service as arbitrators from hundreds of men prominent commercially

and professionally, who have offered to give their time without compensation in any case where their services are needed. Merchants in a given business, professional men or bankers, will have the opportunity to select as arbitrator one or more men in their own business or profession who will have the requisite knowledge to pass a point at issue. This may prevent the contradictions of experts in Courts of law which so often hopelessly confuse the most intelligent jury over a question of fact, and also make it possible to do in one day what by Court procedure would require weeks.

Under the title of "A More Liberal View" the following editorial note on a recent New Jersey divorce case appeared in the June "Law Notes:"

"With the advance of civilization some signs of the dawning of a more liberal view of this subject are now appearing. In Ysern v. Horter (N. J.) 110 Atl. 31, the Court, referring to the language heretofore quoted from Moss v. Moss, said: 'These harsh propositions are absolutely inconsistent with the law of New Jersey.' In that case and in the later case of Dooley v. Dooley, 115 Atl. 268, it was held that false representations as to character and position are sufficient to warrant the annulment of an unconsummated marriage. The Court in each of these cases confines its holding to an unconsummated marriage in deference to earlier authorities in the state, but, at least where the suit is by the wife, it is difficult to see that consummation affects the principle involved. If, as was said in the Ysern case 'there is no reason based on public policy why a young girl should be tied forever to an escaped criminal simply because of a ceremony of marriage to which she was induced to consent by a fraudulent representation,' the fact that by the consummation of the marriage he has inflicted an added wrong on her should not debar her from relief. The Courts of New York have settled the question in the only manner consistent with the modern doctrine that marriage is a civil contract. Disregarding all distinctions between consummated and unconsummated marriages, it is held in that state that a marriage may be annulled if consent thereto was procured by a fraudulent misrepresentation of any material fact, the test of materiality being whether the party deceived would have consented to the marriage had the false statement not been made. Di Lorenzo v. Di Lorenzo, 174 N. Y. 467. Under this doctrine a marriage has been annulled for breach of an ante-nuptial agreement that there should be a marriage ceremony according to Jewish rites in addition to a civil ceremony. Rozso v. Rozso, 191 N. Y. S. 868. This would seem at first blush an extreme holding, but the effect of such a breach of faith would naturally be to cut an orthodox Jewess off from association with her kindred and friends placing her in their estimation in the position of a concubine. Slowly but surely the law is progressing away from the superstition that the sacredness of a relation is best preserved by refusing legal relief for frauds and abuses which degrade and pervert it."

How many of our readers are aware of the provisions of the Debtors' law of 1828, by which creditors could put their debtors in jail without hope of food except by the charity of their friends? The law was described, in part, by the jailer of the Hunterdon county jail, in a communication to the "Democrat" of that county, under date of Dec. 3, 1828:

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all lands. He was the choice and the champion of a party; but his lofty soul could see over and beyond party walls—the unlimited terrain beyond; his motto was: 'Stand with anybody who stands right, stand with him while he is right, and part with him when he goes wrong.' No pure partisan would ever assent to so disintegrating a proposition. . . . He once said, 'I have not willingly planted a thorn in any man's bosom.' And yet, as soon as he reached the height of ambition, this man, who shunned hurt and scattered kindness on his path, was doomed by a cruel destiny to send millions of his own fellow-countrymen through the torturing experiences of a prolonged and fierce war against their own kith and kin. This, the tenderest soul who ever ruled over a land, was driven for five years by an inexorable fate to pierce the gentle hearts of mothers with anguish that death alone can assuage. And in this, the greatest and most poignant task of his life, he was worried, harassed, encumbered, lassoed at every turn by the vanities, the jealousies, the facetiousness and the wiles of swarms of little men. He was misrepresented, misunderstood, maligned, derided, thwarted in every good impulse, thought or deed. No wonder his photographs became sadder and sadder and more and more tragic year by year up to the tragic end. His example and his wise sayings are the inheritance of mankind, and will be quoted and used to save it from its follies to the end of the ages. . . . Lincoln is the finest product in the realm of the statesmanship of Christian civilization and the wise counsel he gave to his own people in the day of their triumph he also gives today to the people of Europe in the hour of their victory over the forces that menace their liberties."

Ex-Senator Frelinghuysen has written a letter to the Government at Washington in relation to the non-execution of the Volstead Act in New Jersey, holding that Federal officials in this State are not performing their full duty. The fact is certain that there is collusion or understanding somewhere that the law is not to be taken at its full value, because it is evident from press reports and from what men accustomed to drink strong liquors say, that there is no difficulty in securing hard beverages, especially in any of our large cities. We notice that at the October Term of Court in Atlantic City Judge Black said, in his charge to the Grand Jury: "You can not be called upon to be detectives or sleuths, but you can be called upon to determine if the charges made in the public press are true that in Atlantic City there is notorious and open violation of the liquor laws to such an extent that young girls are seen intoxicated on the highways and streets. Every one knows the conditions, according to the public press, except the officials. If you find these allegations are true, if you find the commissioners sit down and see the law violated, indict them for malfeasance in office." It has been declared that Atlantic City is the worst offender in this regard in this State, but there certainly are offenders elsewhere and it ought not to be a difficult thing for the officers of the law to find out the facts and present them to a grand jury, and if such a jury does not act, to make all the facts public.

Mr. Frank H. Sommer, of Newark, in a recent address before the Society of Certified Public Accountants, strongly commended the recent

46 NJLJ 323-324 (1923)

Arbitration Act of this State. We have heretofore called attention to this statute (Laws 1923, p. 291).

The Act provides for arbitrators to hear disputes and makes their decision binding upon the parties who have submitted their case under this law. The Courts are required to enter judgments in accordance with the decision of an arbitrator, except where the decision is obtained fraudulently. The premier benefit of the Act is that it will eliminate seventy per cent. of the litigation clogging the Courts. The Act would also prevent cases running four or five years before a decision could be reached, as Mr. Sommer suggested, and prevent either of the parties in a controversy stopping proceedings when they felt matters were going against them. The fact that this law exists seems not to be generally known by would-be suitors.

The Governor has recommended a central garage (presumably in Trenton) for housing all State-owned automobiles, and has appointed a committee to make suggestions how to reduce the cost to the State of the maintenance of the machines used. The cost now is said to be the upkeep of 282 passenger cars and 317 motor trucks, entailing a bill in excess of $500,000 a year. This is an economy which there ought to be no difficulty in bringing to pass. It is strange, and yet not strange, how expenses mount up in such matters when left to take care of themselves. The object of a State or Federal budget, however, is to control just such improper expenditures, and we see no reason why our Legislature should not put on brakes in this and other things wherein there is a public waste.

That seemed to be a singular, although possibly a correct judgment of our Supreme Court which recently set aside the removal of various officials in Bayonne because the Commission organized on May 15th last on daylight saving time instead of standard time. The vote in the Court was 3 to 2, and the case is to be appealed. It will now behoove the next Legislature to regulate the matter for the future and either make standard time the correct time for all occasions when time is mentioned in the statutes, or allow municipalities, as well as Courts, to do as they please. There is an argument for both contentions. It might be a better way to legislate daylight saving time out of existence, or fix permanently when it is to begin and when end, though controversy in regard to this latter matter is almost sure never to end.

The decision by Federal Judge Knox in New York City to dissolve what is popularly known as the "Cement Combine" will naturally meet with popular approval. The technical name of the defendant was the Cement Manufacturers' Protective Association. Judge Knox said: "I think that real competive effort tended to become more and more feeble. That manufacturers by reason of the exchange of statistics, were equipped to regulate their production, and by common consent and a concert of action, did so to the end that the cement supply would at all times be a lap or two behind the demand, and this created higher prices. In enabling this to be done the association, its officers and agents, together with its membership materially limited the full and free operation of the contending

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