

**ARBITRATION ACT, 1892,
WITH THE RULES OF 24TH
MARCH, 1893, FORMS
AND NOTES OF CASES**

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Arbitration Act, 1892, with the Rules of 24th March, 1893, Forms and Notes of Cases by James Moriarty

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JAMES MORIARTY

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WITH THE RULES OF 24TH
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New South Wales, Laws, statutes, etc. Civil proced-
ure law.

ARBITRATION ACT, 1892,

WITH THE

RULES OF 24th MARCH, 1893,

FORMS AND NOTES OF CASES.

BY

JAMES MORIARTY,

OF THE

Middle Temple, Barrister-at-Law.

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1893.

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To the

HONOURABLE PETER FAUCETT,

Who, for over twenty-two years, was a Judge of the Supreme
Court in the Colony of New South Wales.

A Judge courteous, wise, and learned.

MAY 8 1917

The Arbitration Act.

(BY THE SAME AUTHOR.)

IN PREPARATION.

THE LAW & PRACTICE

OF

NEW SOUTH WALES

ON

Appeals from Justices' Orders and Convictions,
and by Special Case

Appeals from all inferior Courts to the Supreme
Court

AND ON

Appeals to the Privy Council,

Criminal Information and Writs of Habeas Corpus,
Mandamus, Prohibition and Quo Warranto,

WITH

COPIOUS NOTES AND AN APPENDIX CONTAINING THE
ACTS AND RULES,

BY

JAMES MORLARTY,

OF THE

MIDDLE TEMPLE, BARRISTER-AT-LAW.

PREFACE.

THE law relating to arbitration in the Colony of New South Wales is contained in three Acts of Parliament, 22 Vict. No. 18, 51 Vict. No. 37, and the 55 Vict. No. 32. The Act of 1892, while repealing the 31 Vict. No. 15, is on the same lines as the 52 & 53 Vict. c. 49, which passed into law in England in 1889. The law in England previous to the 52 & 53 Vict. c. 49 was regulated (apart from particular statutes) by the 9 Will. III. c. 15 as amended by 3 & 4 Will. IV. c. 42 and the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), ss. 3-17, and further amended by the Judicature Acts, 1873 and 1884, and the Rules of the Supreme Court, 1883. The law in New South Wales was regulated by the 31 Vict. No. 15 (now repealed), the Public Works Act, 1888, and the District Courts Act, 1858.

The Arbitration Act, 1892, may be divided into references by consent and compulsory references. As to the former, there can arise little difficulty if the parties be in earnest in their willingness to arbitrate, and independent persons—not partisans—be nominated as arbitrators. As to the latter, the Judge has power under a. 12 to order the whole matter, or any question of fact arising therein, to be tried before an arbitrator agreed on by the parties or before a referee appointed by the Court or Judge for the purpose. As to remuneration in compulsory references, the Judge (sub-s. 3 of s. 13) shall determine the remuneration to be paid to any referee or arbitrator; in reference by consent the Act is silent as to fees or payments, but Rules 7, 10, 11 and 12 provide a means which may work satisfactorily in practice.

Before proceeding to arbitration it will be advisable to arrange the fees payable to the arbitrator, and, in case of any difference, that the matter of claim be taxed by the Prothonotary, as there

is judicial authority so ancient as 1820 [*Goodman v. Sayers*, Jacob & Walker's Cases in Chancery, vol. 2] for saying "that the very definition of a good award is that it gives dissatisfaction to both parties."

In the following pages I have endeavoured to lay before the Profession the decisions in England, New South Wales and Victoria, and I hope while this book may prove useful that the Arbitration Act will be generally availed of in suitable cases.

JAMES MORIARTY.

CHAMBERS,

12 Wentworth Court,
Sydney.

May, 1893.

ALPHABETICAL LIST OF CASES CITED.

A.

Arbuckle v. Price, 4 Dowl. 174
Armstrong and Culley, *In re*, 4 V.L.R. (L) 178
Alexander v. Campbell, 41 L.J. (Ch.) 478

B.

Bailey v. Harb, 9 V.L.R. (L.) 322
Banks v. Banks, 1 Gale 46
Baker v. Townsend, 1 Moore 120
Bagaley v. Borthwick, 10 C.B.N.S. 64
Batty, *In re*, 1 E. & B. 787
Beddow v. Beddow, 5 H.L.C. 88, 9 Ch. D. 89
Beck v. Jackson, 1 C.B.N.S. 695
Birmingham and Staffordshire Gas Co. v. Ratcliffe, L.R. 6
Ex. 224, 40 L.J. Ex. 136
Blennerhassett v. Day, 2 Ball & Beatty 116
Blanchard v. Sun Fire Office, 6 Times Law R. 365
Bowker v. Evans, 15 Q.B.D. 565
Bradley v. Phelps, 6 Ex. 97
Brockler v. McPherson (*Outmore v. Same*), 8 V.L.R. (L.) 154
Bottomley v. Amber, 38 L.T. N.S. 545
Booth v. Davis, 3 A. & E. 200
Brumsden v. Stains Local Board, 1 C. & E. 272
Bury v. Dunn, 1 D. & L. 141

C.

Campbell v. Vickery, 6 N.S.W.R. 209
Caerleon Tin Plate Company v. Hughes and Another, 65 L.T.
115, 7 Times Law R.
Carlisle, *In re*, Clegg v. Clegg, L.R. 44, Ch. D. 200
Chappell v. North, 2 Q.B.D. 232
Christie v. Noble, 14 L.R. Ch. D. 203
Clout v. Metropolitan Railway Co., 46 L.T. 141
Curzey v. Aitchison, 2 B. & C.K. B.R. 170
Cook v. Catchpole, 34 L.J. Ch. 60
Coxhead v. Mullis, 3 C.P.D. 439
Collins v. Locke, L.R. 4 App. Cases 674
Crampton and Holt v. Ridley & Co., L.R. 20 Q.B.D. 48
Compagnie du Senegal v. Woods & Co., 53 L.J. N.S. (Ch.) 166
Crossley v. Clay, 5 C.B. 581