

thereto, be submitted and referred to the award and arbitrament of any person, &c., and the Court may give judgment on the award of the person, &c., to whom such submission and reference shall be made, as of the Court to which said award shall be returned, and award execution thereon, as upon verdict, confession or nonsuit. Such award shall remain four days in Court during its sitting after the return thereof, before any judgment shall be entered thereon, and if it shall appear to the Court within that time, that the same was obtained by fraud or malpractice in, or by surprise, imposition or deception of the arbitrators, or without due notice to the parties or their attorneys, the Court may set aside such award and refuse to give judgment thereon. And by the Act of 1785, ch. 80, sec. 11, Code, Art. 7, secs. 3-6,<sup>11</sup> it was enacted that all causes so referred shall be continued till award made, and not abate by the death of either party, but on reasonable notice to the person succeeding to the interest of the deceased, &c., not being a minor, the arbitrators shall proceed to a determination, and return their award, upon which judgment may be entered, notwithstanding the death of either of the parties. If any arbitrator appointed by the parties upon such reference shall die or refuse to act, the Court on motion of either party shall appoint an arbitrator in his place, with the same powers as if appointed by the parties. If the award is not returned within eight months after reference, the Court may, by order, compel the arbitrators to return the award, or give their reasons for not returning it, or may in its discretion, on motion of either party, re-instate the cause, and take order to have it fairly tried, as if never referred. And when the award is made, the party, in whose favour it is given, shall cause a copy thereof to be served on the opposite party, or his attorney, at least three days before judgment is moved for, and the clerk shall not enter judgment without a motion to and direction of the Court, and the Court shall always have satisfactory proof by the party's oath or otherwise, that a copy has been delivered to the opposite party, before judgment shall be directed to be entered thereon.

The uniform practice under these provisions is to institute a suit adversely, or docket an action amicably, and then by a rule of reference name the persons selected as arbitrators, define the subjects intended to be submitted, and limit the time within which the award is to be returned, the notice to be given to the parties, and every other matter connected with their proceedings, *Shriver v. the State supra*. But the \* Court, while holding the Act to be a remedial one, would not de- **621** termine that an agreement made a rule of reference under the Statute of W. 3 was a cause instituted in the Court, in which the agreement was made a rule. The Act contemplates throughout a cause still pending in Court and awaiting the return of the award before judgment is entered, and therefore where there was a judgment by confession for the penalty of a bond to be released on payment of what A. should say was due, this was held to be a final judgment, and as judgment could not be

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<sup>11</sup> Code 1911, Art. 75, secs. 48-51 (as now amended).