entered on the award, the object of the Act could not be attained, State v. Jones, 2 Gill, 49. But under the Act of 1864, ch. 311,[12] such judgments are now only interlocutory.

The reference under the Act is usually made in open Court, to a person or persons then named, and the entry of "referred," &c., by the clerk upon his docket, is supposed, in practice, to give him authority to draw up the rule subsequently, which is then handed to the arbitrators. The practice also is for the clerk to insert in the rule the usual direction that in case of disagreement between two named arbitrators, they may select an umpire. But if the reference is a special one, it is drawn up and signed in the regular way by the attornies of the parties. The Act relates only to actions depending in Courts of Common Law, Phillips v. Shipley, 1 Bl. 516.

**Subjects and extent of reference.**—The question, however, as to the proper subjects of reference is to be determinel by the common law. And the extent of the reference depends upon the agreement of the parties. In Walsh v. Gilmor, 3 H. & J. 383, where a submission was evidenced by correspondence between the parties, the terms and stipulations of the reference were held to be a question of fact for the jury, see Bullitt v. Musgrave, 3 Gill, 31. At common law, before the Statute of W. 3, where there was a cause in Court, it might be referred by order or rule of Court, and other matters in difference not included in the cause might have been tacked on by consent, whereupon the arbitration became binding, R. v. Hardey *supra*. And it being held that the Statute of W. 3 is not confined to references of existing controversies, a covenant in an indenture that any differences, which might thereafter arise between the parties touching the matter of the indenture, shall be and they are thereby referred to the arbitrator named, constitutes a submission which may be acted on and made a rule of Court, under the Statute, when such differences arise, Parks v. Smith, 15 Q. B. 297. But see Henningway's arbitration, referred to in note (*a*) to that case, S. C. 3 Nev. & Man. 860, where the parties had contracted, the one to purchase and the other to convey land at a price to be named by third persons, and held not an agreement of reference within the Statute. And so, also, it has been determined, that the Act of 1778, ch. 21, does not apply only to causes instituted, and therefore cannot be made to comprehend other matters than those involved in the suit, but that the arbitrators may decide upon all other extraneous subjects included in the submission, and thereupon judgment may be given pursuant to the submission, Shriver v. the State *supra;* and if the declaration in a cause referred to arbitration presents a case cognizable in a Court of law, it is not essential, to support the jurisdiction of the Court, that the matters in controversy and determined upon should be properly subjects of common law jurisdiction, Caton v. McTavish, 10 G. & J. 192. Indeed, in Dorsey v. the State, 3 H. & McH. 388, a judgment on an award was affirmed good where it did not appear that any declaration had been filed in the cause. And, in general, the effect of a submission under the Act is to include all matters that could

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[12] Code 1911, Art. 26, sec. 18.