

Enclosure in No. 16.

The Right Hon. E. HAMMOND, to the UNDER SECRETARY, Colonial Office.

SIR,—

Foreign Office, 27th September, 1867.

With reference to your letter of the 18th of May last, I am directed by Lord Stanley to transmit to you, to be laid before the Duke of Buckingham and for transmission to the Government of New Zealand, the accompanying Memorandum, together with certain books and documents which contain all the information which has been obtained by Her Majesty's Minister at Florence, respecting the constitution and practice of Courts of Arbitration in Italy.

I am, &c.,

The Under Secretary of State, Colonial Office.

E. HAMMOND.

Sub-Enclosure to Enclosure in No. 16.

MEMORANDUM ON COURTS OF ARBITRATION IN ITALY.

THERE are no special Courts of Arbitration in Italy, but the Code of Civil Procedure lays down certain rules respecting arbitration which are contained in a series of Articles from the 8th to the 34th. They are in substance as follows:—

Litigants, with the exception of administrators and others who cannot freely dispose of what is in dispute, are at liberty to submit to arbitration the questions at issue between them. Questions, however, which relate to separation of husband and wife cannot be so treated.

Either natives or foreigners may be chosen as arbitrators; women, minors, persons under legal incapacity or disqualified from serving on a jury by penal sentence cannot act as arbitrators.

The submission may be made either by a public or by a private instrument. It must state the names of the parties and of the arbitrators, and define the matters in dispute.

In the case of an arbitration in conformity with the stipulations of a contract, if the arbitrators have not been designated or should be unable to act, they are appointed by the Court which would have been competent to decide the cause if the parties had not otherwise determined.

If one of the parties to a submission should be succeeded by a person under guardianship the right of nomination devolves upon the guardian.

The arbitrators form their judgment upon the statements and documents laid before them by the parties within a time prefixed.

Arbitrators are not bound to observe ordinary judicial forms. They must however keep to those which are prescribed for them by the parties, but they may lay down the course of proceeding for themselves when nothing has been otherwise provided.

If there should arise any incidental questions not of a nature to be settled by arbitration or which might give occasion to criminal proceedings, it must be referred to the competent authorities, and until their decision has been notified to the arbitrators the cause is suspended.

Arbitrators decide according to law, unless authorized by the terms of the submission to effect an amicable arrangement.

Their award, which is the judgment of the majority among them, must contain a statement of the names and places of abode of the parties, of the act of reference, and of the reasons for the judgment. It must specify the time when, and the place where it is made, and be followed by the signatures of all the arbitrators. If any one of them however refuses to sign, the signatures of the majority will be sufficient.

Arbitrators must make their award within the realm.

The award, together with the submission, must be deposited, in original, within the term of five days, at the office of the Prætor of the district in which it is pronounced. It is registered, and put in execution within five days from the date of its deposit.

The award may be appealed against, except in the following cases:

1. When the arbitrators have been appointed to effect an amicable arrangement.
2. When they have acted as Judges of Appeal.
3. When the parties have renounced their right of appeal.
4. When the cause might have been brought before the Mediator.

Appeals will lie to the Civil or Commercial Courts in cases which the Prætor would have been competent to try; and to the Courts of Appeal when the Civil or Commercial Courts would have been the competent tribunals.

An award may be annulled notwithstanding any renunciation of the right of appeal:—

1. When made upon a submission in itself null, or when it exceeds the limits prescribed by the submission.
2. If it does not decide all the questions submitted to arbitration, or contains contradictory dispositions.
3. If the arbitrators were not qualified to act as such.
4. If not drawn up in proper form.

The submission ceases to be valid:—

- On the appointment of the arbitrators being cancelled by the consent of the parties.
- On the death of one of the arbitrators, or by his refusal or inability to act.
- On the expiration of the prescribed term.

Arbitrators who, after having accepted their appointment, without sufficient grounds desist from their functions, or omit to make their award within the prescribed term, are liable for the injuries which the parties may sustain in consequence.

Courts of Mediators somewhat akin to Courts of Arbitrators existed formerly in the Kingdom of Naples, and they have lately been adopted by the new Italian Legislation.

The history and nature of this institution may be learned from the enclosed treatise—"Il Perfetto Guidice Conciliatore."

The jurisdiction and procedure of these Courts are determined by the law on judicial organization, the code of civil procedure, and the general judicial regulations.