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HISTORICAL DEVELOPMENT OF COMMERCIAL  
ARBITRATION IN THE UNITED STATES

By SABRA A. JONES\*

## INTRODUCTION

SINCE men began to deal with each other commercially, conflicts of interest have resulted in disputes which have been settled in many ways. Sometimes the parties have settled the differences between themselves without outside interference. Sometimes they have resorted to litigation, but litigation is expensive, encounters many delays, causes ill-will between the parties, and is often carried on before judges versed in law but not in the trade practices of the particular industry in question, and before incompetent juries. A substitute for litigation has been developed in commercial arbitration, the purposes of which are to eliminate the expense of litigation, to save delays in legal proceedings, to improve business relations between men in an industry and between them and their customers, to help establish trade customs, and to substitute the decisions of practical business men for those of inexperienced juries.

While the scope of business has grown from state to national and finally to international boundaries, there has been a corresponding growth of commercial arbitration. During our colonial history we accepted the common law rules of England on the subject, but shortly after Independence was declared our states began to pass statutes to regulate intrastate controversies. Within the last decade our Federal Arbitration Law was passed to govern maritime and interstate commerce disputes, and the International Chamber of Commerce (of which the United States Chamber of Commerce is a member) was formed and many commercial arbitration treaties were made to adjust foreign trading differences.

In this paper the background, developments, present status and future tendencies of commercial arbitration will be discussed.

Commercial arbitration may be defined in several ways. The common law definition is:

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\*Chicago, Ill. This paper, in substance, was submitted as a master's thesis, University of Chicago, 1927.

"Arbitration is the submission of some disputed matter to selected persons and the substitution of their decision or award for the judgment of the established tribunals of justice."<sup>1</sup>

The selection of arbitrators may be provided for in the submission by the parties in any way they wish. When no provision has been made, the court infers the intention to be that each party is to choose one arbitrator.<sup>2</sup> In several states no statutes concerning arbitration have been passed; consequently, in these states common law rulings are used. This means that an agreement to arbitrate, or a submission as it is called, is no different in legal effect from any other agreement. A party to it can at any time revoke the arbitrator's authority,<sup>3</sup> in which case the attempt at arbitration is abortive, or he can begin a suit at law upon the subject matter and thereby render the submission useless.<sup>4</sup>

There is a general tendency in the statutes of the various states to limit the kinds of disputes which may be arbitrated. Many of the state statutes say that arbitration is limited to any controversy which can be the subject of civil action;<sup>5</sup> many other states do not permit arbitration of disputes over the title to real estate,<sup>6</sup> in fee or for life,<sup>7</sup> of disputes involving the title to water or water rights,<sup>8</sup> but allow arbitration of disputes involving claims to an estate for years, or other interest for a term of years, or for one year or less in real property,<sup>9</sup> or involving the admeasurement of

<sup>1</sup>Castle-Curtis Arbitration, (1894) 64 Conn. 501, 30 Atl. 769, 42 Am. St. Rep. 200; Perry v. Cobb, (1896) 88 Me. 435, 34 Atl. 278, 49 L. R. A. 389.

<sup>2</sup>Orne v. Sullivan, (1839) 3 How. (Miss.) 161, 34 Am. Dec. 74.

<sup>3</sup>Paulsen v. Manske, (1888) 126 Ill. 72, 18 N. E. 275, 9 Am. St. Rep. 532. See also 37 Yale L. J. 113, 114. The damages recoverable for breach of the agreement to arbitrate are merely nominal. 3 Williston, Contracts, sec. 1719, p. 3009.

<sup>4</sup>138 Am. St. Rep. 648 note. As to the effect of an agreement making arbitration a condition precedent to liability, see 3 Williston, Contracts, sec. 1720 et seq.; pp. 3010 et seq.

<sup>5</sup>Miss. Ann. Code (Hemingway 1917) sec. 38; Ill. Stat. (Hurd 1917) chap. 10, sec. 1; Iowa, Code 1924, chap. 548, sec. 12695; Me. R. S., chap. 113, sec. 1; Mo. Laws 1919, p. 151; Neb. C. S. 1922, sec. 9171; N. J. Laws 1923, chap. 134, sec. 2; Ark. Dig. of the Statutes 1921, sec. 415; N. Mex. Ann. Stat., sec. 243.

<sup>6</sup>Or. Laws 1925, chap. 186 sec. 1; Ohio Gen. Code, sec. 12148; Wash. C. S. 1922, sec. 420; Wyo. C. S., sec. 6198; Pa. Statutes, sec. 597.

<sup>7</sup>Utah C. L. 1907, sec. 3221; Idaho C. S. 1919, sec. 7428; Mich. C. L. 1915, sec. 13647; Minn. G. S. 1923, sec. 9153; Ind. Ann. Stat. (Burns 1914) sec. 876; Cal. Code C. P., tit. 10, sec. 1281; Wis. Laws 1923, chap. 447, sec. 3544; Nev. R. L. 1912, sec. 5255; N. Y. Laws 1920 chap. 275, art. 84, sec. 1448; N. D. C. L., 1913 sec. 6327.

<sup>8</sup>Utah C. L. 1907, sec. 3221.

<sup>9</sup>Wis. Laws 1923, chap. 447 sec. 3544; N. Y. Laws 1920, chap. 275, art. 84, sec. 1448; Ind. Ann. Stat. (Burns 1914) sec. 876; Mich. C. L. 1915, sec. 13647; Minn. G. S. 1923, sec. 9513.

dower.<sup>10</sup> New York, New Jersey, California, and Pennsylvania permit an agreement to arbitrate to be made before the dispute arises.<sup>11</sup> The statutory selection of arbitrators is also varied. The most common methods are: one chosen by each party;<sup>12</sup> one chosen by each party and these two choose a third;<sup>13</sup> according to the published rules of any organization or association if they are included in the submission and are approved by the court;<sup>14</sup> and according to the provisions made in the submission.<sup>15</sup>

Trade associations in defining arbitration are attempting to widen the scope of arbitration by sanctioning the making of an arbitration agreement before a dispute has arisen. Most associations have set down definite rules as to the method of choosing arbitrators such as: (a) arbitrator must be an officer who ex-officio is an arbitrator; (b) arbitrators must be appointed or elected yearly; (c) arbitrators must be chosen by the parties; (d) arbitrators must be appointed by an officer of the association.

#### BACKGROUND OF STATUTORY ARBITRATION IN UNITED STATES

*Greek and Roman.* Arbitration is not a new phase of commercial activity. Arbitration practice prevailed among the Greeks.<sup>16</sup> In Athens, for instance, there were two classes of arbiters, public and private. The public arbiter, who was at least fifty years of age, who was chosen annually by lot by the respective tribes before the magistrate, and who had jurisdiction in pecuniary claims, made awards which could be appealed to a court of law. The private arbiter seems to resemble more closely, in character and functions, the arbiter of later times. He was selected by the parties themselves; his powers in each case were limited by the contract of the parties and he took an oath to decide the case in question impartially. At the same time the parties bound them-

<sup>10</sup>Mich. C. L. 1915, sec. 13647; Wis. Laws 1923, chap. 447 sec. 3544; N. Y. Laws 1920, chap. 275, art. 84, sec. 1448; Ind. Ann. Stat. (Burns 1914) sec. 876.

<sup>11</sup>Curtis, A Comparison of the Recent Arbitration Statutes, 13 Am. Bar Ass'n J. 567-570; N. Y. Laws 1920, chap. 275, sec. 2; N. J. Laws 1923, chap. 134, sec. 1; Calif. Stat. 1927, chap. 225, sec. 1.

<sup>12</sup>Arizona Code 1913, sec. 1481; N. Mex. Ann. Stat. sec. 241; a third arbitrator is chosen in case of disagreement.

<sup>13</sup>Ga. Code, sec. 5032; S. C. Code of L. 1922, sec. 5602; Wyo. C. L. 1920, sec. 6646; Pa. Stat. sec. 614.

<sup>14</sup>Ill. Stat. (Hurd 1917) chap. 10, sec. 2.

<sup>15</sup>N. J. Laws 1923, chap. 134, sec. 4; N. Y. Laws 1920, chap. 75, art. 2, sec. 4; Or. Laws 1925, chap. 786, sec. 4; Wyo. Laws 1927, chap. 96, sec. 4.

<sup>16</sup>In 5 Plato's Dialogues, Prof. Jowett's translation, 2nd ed., p. 528, and 2 Aristotle's Politics, 8; Prof. Jowett's translation Vol. 1, p. 49, mention is made of arbiters.

selves to abide by the award and could make no appeal to any court of law.<sup>17</sup>

Demosthenes in his pleading against Meidias quoted in full the regulating Athenian law on this subject.

"If the parties have a dispute with each other respecting their private obligations, and desire to choose an arbiter, be it lawful to them to select whomsoever they will. But when they have mutually selected an arbiter, let them stand fast by his decision, and by no means carry on appeal from him to another tribunal; but let the arbiter's sentence be supreme."<sup>18</sup>

It should be noted in the above law that matters of "private obligation" only fell under the jurisdiction of arbiters and that either party could withdraw from the submission at any time before an award was actually given out.

The evidence of the use of arbitration by the Romans is shown by the mention of arbiters in the laws of the Twelve Tables,<sup>19</sup> and the treatment of practical topics in arbitration law in the Pandects under the title of arbitration.

Cicero, in his oration for Quintus Rescius,<sup>20</sup> said:

"A trial is one thing, the decision of an arbiter another. A trial concerns a definite sum, an arbitrator's opinion an indefinite. We come to the trial with this idea, that we will either win the whole suit or lose it; an arbitration we approach in this spirit (that neither will we gain nothing nor will gain as much as we demanded) that we may gain something but not all we want. Of this fact, the very words of the contract are a proof. What is a trial like? Exact, clear cut, frank. . . . What is arbitration like? Gentle, fair . . . ."

*English.* The merchant gilds of England, which may be compared to our modern chambers of commerce, and the craft gilds, which were like our trade associations,<sup>21</sup> were organizations for the purpose, among others, of mutual arbitration. Gild-brothers, before going into the law courts, had to bring their cases before the gild for the sake of attempting, at least, reconciliation between them.<sup>22</sup> Among the early "Ordinances of the Brotherhood of Our Lady of Bethlehem" appears the following typical provision:

"Also they are agreed that if any dispute arise between any of the said Brotherhood, that he who shall feel himself aggrieved shall complain to the said Brotherhood so that the trespass may

<sup>17</sup> Penny Cyclopaedia 252.

<sup>18</sup> Demosthenes, Ex recensione Guilielmi Dindorfii 572.

<sup>19</sup> Table 2, L. 2.

<sup>20</sup> Chaps. 4 and 5.

<sup>21</sup> Unwin, Gilds and Companies of London 87, 91. The craft gild in addition to shop keepers and small capitalists had an additional group, namely apprentices who were restricted in number.

<sup>22</sup> Brentano, History and Development of Gilds 39.

be redressed between the parties without making a disturbance, and that no one shall complain in any other place nor in any other manner; and if any one be a rebel (soit Revell) and will not be reformed by the said Brotherhood, that he be ousted from the Company forever."<sup>23</sup>

The records of the Grocers Company of London contain the following entry for the year 1379:

"These are the taies of different wares ordained and assented to by the old company the eighteenth day of August, the year aforesaid, to stop and prevent all disputes which might arise between the mystery of Grocers in the case where the purchaser and vendor are of the same company or where the purchaser be of the company of Grocers and where no express agreement has been in express terms at the time of the bargain."<sup>24</sup>

In 1504, a statute of parliament allowed a gildsman to sue his fellow member at law without leave of the fellowship.<sup>25</sup> However, the ordinances made by the guilds continued to be enacted and enforced for over a century thereafter.<sup>26</sup> The Elizabethan Guild of the City of Exeter passed the following ordinance in 1560:

"Yf any debate or controversie about any accompte or otherwyse doo happen betwene any of this Companye, That then the same variance to be revealed to the Governe' and Consultes of the Companye, who according to their discrecions may take further order therein for the endyng and appeasing of the same which yf they cannot redresse: That then it shalbe lawful for the saide parties to precede in wager and tryall of Lawe."<sup>27</sup>

<sup>23</sup>Johnson, *History of the Worshipful Company of the Drapers of London 1200*. This ordinance was evidently regarded as of sufficient importance to be marked "lege" (*ibid* I, 262) i.e., that it was to be read at certain stated periodic assemblies of the company.

<sup>24</sup>Ms. Archives of the Company of Grocers of London (ed. J. A. Kingdon,) pt. i, p. 56. See also *Cooper's Company, London* (ed. J. F. Firth) p. 42 (1456) 85; 2 *Goldsmiths' Records in Herbert, Livery Companies of London* 171 (1462); *Annals of the Barber Surgeons of London* (ed. S. Young) p. 33 (before 1388) 201 (1606); *Welch, History of the Paviers of London* 9 (1479); *History of the Saddlers of London* (ed. J. W. Sherwell) 169-171 (*passim*) (1606-39); *Some Account of the Worshipful Company of Iron-Mongers of London* (ed. J. Nocholl) p. 118-120-21 (1504); *Annals of the Founders Company of London* (ed. W. M. Williams) 87-88; *Coventry Smiths' Records in Harris, Coventry Leet Book* 744 (1540); *Company of Stitchmen of Ludlow* (ed. G. M. Hills) in 24 *Journ. Brit. Archaeol. Ass'n* 329 (1569); *Ordinances of Listers of York in York Memorandum Book* (*Surtees Soc. Pub. vol.* 125) 211-13 (1472); *Shrewsbury Guild of Barber-Chirurgeons* in 5 *Trans. Shropshire Archaeol. and Nat. Hist. Soc.* 265 (1432); *Aberdeen Gildsmen* in E. Bain, *Merchant and Craft Gilds* 129 (1599); *Dublin Carpenters, Millers, Masons, etc.*, in 35 *Jour. Royal Ass'n of Antiquaries of Ireland* 321.

<sup>25</sup>19 Hen. VII c. 7, 2 *Stat. of the Realm* 653.

<sup>26</sup>1 Lipson, *Economic History of England* 309-310.

<sup>27</sup>Cotton, *An Elizabethan Guild of the City of Exeter* 18.

The barber surgeons of London passed a similar ordinance in 1530, which was signed by Sir Thomas More, and stated:

"Yff any matter of stryffe or debate hereafter be betwenē any p'son of the said Crafts as God ffordende that noon of them shall made eny p'sute in the Comon Lawe but that he whiche ffyndeth hym aggrieved shall ffurst make his complaynt to the Masters—to the extent that they shall ordre the said matter or cause of complaynt so made yff they can."<sup>28</sup>

In 1698, an Act<sup>29</sup> was passed "for determining differences by arbitration" the purpose being "promoting trade, and rendering the awards of arbitrators the more effectual in all cases, for the final determination of controversies referred to them by merchants and traders, or others, concerning matters of account or trade, or other matters." The statute made it lawful for all parties having a dispute of the description there set forth, to agree that their submission thereof to arbitration, "should be made a Rule of any of his Majesty's Courts of Record." An affidavit thereof should be duly produced and entered of record in such court and then a Rule should "thereupon be made by the said court, that the parties shall submit to, and finally be concluded by the arbitration and umpirage." Failure to abide by the award was punishable as for contempt of court. An award could be set aside when it "be made to appear, on oath, to such court, that the arbitrators or umpire misbehaved themselves, and that such award, arbitration, or umpirage was procured by corruption or other undue means."

The courts of law in England held that the parties were at liberty to revoke the authority given to an arbiter, under the submission, at any time before an award was made. This led to the abuse that a party frequently revoked the authority of an arbitrator when he felt that a decision would be rendered against him. To remedy this difficulty, in 1833 the Legislature enacted a statute<sup>30</sup> which said:

"That the Power and Authority of any Arbitrator or Umpire appointed by or in pursuance of any Rule of Court, or Judge's Order, or Order of Nisi Prius, in any Action now brought or which shall be hereafter brought, or by or in pursuance of any Submission to Reference containing an Agreement that such submission shall be made a Rule of any of His Majesty's Courts of Record, shall not be revocable by any party to such Reference without the Leave of the Court by which such Rule or Order shall be made, or which shall be mentioned in such Submission, or by Leave of a Judge."

<sup>28</sup>Annals of Barber Surgeons of London 423.

<sup>29</sup>and 10 Will. III, chap. 15.

<sup>30</sup>and 4 Will. IV, chap. 42, sec. 39.

In 1889, Great Britain passed an arbitration law which with a few modifications is in force today. In this new law, arbitration agreements are irrevocable, except by leave of the court or a judge, and must be written. The arbitrators may administer oaths, compel the production of books and papers, and subpoena witnesses. An award is enforceable in the same manner as a judgment of a court, and must be made within a limited time. England goes further by providing for the machinery to effectuate arbitration agreements namely through making provisions for the appointment of arbitrator, arbitrators, or umpire when one party refuses to do so and thereby gives the arbitrator a sort of public function and status. This law, which forces British subjects to abide by their arbitration agreements, has been instrumental in bringing about the passage of the New York law of 1920 and our federal Act of 1925 which make arbitration agreements in those jurisdictions irrevocable.

#### UNITED STATES DURING THE COLONIAL PERIOD

In the earliest history of the United States there is considerable evidence of arbitration. Most of the early laws and statutes restricted arbitration to certain causes. In Connecticut in the Colonial Code of 1650,<sup>31</sup> arbitration was allowed for Caveats Entred, Strayes, and Trespasses. In Pennsylvania, in the Duke of Yorke's Books of Laws, a law dated April 2, 1664 allowed all actions of Debt or Trespass to be arbitrated. In Massachusetts, the General Laws of the Massachusetts Colony, revised and published by the order of the General Court in October 1658, shows that in 1646,<sup>32</sup> arbitration was permitted for trespass. In South Carolina, "An act for making sufficient fences, and keeping the same in repair" was passed June 20, 1694. This act<sup>33</sup> provided for arbitration of disputes concerning trespass.<sup>34</sup>

The earliest example of a general law on commercial arbitration in America was the establishment of "The Board of Nine Men" in the town of New Amsterdam in 1647.<sup>35</sup>

The ordinance read as follows:

"Whereas in consequence of the increase of the Inhabitants, Lawsuits and Disputes which parties bring against each other multiplied, and also divers questions and quarrels of trifling mo-

<sup>31</sup>Pp. 36, 94, and 97.

<sup>32</sup>L. 2, p. 8.

<sup>33</sup>In sec. 3.

<sup>34</sup>There was also colonial legislation in Pennsylvania on arbitration. See Charter to William Penn and Laws of the Province of Pennsylvania 1879, pp. 3; 4, 60, 128.

<sup>35</sup>Cohen, Commercial Arbitration and the Law 5-6.



ment, which can be determined and disposed of by arbitrators, but in consequence of matters of greater importance, frequently remained over and undecided, to the prejudice and injury of this place and the good people thereof, and also to the great expense, loss of time and vexation of the contending parties,"

and further provided that three men should serve at a time as arbitrators, one being a merchant, one a burgher, and one a farmer, that three out of those chosen as arbitrators were required to attend "once a week, on Thursday, the usual Burgher Court Day to our General Council," and that parties referred, being judged shall remain bound to submit without opposition the pronounced decision of the arbitrators.

In 1653, a municipal government was granted to New Amsterdam, and at that time the "Court of Burgomasters and Schepens" which was composed of one Schout (Sheriff,) two Burgomasters (Mayors) and five Schepens (Aldermen) was created to succeed the Board of Nine Men.<sup>36</sup> When the English took over the rule of New Amsterdam on June 12, 1665, the court became known as the court of the "mayor and aldermen;" when New York became an independent state, it became the "Court of Common Pleas for the City and County of New York."

Georgia passed a general law on arbitration in 1698.<sup>37</sup>

#### UNITED STATES FROM 1778 TO 1920

With a few exceptions, this period shows a tendency on the part of the various states to pass laws of a general nature covering arbitration. A few states passed laws both of a general nature and laws for specific disputes.

During this period there were several defects with respect to arbitration in the United States. A submission to arbitrate had to be made after a dispute had arisen. Psychologically, this is the wrong time, for the man who has broken his contract is the man who does not want arbitration of his dispute, but rather wants the dispute to drag along in order that his opponent will drop the matter entirely. Statutes should be made to include future as well as present differences if they are to have teeth.

There is a lack of uniformity of state statutes, especially as to the enforceability of an arbitration agreement. All statutes should make the agreement irrevocable. Several statutes do so,

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<sup>36</sup>Lauer, *The New Practice of Procedure in the Municipal Court of the City of N. Y.* 5, 278, 495, 252, and chap. xxxi.

<sup>37</sup>This law may be found in the *Digest of the English Statutes of Force in the state of Georgia in 1776*, pp. 302-307.

providing that, "no submission, entered or agreed to be entered of record, in any court, shall be revocable by any party to such submission, without leave of such court;" and others say "without the consent of both parties."<sup>38</sup>

There is variation among state statutes and trade associations as to the method of enforcing an award after it is made. Many of them make no arrangement whatsoever. Consequently a party can refuse to abide by the award and the case will then have to be taken to court just as if there had been no arbitration at all. Statutes should provide that an award should be enforced as a judgment of the court and trade associations should expel members for non-performance.

In the United States in 1916 there were about 6,000 commercial, industrial, and trading organizations. These included about 2,500 chambers of commerce, commercial clubs, boards of trade, and similar promotive business organizations, 1,000 manufacturing and mercantile associations of a general character, and about 3,000 trade associations or groups of business men in particular manufacturing, mining, or mercantile industries.<sup>39</sup> In the sixth edition of "Commercial Industrial Organizations of the United States" we find approximately 9,000 organizations, covering national, international, state, and local areas. Of these probably 200, seeing the practicability of arbitration, made their own rules on arbitration and in many, if not most instances, proceeded independently of the state statutes. Especially was this true of the associations with a national or larger scope. However, the trade associations could make arbitration agreements binding only on their members, and often non-members were the objectors to the awards. Also, when members of two organizations which had arbitration rules wanted to arbitrate, the question always arose as to which set of rules should be used.

The Chamber of Commerce of the State of New York recognized these difficulties and together with the New York Bar Association drafted and presented the measure to the state legislature which became the law of New York in 1920.<sup>40</sup>

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<sup>38</sup>This rule was adapted from 3 and 4 Will. 4, chap. 42, sec. 39. W. Va. Acts, 1882, chap. 63; Va. Code, 1849, chap. 153, sec. 2, p. 611; Tenn. Code, 1919, sec. 5195; Calif. C. C. P., tit. 10 sec. 1283; Idaho C. S. 1917, sec. 7430; Utah C. L. 1907, sec. 3223; Nev. R. L. 1912, sec. 5257; 3 Mont. Rev. Code, 1921, chap. 17, sec. 9974; cf. Minn. G. S. 1923, sec. 9513.

<sup>39</sup>75 Domestic Engineering 127.

<sup>40</sup>Annual Report of the Committee on Arbitration of the Chamber of Commerce of the State of New York, Report for 1920.

UNITED STATES 1920 TO THE PRESENT TIME<sup>41</sup>

The outstanding value of the New York Law<sup>42</sup> is that an agreement to arbitrate a controversy arising in the future between the parties to the contract is valid, enforceable and irrevocable. New Jersey passed a similar law in 1923.<sup>43</sup>

After the passage of the New York law, the Chamber of Commerce of the State of New York began to urge uniform state statutes and a federal law on arbitration. It communicated with the governors of the various states, with chairmen of state legislative committees, newspapers, trade bodies and chambers of commerce, etc., regarding the Arbitration Law of 1920 of the state of New York, with a view of having other states follow the example of their state, with the ultimate aim of causing public sentiment to call for the enactment of federal legislation. The committee has urged trade bodies and sister institutions to install systems of arbitration similar to that in use by that chamber. Members of the committee have made addresses before colleges and business men's institutions. They have furnished the press with data, information and news items on arbitration.<sup>44</sup> The above organization in coöperation with the American Bar Association prepared a draft of the federal Arbitration Law.<sup>45</sup> The federal Arbitration bill was introduced in both Houses of Congress in the latter part of December 1922, and in each instance was promptly referred to the committee on the judiciary.<sup>46</sup> During "arbitration education week," a movement organized to educate the public toward a better understanding of the principle of commercial arbitration and its practical workings, several important addresses were made.

In 1923, the Arbitration Bill, revised, was once more introduced before Congress and on January 9, 1924, a joint public hear-

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<sup>41</sup>See Curtis, *A Comparison of the Recent Arbitration Statutes*, 13 *Am. Bar Ass'n J.* 567-570; Jones, *Trade Ass'n Activities and the Law*, containing a chapter on commercial arbitration as now practiced by Trade Ass'ns in the United States.

<sup>42</sup>*N. Y. Laws 1920*, chap. 275.

<sup>43</sup>*N. J. Laws 1923*, chap. 134.

<sup>44</sup>Annual report of the Committee on Arbitration of the Chamber of Commerce of the State of New York, Report of 1921.

<sup>45</sup>It is of interest at this point to note the inconsistency of the Commission on Uniform Legislation of the American Bar Association who approved of the federal arbitration law wherein submissions of present and future disputes are enforceable and at the same time approved of a state statute wherein only submission of present disputes is enforceable.

<sup>46</sup>Annual report of the Committee on Arbitration of the Chamber of Commerce of the State of New York, Report of 1923

ing took place before the members of the judiciary committees of the Senate and House. The full judiciary committee of the House unanimously recommended the bill. In the Senate the bill was passed out from the sub-committee to the full judiciary committee. In 1925, the bill finally passed both houses and was signed by the president on February 12th, of that year.<sup>47</sup>

Of chief importance in this law are the following rules. Maritime transactions and interstate commerce transactions may be arbitrated.<sup>48</sup> An arbitration agreement to settle either an existing controversy or one thereafter arising is "valid, irrevocable, and enforceable save upon such grounds as exist at law or in equity for the revocation of any contract."<sup>49</sup>

If a suit is pending on an "issue referable to arbitration under an agreement in writing for such arbitration," the court "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration."<sup>50</sup> If a party fails, neglects, or refuses to carry out submission the aggrieved party may petition the proper court "for an order directing that such arbitration proceed in the manner provided for in such agreement."<sup>51</sup>

"At any time within one year after the award is made, any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected."<sup>52</sup> The judgment on the award "shall have the same force and effect, in all respects, as, and be subject to all provisions of law relating to, a judgment in an action; and it may be enforced as it had been rendered in an action in the court in which it is entered."<sup>53</sup>

With the cooperation of the Arbitration Society of America, Oregon enacted a law on February 25, 1925, similar to the New York and New Jersey laws. In 1927 arbitration laws were passed in California, North Carolina, Pennsylvania, Utah and Wyoming. The Utah and North Carolina statutes are restricted to the arbi-

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<sup>47</sup>U. S. C. tit. 9, § 9 U. S. C. A., Mason's Code, tit. 9.

<sup>48</sup>*Ibid.*, sec. 1.

<sup>49</sup>*Ibid.*, sec. 2.

<sup>50</sup>*Ibid.*, sec. 3.

<sup>51</sup>*Ibid.*, sec. 4.

<sup>52</sup>*Ibid.*, sec. 9.

<sup>53</sup>*Ibid.*, sec. 13.

tration of existing disputes.<sup>54</sup> Massachusetts passed an amendment to its arbitration law on April 29, 1925.<sup>55</sup>

#### UNITED STATES AND ARGENTINA

One writer has said:

"If improper or unfair practices upon the part of individual traders are allowed to continue and accumulate, if differences between individual traders in different countries are allowed to drag in their settlement, they finally color, if not determine, the attitude of the rest of the world toward the nation whose traders have dealt amiss. In a very real sense the exporter is a trustee of the nation's honor. If enough traders deal unfairly or show reluctance in effecting swift and just settlement of differences, they breed distrust in that honor. When that is done, when confidence in the Nation's honor has been undermined and good will destroyed, every exporter in the nation suffers—a reputation for reliability being the corner stone of all business—and bad feeling which menaces the peaceful relations of the world is generated."<sup>56</sup>

Let us consider in this connection the feeling which existed between the Argentine importer and the American exporter. The Argentine merchants complained that the American merchants broke their contracts and at the same time the United States Federal Trade Commission reported that some of our European rivals engaged in unfair competition in Latin America. When the Argentinians shipped grain to London all questions arising could be settled within a few hours after the cargo arrived while similar questions arising in the United States had to be settled in expensive courts and often required weeks and even months to effect a settlement. Naturally the Argentine shipper was more eager for British business than for American.

As a result, during the Pan-American Financial Conference, which was held at Washington in May 1915, the members of the Bolsa de Comercio de Buenos Aires and the Chamber of Commerce of the United States, met to discuss the possibility of these two bodies aiding commerce between Argentina and the United States through encouraging arbitration and making it available to persons engaged in commerce between the two countries. Several conferences were held during the following month, with the result that on April 10, 1916 a definite plan was put into effect.

<sup>54</sup>Curtis, *A Comparison of the Recent Arbitration Statutes*, 13 *Am. Bar Ass'n J.* 567-570. See *Calif. Stat.* 1927, chap. 225; *Utah Laws* 1927, chap. 62; *Wyo. Laws* 1927, chap. 96.

<sup>55</sup>*Mass. Acts* 1925, chap. 294.

<sup>56</sup>*A New Foreign Trade Insurance* by Edward A. Filene in *Nation's Business*, Oct. 1918, p. 32.

The United States Chamber of Commerce has similar agreements with the *Asociacion de Comercio de Panama*, *Associacao Commercial de Rio de Janeiro*,<sup>57</sup> *Camara de Comercio de Asuncion*, *Camara de Comercio de Bogota*, *Camara de Comercio de Caracas*, *Camara de Comercio de Montevideo*, *Camara de Comercio y Agricultura de Guayaquil*.

The efficiency and desirability of this type of arbitration is shown by the report of the arbitration committee of the Chamber of Commerce of the United States of America in the Argentine Republic for the Year ending April, 1925.

"Twenty-two cases have been submitted, two of which originated from members of the Chamber. Three cases which were submitted were withdrawn in view of the fact that a satisfactory agreement had been reached by the respectively interested parties. The committee refused only one case and that on the grounds that it involved action not within the scope of the chamber's activities. Two cases were requests for intervention between Argentine firms and American exporters; one case involved a chemical analysis, one an inspection of merchandise and twelve cases were requests for the appointment of competent surveyors. The articles surveyed included the following: machinery, apples, sanitary articles, prunes, sardines, shovel handles, a piano, stockings, woven materials, and various kinds of lumber in large quantities.

"It is interesting to note the high regard in which the integrity of the chamber is held by citizens of other countries. In October 1924, a case was submitted to the committee by a Danish company and a Danish citizen and both contestants reposed full power of action and final decision in the committee. The case, being an important one, was closely studied and settled satisfactorily. This is indeed a tribute to the chamber and one that demonstrates the constantly increasing confidence in American business men."

#### INTERNATIONAL CHAMBER OF COMMERCE

The International Chamber of Commerce was created in June 1920 to attempt a world wide plan for compulsory arbitration in commercial disputes between business men in different countries.<sup>58</sup>

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<sup>57</sup>See Arbitration agreement between *Associacao Commercial de Rio de Janeiro* and the Chamber of Commerce of the U. S., published by the American Chamber of Commerce for Brazil, Rio de Janeiro. See also Arbitration for disputes in trade between the United States and the republic of Uruguay, published by Chamber of Commerce of United States, 1917; Arbitration for disputes in trade between the United States and republic of Ecuador, published by the Chamber of Commerce of United States, 1919.

<sup>58</sup>The International Chamber of Commerce, 33 Rue Jean-Goujon, Paris, devotes part of its quarterly Journal and part of its yearly reports to arbitration. It also issues digests, such as no. 57 and

Today it comprises twenty national committees representing trade, industrial, and banking organizations in the leading countries of the world.<sup>59</sup> In addition, economic associations and chambers of commerce in sixteen other countries have joined individually.<sup>60</sup>

At the meeting at London in June and July 1921, the following resolution was passed:

"Whereas, the development and extension of a System of Arbitration would tend to facilitate international commercial relations, and to ensure greater security for them;

"Whereas, the restrictions in force under the laws of certain countries, as regards the validity of the legal arbitration clause (clause compromissoire) and the free choice of arbitrators form an obstacle to the use of legal arbitration in matters in dispute between traders;

"Whereas, the difficulties in the way of rendering executory the awards of foreign arbitrators are likewise prejudicial; and

"Whereas, uniformity of legislation directed towards the recognition of standard arbitration proceedings is, therefore, highly desirable from the point of view of international relations:

"Be it Resolved,

"1. That the legal arbitration clause, or undertaking to submit to arbitration disputes arising as to the interpretation or execution of contracts between traders and manufacturers, be declared valid by all countries;

"2. That all legislation, bringing into operation international agreements, recognize as arbitrators the persons designated by the parties concerned without distinction or nationality;

"3. That in all countries an effort be made to secure legislation that will render executory the awards of foreign arbitrators without reference to the nationality of the parties, without further discussion upon the merits, limiting the enquiry merely to ascertaining as to whether or not the rules of procedure in force in the country where the award was made have been complied with, and whether or not such awards contain anything contrary to public order in the country in which the enforcement or execution is demanded;

"4. That the procedure in legal arbitration should be uniform in all countries;

"5. That the validity of the legal arbitration clause be recognized in legislation also in case where arbitration is to be deter-

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no. 3 concerning arbitration. See also Young, *International Commercial Arbitration* reports a Victory, 5 *Nation's Business* 30-32.

<sup>59</sup>United States of America, Argentina, Austria, Belgium, Brazil, Czechoslovakia, Denmark, France, Great Britain, Hungary, Indo-China, Italy, Japan, Luxemburg, Netherlands, Norway, Poland, Roumania, Spain, Sweden, Switzerland.

<sup>60</sup>Journal of the International Chamber of Commerce, No. 4, April, 1921.

mined by means of 'amiables compositeurs,' since the diffusion of commercial arbitration is strictly connected to the possibility that arbitrators should be guided in their decision rather by principles of equity than by strict law."

The Court of Commercial Arbitration of the International Chamber of Commerce was inaugurated on January 19, 1923. There are two committees, the standing committee on arbitration which consists of eight members, and meets twice a year to study the general policy of the chamber in matters relating to arbitration, especially the improvement of rules and procedure, and the executive committee of the court of arbitration which devotes its entire time to the consideration of disputes submitted to it.<sup>61</sup> The two committees have a joint half-yearly meeting. The rules of the International Chamber of Commerce are very comprehensive. If a party first desires conciliation he must present his contract, and all material bearing on the contract, to his national committee. The other party is then notified through his national committee and is requested to present his side of the case. Both sides are reviewed by the administrative commission and an agreement made. If the agreement is not satisfactory to both parties, then the case may be submitted to arbitration or litigation. In providing rules for arbitration, two complete sets of rules have been made, one for the countries where awards are not enforceable by law and one where awards are enforceable by law.

Anyone desiring arbitration must make a written request for the same. The request must contain the names of the parties, a copy of the contract and any other material pertinent to the contract, and a statement of the claims of the party making the request. After the case has been approved the other party is notified. The national committee of the country of which each party is resident may submit a list of arbitrators, from which list the arbitrators will be chosen. There may be one arbitrator, two arbitrators and an umpire, or three arbitrators according to the wish of the parties. In countries in which awards are enforceable, a special submission agreement must be signed by both parties and must contain the names, residence, etc., of the parties, the subject of the arbitration, the names of the arbitrators, the claims of each party and any other material pertinent to the case. In event one party fails or refuses to sign the submission, the case will proceed in default. The Court of Arbitration determines the

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<sup>61</sup>International Chamber of Commerce Arbitration Reports No. 4, p. 4.



time and place for the hearings but they usually are held in the country where the goods, etc., in dispute are located. The arbitrators have the right to take evidence in other countries than the one in which the case is being heard. The time for making the award ordinarily should not be more than sixty days. The costs are determined by the arbitrators and must be paid by the party indicated by the arbitrators before the award will be delivered. Several copies of the award will be delivered. Several copies of the award must be made, one for the International headquarters, one for the national committees in the country where the arbitration took place, and one for each party to the dispute. In countries where an award is enforceable, the award when not complied with is enforced by due processes of law; in countries where the award is not enforceable, the national committee of the country in which the defaulting party lives will notify the Chamber of Commerce or any other business organization of which the party is a member of the default of the award and will request that disciplinary methods be used on the party. The national committee may also request that the names of defaulting members be printed in the journals, etc., of the organization members.

Traders are requested to insert the following clause in all contracts with foreign merchants:

"The contracting parties agree to submit to arbitration, in accordance with the arbitration rules of the International Chamber of Commerce, the settlement of all disputes in connection with the interpretation or the execution of this contract.

"For the settlement of all disputes in connection with the interpretation or the execution of this contract, the contracting parties agree to submit to arbitration (in accordance with the Arbitration Rules of the International Chamber) rendered by one or more arbitrators nominated by the Court of Arbitration of the International Chamber. They agree therefore to accept and execute the decision of the arbitrator or arbitrators."

Mr. Van Hamel, Director of the Legal Section of the League of Nations, in his speech at the inaugural meeting of the Arbitration Court of the International Chamber of Commerce said:

"Any attempt to develop or transform legal institutions would be vain if it were not fully supported by the opinion of the parties concerned, and guided by their experience.

"The law cannot be developed apart from practice, and laws must only be modified with the assistance of experienced legal practitioners and on the basis of exact knowledge of the difficulties arising and of the solutions which appear advisable.

"Here, therefore, we have a common field of activity.

"Your International Chamber of Commerce is composed of eminent representatives of industrial and commercial circles; and the progressive development of the arbitration organisms created by you will show to what extent any contemplated legislative reforms correspond to actual needs. It will further indicate the lines along which such reforms must be carried out, it will be of assistance in bringing them about. And in this way the operation of arbitration courts, the conclusions reached as a result of the scientific investigation undertaken by the International Chamber, will facilitate the task of the technical services of the League of Nations and its members."

#### PRESENT STATUS<sup>62</sup>

In the early history of the United States there was considerable objection to arbitration. This primarily was due to the fact that in England there was a deep rooted rule that parties might not, by their agreement, oust the jurisdiction of the courts. The American courts, however, believed that the policy of arbitration was wise and should be encouraged, but declared that it was the duty of the legislatures to make arbitration agreements enforceable. The legal profession also objected to arbitration as is shown by an editorial in the *Central Law Journal* for August 12, 1881.<sup>63</sup>

"Of course no one believes that the rough and ready tribunals for the administration of a summary semblance of justice which have been organized by the various boards of trade and chambers of commerce of the country, will even then tend to absorb the litigation of the public, and leave the courts of justice unfrequented. No civilized community will consent for any considerable length of time to have its controversies determined, and justice administered by courts which are without the power of enforcing their decrees, or otherwise than by trained specialists. The significant feature of the establishment of the system of arbitration by such bodies of merchants, is not the danger that it will by virtue of its excellence absorb any appreciable portion of the current litigation of the community; but the fact that so crude and imperfect a method of settling disputes is tolerated and receives any patronage at all."

At the present time the attitude of the legal profession has entirely changed as is shown by the resolution adopted in 1924 by the Commercial Law League of America, an organization composed of thousands of lawyers who specialize in business law:

"Resolved, that the Commercial Law League of America, in convention assembled, recognizes the extreme importance of the place that commercial arbitration will soon have in the sphere of

<sup>62</sup>See Sturges, *Commercial Arbitration or Court Application of Common Law Rules of Marketing*, 34 *Yale L. J.* 480; *Yearbook on Commercial Arbitration in the United States*, prepared by American Arbitration Association, New York.

<sup>63</sup>13 *Cent. L. J.* 101-120.

commerce, and that we as men and women entrusted with the handling of the disputes of the business world and the litigation resulting therefrom, recognize the value of commercial arbitration as an aid to the settlement of these disputes and as a quick, efficient, inexpensive and entirely satisfactory method of doing justice between disputants, and that we now accord our support to the rapidly growing movement for the universal adoption of commercial arbitration by the business interests of this country."<sup>64</sup>

The change in the attitude of the courts can be attributed to the fact that the judges are not able to keep abreast with the

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<sup>64</sup>An excerpt from a letter from Judge Moses H. Grossman, Executive head of the Arbitration Society of America, to Hon. William Draper Lewis, Secretary, The American Law Institute, Philadelphia, December 24, 1923, will also show the favorable attitude of the bar.

"In the complex civilization in which we live, the diversity of trades and occupations, the influx of immigration, the increase of population, the innumerable new enterprises, these and many other causes all tend towards creating multitudinous controversies which lend added force to these considerations. As a result, the congestion of the courts has so emphasized the proverbial 'law's delay,' as to render it one of the most intolerable ills which flesh is heir to. Due to this congested condition of court calendars it is common experience that two or three years must elapse before even the trial at *Nisi Prius* is had and there the law's uncertainty and intricacy readily afford occasion for error, grounds for appeal and cause for reversal under which the litigation may be protracted indefinitely.

"In this regrettable situation, conceding the general dissatisfaction with the administration of justice and the pressing necessity for a clear and definite statement of the rules of procedure and the principles of substantive law in order to bring about the desired betterment, conceding that the underlying rules and principles of both our substantive and procedural law must be simplified and clarified and that a restatement of the law will conduce greatly to that end, it must not be overlooked that these aims are not purely abstract, not merely to have at hand a more concise and clear compendium of the law, but that the ultimate object is thereby to accomplish the speedy, just and effective solution of human controversies. With this in mind, inasmuch as Arbitration, properly understood and applied, is of all legal remedies the most effective and speedy, the least costly and most practicable, indeed, of all human institutions, the earliest and yet the most time-honored and enduring, to peaceably put an end to strife and dissension and to promote and afford justice, it is obvious that of all topics of the law it best deserves and most urgently requires such restatement."

Herbert Harley, Secretary of the American Judicature Society, says, "The present universal fear of litigation, with its slow and costly procedure and interminable appeals, is a principal reason for this irregular method of reaching a settlement—for it ought not to be dignified by the name of arbitration. Its fault is not merely that of inexpertness but that it is dominated by compulsion, not by mutuality. Arbitration is the means by which this growing function is to be methodized and regulated in a public manner. It should be viewed, not as hostile to courts but as a special method of adjudication adapted to certain modern needs, a new arm of the law supplementing courts in a practical way." Introduction to Bulletin xii issued by the American Judicature Society, October 1916.

ever-increasing volume of litigation and therefore want to be relieved of some of the cases. This great amount of cases is pointed out in the Literary Digest of October 4, 1924,<sup>65</sup> in an article entitled "Peoples' Courts" of Arbitration, which said:

"On January 1, 1923, 27,000 untried cases were on the supreme court calendars in New York County. Using every effort, the court can dispose of about 8,000 cases a year. On the other hand, about 13,000 new cases are being added to the calendar each year. Thus it is going to take close to three years before a good many cases now developing can be brought to trial."

Furthermore the court is not robbed of its jurisdiction for an award once made is enforceable through a judgment of the court.

The change in the legal profession attitude is due to the fact that the lawyers, who formerly presented cases in court, do not find themselves without clients but rather find themselves in the capacity of legal advisers to the trade associations. They now have grateful, appreciative clients consulting them frequently as to business affairs where formerly because of the annoyance of delays in legal proceedings they lost the confidence and appreciation of their clients.

Arbitration is also sponsored by the dental profession, Rotary International, Legal Aid Societies, Civil Engineers, the American Institute of Accountants, and the United States Department of Agriculture.

Furthermore the cause is increasing in importance as can be shown by a few examples.

The following report was taken from Commerce Reports for June 30, 1924:

"Arbitration has been in effect in the motion-picture industry for a period of 15 months. In carrying out the arbitration plan, thirty-one key distributing centers with film boards of trade, composed of the branch manager of each distributing company were organized. Each of these film boards of trade selected three managers of three companies, changing from time to time to sit upon an arbitration board composed of six members. The other three members were selected by the exhibitors or theatre owners of the same district in like manner, and these six men constituted the arbitration board, with the right to select a seventh arbitrator in case of a tie vote.

"A uniform exhibition contract was agreed upon by many of the distributors. Nearly all distributors of motion pictures are using contracts providing for arbitration, and probably 90% of the contracts that are being written for motion pictures today contain these uniform provisions for arbitration.

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<sup>65</sup>P. 14.

"During the first year of arbitration these boards have heard, decided and disposed of more than 5,000 cases. . . . In 22 cases only was the seventh arbitrator called in. . . . The money savings in distribution cases during this period can be most conservatively estimated at \$1,500,000."

In 1924 there were 11,197 disputes which involved \$2,119,-622.26. Of these 5,697 were settled by conciliation, 4,827 by arbitration, 332 were withdrawn by complainants, and 293 were dismissed because of want of jurisdiction. Expressed in money, \$871,035.74 were settled by conciliation, \$1,077,968.99 by arbitration, \$132,115.48 were withdrawn by complainants, \$38,502.35 were dismissed for want of jurisdiction. Of these only 15 cases required the seventh arbitrator. In 1925 there were 11,887 disputes which involved \$2,542,544.40 settled by arbitration, conciliation, dismissal, etc. Of these 22 required the seventh arbitrator.<sup>66</sup>

The Arbitration Society of America, through its arbitration tribunal, settled more than 500 cases during its existence. In the *New York Times* of May 11, 1924 is found a brief resumé of the work accomplished. We quote as follows:

"In contrast with the long time required by the courts with their congested calendars to settle a dispute, the records of the society show that the average arbitration required but a single hearing, and occupied but a few hours of the time of the disputants, counsel and witnesses. The cost to the disputants was said to be trifling as compared with the cost of litigation.

"Complicated controversies involving large sums of money which beyond a reasonable doubt, if taken to the courts would have been fought through years of costly litigation, have been legally determined in this tribunal, whose only rule of procedure is the rule of common sense, in from two to three weeks. And the specially significant thing—just as significant as the saving of time and money—is the fact that wide satisfaction has resulted from the procedure. Winners and losers alike bear witness to this in letters on file at the office of the society."

In 1925 the Arbitration Society of America consolidated with the Arbitration Foundation, Inc., and the Arbitration Conference to form the American Arbitration Association whose purposes are to promote the knowledge of arbitration and its application to the settlement of disputes.

"To this end, it conducts researches, coöperates in the establishment of arbitral tribunals in trade organizations, and collaborates with Government Departments, Bar Associations, trade, commercial and banking organizations, professional bodies and other interested agencies."<sup>67</sup>

<sup>66</sup>Birdseye, *Arbitration and Business Ethics* 51.

<sup>67</sup>American Arbitration Ass'n *Information Bull.* no. 1, Supp. A,

A report<sup>68</sup> of the International Chamber of Commerce states:

"Up to November 19, 1925, one hundred disputes between business men of different countries had been submitted for settlement to the Arbitration Court of the International Chamber of Commerce."<sup>69</sup>

p. 1. Other illustrations of commercial arbitration follow:

The Credit Association of the Building Trades of New York settled 253 disputes in 1918 and about 700 in 1919. 2 Am. Judicature Soc. J. 53.

The National Wholesale Grocers' Association tried 21 arbitrations in 1913, 21 in 1914, 47 in 1915, 28 in 1916, 22 in 1917, 12 in 1918, 54 in 1919, 39 in 1920, 114 in 1921, 53 in 1922, 46 in 1923, 57 in 1924 or a total of 514 arbitrations. Of the 57 arbitrations settled in 1924, 34 were decided in favor of the buyer and 23 in favor of the seller.

In the April 1924 issue of Arbitration News Mr. M. Mosessohn, Executive Chairman of the United Women's Wear League of America said:

"The United Women's Wear League of America and the organizations comprising it have had an Arbitration Board in service since the organization of the United Waist League of America, the first of our Leagues. Thus far, our Boards have arbitrated over 300 cases and apparently all cases have been satisfactory."

<sup>68</sup>Supplement to no. 7 of the Journal for December, 1925, arbitration report no. 5.

<sup>69</sup>The report continues:

"Of these one hundred cases:

"Forty were settled, namely five by arbitration, seven by conciliation, ten by mutual agreement on the mediation of the Chamber, without having recourse to the Rules, sixteen by mutual agreement before the intervention of the Chamber, and two by an arbitration organization other than the International Chamber of Commerce, following the action of the Chamber.

"Fifty-one cases were without result. In forty-six of these cases, only one party requested the Chamber to intervene; the other party, not being bound by an arbitration clause, declined to accept either arbitration or conciliation.

"It is essential that business men should insert the arbitration clause of the Chamber in all their contracts with foreigners in order to avoid difficulties of this sort with respondents. For respondents, realizing that the claimant has recourse to arbitration so as to escape the costs and delays of a civil action, often refuse to accept arbitration unless they are bound by an arbitration clause. It is nevertheless encouraging to note that the Chamber has been able to settle, on an average, two cases out of five in spite of the fact that in nearly every instance it has been necessary to persuade respondents into accepting an arbitration which they were quite at liberty to refuse.

"In three cases the Chamber's attempts at conciliation have been fruitless; in one case the claimant withdrew his application, and in one other case the court was obliged to reject the request for arbitration."

In a letter to the author on November 5, 1925, in regard to the work of the Chamber of Commerce of the State of New York, Charles L. Bernheimer, Chairman of the Committee on Arbitration, said:

"Probably five to six hundred cases are brought to the attention of our committee during a year. It is our aim, however, to maintain the number of actual arbitrations at the minimum. In other words, we endeavor to dispose of most of these disputes through mediation and conciliation, merely permitting the cases to come to formal ar-

## CONCLUSION

The development of commercial arbitration in the United States may be divided into several periods, (a) colonial period in which but few laws were passed; (b) period 1778-1920 in which almost all the states passed laws in which submission was revocable and had to be made after the dispute arose; (c) period from 1920 to the present time, in which emphasis is being placed on a uniform state statute where submission is irrevocable and can be prior to the dispute; in which a federal law has been passed; in which agreements have been made between the Chamber of Commerce of the United States and many like organizations in Central and South America; in which the International Chamber of Commerce was formed with the United States of America as a member.

As to the future development there is much to be said. First, through the efforts of the Commission on Uniform Legislation of the American Bar Association, the New York Chamber of Commerce, the Arbitration Foundation, and hundreds of trade associations in the United States, many states are being shown the defects in their statutes which undoubtedly will be amended.

Second, it seems indisputable that two such powerful nations as Great Britain and the United States will spread their enthusiasm to other countries, through compelling their subjects to abide by arbitration agreements made with subjects of other countries, and thereby affect the laws of the countries which up to the present time have relegated arbitration to a very inferior place in the world of commerce.

Third, with countries which have no arbitration laws the United States will undoubtedly make treaties where arbitration agreements will be recognized as irrevocable.

Fourth, where no treaties are made by the United States government, the Chamber of Commerce of the United States and other trade associations here will make agreements with similar associations in foreign countries whereby these associations will enforce arbitration agreements made by their members.

Fifth, because of the success already enjoyed by the International Chamber of Commerce in Commercial Arbitration, there would seem to be prospect of success in the future in this undertaking.

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bitration when a settlement is impossible by either of the two former mentioned methods. I might add, however, that all of the cases that do come to us are disposed of by one of these three methods."

Sixth, the variation in agreements among Trade Associations in the United States gradually will be overcome through the making of joint arbitration agreements between associations in the same industry. This has been done in the shoe industry by the National Association of Shoe Wholesalers, the National Shoe Retailers Association and the Tanners' Council of America; and in the grocery trade by the Dried Fruit Association of California, and those of New York, Chicago, and St. Louis, the National Canned Foods and Dried Fruits Brokers Association, National Canners Association and the National Wholesale Grocers Association.

Seventh, there is a possibility that as more rigid statutes are passed making arbitration agreements enforceable a new type of courts will be set up to handle the procedure.