FEDERAL ARBITRATION—Letter-Bulletin 5

To Members and Associates:

Federal recognition of the principle of arbitration through the enactment by the Congress of an arbitration act which became effective January 1, 1926, enlarges materially at one stroke the field of usefulness of public accountants. As members of a profession closely allied with the arbitration movement, they are charged with the responsibility of encouraging the settlement, by this method, of business differences and of serving, when called upon, as arbitrators.

The Institute presents in this letter-bulletin essential facts with respect to progress in the arbitration movement and suggests ways by which public accountants may perform valuable public service in behalf of arbitration. Suggestions are also given as to how effective use may be made, in the affairs of clients, of the new federal law.

You are urged to meet the responsibilities placed upon you with relation to arbitration by advocating the use of the new legal instruments provided by the Congress and by several of the states, and by encouraging and supporting the enactment of additional effective state arbitration laws, in the ways described herein.

The Committee on Public Affairs

Contents

What Arbitration Needs at the Hands of Accountants ........................................ 2
Definition of Arbitration ......................................................................................... 3
Accountant's Relation to Arbitration .................................................................. 3
Year's Developments in Arbitration Field ........................................................... 4
Business World Accepts Arbitration ..................................................................... 5
Arbitration in Legislative Halls ............................................................................. 6
Analysis of New Federal Law ............................................................................. 7
Cities In Which Arbitration Has Made a Start ..................................................... 8-9
Needed Improvements in Laws .......................................................................... 10
Procedure In Arbitration ....................................................................................... 10
The Growth of Arbitration ................................................................................... 11
Legal Profession Endorses Arbitration ................................................................. 12-14
United States Arbitration Act ............................................................................. 15-16
WHAT ARBITRATION NEEDS AT THE HANDS OF PUBLIC ACCOUNTANTS

From Public Service Point of View

First
Support in enactment of arbitration laws in many of the states.

Second
Assistance in setting up local and trade arbitration tribunals.

Third
Advocacy of use of arbitration, for settlement of business disputes, whether intra-state, inter-state or international.

From Professional Point of View

First
Service as arbitrators, when needed by arbitration tribunals.

Second
Preparation of facts for the arbitration of cases, through investigative, auditing or other accounting work for clients.

To carry out any or all of the first three suggestions enumerated above, accountants may distribute this letter-bulletin to clients and others, including trade bodies, chambers of commerce, banking institutions, civic, business and professional organizations: They may also cooperate with such organizations by appearing before them to speak on commercial arbitration, by serving on committees charged with legislative activities, and by writing articles for publication.

The last two suggestions enumerated relate to the professional activities of public accountants, and are self-explanatory.

Acknowledgment

The Committee on Public Affairs acknowledges with gratitude valuable assistance given in the preparation of this letter-bulletin by the three national organizations devoted to advancing the cause of commercial arbitration, which, as this letter-bulletin is published, are being merged into a new organization, to be known as the American Arbitration Association. The organizations whose resources and activities are being consolidated, are:

Arbitration Society of America, 115 Broadway,
New York, N. Y.—organized in May, 1922.

Arbitration Foundation, Inc., 65 Liberty Street,
New York, N. Y.—organized in March, 1925.

The Arbitration Conference, 115 Broadway, New
York, N. Y.—organized in March, 1925.

The new Association, with its enlarged facilities, is prepared to furnish detailed information relative to arbitration, and to assist in setting up arbitration tribunals and in drafting new state measures.

Prior Letter-Bulletins Available

Copies of the following letter-bulletins issued by the Committee on Public Affairs are available for the use of accountants, attorneys, bankers, business men, credit men, civic, public, and quasi-public organizations, trade bodies, schools, libraries, chambers of commerce, and boards of trade:

1. "Arbitration"
—a letter-bulletin of 8 pages discussing the use of arbitration for the settlement of commercial disputes.

2. "The Crime Tendency"
—a letter-bulletin of 16 pages discussing the prevailing crime tendency as related to financial affairs.

3. "Credit Frauds"
—a letter-bulletin of 32 pages discussing the subject of credit frauds in three principal parts—misrepresentation, diversion of assets, and bankruptcy.

4. "Tax Simplification"
—a letter-bulletin of 12 pages discussing the simplification of tax laws.
What It Is, and the Accountant's Relation to It

With the enactment of a federal arbitration statute and of two additional state arbitration laws during 1925, arbitration for the settlement of commercial disputes, takes its place as an important and dependable procedure in the orderly transaction of business in the United States. Prompt, impartial and economical settlement can now be obtained with respect to disputes growing out of interstate, maritime and foreign trade, and with respect to intra-state disputes in New York, New Jersey, Massachusetts and Oregon. Arbitration laws are being considered in a score of states and arbitration statutes of an effective character may soon be available in every state. The arbitration movement is spreading rapidly because of its inherent soundness.

As described in an earlier letter-bulletin issued by this Committee on Public Affairs, (No. 1, May, 1924)—

“Arbitration is a legally recognized method of settling differences between business men without ordinary litigation. Decisions are obtained by the submission of facts to one or more arbitrators, whose award is binding and legally enforceable. When disputants sign an agreement to arbitrate, this agreement, under approved arbitration laws, is irrevocable; neither side can withdraw, and both must abide by the decision.

“Arbitration is a method of cooperating with the court. It is in no sense a rival of the courts, but it is a method of obtaining a settlement of points in dispute in a few days, or weeks, instead of by litigation extending over the months or years required to take a legal action through the courts.

“Hearings are held in private—there is no publicity. Each side tells its story in its own way. Rules of evidence do not exclude matter which the arbitrators believe has a bearing on the case.

“Arbitrators may be chosen from a list of volunteers who serve without pay, or the disputants may agree on one or more arbitrators, and make their own arrangements as to fees. Disputants may be represented by counsel if they so desire, and may introduce, at their own expense, such expert testimony as they wish.

“Arbitrators, under the approved laws, have the power to subpoena witnesses, compel production of books and papers, and in almost all essential respects, to exercise the same authority with which a judge is clothed in the conduct of a trial.”

Relation of arbitration to the profession of accountancy was set forth in letter-bulletin 1 in a statement prepared by the late Edward L. Suffern, one of the most respected accountancy practitioners of this country, who had for years been actively engaged in advancing commercial arbitration, who had served on many occasions as an arbitrator, and who acted for a year as Chairman of the Accountants’ Committee of the Arbitration Society of America.

In this statement Mr. Suffern said that accountants should be interested in arbitration, because “its use in the settlement of business disputes in place of litigation tends to stimulate business activity in the community, saves time and money and good will for clients, and offers accountants an unique opportunity for the highest type of professional service.”

Continuing, Mr. Suffern said in part:

“The confidential relationship existing between the accountant and his client—the latter of whom frequently exercises a wide sphere of influence in the community—makes it possible for members of the American Institute to become potent factors in the nation-wide Arbitration movement. . . . A few practical suggestions may be of interest:

“First: Arbitrate your own disputes with clients or other persons with whom you have business relationships—it will save you time and money and retain your business friendships.

“Second: Urge your clients to settle their civil disputes through Arbitration rather than through litigation; even if your State has no effective Arbitration Law, which would make it impossible to enforce an Arbitrator’s award, the mere fact that the dispute has been submitted to arbitration will, in a large majority of cases, bring about its amicable adjustment.

“Third: Offer to serve as an arbitrator, whenever occasion presents, especially in disputes involving technical accountancy problems; even if you are not compensated for the time devoted to such work, you will find it tremendously worth while because of the high type of public service rendered in judging disputes among your fellow men, and because of the training it offers for a judicial approach to business problems.

“Fourth: Cooperate with commercial organizations and bar associations in your state to secure the introduction of a model Arbitration Law based on the New York and New Jersey Acts. . . .”

No more concise statement than this, nor from a more authoritative source, is needed to indicate the relationship of accountants to arbitration.

With arbitration accepted as a new business procedure approved by the courts, recognized by the Congress and several state legislatures, and employed increasingly in many trades, the Committee on Public Affairs presents for the information of public accountants and of the business public, a review of recent developments, a view of arbitration as it is today, and a brief account of what is needed to assure its still wider use.
Recent Developments Emphasize Growing Importance of Arbitration

The year 1925 was marked by important developments in the arbitration movement. Some of the outstanding achievements are:

Approval of the United States Arbitration Act by President Calvin Coolidge, on February 12th.

Approval of the Oregon Arbitration Act on February 19th.

Holding of important arbitration conference, attended by many persons prominent in the world of affairs, at New York home of Mr. and Mrs. Vincent Astor, on March 19th, which resulted in the organization of The Arbitration Conference as a clearing house for the standardization of arbitration procedure.

Organization of the Arbitration Foundation, Inc., on March 23rd, to aid in forming new arbitration tribunals and in the dissemination of information.

Approval of the Massachusetts Arbitration Act on April 24th.

Introduction of modern arbitration bills in the legislatures of seven states—California, Indiana, Minnesota, Missouri, North Carolina, Rhode Island, and Washington.

Formation of numerous additional arbitration tribunals.

Adoption and use of arbitration by many trade bodies.

Widespread advocacy of arbitration by certified public accountants.

Announcement of the new arbitration laws and discussion of the legislative status of commercial arbitration will be found elsewhere in this letter-bulletin.

Arbitration Sentiment Crystallized

The conference on arbitration at the Astor home on March 19th was attended by more than 200 prominent officials and business men, and served to crystallize arbitration sentiment. It called public attention to the great strides made by this method of settling commercial disputes. Addresses were made by such men as Willis H. Booth, William C. Redfield, United States Senator Thomas J. Walsh, Julius Henry Cohen, Judge Moses H. Grossman, Judge Thomas B. Paton, Will Hays, R. J. Cary, and Charles L. Bernheimer. A message from Secretary of Commerce Herbert C. Hoover was brought by A. J. Wolfe, Chief of the Division of Commercial Laws of the United States Department of Commerce, to the effect that in the opinion of that Department, arbitration is one of the most important movements which recently have been initiated for the benefit of the business community.

"We must make arbitration a practical instrument for the benefit of business," he said, in urging that the advocates of arbitration carry on, in their efforts to make it accessible to business men the world over.

Bankers Will Use New Law

Judge Paton, speaking for the American Bankers Association, said that it will get behind the United States Arbitration Act. "We realize its desirability and the need for it; it is especially applicable to banking transactions. In the office of the general counsel in the past fifteen years there have been controversies that have involved banking transactions of no little intricacy, which we could not take up to the courts."

The American Bar Association, through its Committee on Commerce, Trade and Commercial Law, which drafted the Federal bill, comments: "No piece of commercial legislation, no enactment at the request of lawyers has been passed by Congress in a quarter of a century comparable in value to this."

Developments in the international field were outlined by Willis H. Booth, who told of the increasing activity of the International Court of Arbitration, set up by the International Chamber of Commerce. The work of this international tribunal is restricted to hearing and adjudication of disputes between people of different nations.

Opinion of Hon. Charles E. Hughes

Speaking at a luncheon of the Chamber of Commerce of the State of New York, Hon. Charles E. Hughes congratulated the supporters of commercial arbitration on the progress that has been made. He said, in part:

"Being more interested in the maintenance of the institution of amicable adjustment, than anything else, I must congratulate this Chamber on the success which has crowned its long efforts in support of the extension of commercial arbitration. The system here established, I am advised, has extended to all parts of the United States and to South America and Europe. Recently these efforts have led to the enactment by the last Congress of the United States Arbitration Law, relating to arbitration in the field of maritime and interstate commercial transactions. It is especially gratifying to me as a member of the American Bar Association to recall the support of this measure by that Association—a measure which your President has described as 'one of the most far-reaching pieces of legislation that has been introduced in recent times in the interest of sound business practices'. The influence of arbitral arrangements and judicial institutions is far greater than their service in disposing of particular differences. The fact that there is a court, a facile recourse to arbitral procedure or judicial remedy, makes actual resort to such processes the less necessary because the spirit of fairness and accord is cultivated."

Organization of additional arbitration tribunals has gone on apace, as trade after trade recognized the worth of this method of settling business disputes. Reports have been presented of the saving of hundreds of thousands of dollars through the application of arbitration.

Though the year was one of great accomplishments, it is recognized that much more remains to be done than has been completed in the past decade. The opportunity is at hand for all those, including certified public accountants, who are interested in public affairs and in the perfection of this business instrument, to perform valuable public service, in ways pointed out in this letter-bulletin.
Business World Accepts Arbitration as Workable Procedure

Because of its speed, low cost, and generally satisfactory results, arbitration is today being applied by thousands of merchants and manufacturers to their every day business affairs; facilities for arbitrating business differences involving principally questions of fact, are increasing rapidly; "frozen" assets are being freed without delay; court decisions are being handed down upholding arbitration laws; and chambers of commerce and trade associations are giving their aid in setting up arbitration tribunals and encouraging their use. The acceptance and free use of the principle of arbitration is an outstanding progressive step, one of the most pronounced of recent years in business circles. It is one in which accountants have played a large part.

Large Savings Effect Through Arbitration

Hundreds of thousands of dollars have been saved by business men, according to reports compiled by trade associations, through the application of the principle of arbitration under the procedures provided by laws adapted to the complexities of modern commercial and industrial activities, and in many cases under procedures unsupported by law, but voluntarily adhered to. These savings have been brought about even though arbitration—in a modern sense—has been used only in a comparatively restricted area. Its possibilities have been demonstrated.

"Why wait for the law?" is the attitude of many business and trade organizations, which are setting up arbitration tribunals of their own and are themselves enforcing compliance with arbitration awards in disputes between members, with loss of membership as the penalty for failure to abide by such awards. It is the experience of these organizations that a large percentage of disputes may be settled amicably without resort to arbitration, as the disputants know that if they do not agree, they must submit their differences to arbitration, and abide by the award.

The principle of arbitration has been accepted by business men as something that is of value to them, and has been recognized by government officials. It is an old principle, given a modern legal setting. A much more widespread acceptance and quite general use of this new procedure seems destined during the coming decade, as more states modernize their laws and as more trade groups sanction, authorize and encourage its application.

Accountants' Part in Movement

The part that accountants have taken in the development of modern arbitration has been in the roles of advocates of effective legislation and of exponents of arbitration. They have aided in laying before business men the advantages of the use of arbitration. Publication in May, 1924, by the Bureau of Public Affairs of this Institute of a letter-bulletin on arbitration served to stimulate public interest in this movement and proved a real public service.

Institute Endorses Arbitration

Official cognizance of the modern arbitration movement was taken by the American Institute of Accountants in September, 1923, when, in its annual convention, a resolution was adopted to the effect that it "give to the work of the Arbitration Society of America its support; that it communicate with its members throughout the country urging them to be favorable to the introduction of the system of arbitration in commercial disputes and generally do everything possible to forward the popularity of arbitration, including services as arbitrators, when called upon so to act." Since that time accountants have been most active in their support of arbitration and this Institute has taken a foremost place in doing constructive work in forwarding this movement.

Arbitration Organizations in Field

The new American Arbitration Association, which will be the only national organization devoted entirely to the advancement of the arbitration movement throughout the United States, following the merging of the three organizations listed on page 2 of this letter-bulletin, will encourage the enactment of modern arbitration laws, the adoption of arbitration by trade organizations, and the setting up of arbitration tribunals. It will also maintain facilities for arbitrating disputes.

The Committee of Accountants, of the Arbitration Society of America, of which J. Pryse Goodwin of New York, is chairman, will be continued. This committee has done effective work in coordinating the efforts of practising accountants and of the Arbitration Society of America to encourage the passage of comprehensive arbitration statutes. The committee is composed of: Meyer Bernstein, Louis D. Blum, Horace G. Crockett, Leonard S. Davis, J. Homer A. Dunn, Bradley A. Dusenbury, James F. Farrell, Joseph Frank, J. Pryse Goodwin, Samuel J. Jacobsen, Richard T. Lingley, John T. Madden, Edward B. Miller, Nathaniel Miller, John B. Niven, Alfred A. Ritchie, Stephen G. Rusk, John S. Snelham, Arthur W. Ticele, and James F. Welch.

As arbitration emerges from its ancient form, improvements are written into the laws which make them much more effective than the old statutes—improvements such as prevention of withdrawal of either disputant, once an agreement to arbitrate is signed; enforceability of arbitrators' awards; provision for arbitration of future disputes. These features help to make arbitration an instrumentality that serves a useful purpose.

The economic waste attendant upon litigation is declared by economists to be next in size to that caused by war. Arbitration reduces the waste caused by litigation and is a procedure of which accountants and business men must take cognizance because of its growing importance in the business structure.
ARBITRATION IN LEGISLATIVE HALLS

Federal Measure and Two New State Laws Enacted Last Year

Thus rapid strides that commercial arbitration is making are reflected by the enactment during 1925 of the federal statute already mentioned and of two new state laws; and by the careful consideration given by many state legislatures to proposed arbitration measures which may become law in the near future.

The legislative aspect of the arbitration movement is interesting in that the enactment of effective arbitration laws is following, rather than preceding, the use of arbitration in many instances.

Four states—New York, New Jersey, Oregon and Massachusetts—enacted their laws in 1925. New York's new law—an amendment of an old law—was signed by Governor Alfred E. Smith on April 19, 1920, being the first of the comprehensive modern laws to be enacted. New Jersey's statute was approved by Governor George S. Silzer on March 21, 1923. The Oregon law was approved by Governor Walter M. Pierce on February 25, 1925. The Massachusetts law was amended and the amendment approved by Governor Alvan T. Fuller on April 29, 1925. The Arbitration Society of America has published the four laws in its "Information Series" pamphlets.

In the seven additional states previously listed—California, Indiana, Minnesota, Missouri, North Carolina, Rhode Island and Washington—generally comprehensive arbitration measures were introduced in the legislatures during the 1925 sessions. Though they received careful consideration, they were not acted upon in the cases of the first six states mentioned. Indications are that the legislatures of these states will renew consideration of the proposed arbitration laws at their next sessions.

The Legislature of the State of Washington now has before it an arbitration measure modeled on the New York statute, which is being supported by the State Chamber of Commerce of Washington, and the Federated Industries of that state. Accountants in Washington also are advocating the enactment of this measure into law.

Space limitations prevent presentation of detailed statements here of the legal and legislative status of arbitration in all of the states. There are thirty-four states which have some form of arbitration law. They are: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Judge Moses H. Grossman, vice-president of the Arbitration Society of America, in an article in the January, 1925, Yale Law Journal, says, in part:

"In several of the states, such as Maine and New Hampshire, controversies may be referred to referees, appointed by the Courts, who file their report in court 'for acceptance, rejection or recommittal.' In Connecticut, executors, guardians, etc. may be authorized by the Probate Courts to settle 'any doubtful or disputed claims.' In Maryland, controversies between corporations 'in which the State may be interested as stockholder or creditor' may be submitted to arbitration before the Board of Public Works. In Vermont, the law provides for arbitration of a controversy over an order of a building inspector, where the question involved can not be the subject of a civil suit. North Carolina, Oklahoma, Rhode Island, South Carolina and South Dakota apparently make no statutory provision for arbitration in any form.

"In the states other than New York, New Jersey, Oregon and Massachusetts, statutory provisions for arbitration are more or less limited in scope. Only existing disputes may be submitted to arbitration, clauses in contracts to arbitrate future disputes not being enforceable. Either party, under the majority of these statutes, may withdraw from the arbitration at any time before the award is rendered, if the submission had not been made a 'rule of court.' In a few states, such as Illinois and Massachusetts, either party may request that any question of law arising during the hearing be referred by the arbitrator to the Court, which may 'in its discretion instruct the arbitrator upon a question of substantive law,' and such instruction is binding.

"The submission to arbitration in most States must be in writing. . . Arbitrators must be sworn in most states and have the same powers as a referee to subpoena witnesses, administer oaths, hear and determine the dispute, etc. In a few states, such as Arizona and Delaware, arbitrators must possess the qualifications of jurors.

"'Any controversy which might be the subject of suit may be submitted to arbitration' is a frequent statutory provision, but questions of title to real estate are specifically excepted in such states as California, Indiana, Michigan, etc. It is generally required that the award of the arbitrators shall be in writing and be signed by the arbitrators; a majority decision is adequate in most states. In some states, the award is given to the parties, but generally it must be filed with the clerk of a court if it is to be recorded as a judgment.

"Awards may be set aside, generally speaking, by the courts for fraud, partiality, corruption, or other misconduct, but this varies occasionally, as in Maine where the court may accept, reject or commit the award, either party may file exceptions and may bring a writ of error to secure a reversal of a judgment thereon. In Illinois, the aggrieved party may appeal on matters of law.'
THE FEDERAL ARBITRATION ACT

New Law an Important Step Toward Elimination of Business Waste,
Says Secretary Hoover

The United States Arbitration Act is reproduced in full on pages 15 and 16 of this letter-bulletin. Enactment of the law was strongly supported by the United States Department of Commerce. In a statement issued recently at Washington Secretary of Commerce Herbert C. Hoover declared that he believed the new law represents an important step toward elimination of business waste.

"Information collected by the Department of Commerce over the past several years" he said, "clearly showed that the substantial element of the American business public is overwhelmingly in favor of arbitration in the settlement of commercial disputes in both domestic and foreign trade. In addition it has the approval and support of leading members of the bar throughout the United States."

In the field of waste elimination it comprises another important advance according to the Secretary, and because of this he says that he has encouraged every reasonable movement in making arbitration accessible to merchants everywhere.

Makes Arbitration Contracts Enforceable

The United States Arbitration Act was passed by the last Congress without a dissenting vote in either house and was signed by President Coolidge on February 12, 1925. This phenomenal support testifies to the solidarity of opinion, legal, business and lay, that supports the arbitration movement.

Joseph Mayper, an attorney and legislative secretary of the Arbitration Society of America, discussing the federal act in an article written especially for this letter-bulletin, says:

"Because the fundamental principles enunciated in this Act undoubtedly now represent the policy of the United States for the legal settlement of business controversies by arbitration instead of through litigation, and will probably form the basis of future state legislation, an analysis of its provisions is of special value.

"The Act makes valid, irrevocable and enforceable, a written provision in a contract to arbitrate any dispute that may later arise thereunder—as well as a written agreement to submit to arbitration an existing controversy—if it relates to 'maritime transactions' or 'commerce among the several States or with foreign countries'. As the Federal Courts are empowered to enforce such arbitration agreements only in cases in which they would normally have jurisdiction, the dispute must involve a sum of $3,000 or over and there must be diversity of citizenship between the parties. In order to safeguard the interests of the claimants in admiralty matters, the right is preserved to libel a vessel or other property at the commencement of the proceeding.

"Under the outlined procedure, the arbitration agreement assures a prompt settlement of the controversy. If a party declines to comply therewith, a petition for an order directing that the arbitration proceed may be filed with the Federal Court normally exercising jurisdiction over the subject matter.

"Arbitrators are usually named by the parties, but one or more may be designated by the Court upon the application of a party. They may subpoena witnesses and place them under oath, and require the production of books and papers. The hearings are private and the testimony is presented informally without technical rules of evidence, each side telling its story in its own way.

"The award of the arbitrators must be in writing and the parties may agree that its bail be entered as a judgment of the court. It may be vacated only if procured through corruption, fraud or other undue means or if partiality, misconduct or excess of power on the part of the arbitrators can be proven. An award may be modified, however, to correct an obvious miscalculation of figures or a mistake in description. In order to vacate or correct an award, proceedings must be brought within three months after it is delivered, but to confirm an award, proceedings must commence within one year after it is made. All such applications to the court are heard and disposed of in the same manner as motions."

"Although the constitutionality of the Act has obviously not yet been questioned in the Courts, the United States Supreme Court has expressed itself, nevertheless, very definitely upon the enforceability of agreements entered into under the New York State Arbitration Law, and the basic principles of which are quite similar. In the case of Red Cross Line vs. Atlantic Fruit Company (No. 112, October Term, 1923), the Court held that the State has the power to confer upon its courts the authority . . . to compel parties within its jurisdiction to specifically perform an agreement for arbitration . . . which is contained in a contract made in New York and which, by its terms, is to be performed there."

"It may be safely assumed, therefore, that the Federal Act will be held constitutional, and the utilization of its simple machinery by trade groups and business men generally should, therefore, not be retarded pending such court action."

How to Apply New Law

Representatives of trade associations and chambers of commerce have offered the following suggestions relative to possible uses that may be made of the new law:

First—Trade associations, chambers of commerce, trade exchanges and other commercial bodies who desire to promote the use of arbitration should set up arbitration bureaus, boards or groups to deal with disputes not only between their members but between their members and outside business organizations and, where feasible, between business organizations which are not connected with them.

Second—Rules of procedure, methods and practices for conducting arbitration hearings which have been tested by arbitral groups already in existence should be investigated and suitable practices and standards adopted by new groups. The establishment of such groups is not difficult but should be undertaken conservatively with full appreciation that experience is one of the factors necessary to the successful operation of such a body, and with recognition of the fact that arbitration is not a universal substitute for litigation nor a panacea for its ills.

Third—Arbitration committees of trade bodies may consider it desirable to proceed with the appointment of reputable business men who are willing to act as arbitrators. If possible these men should be prepared to serve not only within their respective organizations but in disputes which are submitted to them by others concerning matters which they are qualified to handle, thus providing groups from which disputants in all parts of the country, may select suitable and acceptable arbitrators to sit in their controversies. By providing such groups selected by disinterested bodies, much litigation arising from disputes of an intersectional character may be avoided. It is highly important that business men of ability, standing and reputation in their communities be listed for appointment as arbitrators.
Cities In Which Arbitration Has Made a Start

NOTE
Figures shown on this map indicate the number of trade and commercial organizations which either offer facilities for arbitration, or are interested in promoting the use of arbitration. See page 10 of this Letter-Bulletin.

Map Prepared by Arbitration Foundation Inc., 65 Liberty Street, New York, December, 1925.
Facilities for Arbitrating Disputes Available in Forty-five States

A comprehensive picture of the facilities that are available to business men who wish to make use of arbitration is presented by the map printed on pages 8 and 9, which is published through the courtesy of the Arbitration Foundation, Inc.

The figures appearing on this map indicate the number of trade and commercial organizations which either offer facilities for arbitration, or are interested in promoting the use of arbitration.

Publication in this Letter-Bulletin of the list of organizations represented by the numbers given on the map is not practicable. Information relative to the organizations in any of the cities indicated that either have arbitration tribunals or are interested in promoting arbitration will be given on request, either by the committee on Public Affairs, or by the American Arbitration Association.

The establishment of additional arbitration tribunals in cities which have none or which are inadequately supplied is one of the most important objectives lying before those interested in advancing commercial arbitration. Accountants are urged to study conditions in their own cities and states, to familiarize themselves with existing facilities for arbitrating commercial disputes and to determine the need of supplying additional tribunals. This may be done irrespective of legal conditions surrounding arbitration in a given state as arbitration may be applied by mutual consent of disputants, whether or not the law in their state is comprehensive in its provisions.

Needed Improvements in Arbitration

As the arbitration movement grows in this country, and as the principle is more widely studied and adopted by organizations and individuals, the need of certain refinements in the enabling statutes may present itself. A few of the suggestions now being considered by leaders of the movement are outlined here.

First is the need of providing legal means to contract for the arbitration of future disputes.

Comprehensive laws should include, it is believed, a provision requiring and making it possible for arbitrators to refer to a court of competent jurisdiction any questions of substantive law that arise during the conduct of an arbitration hearing.

Arbitration laws should include also provisions making it possible for a party to an arbitration contract who believes he has been aggrieved, and who believes the other party to the contract intends to dissipate assets, to employ legal machinery to prevent such dissipation, without thereby violating the arbitration agreement and relieving the other party of the necessity of carrying out the arbitration. This protection of assets can not generally be resorted to under existing laws.

Accountants who interest themselves in arbitration legislation are urged to keep in mind suggestions of this nature.

Arbitration Procedure

Procedure in arbitration hearings, while it follows certain fundamental principles and standard forms, varies in different trades. It is not practical to present here an outline of the procedures in use by trade bodies.

The Arbitration Society of America has worked out a procedure which it uses in its own arbitration tribunal, which may serve as a model for an organization desiring to set up a procedure of its own. The Arbitration Society will supply copies on request.

No attempt will be made by the Committee on Public Affairs to supply the wording for contracts in which an agreement to arbitrate future disputes arising from the operation of a contract is to be included. This is a matter of such great importance and delicacy, subject to so many trade considerations, that this committee believes the wisest course for trade organizations and individuals to pursue when drafting such contracts or adopting such forms is to consult one of the organizations specializing in such matters—the American Arbitration Association, or the United States Department of Commerce.

"Laws and Procedure," pamphlet No. 1 in the information series of the Arbitration Society of America says:

"The text of the following proposed standard arbitration clause, enforceable both under the Federal and the State laws mentioned above, is adapted from the clause heretofore found effective by the Arbitration Society of America under the New York State Law:

"'Any claim or dispute arising under this contract or for the breach thereof shall be submitted to arbitration in conformity with the arbitration statutes, Federal or State, as the case may be.

"In the event that it is desired to safeguard the procedure by utilizing the special facilities of an existing responsible arbitral tribunal, the organization under whose rules, guidance and auspices the arbitration is to take place may be designated by adding the following phraseology to the end of the above clause:

"' and in accordance with the rules, then obtaining, of the Arbitration Society of America (or substitute the name of any other responsible organization).""

[10]
The Amazing Growth of Arbitration

The origin and growth of commercial arbitration is discussed in an informative manner by the Journal of the American Judicature Society in its October, 1925, number, under the heading "The Amazing Growth of Arbitration." Practically the entire October number of the Journal was devoted to a discussion of various phases of Arbitration. The following is quoted:

"This number of the Journal is devoted mainly—perhaps wholly—to consideration of the progress being made by commercial arbitration. So much has occurred in the acceptance of arbitration as a practical mode of adjudication that we cannot hope to make more than a cursory survey of the situation within available limits of space."

"Attempts to invent a better term than 'commercial arbitration' have not succeeded, and probably will not. The matter has been so little understood until rather recently in this country that the word 'arbitration' frequently has conveyed an erroneous impression. The kind of arbitration we have heard most about has been the arbitration of disputes between employer and employee. These disputes are arbitrated, as we say, because they are not justiciable. It is a notorious fact that in this class of cases, arbitration ordinarily means negotiation and compromise. It is to be commended only because no other method of settling industrial disputes on a large scale has been discovered.

"But in haggling and compromise there is much that is offensive to a sense of right and justice. And because the words 'commercial arbitration' have suggested to many persons something undignified and speculative, there have been efforts to find a euphonious name for the adjudication of justiciable controversies on a voluntary basis—for the operations of what has been called 'domestic tribunals'. This is a game that anybody can amuse himself with, but probably the procedure will continue indefinitely to be called commercial arbitration. It has made headway in public understanding and esteem in spite of its equivocal name, until now it appears plausible to hold that the popular liking for the product of this procedure will dignify the name itself. Indeed, it is likely that before long arbitration will commonly be understood to mean the adjudication of ordinary private disputes involving money claims, except when qualified as 'wage' arbitration or 'industrial' arbitration.

Technique Not Understood

"Until recently the technique of arbitration has been little understood in this country. Although every state, probably, has had its arbitration act, laying down the main items of procedure and providing for enforcing the arbitration award as a judgment, use of this procedure has been rare and often unsatisfactory. A principal reason for dissatisfaction has arisen from the common practice of requiring that the parties shall select each one arbitrator, and that these arbitrators shall select a third. When this procedure is followed without the control exerted by a strong trade association, it implies that the parties shall select as arbitrators those whom they can rely upon as champions. The third arbitrator then is not assisted by the first two, but, on the contrary, finds himself embarrassed by their partisanship. A unanimous decision is impossible and the defeated party feels that he has been victimized.

"In fact, arbitration as a successful procedure was until lately restricted to fields in which litigation is ruinous and in which there exist strong associations to compel its use and to conserve its essential procedure. In this country it had its beginning in produce and stock exchanges and next developed in the building trades.

"This was substantially the situation ten years ago and not until after that did the growing desire for a freer use of arbitration find expression in legislative action. At about that time the National Credit Men's Association started a movement and the Illinois branch undertook to obtain a more modern arbitration act. The matter came to the attention of the American Judicature Society, which at that time commanded the services of Samuel Rosenbaum, of the Philadelphia Bar, who had devoted two years to a study of the administration of justice in England. Of this time a considerable share had been spent on commercial arbitration, because Mr. Rosenbaum learned that the High Court of Justice was almost without exception. The Society was able to make Mr. Rosenbaum's extensive information on the subject available and did so by commissioning him to write what was soon published as Bulletin XII under the title "A Report on Commercial Arbitration in England." This bulletin is still the most informative writing on this subject, though much credit for developing a technical side of the subject is due Mr. Julius Henry Cohen, of the New York Bar.

Credit Men Help

"The revision of the Illinois arbitration act was accomplished largely through the support of the Credit Men's Association. An effort was made to change the law to the extent of making agreements to submit controversies arising in the future irrevocable, but the effort failed. The new act, however, was made much more workable than the old and was made to embody the English provision for submission of a point of law by the arbitrator to a court of competent jurisdiction. Two years later the act was again improved textually and in due time its constitutionality was upheld by the courts. Illinois had arrived at the stage where a party to an agreement to arbitrate an existing dispute could not back out.

"Year by year the movement for the freer and wider use of arbitration made progress both among lawyers and business men. The New York State Chamber of Commerce was active in furthering the movement. Mr. Bernheimer, chairman of its Arbitration Committee, for years has been tireless in advancing this subject. The New York State Bar Association gave formal approval to arbitration and took practical measures of encouragement. The United States Chamber of Commerce worked out agreements with similar commercial bodies in other countries to permit arbitration in our importing and exporting trades. In 1910 the New York legislature revised the arbitration law, making agreements to arbitrate, whether of future or existing disputes, irrevocable, and in due time this act was held valid by the New York Court of Appeals and the United States Supreme Court.

"Meanwhile, the movement, growing broader and deeper with amazing rapidity, spread among commercial organizations throughout the country and obtained the approval of the American Bar Association, resulting in this year in the passage of an act by Congress applicable to interstate and foreign commerce and in the approval of a model, or uniform, act drafted by the Conference of Commissioners on Uniform State Laws.

"Quite recently organizations have sprung up expressly purposed of encouraging and promoting the growth of arbitration, notably the Arbitration Society of America, and the Arbitration Foundation, Inc., to which reference is had in succeeding pages.

"Coincident with this progress of arbitration as an idea has been its rapid adoption as a practice in numerous lines of trade. The amount of arbitration actually accomplished has doubtless doubled every year for the past four or five years and bids fair to maintain this astonishing rate of growth until its shall have become a very common procedure in organized business throughout the country.

"Whereas, only a few years ago statutory reform was sought to encourage the practice of arbitration it is observable now that the customary conservatism and indifference of legislatures can not block the movement. Arbitration tends constantly to root itself in business practice, even in the face of archaic laws.

"Such is the briefest possible sketch of the phenomenal spread of an idea. Some of its phases will be more adequately presented in succeeding pages.

Attitude of Legal Profession Toward Arbitration

Attorneys, through their national organization, the American Bar Association, have endorsed the principle of arbitration, but have not declared themselves unreservedly in favor of business men binding themselves by contract to settle future disputes by arbitration. The Association supported the federal measure, which contains a provision for the arbitration of future disputes, but refused to include such a provision in the draft of a uniform state arbitration statute.

On the matter of contracting to arbitrate future disputes supporters of arbitration in this country are divided into two schools. A committee of the Annual Conference of Commissioners on Uniform State Laws appointed nearly three years ago to consider and report on a uniform arbitration act, presented a report to the 34th annual meeting of the Annual Conference of Commissioners in Philadelphia in July, 1924, together with a draft of a uniform act. The committee in its report said in part:

"This question of commercial arbitration is really divided into two schools in this country, viz., that which holds that an agreement to arbitrate any controversy may be made before the controversy arises, and that which believes that the agreement to arbitrate should be confined to controversies which have arisen. The line of cleavage is very clear. New York and New Jersey have passed laws which have been held constitutional which permit parties to agree in advance to arbitrate any difficulties that may arise in the future in connection with the contract. Illinois, on the other hand, limits the agreement to arbitrate to controversies which arose before the contract was made."

The proposed uniform act presented by the committee adhered generally to the Illinois point of view.

The principle of contracting to arbitrate future disputes, which may arise from the execution of a contract, was included in the New York statute, and has been tested in cases which have been carried to the United States Supreme Court, which upheld this provision and declared it constitutional.

Practically all the court decisions dealing with the modern practice of arbitration have been handed down in arbitration cases arising from the application of the New York law. All these decisions have been favorable; there has been little tearing down of the law in these decisions.

Action of American Bar Association

The Committee on Commerce, Trade and Commercial Law of the American Bar Association was instructed several years ago to draft a state uniform arbitration measure and also a federal arbitration act. The Committee did so and the two matters were submitted to several conventions of the American Bar Association. The federal measure was formally approved and the committee was instructed to aid in its enactment. This is substantially the bill that was enacted. It includes a provision similar to those in the laws of New York, New Jersey, Oregon and Massachusetts, making agreements to arbitrate future disputes enforceable and irrevocable.

Action was deferred by the American Bar Association on the draft of the uniform state law, which was almost identical with the New York state statute containing provision for the arbitration of future disputes.

In July, 1924, at a convention of the American Bar Association in Philadelphia, its committee on Commerce, Trade and Commercial Law presented its draft of the proposed uniform state law. A division had occurred in the committee and a representative from Illinois, under instructions from the Illinois Bar Association, opposed the provision in the draft of the uniform state measure which made it possible to contract to arbitrate future disputes. As a result of this opposition the uniform state law was referred back to the committee for further consideration and presentation to the next annual convention.

Soon after, the federal law, with its provision for the arbitration of future disputes, was enacted, substantially in the form drafted by the American Bar Association. The Massachusetts bill containing the clause for the arbitration of future disputes, was introduced and was passed, and became law, although that feature of the bill was opposed by representatives of the American Bar Association.

At the 1925 convention of the American Bar Association the Illinois proposal prevailed, to the effect that the provision for the arbitration of future disputes be omitted from the draft of the uniform law. The American Bar Association stands committed to a uniform state law which does not include provision for the arbitration of future disputes, but is on record as approving the principle of arbitration.

Views of New York Bar

The association of the Bar of the City of New York appointed a special committee in February, 1924, to consider the subject of arbitration with particular reference to its operation in New York. As the New York arbitration law, as amended in April, 1920, is regarded as one of the most satisfactory now in effect, the report of this special committee of the Association of the Bar of the City of New York is of special interest. It is of additional value as presenting the views of a large and important section of the legal profession. This Committee on Public Affairs recommends a careful study of the report. It can present here, however, only a few of the outstanding features of that document, as follows:

"In 1874 the Legislature of the State (New York) established a Court of Arbitration, which was presided over until 1895 by Judge Enoch L. Fancher. In more recent years a Special Committee of the Chamber of Commerce under the Chairmanship of Mr. Charles L. Bernheimer has been most active in promoting arbitration as a means for the settlement of commercial disputes. The efforts of this Committee were largely responsible for the adoption in this State of the Arbitration Law of 1920. In 1922 a membership corporation under the style 'Arbitration Society of America' was organized in New York City, which has since devoted itself most actively to the advocacy of arbitration and to lending its assistance in the settlement of disputes by this method. That Society has conducted a very extensive campaign with a view to the increased use of arbitration in substantially every kind of dispute. Very recently a corporation has been formed in New York under the style 'Arbitration Foundation, Inc.,' which we understand intends to raise a very sub-
stantial sum of money for the purpose of promoting arbitration. At the present time a great number of exchanges and commercial, industrial and professional associations maintain permanent committees and definite machinery for the settlement of disputes between their members and others by arbitration. It is the opinion of the Committee that there is more general and widespread interest in arbitration and greater resort to it for the settlement of disputes than ever before.

Reasons for Growth of Arbitration

"Some of the reasons for the present more extensive use of arbitration are obvious. The congestion of the courts, the delays incident to trials, the inconvenience in meeting court engagements, the expense, are all contributing causes. The chief argument for arbitration, however, is found in the fact that many disputes relate to matters involving quality of goods, trade customs and practices, etc., with respect to which there is, with considerable justice, a feeling that a proper determination of the questions at issue calls for a technical knowledge which obviously cannot be possessed by committees and definite machinery for the settlement of disputes. Committees and associations maintain arbitration for a technical knowledge which obviously can not be possessed by the ordinary jury, or, except by accident, by the court. In another class of cases, such as the settlement of partnership difficulties, the parties may also desire to avoid the publicity incident to court proceedings.

"In our opinion, the strongest argument in favor of arbitration as an alternative to litigation lies in this fact, that arbitrators, especially versed in the matters upon which they are to pass, can more expeditiously, economically and accurately determine the merits of many disputes. It seems clear that the arguments are strongest when the questions at issue are principally questions of fact.

The plea for arbitration amounts substantially to this—that when men have the choice of submitting their disputes either to arbitration or to a court of law, they should elect the former. The plea is sometimes limited to particular classes of cases, but frequently is given practically no limit. Such a plea necessarily carries the implication of serious defects in our judicial system at least in so far as the settlement of commercial disputes is concerned. The criticism is one which we believe should not be ignored by the Bench or Bar..."

"Some of the advocates of arbitration have, however, gone almost to the extent of asserting that our system of law and of judicial procedure denies rather than seeks to enforce substantial justice. Undue emphasis has been laid upon the technicalities of law and of the rules of evidence and the notion has been encouraged that litigation was merely a game and that justice was to be had through the ordinary machinery of the courts only by accident. Admitting that perfect justice is an ideal which it is extremely difficult to attain, we believe that there is of the kind just referred to an ill-considered and unsound, that it arises largely from a disregard of obvious facts affecting the field of human relations and that it is positively harmful to the community.

The Proper Field and Scope of Arbitration

"Arbitrators are not judges in the technical sense. They are not limited by the rules of substantive law or of evidence. They may receive and act upon evidence which would not be competent in any court of law, and in their decisions they may disregard the substantive rules either of statute or of common law. There is no appeal from their decisions on matters either of law or of fact. This fact in itself makes apparently a strong appeal to many lay minds. There is in the minds of many a sort of feeling that justice is easy of attainment, but that lawyers and courts make it difficult to attain. They seem to have confidence in what we may call 'inspirational' or impromptu justice. They seem to feel that the man who has never studied the history of human relations as recorded by the development of our system of law is likely to be more sound and more accurate in his search for justice between two contestants than is the man who has made a careful study of and who looks for assistance to earlier conflicts and decisions.

"The decision of arbitrators in any one case is no precedent for the decision of other arbitrators in a similar case. We feel that this condition is a source of danger if arbitration is to be used as a means of settling every class and kind of dispute. The danger will, however, disappear very largely if arbitration is limited to the settlement of disputes of a kind which are frequently recurring and which relate to matters of such a sort that the arbitrators can, in deciding them, draw upon a well-established and recognized body of custom and trade practice. Of course, disputes should be settled with finality. It should be remembered, however, that by far the greater number of human dealings do not result in disputes, because they are conducted in accordance with fixed and recognized standards and rules. It is, we believe, supremely important to the public welfare that men in their dealings with each other should know with reasonable certainty what their rights and obligations are, so that disputes may be avoided and so that, if they do arise, the results may be fairly definite and certain. This is one of the great purposes of any system of law, and arbitration, if it is to be successful, must be reasonable and possible criteria in its results. If this then 'inspirational' or impromptu justice is not a sure guide to the arbitrator. The true guide must be found in established customs, practices and standards. Such established customs, practices and standards are of the essence of law, and arbitrators, if they are to be satisfactory and successful in the long run only if arbitrators are guided by them. If they do not exist or if they are ignored, then awards must inevitably be haphazard matters of individual whim..."

"We see no reason to criticise the resort to arbitration in the case of any existing dispute. Once the controversy has arisen, the parties are themselves fully competent to settle it in any way that they see fit, and if they agree to abide by the decisions of some arbitrator, whether the primary questions at issue are those of fact or of law, no one can seriously object to their doing so...

The principal questions which arise with respect to arbitration in New York arise in connection with the Act of 1920, which makes binding and enforceable agreements to arbitrate disputes which may arise in the future. With respect to the arbitration of existing disputes we are wholly in sympathy with the proposition that such agreements should not be revocable.

Automatic Limitation of Field

"It is obvious that an agreement to arbitrate a future dispute can, as a matter of practice, come into existence only in connection with the making of a written contract between two or more parties. The arbitration of future disputes, therefore, has, as a practical matter, no relation to actions of any sort other than those resulting from some contractual relation arising out of a written contract. This is in itself an automatic limitation in the field of the arbitration of future disputes.

"We believe that contracts for the arbitration of future disputes should, except in special cases, be further limited in practice to those fields where there is an established body of custom and usage, where skillful and unbiased arbitrators can readily be found and where the questions likely to arise are of comparatively frequent recurrence. Indeed, this further limitation seems to be recognized by the common use of the term 'commercial' arbitration. In our opinion, general agreements to arbitrate future disputes should not, except in unusual cases, be inserted in what we may call 'casual' contracts.

"The word 'casual' is not entirely satisfactory and perhaps requires explanation. We use it in contrast with the term 'commercial'. By far the greater number of contracts are commercial. They are made between persons who are engaged in some economic or professional field. Examples are numerous—contracts between wholesaler and jobber, between producer and distributor, between brokers or dealers in silk, cotton, steel or other merchandise. Here we have a constant and recurrent series of transactions similar in nature and involving the same general elements of price, quality, delivery, etc. We have also established and recognized standards and customs known to all who pursue the particular field of commercial activity. By 'casual' contracts, on the other hand, we mean a contract other than one of this 'commercial' sort, one which may be called unique, unusual and not of any common or frequently recurring type.

"In respect to such contracts there is no body of established custom and practice. Arbitrators in considering disputes which may arise will generally be as unacquainted with the matters as any court or jury. They will not be able to draw upon any body of trade custom because there is none. They will have no standards to aid them. They will be dealing frequently with cases of first impression so far as they are concerned. In such cases we think that arbitration in so far as it contemplates future disputes is not really appropriate. Special reasons may, of course, exist for agreeing to it in advance, as for example in a partnership contract, but we think that in the case of such contracts an agreement to arbitrate all questions which may arise in the future should be inserted only after most careful consideration of the advantages and disadvantages of such an agreement.

The disputes which arise in commercial fields are disputes which can best be settled by men familiar with these lines of business. Their determinations are likely to be made in accordance with the recognized usages and standards and customs of the trade. Quality of goods can best be settled by men familiar with these lines of business. Matters relating to delivery and all of the other disputes which are likely to..."
arise between two persons accustomed to deal in any of these fields are appropriate subjects for determination by arbitration. The questions of substantive law involved are generally unimportant or well settled matters of trade practice. In the unusual or 'casual' contract, however, it is quite beyond the power of anyone to foresee the nature of the dispute which may arise and it may turn out to be of a sort which cannot be settled by arbitrators as well as by the courts and in respect to which the decision of any arbitrator is bound to be largely a matter of unconscious bias or personal whim. (46x628)

Defects of the Present Law

"At the present time the statutory provisions of this State relating to arbitration are found in numerous sections of the old Code of Civil Procedure and its successor, the Civil Practice Act, and in the Arbitration Law of 1920 and the amendments thereto. It is, in the opinion of this Committee, desirable that at some appropriate time all of these provisions should be assembled and codified in a single arbitration law. This is not, however, a matter for which there is immediate and pressing need. (46x612)

There are, however, in the opinion of this Committee, serious defects in the present arbitration law. Under that law as now interpreted a party to a contract containing a clause for arbitration forfeits or waives his right to compel the other party to proceed with the arbitration if he himself commences an action upon the contract. The defendant in such an action may, on the other hand, stay the action and compel the plaintiff to proceed with the arbitration, but if the defendant appears and answers generally, he is also taken to have waived his rights under the arbitration agreement. It may not infrequently happen that the incidental remedies of attachment, injunction, receivership and arrest may be vital to the protection of the plaintiff's interests. Under the law of this State as it exists at the present time we know of no way in which the plaintiff can avail himself of these remedies without losing his right to compel arbitration." (46x604)

"Contracts to settle disputes by arbitration were not enforceable in this State until the Arbitration Law of 1920 was adopted. It was hitherto possible for parties to submit a matter to arbitration without being obliged to conclude a settlement in that manner. Either party could revoke the agreement at any time prior to the final award. This state of the law sometimes led to the adoption of arbitration bonds whereby each party bound himself in a certain penal sum to carry out his arbitration agreement. This device, however, appeared to be unsatisfactory in many situations. The courts took the position that an arbitration agreement was contrary to public policy as ousting the court of its jurisdiction. The present arbitration law has changed this statement of public policy. In our opinion, there is no fundamental difference between a contract to arbitrate and a contract to do any other act, and in general we thoroughly approve of this altered view with respect to public policy. The courts of this State in passing upon questions of arbitration since the Act of 1920 have shown a disposition to enforce it with considerable liberality. We suspect, however, that considerable litigation will be necessary before the matter is entirely clear in this State. There is at the present time considerable uncertainty as to the power of arbitrators and as to precisely what will be regarded as misconduct on their part. We are unable, however, to suggest any practical method by which this phase of the matter can be clarified without the aid of the courts. (46x554)

Bar Should Aid Arbitration

"We are of the opinion that the profession and this Association in particular should maintain a friendly and sympathetic attitude toward the more extended use of arbitration, always bearing in mind, however, that its appropriate field in respect to future disputes is somewhat qualified and limited. It is, in our opinion, desirable that this Association should lend its influence and aid to arbitration within its proper field. It is not, as we believe, to the interest either of the public at large or of the profession that this Association should in any way oppose the more extensive use of arbitration whenever, within its proper field, it can relieve the congestion of the courts, reduce the expense, delay and irritation to the parties and accomplish substantial justice. (46x539)

"It is, in our opinion, advisable that this Association should create a permanent Committee on Arbitration; that the duties of that Committee should be to continue the study of this subject and to report to the Association from time to time upon such matters relating to it as appear to be of interest or importance; that it should consider and from time to time make recommendations with respect to such amendments to the law as it deems desirable; that it should prepare a code or set of regulations for the general government of such arbitrations as it may have submitted to its general control; that it should consider the preparation of a list of official arbitrators, and if the preparation of such a list be deemed advisable, that it should prepare such a list; that in this connection it should consider carefully the question of whether such a list should be limited to members of the bar or whether it should attempt to include specialists in the various lines of trade and commerce, that it should be prepared to lend its advice and assistance to persons, whether members of this Association or not, who desire its aid in the settlement of particular disputes by arbitration; and that in arbitrations over which it may accept jurisdiction it be authorized to make the physical facilities of the Association in the way of rooms and stenographic service available for hearings upon the usual terms. (46x434)

"The success of such a committee and its usefulness in this city will necessarily depend to a substantial extent upon the unselfish devotion of its members to the work in hand, but, in our opinion, such a committee would have before it a large opportunity for genuine public service." (46x474)

Miscellaneous Notes

Government to Aid. To aid business men interested in arbitration the Department of Commerce through its Division of Commercial Laws will endeavor to furnish information within the scope of its activities concerning operations under the Federal Law and the arbitration of international commercial disputes. It will also provide means through which trade bodies and groups interested in arbitration may be put into communication with one another.

Arbitration in Cuba. An arbitration measure is being drafted for enactment in Cuba, with the cooperation of the American Chamber of Commerce of Cuba, and of the National Federation of Economic Corporations of Cuba, which is analogous to the Chamber of Commerce of the United States, its membership including chambers of commerce and trade bodies throughout the island. William P. Field, a member of the American Institute of Accountants, is president of the American Chamber of Commerce of Cuba. He is actively assisting in bringing about the passage of a comprehensive law. Dr. Pedro Pablo Kohly, president of the National Federation of Economic Corporations in Cuba, recently visited the United States to obtain detailed information relative to the setting up of arbitration tribunals, and as to the provisions that should be included in an arbitration law. He was given complete data by the Arbitration Foundation, Inc.
THE UNITED STATES ARBITRATION ACT

(In effect January 1, 1926)

An Act to make valid and enforceable written provisions or agreements for arbitration of disputes arising out of contracts, maritime transactions, or commerce among the States or Territories, or with foreign nations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That "maritime transactions," as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce," as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

Sec. 2. That a written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Sec. 3. That if any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, 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.

Sec. 4. That a party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any of the courts of the United States which, save for such agreement, would have jurisdiction under the judicial code at law, in equity, or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by law for the service of summons in the jurisdiction in which the proceeding is brought. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement: Provided, That the hearing and proceedings under such agreement shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by law for referring to a jury issues in an equity action, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

Sec. 5. That if in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

Sec. 6. That any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

Sec. 7. That the arbitrators selected either as prescribed in this Act or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue
in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition to the United States court in and for the district in which such arbitrators, or a majority of them, are sitting, may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner now provided for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

Sec. 8. That if the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

Sec. 9. If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then 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 as prescribed in the next two sections. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a non-resident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

Sec. 10. That in either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(a) Where the award was procured by corruption, fraud, or undue means.
(b) Where there was evident partiality or corruption in the arbitrators, or either of them.
(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.
(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

Sec. 11. That in either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
(b) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.
(c) Where the award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.
(d) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.
(e) Where the arbitrators were guilty of misconduct in refusing to obey said summons, upon petition to the United States court in and for the district in which the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a non-resident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

Sec. 12. That notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a non-resident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

Sec. 13. That the party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.
(b) The award.
(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

Sec. 14. That this Act may be referred to as “The United States Arbitration Act.”

Sec. 15. That all Acts and parts of Acts inconsistent with this Act are hereby repealed, and this Act shall take effect on and after the first day of January next after its enactment, but shall not apply to contracts made prior to the taking effect of this Act.