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## Commercial Arbitration in Missouri

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# ST. LOUIS LAW REVIEW

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## COMMERCIAL ARBITRATION IN MISSOURI

BY HON. MOSES H. GROSSMAN\*

On January 19th, 1927 Messrs. Wilson & Roney introduced in the 54th General Assembly of the State of Missouri a bill which, had it passed, would have made the present Missouri arbitration statute more comprehensive and would have provided the business men of the state of Missouri with the same facilities for self-regulation which are now available under the arbitration acts of New York, New Jersey, Massachusetts, California, and Oregon and under the Federal Act. This bill, known as House Bill No. 149, in effect repealed the existing statute and substituted an entirely new and comprehensive act.

The introduction of this arbitration bill raises an important question. In what respects does the present Missouri arbitration act fail to meet the expanding business needs of the community? House Bill No. 149 was intended as a substitute for the existing legislation only because of the difficulty of amending the existing arbitration statute, in such a manner as to retain a uniform and effective piece of legislation. In view of the intricacies of modern business it was the feeling of the sponsors of the bill that the Missouri arbitration statute should be a well written act with every section so correlated with every other section as to present a complete act. With this purpose in view House Bill No. 149 was introduced. It was modelled largely on the United States Arbitration Act and on the statute of New York State, both of which have been found well adapted to modern business conditions.

The bill failed of passage largely because there was not sufficient time to present its merits to the lawyers and business men of the state, and to discuss with them its advantages. But its introduction constitutes

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a forward step toward giving the business men of Missouri the same advantages in the pacific settlement of disputes that are now enjoyed in some other states.

### I. THE PRACTICE OF COMMERCIAL ARBITRATION

The settlement of private controversies in domestic, quasi-judicial tribunals is not a product of the twentieth century. What is known today as commercial arbitration has its forerunners not only in the early history of English Common Law but even in the history of the ancient nations of Rome and Greece. With the development of the Common Law in England the institution of arbitration was always recognized. Two parties to a dispute could always agree to submit the controversy to a man of their own choosing, an arbitrator, and any decision made by that arbitrator was respected by the courts.

At the time that the Common Law, and with it the law of arbitration was developing, the commercial organization of society was neither extensive nor cohesive. Undoubtedly the existing social conditions were reflected in the attitude of courts toward arbitrations. In early Common Law an agreement to arbitrate was not valid while it was still executory; in those days the time of the judges was not always fully occupied and accordingly they looked askance at anything which "ousted them of their jurisdiction."<sup>1</sup> If an arbitration proceeding went to a final award the courts would consider that award as a bar to any future motion but would not enforce the execution of the original arbitration agreement if either of the parties saw fit to default.

With the other common law principles taken over in the American judicial system, the principles of arbitration were adopted by the American courts. Accordingly the doctrine of revocability of the arbitration agreement at any time prior to the final award was incorporated in American law.

Throughout the early history of the United States when business was largely local and was conducted on a small scale, the court system sufficed in the handling of disputes between individuals. As long as the existing court system sufficed there was no great need for men to resort to the supplementary method of settling disputes by arbitration. During the eighteenth century and the greater part of the nineteenth century disputes could be settled quickly because calendars were not congested. Business disputes rarely became intricate and the court judges were capable of handling the cases before them in an equitable

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<sup>1</sup> Kill v. Hollister, 1 Wils. (K. B.), 77 Eng. Rep. 595 (1609).

manner. With the whole judicial system rather simply organized, the expenses of litigation were not inordinate.

During the nineteenth and twentieth centuries, however, there was a gradual evolution not to say revolution in the economic status of the country. Ease of communication increased, business broadened in scope and in character, and with the increased commercial contacts the number of disputes also increased. The number of courts increased but not nearly as rapidly as did the number of cases on the docket. The difficulty in handling a case gave rise to high legal fees and, perhaps worst of all, with the increasing complexity of the nature of the disputes, the judicial system still tried to work justice by the same type of machinery which worked justice in an entirely different age. As a remedy to these conditions commercial arbitration soon occupied an important place. Under that method of settling disputes two business men having a dispute and desiring a quick and equitable decision could agree to submit their case to a third person in their own line of business. This third person, the arbitrator, could hear the evidence and conduct his investigation unhampered by legal technicalities. He could give his decision, that is, make his award in a short time. This award would usually provide a quick and just settlement of the controversy. Here then was a method whereby the American business man could evade the technical obstacles and the temporal delays of the judicial system.

It was soon discovered, however, that the old common law doctrine of the revocability of an agreement to arbitrate stood in the way of the fullest use of commercial arbitration. There were two ways of surmounting this hindrance. One was to abolish the common law doctrine by judicial decision. To a certain extent this is what has occurred in the state of Washington.<sup>2</sup> The other method was to supersede the common law doctrine by a statute. This method has been followed in the Federal Arbitration Act and in the arbitration statutes of New York, New Jersey, Massachusetts, California, and Oregon.

Since arbitration is really an attempt by the modern business man to provide himself with a means of adjudicating his disputes as efficiently as he conducts his business, it is only natural that the first modernizing statute should have been passed in the state in which is transacted the greatest proportion of American business—New York State.

Prior to 1920 the New York Code of Civil Procedure (now known

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<sup>2</sup> *Zindorf Construction Co. v. Western American Co.* 27 Wash. 31, 67 Pac. 374, (1901).

as the Civil Practice Act) included a number of provisions which defined the legal powers and duties of arbitrators and established certain limits to arbitration procedure. These procedural provisions, however, were applied subject only to the common law doctrine of revocability of an arbitration agreement. In 1920 there was passed the New York Arbitration Act<sup>3</sup> which so supplemented the existing provisions in the Code of Civil Procedure as to provide in New York a legal, enforceable, and amicable method of settling disputes without resort to the courts of law.

Today practically all large trade associations and exchanges and numerous commercial organizations in New York State provide arbitration tribunals. To these tribunals business men come with business disputes. In these tribunals cases are heard and decisions rendered in accordance with established business customs. From these tribunals there emanates a body of decisions or arbitration awards which in New York State have exactly the same dignity as any judgment of a court.

The congestion of the courts in New York has not been entirely relieved but this is only because commerce develops contracts and disputes faster than even courts and arbitration combined can handle them, and because litigation being the established custom does not give way to the new and more efficient method, except in proportion as business men and their counsel experience the benefits of arbitration. It is a fact, however, that every day in the year cases are being arbitrated in New York which otherwise would still further increase the court congestion. What is more, the existence of an enforceable arbitration clause in a contract often leads to a private, amicable settlement of a dispute which otherwise would inevitably find its way into the courts. As a partial evidence of the application of arbitration in New York one may cite the following organizations which maintain arbitration tribunals to which business men can bring their disputes for adjudication: the Chamber of Commerce of the State of New York; the American Spice Trade Association, the Associated Dress Industries of America, the Real Estate Boards of New York City, the Federation of Graphic Arts and Allied Industries, the Fruit & Produce Trade Association, the Green Coffee Association, the Motion Picture Producers and Distributors of America, Inc., the National American Wholesale Lumber Association, the New York Building Congress, the New York Stock Exchange, the New York Produce Exchange, the New York Cotton Exchange, the New York Coffee and Sugar Ex-

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\* See Chapter 275; Laws of 1920 and Civil Practice Act, Art. 84.

change, the Rubber Trade Association of America, the Silk Association of America, the United Women's Wear League of America, the Dried Fruit Association of New York, the National Jewelers Board of Trade, and the Council of Arbitration of the Shoe & Leather Industry.

## II. COMPARISON OF THE PRESENT STATUTES OF NEW YORK AND MISSOURI

Arbitration in New York State is resorted to daily for the settlement of business controversies. In Missouri, on the other hand, relatively few business men resort to this method of settlement. Perhaps a reason for this may be found by the following comparison of the present arbitration statutes of these two states.

For this comparison the New York Arbitration Statute was chosen because it is in that State that commercial arbitration has developed most rapidly. This same comparison might, however, have been made with the provisions of House Bill No. 149 for that bill was modelled on both the New York Arbitration Statute and the Federal Arbitration Act—presenting some improvements through elimination of some technical requirements and, what is most important, providing a bill which would be uniform in content with both the Federal Act and the progressive state statutes.

### FUTURE DISPUTES

#### MISSOURI<sup>4</sup>

An agreement to arbitrate a future dispute is not recognized under Missouri Law. Section 595 provides "any contract or agreement hereafter entered into containing any clause or provision providing for an adjustment by arbitration *shall not preclude any party or beneficiary under such contract or agreement from instituting suit or other legal action on such contract at any time, and the compliance with such clause or provision shall not be a condition precedent to the right to bring or recover any such action.*"

#### NEW YORK<sup>5</sup>

An agreement to arbitrate future disputes, (disputes not in existence at the time of the making of the agreement) are valid under the New York statute which reads: "a provision in a written agreement to settle by arbitration a controversy thereafter arising between the parties to the contract, . . . shall be valid, enforceable and irrevocable save upon such grounds as exist at law or in equity for the revocation of any contract.

### EXISTING DISPUTES

The Missouri Statute would seem to make legal and enforceable in Sec-

Any agreement to arbitrate an existing dispute when in the form of

<sup>4</sup> See Revised Statutes Missouri (1919) Sections 595-622.

<sup>5</sup> See Chapter 275, Laws of 1920, New York, and Article 84 of Civil Practice Act.

tion 596 the arbitration of a dispute in existence. This section reads: "All persons except infants and persons of unsound mind may, by instrument in writing, submit to the decision of one or more arbitrators any controversy which may be existing between them which might be the subject of an action and may, in such submission, agree that a judgment of any circuit or other court having jurisdiction of the subject matter, be designated in such submission, shall be rendered upon the award made pursuant to such submission."

This section however must be read in conjunction with the preceding Section 595 quoted above which reads: "any contract or agreement hereafter entered into containing any clause or provision providing for an adjustment by arbitration shall not preclude any party or beneficiary under such contract or agreement from instituting suit or other legal action on such contract at any time. . . ." This section practically nullifies the effect of Section 596.

#### ENFORCEMENT OF ARBITRATION AGREEMENT PRIOR TO AWARD

Since the Missouri Act does not recognize an arbitration agreement while it is still executory, there is naturally no provision for the enforcing of that agreement before it is executed.

a *submission* is valid and irrevocable. The statute provides "A provision in . . . a submission hereafter entered into of an existing controversy . . . shall be valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract."

" . . . two or more persons may submit to arbitration of one or more arbitrators any controversy existing between them at the time of the submission which may be the subject of an action."

"A submission authorized by the last section shall be in writing, duly acknowledged or provided and certified, in like manner as a deed to be recorded."

The New York Statute provides that "a party aggrieved by the failure, neglect or refusal of another to perform under a contract or submission providing for arbitration . . . may petition the supreme court or a judge thereof for an order directing that such arbitration proceed in the manner provided for in such contract or submission. . . . The court, or a judge thereof shall hear the parties and upon being satisfied that the making of the contract or submission or the failure to comply therewith is not in issue, the court or a judge thereof hearing such application shall make an order directing the parties to proceed with arbitration in accordance with the terms of the contract or submission."

Subsequent sections of the Act provide for the court's naming of an arbitrator in case of default in such

naming by either party and for a stay of any suit brought by one party to the controversy where the other party desires arbitration.

All applications are made and heard as motions, providing a speedy enforcement of arbitration even where the calendar of an ordinary court is congested.

#### WHO CAN ARBITRATE

"All persons except infants and persons of unsound mind . . . ."

". . . . two or more persons may submit to the arbitration. . . . Where one of the parties to the controversy is an infant, or a person incompetent to manage his affairs by reason of lunacy, idiocy or habitual drunkenness, submission to arbitration cannot be made."

#### WHAT CONTROVERSIES

"All persons . . . . may by instrument of writing submit to the decision of one or more arbitrators any controversy which may be existing between them and which might be the subject of an action. . . ."

"two or more persons may submit to the arbitration of one or more arbitrators any controversy existing between them at the time of the submission which may be the subject of an action."

A provision in a written contract to settle by arbitration a controversy thereafter arising between the parties to the contract etc. . . . shall be valid, enforceable and irrevocable.

#### FORM OF SUBMISSION

Submission must be in writing.

Submission must be in writing and acknowledged as a deed. An arbitration agreement may also be in the form of a clause inserted in a major contract.

#### REGULATIONS GOVERNING HEARINGS

##### TIME AND PLACE

"The arbitrators thus selected shall appoint a time and place for the hearing and notify the parties thereof."

". . . . the arbitrators selected as prescribed in this article must appoint a time and place for the hearing of the matters submitted to them and must cause notice thereof to be given to each of the parties."

#### ADJOURNMENT

The arbitrators "shall adjourn the hearing from time to time as may be necessary and, on the application of either party, and for good cause, may

The arbitrators "may adjourn the hearing from time to time upon the application of either party for good cause shown or upon their own mo-



postpone the hearing to a time not extending beyond the day fixed in the submission for rendering the award."

tion, but not beyond the day fixed in the submission for rendering their award. . . ."

#### ATTENDANCE OF WITNESSES

"The arbitrators shall have the same power to issue subpoenas for witnesses and to compel their attendance by attachment, to administer oaths and punish contempts committed in their presence during the hearing of the cause that may be given by law to justices of the peace." Under this provision arbitrators have powers similar to those of a court; they may compel witnesses to attend and may administer to them an oath."

"The arbitrators . . . or a majority of them, may require any person to attend before them as a witness; and they have, and each of them has, the same powers with respect to all proceedings before them, which are conferred upon a board or a member of a board authorized by law to hear testimony." Under this provision arbitrators have powers similar to those of a court; they may compel witnesses to attend and may administer to them an oath.

#### QUORUM OF ARBITRATORS

"All of the arbitrators must meet together, and hear all the proofs and allegations of the parties, pertinent or material to the cause; but an award made, and every other act done by a majority of them, shall be valid, unless the concurrence of all of the arbitrators, or a certain part of them to such award or act be expressly required in the submission."

"All the arbitrators . . . must meet together and hear all the allegations and proofs of the parties; but an award by a majority of them is valid unless the concurrence of all is expressly required in the submission."

#### ARBITRATOR'S OATH

"Before proceeding to hear any testimony, the arbitrators shall take and subscribe an oath before some officer duly authorized to administer an oath, faithfully and fairly to hear and examine the matters in controversy and to make a just award according to the best of their understanding which oath shall be filed and returned with the award."

"Before hearing any testimony arbitrators . . . must be sworn, by an officer authorized by the law to administer an oath, faithfully and fairly to hear and examine the matters in controversy and to make a just award according to the best of their understanding, unless the oath is waived by the written consent of the parties to the submission or their attorneys."

#### REGULATIONS GOVERNING AWARD

"To entitle an award to be enforced, according to the provisions of this chapter, it must be made in writing, subscribed by the arbitrators making the same, and attested by a subscribing witness."

"To entitle the award to be enforced as prescribed in this article, it must be in writing, and, within the time limited in the submission, if any, subscribed by the arbitrators making it; acknowledged or proved, and certified in like manner as a deed to be recorded."

## ENFORCEMENT OF AWARD

After an award is made by the arbitrators the proper court may either confirm the award and enter judgment, modify the award and enter judgment, or vacate the award.

Section 602 of the Revised Statutes, Missouri (1919) reads "Upon such submission and the award made in pursuance thereof being approved, the court designated in the submission shall, upon motion, by an order in open court, confirm the award unless the same be vacated or modified, or a decision thereon be postponed, as herein provided.

Section 603: "No award shall be confirmed unless a copy thereof, together with a notice in writing of such motion, shall have been served on the adverse party, at least fifteen days before filing the award and motion in the proper court, if such party be found, or, if not, left at his usual place of abode, with some member of the family above the age of fifteen years; and no such motion shall be entertained after the expiration of one year from the publication of the award.

Section 604: "Any party complaining of such award may move the court designated in the submission to vacate the same upon any of the following grounds: First, that such award was procured by corruption, fraud or undue means; second, that there was evident partiality or corruption on the part of the arbitrators, or any of them; third, that the arbitrators were guilty of misconduct in refusing to postpone the hearings upon sufficient cause shown, or in refusing to hear any evidence pertinent or material to the controversy or any other misbehavior by which the rights of any party shall be been prejudiced; fourth, that the arbitrators exceeded their powers, or that they so imperfectly executed them that a mutual, final and definite award on the subject matter was not made.

After an award is made by the arbitrators the proper court may either confirm the award and enter judgment, modify the award and enter judgment, or vacate the award.

Section 1456 of Article 84 of the Civil Practice Act reads: "At any time within one year after the award is made, as prescribed in the last section, any party to the submission may apply to the court specified in the submission 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. Notice of the motion must be served upon the adverse party to the submission, or his attorney, as prescribed by law for service of notice of a motion upon an attorney in an action in the same court. In the supreme court, the motion must be made within the judicial district embracing the county where the judgment is to be entered."

Section 1457 reads: "In either of the following cases, the court specified in the submission must make an order vacating the award, upon the application of either party to the submission:

1. Where the award was procured by corruption, fraud or other undue means.

2. Where there was evident partiality or corruption in the arbitrators or either of them.

3. 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.

4. 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.

Section 605: "Any party to such submission may also move the court designated therein to modify or correct such award in the following cases: First, where there is an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in such award; second, where the arbitrators shall have awarded upon some matter not submitted to them, nor affecting the merits of the decision of the matter submitted; third, where the award shall be imperfect in some matter of form, not effecting the merits of the controversy, and when, if it had been a verdict, such defect would have been amended or disregarded by the court.

Section 606: "Every such application to vacate or modify an award shall be made to the court designated in the submission or at the next term after publication of the award, upon at least ten days' previous notice, in writing, to the adverse party, if there be time for that purpose; and if there be not time, such court or the judge thereof may, upon good cause shown, order a stay of proceedings upon the award, either absolutely or upon such terms as shall appear just, until the next succeeding term of court.

Section 607: "On such application the court may vacate the award in any of the cases hereinbefore specified, and if the time within which the award shall have been required to be made by the submission has not expired, may in its discretion, direct a rehearing by the arbitrators; and in the cases hereinbefore specified, the court may modify and correct the award, so as to effect the intent thereof, and to promote justice between the parties."

Where an award is vacated, and the time within which the submission requires the award to be made has not expired, the court, in its discretion, may direct a rehearing by the arbitrators.

Section 1458 reads: "In either of the following cases, the court specified in the submission must make an order modifying or correcting the award, upon the application of either party to the submission:

1. Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in the award.

2. Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the controversy, and, if it had been a referee's report, the defect could have been amended or disregarded by the court.

The order may modify and correct the award so as to affect the intent thereof and promote justice between the parties."

#### JUDGMENT ON AWARD

"Upon such award being confirmed or modified the court shall render judgment in favor of any person to whom any sum of money shall have been awarded, that he recover the

"Upon the granting of an order confirming, modifying, or correcting an award, judgment may be entered in conformity therewith, as upon a referee's report in an action . . ."

same, and if the award shall have ordered any act to be done by either party, judgment shall be rendered that such act be done according to such order.

"When the award shall be for the performance of any act other than the payment of money, the same being confirmed or modified by the court, obedience thereto may be enforced in said court by attachment, in the same manner as obedience may be enforced to any other rule of court."

"The judgment so entered has the same force and effect in all respects as, and is subject to all provisions relating to law, 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."

#### APPEAL FROM JUDGMENT

"When any writ of error or appeal from such judgment shall be taken, copies of the original affidavits upon which any application in relation to such award was founded, and of all other affidavits and papers relating to such application, shall be annexed to, form part of and be returned with the record of the judgment, and the court to which such writ of error or appeal shall be taken shall reverse, modify, amend such judgment or any part thereof, according to justice."

"An appeal may be taken from an order vacating an award, or from a judgment entered upon an award, as from an order or judgment in an action. The proceedings upon such an appeal, including the judgment thereupon and the enforcement of the judgment are governed by the provisions (of statute and rule regulating appeals in actions) as far as they are applicable."

### III. THE ANOMALY OF THE MISSOURI STATUTE

An analysis of the foregoing comparison reveals a very interesting situation. The Missouri Statute closely parallels the New York Statute in all except three respects. In setting up a procedure of arbitration the Missouri Statute is in agreement with the New York Statute in substance and in many cases even in phraseology.

Both the Missouri and the New York Statute permit any person other than one insane or otherwise incapacitated to submit to arbitration any dispute which may be the subject of an action. In both cases a submission of an existing dispute to arbitration must be in writing; in New York, however, it must also be acknowledged. In both states arbitrators are empowered to set the time and place of the hearings, and to adjourn the hearings from time to time, for adequate cause, as long as the time set in the submission is not exceeded. In both states arbitrators may compel the attendance of witnesses by subpoena and may administer to all witnesses a proper oath. In both states an award (which must be in writing, and in New York, acknowledged) may be enforced by confirming it in the proper court which will enter judg-

ment thereon. In both states the same causes for vacating the award are set forth—fraud, partiality, misconduct, or excess of power. Similarly both states provide for modification of the award under similar circumstances.

With all these similarities in the two statutes, there are a few very important differences. In New York an agreement to arbitrate a future dispute is valid and enforceable; in Missouri it is not. In New York a submission of an existing dispute is irrevocable and binding; in Missouri it is not. In New York a party to any arbitration agreement may force the other party to the agreement to arbitrate by a simple motion in court; in Missouri a party cannot force the other party to proceed to arbitration—his only remedy being *after* an award is rendered.

The Missouri Statute as it exists today may be likened to a factory building completely manned by laborers but useless because of the lack of executives. Both provide a skeleton for action; both lack the organization and the power to enforce action.

As explained above New York in 1920 modernized its Arbitration Statute by supplementing the existing Code of Civil Procedure with the statutory provisions covering the enforcement of arbitration agreements. In other words New York in 1919 was exactly in the same position wherein Missouri finds itself in 1927. In both cases the Statute recognized commercial arbitration as a means of settling commercial disputes. In both cases resort by the business man to commercial arbitration was impeded because an arbitration agreement was not binding until a final award was rendered by the arbitrator.

#### IV. THE MAIN MOTIVES LEADING TO THE PASSAGE OF THE NEW YORK ARBITRATION ACT

The New York Legislation of 1920 was the result of a demand by the New York business men and lawyers for a remedy of certain defects existing in the judicial settlement of disputes.

1. The business man felt that judicial procedure was not adapted to the settlement of modern business disputes. The chief characteristic of his own business transactions was speed. The industrial triumphs of the United States during and after the war were chiefly triumphs of speed, but when it came to settling a dispute speed was entirely lacking.

Court congestion interfered with the settlement of his business disputes and, therefore, lowered business efficiency. It took three years for a case to go to trial in the New York Supreme Court. To the

modern business man this meant that his assets and capital might be tied up in the subject matter of a business dispute and remain idle during the entire period of litigation. Such a condition was intolerable in an age of quick turnover of business transactions.

Because of the antiquated procedure which had to be followed in the trial of a case once it came before a judge and a jury further delays were encountered. A defendant could compel a plaintiff to go to great expense and trouble to provide the type of evidence recognized by the court to prove a fact about which there was no question in the minds of either judge or jury. Technical rules requiring "the best evidence" were necessary in the sixteenth and seventeenth century but in the twentieth century the legal entanglements of importing witnesses from far flung points to prove obvious facts did not bespeak of a modern system of justice. An arbitrator was free to arrive at the truth without these artificial restrictions.

2. The business man of New York realized that litigation because of the delay and the technicality of the procedure was rapidly becoming a millionaire's luxury. In many situations the total cost of litigation (and court costs were generally the smaller part) proved such a burden that even though a business man won his case he was little better off than if he had charged the amount involved to a loss in the first place. The business man needed a method of settling disputes which would provide substantial justice at a reasonable cost. This condition was met by arbitration.

3. Finally the business man of New York in 1919 realized that the system of having a judge and a jury picked without regard to technical qualifications to settle highly technical questions was unsound. Questions as to the quality of textiles would come before a law court. Each side would import expert witnesses to confuse both the judge and the jury, neither of whom were fitted by experience to judge as to the technical merit of the testimony. As settled by arbitration a dispute over the quality of textiles would come before an arbitrator experienced and well-versed in the manufacture, finishing, and sale of textiles. It would not be necessary to hire and pay for expert witnesses on both sides since the arbitrator would be able to decide without consulting experts.

In summary then the business man of New York was dissatisfied with the established judicial system of settling commercial disputes. Congestion of the courts meant that it was years after a case was entered before it ever came to trial. After it came to trial there were delays incident to the minute following of technical rules of evidence and pro-

cedure. The expense of winning a law suit was often as large as or larger than the amount of the recovery; and finally the ultimate result especially in cases involving technical matters of scientific, engineering, or accounting nature would probably be merely a guess of an unskilled jury rather than a decision upon the merits.

All of these failings inherent in the administration of commercial justice were remedied by the passage of the Arbitration Act of 1920. After this Act two business men could agree by a clause in a contract that disputes arising out of that contract should be arbitrated. Both parties were bound by that agreement. When a dispute did arise it was settled quickly, economically, and equitably.

#### V. THE SITUATION IN MISSOURI

The economic well-being of Missouri, one of the leading states of the Union, rests both upon agricultural and industrial activity. It is only necessary to name the larger cities of Missouri such as St. Louis, Kansas City, Jefferson City, Joplin, St. Joseph and Springfield to realize that there are numerous centers of important industrial activity. Wherever there are centers of industrial and commercial activity it is inevitable that disputes will arise. The St. Louis Merchants Association offers arbitral service to the business men of the state, but the entire proceedings lack legal enforceability prior to an award. Examples of other organizations providing arbitral facilities are the Missouri Bottlers Association and the Kansas City Real Estate Board.

On the agricultural side many of the producers of Missouri today have the benefits of arbitration through trade organizations such as the Missouri Grain Dealers Association, and the Kansas City Hay Dealers Association.

All of these organizations offer arbitral service to the business men of the state but it is a service the efficiency of which can be greatly increased by making it possible for business men to enforce arbitration. What is needed is a statutory sanction. Today these organizations can provide a final settlement to a dispute only if both parties are willing to appoint arbitrators and go before them.

The benefits of arbitration may mean as much to the farmer as to the banker, the business man, or the manufacturer. The congestion of the courts, the delay incident to following legal technicalities, the expense of litigation, the failure to get a technical decision in the Missouri courts—all of these conditions are identical in substance with the situation in New York in 1919. It may be true that a smaller volume of business is conducted in Missouri than was conducted in New York

in 1919, but also there are fewer courts both state and federal. It may not take three years for a case to come to trial in Missouri, but it certainly does take much longer for a case to be settled in the judicial tribunals than for the same case to be arbitrated.

In other words the industrial and the agricultural progress of Missouri today demands the availability of enforceable commercial arbitration just as much as did the industrial progress of New York in 1919 demand the passage of the Act which became a law in 1920.

## VI. NECESSARY CHANGES IN THE MISSOURI ARBITRATION ACT

It was pointed out above that House Bill No. 149, introduced on January 19th, 1927, provided an adequate substitute for the present arbitration statute. The bill was so written as to be practically uniform with the Federal Arbitration Act.

The actual commercial needs of the state may, of course, be met in substance by a few amendments and additions to the present statute. Reference to the parallel column comparison above shows that provisions of three general types only are necessary in order to bring the Missouri Arbitration Statute up to the standard already set by the New York State Arbitration Act. First, there should be a provision making valid, irrevocable, and enforceable any agreement to arbitrate an existing dispute. Second, there should be a provision making similarly valid, irrevocable, and enforceable any agreement to arbitrate a future dispute—a dispute which may arise in the future between the parties to a contract. Third, there should be a provision to compel a party defaulting on an arbitration agreement to proceed to arbitrate, to appoint his arbitrators and to appear and give evidence at the arbitral hearing.

As is evident from the parallel column comparison of the Missouri and New York Statutes the Missouri Statute today provides most of the modern and recognized procedures for the actual handling of commercial arbitrations, that is to say its regulations governing the conduct of hearings, the preparation of the award and the enforcement, modification or vacation of the award are substantially in harmony with the Federal and the New York Statute. What the Missouri Statute lacks, however, are the provisions which will make it possible for one party to an arbitration agreement to force the other party to that agreement to arbitrate. Once the statute is amended so as to remedy this deficiency Missouri can take its place as one of the modern progressive states well advanced in commercial legislation, alongside New York, Massachusetts, New Jersey, California, and Oregon.