REPORT OF THE SPECIAL COMMITTEE APPOINTED IN FEBRUARY, 1924, to CONSIDER THE SUBJECT OF ARBITRATION WITH PARTICULAR REFERENCE TO ITS OPERATION IN NEW YORK*

[Filed May 12, 1925]

To the Association of the Bar of the City of New York:

Your Special Committee on Arbitration begs to submit the following report:

I.

SCOPE OF COMMITTEE'S INVESTIGATION

Your Committee was appointed by the President of the Association in February, 1924, pursuant to resolution of the Executive Committee. The original Committee consisted of the following members: Messrs. Frederick, Chairman; Dittenhoefer, Falk, Fischer, Flaherty, Lichtig, Stone.

Justice Stone participated in the early meetings of the Committee, but resigned shortly after upon his appointment as Attorney General.

Only a preliminary report could be made at the time of the annual meeting in May, 1924, and in consequence the Committee was continued and in June the President added to it Messrs. Rubinger, Samuels, Weiss and White. During the year Messrs. Fischer and White have resigned owing to the pressure of other engagements.

Since its appointment the Committee has held fourteen meetings, which have been attended by a substantial majority of the members. Most of these meetings were held in the evening and each occupied several hours. In its work the Committee has been guided by the instructions contained in its original appointment whereby it was appointed "Special Committee on Arbitration to

* By resolution adopted at the Annual Meeting held May 12, 1925, this report was received and ordered on file and made the subject of a special order at the next stated meeting of the Association.

consider the whole project from the standpoint as it is now working in New York and to report thereon."

The Committee first made an intensive study of the law relating to arbitration in New York, considering especially the matter of arbitration at common law, arbitration under the statutes prior to the Arbitration Act of 1920 and arbitration under the Act of 1920.

The Committee felt that a proper understanding of Arbitration Law in New York called for an extensive comparative study of the laws of other jurisdictions. It has accordingly made an examination of the statute law relating to arbitration in all of the other States and has prepared a concise synopsis or compendium of such laws, which is attached hereto as Appendix "A."[1] It has also examined the English Arbitration Act (52 and 53 Vict. c. 49), the proposed and now enacted Federal Arbitration Act and has also given some consideration to the history of arbitration in various European countries. The matter of a uniform arbitration statute has been considered by the American Bar Association and by various other organizations for several years past and largely as a result of this a Committee of the Annual Conference of Commissioners on Uniform State Laws was appointed some two years ago to consider and report upon a Uniform Arbitration Act. That Committee reported to the 34th Annual Meeting of the Annual Conference of Commissioners at its annual meeting in Philadelphia in July, 1924, and presented a draft of a uniform act. In its report the Committee said:

> "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 con-

[1] Appendix A is too voluminous for printing with this report. The Committee has deposited a copy in the Library of the Association, where members may examine it.

stitutional 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 have arisen before the contract was made."

In the draft of an act submitted by the Committee, the Illinois point of view was generally adhered to. For the purpose of giving to the Committee of this Association the benefit of the discussions of the Commissioners, the Chairman attended the hearings of the Committee upon the subject of arbitration which were held in Philadelphia. In this connection it may be remarked that the recent Federal Act adopts the principle of the New York and New Jersey Acts.

Your Committee also invited Mr. Charles L. Bernheimer, Chairman of the Arbitration Committee of the Chamber of Commerce of the State of New York; Mr. Julius Henry Cohen, counsel of that Committee and a member of this Association, and Hon. Moses H. Grossman, Acting President of the Arbitration Society of America, to meet with it and discuss the general subject of arbitration. Three entire evening sessions were devoted to conferences with these gentlemen regarding arbitration, and so far as possible, stenographic notes were taken of these conferences. Various members of your Committee have also attended a number of actual arbitrations conducted under the auspices of the Arbitration Society of America. Through sub-committees your Committee has also discussed the subject of arbitration in New York with several Judges of the Court of Appeals, the Appellate Division, the Supreme Court, the United States Courts, the Municipal Court of the City of New York, and with many practicing attorneys who have had experience on the subject. The Committee was also represented at an important conference on arbitration which was recently held at Mr. Vincent Astor's home. Your Committee has also addressed a questionnaire to a very large number of commercial and trade organizations in an effort to ascertain their attitude and experience with respect to arbitra-

tion. A copy of this questionnaire is attached hereto as Appendix "B."

Regular minutes of the meetings of your Committee have been kept by the Secretary, Mr. Edwin A. Falk, and a very large amount of material and data relating to the subject is in the hands of the Committee. This material is too voluminous to permit of its being attached hereto.

II.

THE GROWTH OF ARBITRATION

Arbitration as a means of settlement of existing disputes is of extremely ancient origin. It has existed for hundreds of years in England and in various continental countries of Europe. Indeed, it was for a long time the chief resource of merchants in settling their commercial disputes. The law merchant as it was finally incorporated into the law of England very largely grew out of the practices of merchants in settling their differences through arbitration. A substantial part of private international law may be said to have had the same origin. In New York arbitration has been a well-recognized method for the settlement of disputes since colonial days. The Chamber of Commerce of the State of New York, which was chartered in 1768, has almost from the time of its organization been actively interested in the arbitration of commercial disputes. In 1874 the Legislature of the State 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 his 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 substantial sum of money for the purpose of promoting arbitration. At the present time a great number of exchanges and commercial, industrial, trade and professional associations maintain arbitration 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.

III.

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 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 argument will be

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. It does not appear to come within the scope of this Committee's work to investigate the extent of, the causes for and the remedies appropriate to this condition, but we venture to suggest that the Association give further serious consideration to the matter through some appropriate committee.

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 talk of the kind just referred to is 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.

IV.

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 men 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 contenders 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. It is, of course, desirable that 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 reasonably certain in its results. If this is sound, 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 arbitration can 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 will presently return to this thesis because we believe that it will assist in the consideration of the proper field and scope of arbitration.

We see no reason to criticize the resort to arbitration in the case of any existing dispute. Once the controversary 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 decision 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. In this connection, however, the provisions of Section 1448 of the Civil Practice Act should be borne in mind. This section provides as follows:

> "§ 1448. *Submission to arbitration.* * * * *
> A submission of a controversy to arbitration cannot be made, either as prescribed in this article or otherwise, in either of the following cases:
> 1. 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.
> 2. Where the controversy arises respecting a claim to an estate in real property, in fee or for life.
> But where a person capable of entering into a submission has knowingly entered into the same with a person incapable of so doing, as prescribed in subdivision first of this section, the objection on the ground of incapacity can be taken only in behalf of the person so incapacitated.
> The second subdivision of this section does not prevent the submission of a claim to an estate for years, or other interest for a term of years, or for one year or less, in real property; or of a controversy respecting the partition of real property between joint tenants or tenants in common; or of a controversy respecting the boundaries of lands or the admeasurement of dower."

The principal questions which arise with respect to arbitration

in New York arise in connection with the Act of 1920, which makes binding and enforcible 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.

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 a 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 established commercial 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 steady succession of contracts 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" contract, 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 possible advantages and disadvantages.

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 customs of the trade. Quality of goods can be determined by them more accurately than by any jury. 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.

In accordance with the principles which we have discussed

above, it is, as we have already said, the opinion of this Committee that it is inadvisable that a general clause providing for the arbitration of all future disputes should be inserted in contracts of the "casual" type, unless after careful consideration of the particular case the parties should agree upon the inclusion of such a clause. We suggest as an alternative to a general arbitration clause in "casual" contracts the use of a clause limiting arbitration to disputes regarding particular matters of fact.

It is the opinion of this Committee that exchanges, boards of trade, trade associations or other bodies formed by the voluntary association of individuals engaged in similar fields of commercial activity should, if general arbitration clauses are included in the forms of contract used or in the governing rules of the association, take appropriate steps to organize and maintain arbitration boards or committees which should be empowered to oversee and direct the general conduct of arbitrations between their members or others who may seek their assistance. The arbitration clauses used in contracts or submissions of existing disputes should provide that the arbitration shall be conducted subject to the rules of an appropriate Arbitration Committee or Board, such as the committee maintained by the particular organization or by a Chamber of Commerce, Arbitration Society, or the like.

It is the opinion of this Committee that the arbitrators in any particular case should be one or three in number and that these arbitrators should either be selected by the parties jointly or by the arbitration committee having jurisdiction of the general subject matter. We believe that the method frequently used whereby each party selects an arbitrator and the two so selected thereupon select a third as umpire does not lead to the most accurate or satisfactory results.

It is the opinion of this Committee that the various chambers, societies, associations, exchanges or special trades or fields of industry should by their rules be authorized in their discretion, and notwithstanding the existence of a clause providing for the

arbitration of all future disputes, to decline to take jurisdiction of any particular dispute after it has arisen and to remit the parties to their ordinary remedies at law as if no such arbitration agreement had been made. Our reasons for this last recommendation are that disputes occasionally arise which involve chiefly questions of law or which are of a sort which can only be satisfactorily and finally settled by judicial decision. This recommendation is, as we understand it, in line with a provision of the English statute whereby the court is given a certain discretion as to requiring the parties, who have agreed in advance to arbitrate, to proceed with the arbitration. The interests of justice, in our opinion, make it desirable that such discretion should be given to some judicial or semi-judicial body; otherwise an arbitration clause which has been entered into in good faith and which was designed to facilitate the settlement of disputes and to advance the interests of the parties may in fact turn out to be an instrument of great injustice to one or both of the parties. Such a provision is substantially incorporated in the rules of the Chamber of Commerce of the State of New York, The New York Curb Association and of the Silk Association of America.

In the English Arbitration Act and in the laws of a few of the States in this country there are provisions whereby, either during the course of an arbitration or at its conclusion, questions of law may be submitted to the court for advice or definite determination. We have considered this provision with great care with especial reference to its practicability in the State of New York. In our opinion, the incorporation of such a provision in the arbitration act of this State is not desirable. If arbitration clauses providing for the arbitration of future disputes are in practice limited in their use to the fields which we have attempted to define, if practical arbitrations in such fields are made subject to the general supervision of disinterested arbitration boards or committees appointed by reputable exchanges or associations and if such boards or committees are empowered to refuse jurisdiction over particular questions which may be presented, then, in our opinion,

the practical need for such appeal to the courts on questions of law disappears.

V.

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.

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.

In our opinion, it is desirable that the arbitration law of this State should be amended in such a way as to permit a party to an arbitration agreement to resort to these incidental remedies through appropriate court proceedings without thereby waiving his right to compel the other party to proceed with the arbitration. We believe that if such an amendment were proposed with the

approval of this association as well as of the numerous exchanges, trade associations and of the Chamber of Commerce of the State of New York, its passage would not be seriously opposed and we favor the adoption at a reasonably early date of such an amendment.

Another point of the present law which calls for comment is the matter of equitable relief. The present statutes appear to contemplate a money award on the part of arbitrators. Nevertheless appropriate relief may frequently be equitable in its nature. It may in many cases be the right of a party to have his opponent required to do or restrained from doing some particular act. We are informed that arbitrators have sometimes made their award in alternative form requiring a party to do a particular act or to refrain from doing a particular act, or in the alternative, to pay a stipulated sum. This form of relief is obviously not entirely satisfactory. We know of nothing in the statute which would prevent arbitrators from granting purely equitable relief, but it is obvious that the notions of arbitrators as to what is appropriate equitable relief may frequently depart widely from the recognized fields of equitable jurisdiction. An award which grants equitable relief in such manner or form as might be granted by the court can probably be given legal effect by the entry of an appropriate judgment upon the award or by way of confirming the award, but where the award undertakes to grant relief in a way that an equity court would not grant relief, it would seem to be obviously improper that a decree of the court in accordance with the award should be entered. Anything less than such a decree can hardly be regarded as a confirmation of the award, but if the award is confirmed in its entirety, we may have decrees of a sort entirely unknown to the court or to our judicial system and of a sort incapable of enforcement.

We are of the opinion, therefore, that by appropriate amendment to the law, the court should be empowered to remit awards equitable in their nature to the arbitrators with general instruc-

tions as to the extent of the equitable jurisdiction of the court, so that such awards as may finally be confirmed by the court may be conformable to the usages and principles of our judicial system.

VI.

THE PRACTICAL WORKING OF ARBITRATION AT THE PRESENT TIME

It is impossible to assemble reliable figures showing the number of disputes which have been disposed of by arbitration during recent years. Such information as we have been able to obtain, however, leads us to believe that the number of such matters runs into several thousand each year. It appears to be the fact that many of these matters are of minor importance from the money standpoint and that they are such as would ordinarily be litigated in the Municipal Court of the City of New York. There have, however, been instances of very important matters which have been settled in this way. We are also led to the conclusion that some of the matters arbitrated would not have been litigated had litigation been the only recourse of the parties. Nevertheless, arbitration does, as we believe from the evidence before us, lessen to some extent the volume of litigation before the courts. We doubt, however, that its effect in this direction is very great at the present time. Attached hereto as Appendix "C" is a statement containing such information as we have been able to collect regarding the number of actual arbitrations in 1924.

The actual results of arbitration have, we believe, been satisfactory in general, although this is also a matter about which it is almost impossible to make definite assertions.

Business people at large as well as the profession should realize that arbitration is not a panacea. That as regards future disputes in particular its appropriate field is limited and that as regards existing disputes there is very real difficulty in persuading both parties to settle their differences in this manner. We feel that its

usefulness has been considerably overstated by some of its more enthusiastic advocates.

VII.

THE ATTITUDE OF THE LEGAL PROFESSION TOWARD ARBITRATION

Contracts to settle dispute by arbitration were not enforcible 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.

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.

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 sudy 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.

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.

Respectfully submitted,

KARL T. FREDERICK, *Chairman*
I. M. DITTENHOEFER
ARNOLD LICHTIG
WILLIAM S. WEISS
MAURICE RUBINGER
EDWIN A. FALK
THOMAS G. FLAHERTY
SUMNER L. SAMUELS

Dated April 1, 1925.

APPENDIX "A"

Appendix A is too voluminous for printing with this report. The Committee has deposited a copy in the Library of the Association, where members may examine it.

APPENDIX "B"

Gentlemen:

The Arbitration Committee of the Association of the Bar of the City of New York, of which Committee I am a member, desires to gather statistics and general information in connection with the arbitration as it is actually working in trade associations in New York City. I am writing to ask whether you will be kind enough to let me have such information in connection with the working of arbitration in your association as is available. Specifically we would appreciate information on the following points:

1. Does your standard form of contract for use in your trade provide for arbitration of all disputes arising thereunder?

2. Have you a special Committee on Arbitration?

3. In cases of arbitration are the arbitrators selected by the parties or by the association? If by the parties, are they from

a selected group which the association has already chosen as particularly qualified to act or are they taken at random by the parties to the dispute?

4. Are the arbitrators limited to the members of the association or are outsiders permitted to take part as arbitrators?

5. About how many arbitration proceedings have been held per year for the past two years?

6. As far as you can tell, were the results satisfactory to the parties to the dispute?

7. Is the use of arbitration increasing?

8. I shall be glad to have any other information with regard to arbitration which you may feel will be of interest to this Committee and I should also be glad to have any literature which your association issues in connection with arbitration.

Yours very truly,

APPENDIX "C"

CASES ARBITRATED UNDER THE AUSPICES OF VARIOUS ASSOCIATIONS DURING YEAR 1924

Arbitration Society of America	197
Real Estate Board	23
Rubber Trade Association	93
American Pulp & Paper Association	3
American Dramatists	4 or 5
National Boot & Shoe Manufacturers' Association	50
Dried Fruit Association	50 to 75
National Association Purchasing Agents	0
Converters' Association	25
National American Wholesale Lumber Association	250
Theatre Owners' Chamber of Commerce	185 (1,000 disputes settled)
Knitted Underwear Manufacturers' Association	15 (30 in 2 yrs.)
National Jewellers' Board of Trade	7 or 8
Rubber Association of America	0
Italian Chamber of Commerce in New York	25 (50 in 2 yrs.)
New York Building Congress	8
American Association of Woolen & Worsted Manufacturers	20 to 25
Harlem Board of Commerce	Several
Fruit & Produce Trade Association	Several
Crockery Board of Trade in New York	A few
Wholesale Dress Manufacturers' Association	About 25
Silk Association of America	About 35

American Importers' and Exporters' Association.....0
American Mine Institute.....Several
Eastern Millinery Association.....25-40
Stained and Leaded Glass Association of New York.....0
New York Cotton Exchange.....3
Film Arbitration Board—New York.....1,709

(The Board reports that the awards totaled $238,295.43 and that 2,983 additional disputes were disposed of without formal award. There are 31 other Film Arbitration Boards in various parts of the country. Those outside New York made 3,166 awards totaling $839,673.56 and disposed of additional disputes to the number of 3,339 without formal award.)

Equity Actors' Association.....35 to 40