

where as observer or by acting as counsel or special judge, the teacher may also secure a more stimulating approach for the classroom. Dean Stone, in 1912, in an address at the meeting of the section on legal education of the American Bar Association, said that the law schools "should be centers of professional influence, in close contact and in harmony with the bench and bar." His reference there to some advantages, for the teacher, of continuing experience at the bar, especially applies to the present problem.

Such services by the law school will bring grateful recognition and endowments toward the development of such work. Such services will lead the bench and bar and public increasingly to realize that the criminal law, its practice and its improvement, cannot longer be avoided or ignored; that it presents an issue not merely of social welfare but of national existence; and that considerations of professional pride and patriotic loyalty demand intelligent devotion to its problems.

And as the law schools develop courses in criminal law and criminal procedure which are adequate to meeting the increasing need, it is to be desired that criminal law casebooks of the future will fill the enlarged field as satisfactorily as this casebook fills the present restricted law school field.

JAMES J. ROBINSON

INDIANA UNIVERSITY SCHOOL OF LAW

COMMERCIAL ARBITRATIONS AS GOVERNED BY THE LAW OF ENGLAND. By ROGER S. BACON. With an Introduction by SIR W. PETERS RYLANDS. London: HERBERT JENKINS, LTD. 1925. pp. xi, 223.

This book is designed primarily to inform laymen concerning the English commercial arbitration system. It is a business man's manual on "so involved a subject as arbitration." It has its mission because: "the pitfalls which await the ignorant and unwary, be he claimant, respondent, arbitrator or umpire, are many and deep." In the words of an introduction by Sir W. Peters Rylands, President of the Federation of British Industries, 1919-1920, the author "throws a beam of light upon the many and great complexities that surround the subject" of commercial arbitration in England.

One needs to do scarcely more than peruse the initial pages of the book to appreciate that the English system of commercial arbitration is one which is "involved," "complex," and "full-of-pitfalls." But whither has gone the simple, expeditious, inexpensive, non-technical system of adjusting business controversies—commercial arbitration? The English Arbitration Act, in general outline, is like the United States Arbitration Act and the New York Arbitration Law. Some thirty short sections, including References under Order of Court (some sections include only one sentence), seemingly stated simply and concisely, comprise the Legislature's enactment.

The answer appears to lie in the fact that the Act became "law" in 1889. Since that time, due no doubt in part to the complexity of modern commercial practices, and at all events in part, at least, to the ingenuity of lawyers, the statute has become barnacled with an almost inextricable mass of court legislation. As a result to function under present English commercial arbitration law requires the services of an arbitration technician.

The author reviews in detail this growth upon the statute. Illustrations are instructive. Under §19, "Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a judge, state in the form of a special case for the opinion of the

court *any question of law* arising in the course of the reference....” (Italics are the reviewer’s.) Suppose parties to a submission agree that neither shall require, nor apply to the Court to require the arbitrators to state a special case for the opinion of the Court *on any question of law* arising in the course of the reference. Can this agreement stand notwithstanding Lord Coke’s dictum in *Vynior’s* case,<sup>1</sup> and the formula thereof contained in *Kill v. Hollister*,<sup>2</sup> that such contracts to arbitrate are “invalid” and against public policy because they would “oust the courts of jurisdiction”? The King’s courts in 1922 tell us again of the foregoing policy and condemn this agreement of *sui juris* business houses.<sup>3</sup> The remarks of Scrutton, *L. J.*, are pertinent:

“There must be no Alsatias in England where the King’s writ does not run... I think an agreement to short-cut the power of the King’s courts to guide the proceedings of inferior tribunals without legal training in matters of law before them is calculated to lead to erroneous administration of law and therefore injustice, and should therefore not be recognized by the courts.... I think commercial men will be making a great mistake if they ignore the importance of administering settled principles of law in commercial disputes, and trust to the judgment of business men, however experienced in business, based only on the facts of each particular case, and with no knowledge of or guidance in the principles of law which must control the facts and which arbitrators must administer.”

On the other hand, according to “settled principles of law in commercial disputes” what if a bill of lading executed in Germany provides that disputes arising thereunder shall be “decided in Hamburg according to German law”? Are the King’s courts ousted of jurisdiction? Is this a “submission” to commercial arbitration? The King’s courts have declared this to be a valid “submission” to commercial arbitration under the statute. Sir Samuel Evans explains:

“The tribunal at Hamburg is not specified, but a fair businesslike reading of the contract means that such disputes are to be tried by the competent Court in Hamburg, and in accordance with German law. It is conceivable that the parties agreed to that clause in the bill of lading in order expressly to avoid a trial here under the jurisdiction which I decide exists in this Court.

“In dealing with documents of this kind, effect must be given, if the terms of the contract permit it, to the obvious intention and agreement of the parties. I think the parties clearly agreed that disputes under the contract should be dealt with by the German tribunal, and it is right to hold the plaintiffs (an English corporation) to their part of the agreement....

Although, therefore, this Court is invested with jurisdiction, I order that the proceedings in the action be stayed, in order that the parties may litigate in Germany, as they have agreed to do.”

Again, § 1 of the Act provides that: “A submission, unless a contrary intention is expressed therein, shall be irrevocable....” But does this mean that an agreement to refer a dispute to arbitration is irrevocable or only that an agreement to refer a dispute to the arbitration of a named arbitrator is irrevocable? (See page 41 and case cited.) Section 4 has been an extensive battlefield. It provides: “If any party to a submission....commences any legal proceedings in any court against any other party to the submission.... in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the

<sup>1</sup> (1609) Y. B. at 7, fol. 1.

<sup>2</sup> (1746) 1 Wilson 129.

<sup>3</sup> *Czarnikow & Co., Ltd. v. Roth, Schmidt & Co.*, 28 Com. Ca. 29.

proceedings, and that court or judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings." This is one of the longest sections of the Act. But what are the chances for a lawsuit? They have proved to be many. What does "any court" mean? Does it include the County Court? When is it, within the meaning of this section, that one "commences any legal proceedings"? When is a matter "any matter agreed to be referred"? What are "any other steps in the proceedings"? And when is and when is not a party "ready and willing to do all things necessary to the proper conduct of the arbitration"? Does "may" mean "may" or "shall" or what-not? (See pp. 46, 47 and cases cited.) These questions have been raised in the King's courts. Presumably the decisions are in accordance with "settled principles of law in commercial disputes."

It is through a collection of literally hundreds of similar points of case law that the author would take the business man. The reader will be instructed in the complex of rules of law governing The Submission, The Preparations for Trial, The Hearing, Concerning the Arbitrators, The Award, The King's Courts and The Costs. Suffice it to say that the author does his part well. His statement of the rules is clear and concise with little tendency to particularly meaningless generalizations. Regrettable (even if necessary) is it that there was any such complex work to be done. As long as business men desire to further "load" the system and add to its complexity, they need but be disposed to repudiate their contracts, employ astute advocates, and carry the cost to their selling price.

The reviewer leaves the book with the impression heretofore stated that the commercial arbitration law of England calls for the arbitration technician. Probably this leads to the necessity of emphasizing the furtherance of the functions of trade associations, vertically organized along the lines of the particular trade or industry, to at least maintain standing committees technically learned in the ritual of the system.

WESLEY A. STURGES

YALE LAW SCHOOL

#### BOOKS RECEIVED

CLEARING AND COLLECTION OF CHECKS, THE. By WALTER EARL SPAHR. New York: BANKER'S PUBLISHING Co. 1926. pp. xxiv, 597.

CONSTITUTIONAL LAW. By CHARLES W. GERSTENBERG. New York: PRENTICE-HALL, INC. 1926. pp. xv, 562.

CURING THE CRIMINAL. A TREATISE ON THE PHILOSOPHY AND PRACTICES OF MODERN CORRECTIONAL METHODS. By JESSE O. STUTSMAN. New York: THE MACMILLAN Co. 1926. pp. viii, 419.

DE LEGATIONIBUS LIBRI TRES. By ALBERICO GENTILI. Volume I. A PHOTOGRAPHIC REPRODUCTION OF THE EDITION OF 1594. With an introduction by ERNEST NYS. New York: OXFORD UNIVERSITY PRESS. 1924. pp. 38a, 231. Volume II. Translation by GORDON J. LAING. pp. 37a, x, 208.

DIPLOMATIC CORRESPONDENCE OF THE UNITED STATES CONCERNING THE INDEPENDENCE OF THE LATIN-AMERICAN NATIONS. Selected and arranged by WILLIAM R. MANNING. New York: OXFORD UNIVERSITY PRESS. 1925. Volume I, pp. xxxii, 665; Volume II, pp. xxix, 1427; Volume III, pp. xxviii, 2228.