

5/31/60

Memorandum No. 48 (1960)

Subject: Study No. 32 - Arbitration

Attached to this memorandum as Exhibit I is the portion of the arbitration statute that has been considered by the Commission. The changes adopted by the Commission at the May meeting are not shown in strike out and underline. The alterations shown are changes in language that have not been considered by the Commission as yet.

Exhibit II is the remainder of the draft prepared by the staff to carry out the Commission's tentative recommendations.

Exhibit III is the remainder of the consultant's draft that has not been considered by the Commission.

Section 1291. The Commission could not agree on the inclusion or exclusion of a provision of this nature at the March meeting. The section presented here is substantially as recommended by the consultant and is similar to Uniform Act Section 9. The Uniform Act includes a provision permitting the arbitrator to "clarify" the award, which is not presented here. There has been inserted in this section the phrase "if the award has not been entered as a judgment." This phrase is connected with the filing procedure and was placed in this section in order to require that all of the efforts to modify or correct the award be completed before the award may be filed as a judgment. It is suggested that consideration of the substance of the filing procedure be deferred until Section 1293 is considered.

1292. The substance of this section is as recommended by the consultant and the Commission.

1293. This section, together with the remainder of the title on arbitration, include the provisions for filing an award with the clerk of the superior court and entry of the award as a judgment upon such filing. It is contemplated that all attacks on the award, except for fraud, will be completed before the filing. As this procedure originated with the Commission at the March meeting, it has not been considered in the consultant's study and is not contained in the Uniform Act.

(1) This subdivision provides that, after ten days notice and within one year after delivery of the award to him, a party may file an award with the clerk, who shall thereupon enter the award as if it were a judgment in an action, unless an application or motion to vacate, modify or correct the award has been made.

(2) The first sentence is similar to existing Section 1292 which the consultant recommends be retained. The second sentence reflects the decision of the Commission to extend the arbitration statute to contracts which may be entered into subject to the approval of a court, such as separation and property settlement agreements, agreements determining the distribution of estates, etc.

(3) This provision was placed here to carry out the recommendation that awards made pursuant to oral agreements are enforceable.

(4) This subdivision reflects the decision of the Commission at the May meeting to enforce awards as contracts of the parties after the time expires for the summary enforcement procedures of the arbitration act.

1294. This is Section 12 of the Uniform Act as recommended by the Commission. It has been modified to a certain extent to conform with the remainder of this proposed statute. The consultant recommended the existing California section, but also recommended that the last sentence of this section be included therein.

1295. This section is substantially as recommended by the consultant and as contained in both the Uniform Act and the existing California statute. It has been modified to correspond with the filing procedure. The notice provided is 90 days. The consultant recommended 30.

1296. (1) This section was created to permit a party that has been notified that an award will be filed to obtain a stay until he can present a motion to modify, correct or vacate after proper notice. The idea comes from the former California arbitration statute which provided for a stay of entry of judgment if the submission had been made a rule of court.

(2) This was put in the statute to conform to the idea contained in the Uniform Act and recommended by the consultant that a denial of a motion to vacate, modify or correct an award should automatically result in the entry of the award as a judgment.

1297. This is the venue section. It was taken from the Uniform Act. The consultant has recommended a different scheme which follows the existing California statute. The Commission has not considered the matter as yet. The principal difference between the Uniform Act system and the California scheme is that the Uniform Act picks a court to have jurisdiction over the original judicial action and then confers jurisdiction upon that court over all subsequent judicial actions growing out of the particular arbitration proceeding,

while the California statute confers jurisdiction on different courts upon a determination of which one would be most conveniently located to hear the particular kind of motion.

(1) This subdivision was taken from Section 2(c) of the Uniform Act. It was placed here because it seemed desirable to place all venue provisions in a single section.

(2) This subdivision was taken from Section 18 of the Uniform Act. It has been slightly modified to fit into this tentative statutory scheme, but carries out the idea that a single court is to have jurisdiction of all enforcement procedures unless it otherwise directs.

(3) This subdivision was included to make clear that venue for filing an award as a judgment is the same as venue for making a motion. Construed with subdivision (2), this subdivision is intended to provide that motions subsequent to service of notice of intention to file should be made in the court where the award is to be filed.

1298. (1) This subdivision is taken from Section 16 of the Uniform Act. The consultant has recommended a hearing procedure similar to that provided here, but has recommended 10 days notice on all motions.

(2) This subdivision is substantially as recommended by the consultant and as contained in the present California statute. The reference to motions to confirm that is in the consultant's recommended statute has been omitted to comply with the Commission's decision to abandon confirmation proceedings.

(3) The substance of this subdivision was recommended by the consultant.

(4) At the April meeting, the Commission asked the staff to determine the necessity for findings under the present law. Trubowitch v. Riverbank Canning Co., 30 Cal.2d 335 (1947), held that findings are required when a

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petition for an order compelling arbitration is denied. The court reasoned that such an application is really a suit in equity for specific performance, and hence a decision upon such an application requires findings like any other determination in an equity case. The court also relied upon the language of Section 1282 which uses the word "finds" in several places.

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The language in Trubowitch is broad enough to require findings even if an order compelling arbitration is granted. However, no case has been found specifically holding that findings are required in such a situation. It may be that Trubowitch will be limited to determinations which finally dispose of the case. It has been held that findings are not required for interlocutory orders and judgments. (David v. Goodman, 114 Cal. App.2d 571, 575 (1952) hg. den., 114 Cal. App.2d 577.) It has also been held that an order compelling arbitration is not appealable (Jardine-Matheson Co. v. Pacific Orient Co., 100 Cal. App. 572 (1929)); and the Supreme Court has indicated that the reason an order compelling arbitration is not appealable while an order denying arbitration is, even though neither is expressly made appealable by statute, is because the former is interlocutory and the latter is final (Sjoberg v. Hastorf, 33 Cal.2d 116 (1948)). Therefore, it may be that the Supreme Court will also hold that findings are not required to support orders upon interlocutory matters in arbitration proceedings.

Merely to present the issue, this subdivision has been drafted to require findings when final orders are made and to require no findings when interlocutory orders are made. The Commission did not consider this distinction, and it may wish to do away with findings altogether. This provision was included to present this problem.

1299. This section is taken from Section 19 of the Uniform Act. It differs in substance from the section on appeals recommended by the consultant in that this subdivision provides for an appeal from an order vacating an award only if a rehearing is not ordered while the consultant's recommendation is that any order vacating an award is appealable. The consultant's recommendation is in accordance with the existing California statute.

SECTION 3 and SECTION 5. These sections amend certain sections of the Civil Code and Code of Civil Procedure which relate to arbitration. The amendments delete certain provisions which are superseded by the arbitration statute.

SECTION 4. This section amends a section of the Uniform Sales Act that provides that a sales contract is avoided if a valuation fails without fault of the parties. This is amended because appraisal and valuation agreements will be enforceable under this statute.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

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EXHIBIT I

An act to repeal Title 9 (beginning with Section 1280) of Part 3 of the Code of Civil Procedure, to add Title 9 (beginning with Section 1280) to Part 3 of the Code of Civil Procedure, to amend Section 1053 of the Code of Civil Procedure, and to amend Sections 1730 and 3390 of the Civil Code, all relating to arbitration.

The people of the State of California do enact as follows:

SECTION 1. Title 9 (beginning with Section 1280) of Part 3 of the Code of Civil Procedure is hereby repealed.

SEC. 2. Title 9 (beginning with Section 1280) is added to Part 3 of the Code of Civil Procedure, to read:

TITLE 9. ARBITRATION

1280. As used in this title:

(1) "Controversy" includes any question arising between the parties to an agreement whether such question is one of law or of fact.

(2) "Agreement" includes agreements providing for valuations, appraisals and similar proceedings, and agreements between

employers and employees or between their respective representatives.

(3) "Written agreement" shall be deemed to include an oral or implied agreement to extend the term of an expired written agreement.

(4) "Neutral arbitrator" means an arbitrator who is (a) selected jointly by the parties to an agreement to arbitrate or by their representatives or (b) appointed by the court when the parties or their representatives jointly fail to do so.

1281. A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.

1282. (1) On petition of a party alleging the existence of a written agreement to arbitrate a controversy and that the opposing party refuses to arbitrate, the court shall order arbitration if it determines that [such] an agreement to arbitrate the controversy exists, unless it determines that:

(a) The right to arbitrate has been waived by the petitioner; or

(b) Grounds exist for the revocation of the agreement.

(2) If the court determines that there are other issues, not subject to arbitration, that are the subject of another

pending action or special proceeding between the parties, and that a determination of such issues may make the arbitration unnecessary, the court may order that the arbitration be stayed until such determination or until such earlier time as the court specifies.

(3) An order for arbitration may not be refused on the ground that the matter in issue lacks substantive merit.

1283. [~~1~~] Upon petition, the court may stay an arbitration proceeding commenced or threatened upon a showing that would be sufficient to cause the court to stay arbitration or to deny a petition to order arbitration under Section 1282.

[~~2~~] 1284. (1) If a court of competent jurisdiction, whether in this State or not, has ordered arbitration of an issue involved in an action or proceeding [~~involving-an-issue subject-to-arbitration-shall-be-stayed-by~~] pending before a court of this State, the court in which [~~the~~] such action or proceeding is pending [~~,-but-only-if-an-order-for-arbitration has-been-made-or-a-petition-therefor-has-been-filed~~] shall, upon motion of a party made within the time provided to demur to the pleading in which the issue is raised, stay such action or proceeding until an arbitration is had in accordance with the order for arbitration.

(2) If an application has been made to a court of competent jurisdiction, whether in this State or not, for an order compelling arbitration of an issue involved in an action or

proceeding pending before a court of this State and such application is undecided, the court in which such action or proceeding is pending shall, upon motion of a party made within the time provided to demur to the pleading in which the issue is raised, stay such action or proceeding until the application for an order compelling arbitration is decided and, if arbitration of such issue is ordered, until an arbitration is had in accordance with the order for arbitration.

(3) If the issue subject to arbitration is severable, the stay may be with respect thereto only.

[~~1284~~] 1285. (1) If the arbitration agreement provides or the parties agree upon a method of appointing an arbitrator, such method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails to act and his successor has not been appointed, the court, on petition of a party, shall appoint one or more arbitrators.

(2) When a court is requested to appoint a neutral arbitrator the court shall nominate five persons from lists of persons supplied jointly by the parties, or obtained from a governmental agency or from private disinterested associations concerned with arbitration. The parties may within five days of receipt of such nominees from the court jointly select a single person by agreement or lot from such list, who shall serve as a neutral arbitrator. If the parties fail to select an arbitrator within the five-day period, the court shall appoint the arbitrator from the nominees.

[1285] 1286. Unless the parties otherwise agree:

(1) The arbitration shall be by a single arbitrator.

(2) Subject to subdivision (5) of Section 1287, if there is more than one arbitrator, the powers and duties of the arbitrators, other than the powers and duties of a neutral arbitrator, may be exercised by a majority of them if reasonable notice of all proceedings has been given to all arbitrators.

(3) If there is more than one neutral arbitrator, the powers and duties of a neutral arbitrator may be exercised by a majority of the neutral arbitrators.

[1286] 1287. Unless the parties otherwise agree:

(1) The neutral arbitrator shall appoint a time and place for the hearing and cause notification to the parties and to the other arbitrators to be served personally or by registered or certified mail not less than seven days before the hearing. Appearance at the hearing waives notice. The neutral arbitrator may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon his own determination, may postpone the hearing to a time not later than the date fixed by the agreement for making the award or to a later date if the parties consent thereto.

(2) The neutral arbitrator shall preside at the hearing, rule on the admission and exclusion of evidence and on questions of hearing procedure, and shall exercise all powers relating to the conduct of the hearing.

(3) The parties are entitled to be heard, to present evidence and

to cross-examine witnesses appearing at the hearing, but rules of evidence and rules of judicial procedure need not be observed.

(4) If an order directing arbitration has been made pursuant to Section 1282, the arbitrator may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

(5) If an arbitrator for any reason fails to act, the hearing shall continue but only the remaining neutral arbitrator or neutral arbitrators may determine the questions submitted.

(6) If a neutral arbitrator obtains information relating to the issues other than at the hearing, he shall disclose such information to all parties to the arbitration and give ~~[the parties]~~ each party an opportunity to ~~[meet-it]~~ show that such information is not accurate.

~~[1287]~~ 1288. A party has the right to be represented by an attorney at any proceeding or hearing under this title and no waiver of this right is binding.

~~[1288]~~ 1289. (1) Upon application of a party or upon his own determination the neutral arbitrator may issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents and other evidence. Subpoenas shall be issued, served and enforced in accordance with Chapter 2 (beginning with Section 1985) of Title 3 of Part 4 of this code.

(2) The neutral arbitrator may administer oaths.

(3) On application of a party and for use as evidence and not for discovery, the neutral arbitrator may order the deposition of a witness who

cannot be subpoenaed or is unable to attend the hearing to be taken in the manner prescribed by law for the taking of depositions in civil actions.

~~[When-the]~~ If the neutral arbitrator orders the taking of the deposition of a witness who resides outside the State ~~[and-the-neutral-arbitrator-has ordered-the-taking-of-his-testimony-by-deposition]~~, the ~~[neutral-arbitrator]~~ party who applied for the taking of the deposition shall obtain ~~[an-order-of court-to-that-effect-by-filing-a-petition-therefor-in]~~ a commission therefor from the superior court in accordance with Sections 2024 to 2028, inclusive, of this code.

(4) Except for the parties and their agents, officers and employees, all witnesses appearing pursuant to subpoena ~~[,other-than-the-parties-and their-agents,-officers-and-employees,]~~ shall receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in superior court. The fees and mileage expenses shall be paid by the party at whose request the witness is subpoenaed. The fees and mileage expenses of a witness subpoenaed upon the determination of the neutral arbitrator shall be paid for in the manner provided for the payment of the neutral arbitrator's expenses.

~~[1289]~~ 1290. (1) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators the decision of which is necessary to the award made. The neutral arbitrator shall deliver a signed copy of the award to each party personally or by registered or certified mail or as provided in the agreement.

(2) The award shall be made within the time fixed therefor by the agreement, or, if not so fixed, within such time as the court orders on

motion of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notified the arbitrators of his objection prior to the delivery of a signed copy of the award to him.

EXHIBIT II

1291. On application of a party made not later than 10 days after delivery of a signed copy of the award to such applicant, the arbitrators may modify or correct the award upon the grounds set forth in subdivisions (1)(a) and (1)(c) of Section 1295 if the award has not been entered as a judgment. Written notice of the application shall be given to all other parties, stating that they must serve their objections thereto, if any, within 10 days from the service of such notice. No such modification or correction may be made more than 25 days after delivery of the signed copy of the award to the applicant.

1292. Unless otherwise provided in the agreement to arbitrate, each party shall pay one-half of the neutral arbitrator's expenses and fees, together with other expenses incurred in the conduct of the arbitration, not including counsel fees or witness fees or other expenses incurred by the parties.

1293. (1) Not less than 10 days after the filing of notice of intention to file the award with the clerk of the superior court and service of a copy of the notice upon all of the other parties to the arbitration, and not more than one year after the delivery of a signed copy of the award to him, a party may file a signed copy of the award with the clerk of the superior court. The clerk shall enter the award as a judgment in an action if:

(a) No petition to modify, correct or vacate the award has been filed by any of the parties to the arbitration, and

(b) No order staying the entry of the award as a judgment has been made.

(2) An award entered as a judgment has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action; and it may be enforced as if it had been rendered in an action in the court in which it is entered. If the award is upon a controversy that could be settled by a contract between the parties subject to the approval of a court, the award shall be given effect by such court in the same manner and to the same extent as a contract between the parties.

(3) An award made pursuant to an agreement not in writing shall be enforced under this title in the same manner and to the same extent as an award made pursuant to a written agreement.

(4) Unless an award is vacated as provided in this title, the award may be enforced in the same manner and to the same extent as a contract between the parties, whether the award is entered as a judgment or not.

1294. (1) Upon petition of a party, the superior court shall vacate an award if:

(a) The award was procured by corruption, fraud or other undue means;

(b) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) The arbitrators exceeded their powers;

(d) The arbitrators refused to postpone the hearing upon sufficient

cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 1287, as to prejudice substantially the rights of a party; or

(e) There was no agreement to arbitrate the controversy; but the court shall not vacate an award if the issue was adversely determined in proceedings under Section 1282 or 1283 or if the party participated in the arbitration hearing without raising the objection.

(2) A petition under this section shall be made within 90 days after delivery of a copy of the award to the petitioner and before the award has been entered as a judgment, except that, if the petition is predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

1295. (1) Upon petition of any party to the arbitration made within 90 days after the delivery of a copy of the award to such party and before the award has been entered as a judgment, the court shall modify or correct the award if:

(a) 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;

(b) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(c) The award is imperfect in a matter of form, not affecting

the merits of the controversy.

(2) If the petition is granted, the court shall modify and correct the award so as to effect its intent and shall order the clerk to enter the award as so modified and corrected as a judgment of the court.

1296. (1) The court may make an order staying the entry of an award as a judgment to permit a party to make an application or petition to modify, correct or vacate the award.

(2) If the court denies a petition to modify, correct or vacate an award, the court shall order the clerk to enter the award as a judgment.

1297. (1) If the issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a superior court, a petition to compel arbitration or a petition to stay arbitration shall be made therein. Otherwise, the petition shall be made in accordance with subdivision (2).

(2) Subject to subdivision (1), an initial petition shall be made in the superior court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise, an initial petition shall be made in the superior court of the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, in the superior court of any county. All subsequent petitions shall be made in the superior court hearing the initial petition unless

such court otherwise directs.

(3) For the purpose of this title, the filing of a notice of intention to file an award for entry as a judgment shall be deemed to be the making of a petition.

1298. (1) Except as otherwise provided, a petition under this title shall be heard in the manner and upon the notice provided by law for the making and hearing of motions. Unless the parties have otherwise agreed, notice of an initial petition shall be served in the manner provided by law for the service of summons in an action.

(2) The party petitioning for an order vacating, modifying or correcting an award shall attach to the petition a copy of each of the following:

- (a) The agreement to arbitrate.
- (b) The names of the arbitrators.
- (c) Each written extension of the time, if any, within which to make the award.
- (d) The award.

(3) The court shall award costs upon any judicial proceeding under this title as provided in Chapter 6 (beginning with Section 1021) of Title 14 of Part 2 of this code.

(4) Findings of fact and conclusions of law shall be made by the court upon the determination of a question of fact under this title only if an order is made to enter an award as a judgment or an order is made that is appealable under Section 1299.

1299. (1) An appeal may be taken from:

- (a) An order denying a motion to compel arbitration under Section 1282.
- (b) An order granting a motion to stay arbitration under Section 1283.
- (c) An order vacating an award unless a rehearing is ordered.
- (d) A judgment entered pursuant to this title.

(2) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. Upon an appeal, the court may review the order or judgment from which the appeal is taken and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment, or which substantially affects the rights of a party.

SEC. 3. Section 1053 of the Code of Civil Procedure is amended to read:

1053. When there are three referees [~~y-or-three-arbitrators,~~] all must meet, but two of them may do any act which might be done by all.

SEC. 4. Section 1730 of the Civil Code is amended to read:

1730. SALE AT A VALUATION. Subject to Title 9 (beginning with Section 1280) of Part 3 of the Code of Civil Procedure:

(1) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person, without fault of the seller or the buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by chapters 4 and 5 of this act.

SEC. 5. Section 3390 of the Civil Code is amended to read:

3390. The following obligations cannot be specifically enforced:

1. An obligation to render personal service;
2. An obligation to employ another in personal service;
3. [~~An agreement to submit a controversy to arbitration;~~]

[4.] An agreement to perform an act which the party has not power lawfully to perform when required to do so;

[5.] 4. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or

[6.] 5. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

EXHIBIT III

1285. (5) Each party shall pay one-half of the arbitrator's total expenses and fees, together with other expenses deemed necessary by the neutral-arbitrator not including counsel, witness fees, or other expenses incurred by the parties in the conduct of the arbitration. Costs of motions to confirm, vacate, modify or correct an award, and the proceedings pursuant thereto, shall be awarded by the court pursuant to Section 1032 of this code.

1286. (c) On application of a party made within 10 days after delivery of the award to the applicant, the arbitrator may modify or correct the award upon the grounds set forth in paragraphs (1) and (3) of subsection (a) of Section 10. Written notice of the application shall be given to all other parties, stating that they must serve their objections thereto, if any, within 10 days from the service of such notice. No such modification or correction may be made more than 25 days after delivery of the award to the applicant.

SEC. 8. Section 1287 of said Code is amended to read:

1287. At any time within 90 days after the award is delivered to a party he may make a motion to the court for an order confirming the award. The court shall grant such an order unless a timely motion to vacate, modify or correct the award has been filed. If such motion has been filed, the court shall proceed as provided in the next two sections.

SEC. 9. Section 1288 of said Code is amended to read:

1288 (a) Upon motion of a party the court shall vacate the award if it finds:

the

- (1) That the award was procured by corruption, fraud or undue means;
- (2) That the arbitrator was corrupt;
- (3) That the arbitrator was 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 in engaging in other similar misconduct contrary to the provisions of Section 6, which would substantially prejudice the rights of the parties who made the motion;

- (4) That the arbitrator exceeded his powers, or so imperfectly executed them that a mutual, final and definite award, upon the subject matter submitted, was not made.

(b) A motion filed under this section must be filed within 90 days after the award is delivered to the party making the motion, provided that if the motion is predicated upon corruption, fraud, or undue means, it may

be filed within 90 days after such grounds are known or should have been known.

(c) Where an award is vacated:

(1) The court may in its discretion direct a rehearing before a new arbitrator if the vacation was on grounds set forth in Section 9 (a)(1), (2) or (3). A new arbitrator shall be appointed as provided in Section 4.

(2) With the consent of the parties the court may in its discretion, direct a rehearing before the arbitrator who made the award in a case where the ground set forth in Section 9 (a)(4) was the ground for vacation.

(3) The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the motion to vacate the award is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

SEC. 10. Section 1289 of said Code is amended to read:

1289. (a) Upon motion of any party to the arbitration made within 30 days after delivery of a copy of the award to the moving party, the court shall modify or correct the award:

(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 arbitrator has awarded upon a matter not submitted to him, and the award may be corrected without affecting the merits of the decision upon the matters submitted;

(3) Where the award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the motion is granted, the court shall modify and correct the award so as to effect its intent, and shall confirm the award as so modified and corrected. If the motion is denied, the court shall confirm the award as made.

SEC. 11. Section 1290 of said Code is amended to read:

1290. (a) "Court" as used in this title shall mean the following superior court:

(1) A motion for an order that the parties proceed to arbitration, made pursuant to Section 3, or a motion for the appointment of an arbitrator, made pursuant to Section 4, shall be filed in the county wherein any party resides or has a place of business or, where the agreement is to be performed, or, if no party has a residence or place of business in this State, and the place of performance is not specified in the agreement in any county in this State.

(2) A motion for a stay of an action, made pursuant to Section 3, shall be made to the court wherein the action is pending.

(3) Any motion made after the commencement of arbitration proceedings shall be made in the county wherein the arbitration is being, or has been, held.

(b) Written notice of the hearing of any motion authorized by this title shall be served upon the other parties to the arbitration agreement or their attorneys 10 days prior to the date set for the hearing.

(c) The party moving for an order confirming, vacating, modifying or correcting an award shall attach to such motion a copy of each of the following: the agreement to arbitrate, the name of the arbitrator, each

written extension of the time, if any, within which to make the award, and the award.

(d) Any motion filed under the authority of this title shall be heard in a summary way in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

SEC. 12. Section 1291 of said Code is amended to read:

1291. Upon the granting of an order confirming, modifying or correcting an award, judgment shall be entered in conformity therewith in the court wherein said motion was filed. The judgment when rendered by the court shall be docketed as if it were rendered in an action.

1292. The judgment so entered has the same force and effect, in all respects, as, and is 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. 13. Section 1293 of said Code is amended to read:

1293. An appeal may be taken from an order denying a motion to compel arbitration made under Section 3; an order confirming, modifying, correcting or vacating an award; or from a judgment entered upon an award, as from an order or judgment in an action.

SEC. 14. Section 1294 is added to said Code to read:

1294. The making of an agreement providing for arbitration to be had within this State shall be deemed a consent of the parties thereto to the jurisdiction of the court to enforce such agreement by the making of any orders provided for in this title and by the entering of judgment on an award made under the agreement. An agreement made in this State which does not specify a place for the arbitration to be held shall be considered to provide for arbitration within this State.

Notices shall be served on an out-of-state party by personal service on such party, by registered mail sent to the last known address of such party, or in the manner provided in the agreement.