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Two Views of Commercial Arbitration

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this review and the editorial arrangement of its publication are very similar to that of our own Law Journal in Indiana. It seems that we were the first law journal to be definitely published by the State Bar Association under the editorial direction of the State University Law School. The Michigan Law Review and others are published by the State University Law School with the financial aid and co-operation of the bar association; but the Indiana Law Journal was the first to be handled financially by the State Bar Association while the editorial work was done under the supervision of the State University Law School.

We notice that the Dakota Law Review is published by the State Bar Association of North Dakota under the editorial supervision of North Dakota University Law School. In the make-up of this review, we are also pleased to notice that the listing of the periodical material is similar to that which our Journal employs and different from that used in any other law review.

In this first issue appear two leading articles of interest and value while the case notes are of good quality and fairly exhaustive. The case notes are written by the student editors and signed with the full name of the writers. In the first issue no book reviews appear at all but at the end of the issue is a department entitled "Bar Briefs" in which brief summaries of certain North Dakota decisions are given. We confess that we do not understand from these bar briefs what court handed down these decisions or what the number of the cases are so that they can be identified in the reporter system later. No department covering news of bar association affairs appears in this issue and this seems somewhat extraordinary since the bar association is the publisher of the review.

It seems most fortunate that this plan of using it for the State Bar Association and the State University Law School has been approved in North Dakota. We are advised that a similar plan is being urged in many other jurisdictions and that it is likely that such arrangements will be made in the near future. It would seem that for the bar association and the State University Law School to work together in such an effort for their mutual advantage and for the service of the profession in the state.


Professor Nathan Isaacs of the Harvard Law School has published the leading article in the May issue of the Harvard Law Review, entitled: "Two Views of Commercial Arbitration." These two views it seems are: (1) that commercial arbitration is a form of treatment, less technical perhaps than that of the regular courts but nevertheless an integral part of the judicial system; and (2) that commercial arbitration is a contractual method for the settlement of disputes out of court and separate from the regular judicial organization. Professor Isaacs gives a large number of instances from judicial decisions in this country and in Europe which, by his analysis, indicate that different problems in commercial law are decided one way or the other according as the court regards commercial arbitration as a matter of contract or as a matter of judicial procedure. This grouping of cases is remarkable and quite striking to one who has not considered the subject in this precise way. It is submitted, however, that the grouping is perhaps a little arbitrary in certain respects and that perhaps the facts and the decisions are sometimes made to fit the categories
more exactly than the evidence will warrant. For instance, Professor Isaacs says in general that the English courts favor the contract theory while the American courts favor the court procedure theory but on the other hand he suggests that the doctrine that the award in a commercial arbitration dispute be subject to court review on points of law is characteristic of the procedure view of the question. We find, however, in fact, that one of the important features in English commercial arbitration is that the award is always subject to court review on questions of law. This significant instance is not mentioned by Professor Isaacs at all in his alignment of judicial questions under the contract theory or the procedure theory.

The article does not reach a clear conclusion as to which theory is right but contents itself with pointing out that there is a cleavage here and that this should be recognized. The reviewer feels that Professor Isaacs' analysis is striking and that there are a number of instances which seem to fall in with his distinctions. It is suggested, however, that the difference in the decisions cannot in all instances be explained on these different theories and that many characteristics of the English system which Professor Isaacs commends seem to be incidental to the procedure theory, although he asserts that their theory is contracts.

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