CHAPTER 298.

ARBITRATION.

298.01 Arbitration clauses in contracts enforcible. A provision in any written contract to settle by arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, shall be valid, irrevocable and enforcible save upon such grounds as exist at law or in equity for the revocation of any contract; provided, however, that the provisions of this chapter shall not apply to contracts between employers and employes, or between employers and associations of employes, except as provided in section 111.10 of the statutes. [*1931 c. 274; 1939 c. 57*]

Note: For decision upon arbitration of claims against counties, see note to 59.76, citing Joyce v. Sauk County, 206 W 202, 239 NW 439.

Arbitration clauses in contracts will be specifically enforced in a proper case [Hopkins v. Gilman, 22 W 476, is considered overruled by Kipp v. Laun, 146 W 591.] Depies-Heus Oil Co. v. Sielaff, 246 W 36, 16 NW (2d) 386.

298.02 Stay of action to permit arbitration. If any suit or proceeding be brought upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration. [*1931 c. 274*]

298.03 Court order to arbitrate, procedure. The party aggrieved by the alleged failure, neglect or refusal of another to perform under a written agreement for arbitration, may petition any court of record having jurisdiction of the parties or of the property for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by law for the service of a summons. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the arbitration agreement or the failure, neglect or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded the court shall hear and determine such issue. Where such an issue is raised, either party may, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury called and impaneled in the manner provided for the trial of equity actions. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof. [*1931 c. 274*]

298.04 Arbitrators, how chosen. If, in the agreement, provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or an umpire, or in filling a vacancy, then upon the application of either party to the controversy the court aforesaid or the court in and for the county in which the arbitration is to be held shall designate and appoint an arbitrator, arbitrators or umpire, as the case may require, who

shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and, unless otherwise provided in the agreement, the arbitration shall be by a single arbitrator. [*1931 c. 274*]

298.05 Court procedure. Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided. [*1931 c. 274*]

Note: In a proceeding for the confirmation of an award of arbitrators appointed by the parties to a construction contract, where none of the conditions prescribed as grounds for vacating or modifying an award were present, and where the arbitrators at most made merely an error of fact or law in awarding interest to the contractor, the trial court had no power to modify the award by striking the item of interest therefrom. Standard Construction Co. v. Hoeschler, 245 W 316, 14 NW (2d) 12.

298.06 All arbitrators to attend hearings, waiver; subpœnas, witness fees, contempts. When more than one arbitrator is agreed to, all the arbitrators shall sit at the hearing of the case unless, by consent in writing, all parties shall agree to proceed with the hearing with a less number. The arbitrators selected either as prescribed in this act or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses in courts of general jurisdiction. The summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrator or arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpœnas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the court in and for the county in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner now provided for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of this state. [*1931 c. 274*]

298.07 Depositions. Upon petition, approved by the arbitrators or by a majority of them, any court of record in and for the county in which such arbitrators, or a majority of them, are sitting may direct the taking of depositions to be used as evidence before the arbitrators, in the same manner and for the same reasons as provided by law for the taking of depositions in suits or proceedings pending in the courts of record in this state. [*1931 c. 274*]

298.08 Written awards. The award must be in writing and must be signed by the arbitrators or by a majority of them. [*1931 c. 274*]

298.09 Court confirmation award, time limit. At any time within one year after the award is made any party to the arbitration may apply to the court in and for the county within which such award was made 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 in writing of the application shall be served upon the adverse party or his attorney five days before the hearing thereof. [*1931 c. 274*]

298.10 Vacation of award, rehearing by arbitrators. (1) In either of the following cases the court in and for the county wherein the award was made must make an order vacating the award upon the application of any party to the arbitration:

(a) Where the award was procured by corruption, fraud or undue means;

(b) Where there was evident partiality or corruption on the part of the arbitrators, or either of them;

(c) 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;

(d) 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.

(2) Where an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators. [*1931 c. 274*]

Note: Mistakes of judgment, facts, or law are not ground for review of or setting aside an arbitration award, as such errors are among the contingencies which parties assume when they select such tribunals. Mistakes that will void an award are those appearing on its face, or gross mistakes of the arbitrators extraneously appearing as to their powers or duties, which result in real injustice or constructive fraud; and the mistake must so mislead the arbitrators that they did not apply the rules which they intended to apply, so that upon their own theory a mistake was made which has caused the result to be something different from that which they had reached by their reason and judgment. Putterman v. Schmidt, 209 W 442, 245 NW 78.

298.11 Modification of award. (1) In either of the following cases the court in and for the county wherein the award was made must make an order modifying or correcting the award upon the application of any party to the arbitration:

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award;

(b) Where the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted;

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

(2) The order must modify and correct the award, so as to effect the intent thereof and promote justice between the parties. [*1931 c. 274*]

298.12 Judgment. Upon the granting of an order confirming, modifying or correcting an award, judgment may be entered in conformity therewith in the court wherein the order was granted. [*1931 c. 274*]

298.13 Notice of motion to change award. Notice of a motion to vacate, modify or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered, as prescribed by law for service of notice of a motion in an action. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award. [*1931 c. 274*]

298.14 Papers filed with motion regarding award; docketing judgment, effect of judgment. (1) Any party to a proceeding for an order confirming, modifying or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement, the selection or appointment, if any, of an additional arbitrator or umpire, and each written extension of the time, if any, within which to make the award;

(b) The award;

(c) Each notice, affidavit or other paper used upon an application to confirm, modify or correct the award, and a copy of each order of the court upon such an application.

(2) The judgment shall be docketed as if it was rendered in an action.

(3) The judgment so entered shall have the same force and effect, in all respects, as, and be 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. [*1931 c. 274*]

298.15 Appeal from order or judgment. An appeal may be taken from 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. [*1931 c. 274*]

298.16 Chapter provisions severable as to constitutionality. If any provisions of this chapter or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the chapter and of the application of such provisions to other persons and circumstances shall not be affected thereby. [*1931 c. 274*]

298.17 Title of act. This chapter may be referred to as "The Wisconsin Arbitration Act." [*1931 c. 274*]

298.18 Act not retroactive. The provisions of this chapter shall not apply to contracts made prior to the taking effect of this chapter. [*1931 c. 274*]

JUSTICE COURT—CIVIL CODE

Foreword

Chapter 441, laws of 1945, (effective Jan. 1, 1946) is a revision of Title XXVIII—Courts of Justices of the Peace and Proceedings Therein in Civil Actions. The title contains 8 chapters—300 to 307. The revision bill (No. 193-S) was drafted by the Advisory Committee on Rules of Pleading, Practice and Procedure (section 251.18, Stats.). Mr. Eugene G. Williams of Oshkosh, Wisconsin, of a subcommittee, contributed generously of his time and talent to this work over a two-year period. The printed bill carried many explanatory comments. Those comments (so far as they are still helpful) are printed in these statutes following the several sections to which they relate. Those comments should prove useful to the legal profession, especially in connection with section 370.01 (49), Stats.

The legislative history of each section of the 8 chapters is printed in italics and enclosed in brackets at the end of the section. That history is a consolidation of the references given in the 1930 Wisconsin Annotations and of subsequent legislative action. The history now given is intended to be complete; i.e. you need "seek no further."

So too, the annotations—new and old—are consolidated. That is to say that the 1930 Annotations and the cumulative continuations thereof have been worked over and consolidated to make the present annotations complete from 1848 to the present time. So far as chapters 300 to 307 are concerned, there is now no occasion to go to the 1930 Annotations or to the 1943 Wisconsin Statutes for a digest or citation of cases.

A word should be said about the plan pursued in writing and arranging the annotations to supreme court decisions.

1. They are arranged in reverse of their chronological order. The latest case is cited first. The oldest case is cited last—if at all. This is done upon the assumption that a lawyer, when he consults the annotations, usually wants to know what the law is now, rather than what it was in times past; and that he is most likely to find his answer in the latest decision.

2. Only one case is cited in support of a point or proposition. It is not uncommon to find 1, or 2 or 3 Pinney cited in a very recent decision. For example Shefelker v. First National Bank, 207 W 510, cites Roberts v. Warren, 3 W 736, to the proposition that a justice lost jurisdiction if he failed to write *in his docket* the *place* to which the action is adjourned. Is there any sound reason for citing the old case in the annotations? None is perceived. If you care to pursue your study beyond the Shefelker case, you have, in it, a citation to the ancient decision. Needless citation of decisions wastes space and time. Most books are too large; most of them could be improved by condensation and deletion. The 1930 Annotations could have been shortened to advantage. That is also true of the Wisconsin Statutes. The revisor has plodded and is plodding toward that goal—very slowly. The going has not always been good.

The treatment of the annotations to the justice court chapters is a sort of trial balloon. It is also a sort of preview of what the next complete edition of annotations may be. A new edition is about due. We have the 1914 edition and the 1930 edition. The former came 16 years after the 1898 Wisconsin Statutes Annotated and 16 years earlier than the 1930 edition. Another 16 year-period has elapsed. Wisconsin should publish a complete volume of annotations in 1948 and call it the "Centennial Annotations".

I hope that the job will be undertaken in time. An appropriation will be needed to employ additional help but the expense will be returned to the state if the book is sold at cost. The appropriation would merely be an advance to enable the work to be done.

E. E. BROSSARD
Revisor.

REPORT

OF THE ADVISORY COMMITTEE ON RULES OF PLEADING, PRACTICE AND PROCEDURE TO THE STATE LEGISLATURE ON A BILL TO REVISE TITLE XXVIII OF THE STATUTES RELATING TO COURTS OF JUSTICES OF THE PEACE AND PROCEEDINGS THEREIN IN CIVIL ACTIONS.

To the Legislature: The advisory committee on rules of pleading, practice and procedure (created by section 251.18 of the statutes) reports as follows:

In 1935 this committee made a complete revision of the rules of civil procedure in courts of record. That revision was reported to and acted on by the supreme court, and to and by the legislature as Senate Bills Nos. 50 and 75.

Justice court procedure was not then revised. That practice, in fact, has not been revised since 1878. Even in the Revised Statutes of 1878, justice court procedure is still strikingly like it is in the Revised Statutes of 1849, both in style and in substance. Hence a thorough and complete revision of justice court procedure is past due.

Such a revision was undertaken by this committee about two years ago. A subcommittee was then appointed to draft a preliminary or tentative revision of chapters 300 to 307 of the statutes. The subcommittee made a report to this committee in the form of a legislative revision bill. That report was mimeographed. It has been examined section by section (including the notes) and amended as this committee deemed best to provide an up-to-date justice court code, expressed in the plainest, simplest language possible, and calculated to promote the "speedy determination of litigation upon its merits" (251.18).

Accompanying this report and forming part of it is the aforementioned revision bill, intended for introduction in the legislature.

Most of what this report proposes falls within the rule-making power of the supreme court. But there are revised provisions of the statutes which involve the jurisdiction of courts and some that affect substantive rights. And those provisions are without the jurisdiction of the supreme court. They are exclusively within the jurisdiction of the legislature. The problem thus presented could be solved in two ways:

First: Report to the supreme court all recommendations for changes in rules which are strictly procedural; and report to the legislature the changes which affect jurisdiction of the courts and those which affect substantive rights, together with changes which are simply verbal; or

Second: Report the entire revision to the legislature.

Upon careful consideration and full inquiry, the committee chose the second solution or plan. The committee is convinced that is more likely to promote and preserve the symmetry of the revision; will more readily yield to amendment by legislative committee action; and be least expensive. This committee sees no sound objection to proceeding in that manner.

This report is delivered to the joint committee on revisions, repeals and uniform laws for presentation to the legislature.

The advisory committee has requested and hereby requests said joint committee to present this report to the legislature, with any amendments to the proposed bill which the joint committee deems advisable.

The opening paragraphs of the court's opinion in De Laval Separator Co. v. Hofberger, 161 W 344, gives strong support to a complete revision of justice court practice:

"Timlin, J. About four years ago the appellant began suit in justice's court against the respondent to recover a balance of $4.35. This trifling controversy has been in litigation ever since in justice's court, circuit court, and now in the supreme court. It is not denied that the respondent owes this sum to the appellant, but the litigation has been over the question whether the appel-

lant proceeded properly, or rather whether the appellant's lawyer and the justice of the peace proceeded properly, in appellant's attempt to collect this small sum.

"The science of jurisprudence must be far from perfection when the real object and purpose of an action can be lost sight of and a judicial controversy relating to questions of procedure and having no concern with the merits of the action in this way substituted for the real controversy between the parties. Courts of justices of the peace are recognized in the constitution and statutes of this state and they are supposed to furnish cheap and convenient tribunals for the determination of petty differences which may arise between parties. It requires no argument to establish that the way to such courts should be smooth and easy. It was long ago declared to be the law that such inferior tribunals must keep strictly within the limits of the jurisdiction conferred upon them; but this does not mean that the superior courts are to be hostile to their judgments or solicitous to trip them up for every petty error. It means that the justices are to exercise only the jurisdiction conferred upon them by statute fairly interpreted. This court has been for some time engaged in an attempt to mitigate the rigor of some of the ancient rules on this subject. Cowles v. Neillsville, 137 Wis. 384, 119 N. W. 91; State ex rel. Cooper v. Brazee, 139 Wis. 538, 541, 121 N. W. 247; Kremer v. Arians, 141 Wis. 662, 124 N. W. 1064; Kuehn v. Nero, 145 Wis. 256, 130 N. W. 56; State ex rel. Kassner v. Momsen, 153 Wis. 203, 140 N. W. 1117."

It is high time the court or the legislature or both not only *"attempt* to mitigate the rigor of *some* of the ancient rules" of justice ocurt practice but actually proceed to extirpate all "the ancient rules" so dear to tricky practitioners. Now is the time to improve our "science of jurisprudence." Such is the purpose of this revision.

As an example of miscarriage of justice due to technicalities, take Johnson v. Turnell, 113 W 468. The action was on a promissory note upon which $50 and interest were due. The summons was in due form but had been signed in blank by the justice and delivered to an attorney who later filled it out. The defense was the 6-year statute of limitations. The sixth year expired after the date of the summons and prior to the return day. The case was tried in justice court, the superior court and the supreme court. It was held that each of the 6 requirements of a summons was mandatory; that the summons must be complete when the justice issued it and that the summons in this case was void. The legislature, at the next session, authorized justices to sign summonses in blank and deliver them to attorneys to be filled out and issued "as occasion may require." (Ch. 20, laws of 1903, effective March 20, 1903). Johnson v. Turnell was decided March 11, 1902. This was piecemeal reform of procedure. The reform should be wholesale. It is a travesty that pure technicalities should delay or prevent justice in justice court, yet that is just where they "do most abound."

Shefelker v. First National Bank, 207 W 510 (decided April 5, 1932) is another example of miscarriage of justice due to a technicality. The bank sued Shefelker, in justice court, for unlawful detainer of office rooms in the bank building. The case was duly called for trial. At the request of the defendant, adjournment was taken for 2 days. The justice wrote in his docket: "Case adjourned until Monday, March 31st, 9 a. m." On the adjourn day the defendant was present in justice court with his attorney and examined the docket. Noticing that the docket did not state the "place to which the adjournment was taken," the defendant took no part in the proceedings and refused to "appear."

The justice entered in his docket: "Defendant fails to appear." Judgment was entered against him. He brought certiorari. "In the circuit court the judgment of the justice court was reversed on the ground that the place to which the case was adjourned was not stated in the docket"! March 21, 1930 the bank began its action to get possession of rooms which were unlawfully detained. April 5, 1932 (over 2 years later) the bank was told that it had "gotten nowhere." Another travesty; another victory for technicality; another event which helped to bring law and lawyers and courts into disrepute. The court supported its decision by citing Roberts v. Warren, 3 W 736, decided in 1854. This pitfall had existed 68 years; and nothing done to remove it from the path of justice. It was removed by a Supreme Court Rule, effective Jan. 1, 1936. Another instance of tardy and piecemeal reform in procedure where there should now be a general modernizing of practice to the end that more certain and speedy justice may be obtained.

In every instance where the bill makes a change in the law, substantive or procedural, a note is appended calling attention to the change. The absence of a note to any section of the bill signifies that the intention is not to change the meaning.

In this connection, attention is called to section 370.01 (49), which reads:

"A revised statute is to be understood in the same sense as the original unless the change in language indicates a different meaning so clearly as to preclude judicial construction. And where the revision bill contains a note which says that the meaning of the statutes to which the note relates is not changed by the revision, the note is indicative of the legislative intent."

This binding, statutory rule for the construction of *revised provisions* of the statutes gives the draftsman far greater freedom than he would otherwise possess in compacting the diction and restating the law "according to the common and approved usage of the language" (370.01 (1)). That freedom has been exercised in writing this bill.

Respectfully submitted,
ADVISORY COMMITTEE ON RULES OF PLEADING, PRACTICE AND PROCEDURE
By A. W. Kopp, Chairman
E. E. Brossard, Secretary

Feb. 12, 1945