

**Arbitration--Disclosure--Arbitrator in Commercial Arbitration
Proceeding Held To Judicial Standards of Impartiality
(Commonwealth Coatings Corp. v. Continental Casualty Co., U.S.
1968)**

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RECENT DEVELOPMENTS

ARBITRATION — DISCLOSURE — ARBITRATOR IN COMMERCIAL ARBITRATION PROCEEDING HELD TO JUDICIAL STANDARDS OF IMPARTIALITY.— *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 (1968).

In a tripartite commercial arbitration proceeding involving a prime contractor and a subcontractor, the supposedly "neutral" arbitrator failed to disclose his prior business transactions with the prime contractor. Subsequently, the subcontractor discovered the undisclosed relationship, and, conceding the fairness and impartiality of the arbitrator, moved to have the award vacated under Section 10 of the United States Arbitration Act. The Supreme Court, in reversing the lower courts, *held* disclosure of any questionable relationship to be a prerequisite to the impartial hearing which Congress sought to insure through section 10.

The process of arbitration, one of the oldest and most prevalent means of settling disputes,¹ is the consensual submission of a controversy to party-appointed judges who are empowered to render a binding and legally enforceable award.² Such self-regulation, encouraged by the courts as a natural right of man,³ has proven an effective and expeditious substitute for the lengthy and expensive process of litigation.⁴

At common law, although executory arbitration agreements were not specifically enforceable, awards were invariably upheld by the courts.⁵ In order to effectuate the intent of the parties, awards were

¹ See F. KELLOR, *AMERICAN ARBITRATION, ITS HISTORY, FUNCTIONS AND ACHIEVEMENTS* 3 (1948); Mentschikoff, *Commercial Arbitration*, 61 COLUM. L. REV. 846, 854 (1961).

² *Gates v. Arizona Brewing Co.*, 54 Ariz. 266, 269, 95 P.2d 49, 50 (1939) gives the most widely quoted definition of arbitration:

Broadly speaking, arbitration is a contractual proceeding, whereby the parties to any controversy or dispute, in order to obtain an inexpensive and speedy final disposition of the matter involved, select judges of their own choice and by consent submit their controversy to such judges for determination, in the place of the tribunals provided by the ordinary processes of law.

See also *In re Wilkins*, 169 N.Y. 494, 496, 62 N.E. 575, 576 (1902); 6A A. CORBIN, *CONTRACTS* § 1434, at 397; W. Sturges, *Arbitration — What Is It?*, 35 N.Y.U.L. REV. 1031, 1032 (1960).

The essence of commercial arbitration is that the parties voluntarily agree in advance that the award will be final and binding. See M. DOMKE, *THE LAW AND PRACTICE OF COMMERCIAL ARBITRATION* 1 (1968). Commercial arbitration must be distinguished from mediation and conciliation, neither of which is binding upon the parties. "Mediation recommends, arbitration decides." *Id.* at 3. Commercial arbitration also differs from compulsory arbitration in which the parties are required by law to submit disputed issues to a third party for resolution. See Note, *Ad Hoc Compulsory Arbitration Statutes: The New Device For Settling National Emergency Labor Disputes*, 1968 DUKE L.J. 905, 906-07.

³ See F. KELLOR, *AMERICAN ARBITRATION, ITS HISTORY, FUNCTIONS AND ACHIEVEMENTS* 4 (1948).

⁴ See *Fudickar v. Guardian Mut. Life Ins. Co.*, 62 N.Y. 392, 399 (1875).

⁵ See 6 S. WILLISTON, *CONTRACTS* § 1929A, at 5398 (rev. ed. 1938).

deemed final and conclusive, absent direct evidence of corruption, partiality, or gross misconduct.⁶ The arbitrator was deemed judge of both law and fact, and mere mistake with respect to either was not a sufficient ground for vacation of the award.⁷

This favorable disposition was adopted in the legislation promulgated to further enhance the judicial position of the arbitration agreement.⁸ The United States Arbitration Act,⁹ enacted to regulate disputes concerning interstate and maritime transactions, serves as an excellent example of the courts' limited power of review over arbitration proceedings; and section 10 of the Act specifically enumerates those grounds upon which a federal court is empowered to vacate an award.¹⁰ Although earlier courts had strictly construed similar statutory provisions delineating the scope of judicial review,¹¹ modern statutes have been afforded a more liberal construction. Indeed, the courts soon evinced an inclination to insure to the parties in an arbitration proceeding the fair and impartial hearing inherent in judicial proceedings. In setting aside awards, courts began to refer to arbitrators as judicial

⁶ See *Burchell v. Marsh*, 58 U.S. (17 How.) 344, 349-50 (1854); *Brush v. Fisher*, 70 Mich. 469, 38 N.W. 446 (1888); 6A A. CORBIN, *CONTRACTS* § 1433, at 394-95.

⁷ In *Fudickar v. Guardian Mut. Life Ins. Co.*, 62 N.Y. 392, 400 (1875), the court held that "arbitrators may, unless restricted by the submission, disregard strict rules of law or evidence and decide according to their sense of equity." See also *Burchell v. Marsh*, 58 U.S. (17 How.) 344, 349 (1854).

⁸ The first of the modern arbitration acts was the New York Arbitration Act of 1920 (formerly C.P.A. § 1448 *et seq.*, now C.P.L.R. Art. 75). The New York act was the model for, and is substantially indistinguishable from, the United States Arbitration Act of 1925. See S. REP. NO. 536, 68th Cong., 1st Sess. 3 (1925) wherein it is stated: "The bill, while relating to maritime transactions and to contracts in interstate and foreign commerce, follows the lines of the New York Arbitration Law enacted in 1920. . . ."

⁹ U.S.C. §§ 1-14 (1947), formerly 43 Stat. 885 (1925).

¹⁰ U.S.C. § 10 (1947), formerly 43 Stat. 885 (1925), provides:

In either of the following cases the United States court in and for the district wherein the award was made may 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 in 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.
- (e) 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 re-hearing by the arbitrators.

For an in-depth analysis of statutory grounds for vacation of an arbitrator's award, see Rothstein, *Vacation of Awards for Fraud, Bias, Misconduct and Partiality*, 10 VAND. L. REV. 813 (1957); Note, *Arbitration Awards Vacated for Disqualification of an Arbitrator*, 9 SYRACUSE L. REV. 56 (1958).

¹¹ See, e.g., *In re Wilkins*, 169 N.Y. 494, 498-99, 62 N.E. 575, 577 (1902).

or quasi-judicial officers, thus suggesting the imposition of judicial standards of impartiality. For example, in *In re Friedman*,¹² the appellate division of New York unmistakably declared that "the law is well settled that arbitrators exercise judicial functions, and while not *eo nomine* judges, they are, in fact, judicial officers and bound by the same rules as govern such officers."¹³ In *Friedman* there had been neither evident partiality nor any other statutory ground for vacation; rather, the case merely involved a monetary transaction between the arbitrator and one party.¹⁴ Nevertheless, the court set aside the award, stating that "[e]very litigant is not only entitled to present his claims to an impartial judge, but to one who by no act on his part has justified a doubt as to his impartiality."¹⁵ In light of the non-reviewable nature of arbitration, the court reasoned that

every safeguard possible should be thrown about the proceedings to insure the utmost fairness and impartiality of those charged with the determination of the rights of the parties. Nothing should be permitted to throw suspicion even upon the entire impartiality of arbitrators.¹⁶

In effect, the courts were creating another ground, in addition to those set forth in the statute, upon which vacation of an award could be posited. Consequently, nullification of an award would be justified by discovery of any evidence indicative of an unfair or partial hearing. However, this did not mean that courts could freely tamper with awards, for regular intervention would negate an essential element of the arbitration process — its finality.¹⁷ Nor did it subject the arbitrators' decision to scrutiny with regard to law or fact.¹⁸ Rather, the courts were simply given the opportunity to decide whether any relationship

¹² 215 App. Div. 130, 213 N.Y.S. 369 (1st Dep't 1926).

¹³ *Id.* at 134, 213 N.Y.S. at 373.

¹⁴ During the course of the arbitration proceeding one of the parties loaned the arbitrator five thousand dollars.

¹⁵ 215 App. Div. at 135, 213 N.Y.S. at 374.

¹⁶ *Id.* at 136, 213 N.Y.S. at 376.

¹⁷ In *Fudickar v. Guardian Mut. Life Ins. Co.*, 62 N.Y. 392, 400 (1875), the court warned that judicial interference with arbitrators' awards increased the danger that arbitration "[i]nstead of being a final determination of a controversy would become but one of the steps in its progress." See also *Newark Stereotypers Union v. Newark Morning Ledger Co.*, 397 F.2d 594, 598 (3d Cir. 1968), wherein the court held:

The statute was not intended to overthrow the general advantage of speedy and effective decision of disputes by arbitration and the creation of these general grounds [for vacation] does not obliterate the hesitation with which the courts should view efforts to re-examine awards.

¹⁸ The arbitrator has remained the unreviewable judge of law and fact. See *Textile Workers Union v. American Thread Co.*, 291 F.2d 894, 896 (4th Cir. 1961); *Amicizia Societa Nav. v. Chilean Nitrate & Iodine S. Corp.*, 274 F.2d 804, 808 (2d Cir. 1960). But see *Newark Stereotypers Union v. Newark Morning Ledger*, 397 F.2d 594, 600 (3d Cir. 1968), where the court indicates that mistakes as to law or fact may be grounds for vacation if the mistake affects the fairness of the proceeding as a whole.

which existed between the arbitrator and one party might prejudice the rights of the other party. Full disclosure of the relationship would preclude subsequent attack, since a failure to object would amount to free acceptance of the arbitrator with continued faith in his objectivity.¹⁹ The problem arises when the suspicious relationship is discovered subsequent to the award, for an analysis of the cases discloses that the judiciary has established no criteria for determining whether or not a particular relationship is sufficiently substantial to warrant vacation. Instead, the judiciary has proceeded upon an individual basis, adjudging each case on its own facts. The results have been rather nebulous, since seemingly similar cases have been resolved inconsistently. A number of awards have been vacated because of the arbitrator's failure to disclose a prior or contemporary business relationship,²⁰ while others have been confirmed because the relationship alleged was too vague and remote or lacked evident partiality.²¹

In *Knickerbocker Textile Corp. v. Sheila-Lynn, Inc.*,²² a New York court attempted to define and extend the judicial position on arbitral disclosure. For the first time, the court considered failure to disclose as an independent ground for vacation, rather than as mere prima facie evidence of partiality. While presuming the arbitrator to be fair and unbiased, the court stated:

The principle involved is broader than the correctness of the arbitrators' decision. The concern here is with policy rather than expediency; with the fundamental spirit and objective of the law rather than a punctilious adherence to its letter.²³

¹⁹ It is well established that failure to raise a timely objection to improprieties arising during the arbitration proceeding will act as a waiver. *Petrol Corp. v. Groupement D'Achat Des Carburants*, 84 F. Supp. 446, 447 (S.D.N.Y. 1949); *Brush v. Fisher*, 70 Mich. 469, 476-77, 38 N.W. 446, 450 (1888); *In re Milliken Woolens*, 11 App. Div. 2d 166, 168, 202 N.Y.S.2d 431, 434 (1961).

²⁰ See *American Guar. Co. v. Caldwell*, 72 F.2d 209 (9th Cir. 1934) (business relationship warranted vacating award as inherently partial); *Rogers v. Shering Corp.*, 165 F. Supp. 295 (D.C.N.J. 1958) (arbitrator had actually disclosed his prior relationship to the American Arbitration Association, which neglected to inform the other party); *In re Milliken Woolens*, 11 App. Div. 2d 166, 202 N.Y.S.2d 431 (1961) (arbitrator had previously been one party's attorney).

²¹ See *Ilios Shipping and Trading Corp. v. American Anth. & Bit. Coal Corp.*, 148 F. Supp. 698 (S.D.N.Y.), *aff'd*, 245 F.2d 873 (2d Cir. 1957) (arbitrator was employee of company which insured one party); *Texas Eastern Transmission Corp. v. Barnard*, 177 F. Supp. 123 (E.D. Ky. 1959) (counsel for one party was also counsel for a bank of which the arbitrator was an officer); *Meinig Co. v. Katakura & Co.*, 241 App. Div. 406, 272 N.Y.S. 735 (1st Dep't), *aff'd*, 266 N.Y. 418, 195 N.E. 134 (1934) (arbitrator was officer of company dealing with one party); *Newburger v. Rose*, 228 App. Div. 526, 240 N.Y.S. 436 (1st Dep't), *aff'd*, 254 N.Y. 546, 173 N.E. 859 (1930) (arbitrator was in same business as the parties).

²² 172 Misc. 1015, 16 N.Y.S.2d 435 (Sup. Ct. N.Y. County 1939), *aff'd mem.*, 259 App. Div. 992, 20 N.Y.S.2d 985 (1st Dep't 1940).

²³ *Id.* at 1017, 16 N.Y.S.2d at 437.

Despite the arbitrator's high character and freedom from bias, the court asserted that he was obliged to reveal any connection with one party, thus affording the other an opportunity to object. Citing *Friedman*, the court concluded that the arbitrator's failure to disclose the prior relationship was sufficient to disqualify him as an impartial judge.

Although *Knickerbocker* should have solidified the position of the courts, confusion has continued to dominate the area. Failing to formulate a stringent policy in favor of disclosure, the courts have been compelled to resort to an amorphous standard. In 1962, a New York appellate court further attempted to define the disqualifying relationship in *Cross Properties v. Gimbel Bros.*,²⁴ wherein it was stated that

[t]he type of relationship which would appear to disqualify is one from which it may not be unreasonable to infer an absence of impartiality, the presence of bias, or the existence of some interest on the part of the arbitrator in the welfare of one of the parties.²⁵

However, judicial confusion regarding disclosure remained unresolved in 1968 when the Supreme Court decided *Commonwealth Coatings Corp. v. Continental Casualty Co.*²⁶

Pursuant to a painting contract between Commonwealth Coatings Corporation (hereinafter Commonwealth) and Samford Overseas, Inc. (hereinafter Samford), represented in this suit by Continental Casualty Company, a dispute was submitted to arbitration. Each of the parties selected an arbitrator, who together selected a neutral arbitrator. Unknown to Commonwealth, the neutral arbitrator, a prominent engineering consultant from the area, had previously contracted with Samford, collecting about twelve thousand dollars in fees over a period of years. This relationship was not disclosed until after the award. Conceding the fairness and impartiality of the neutral arbitrator, Commonwealth moved to have the award set aside on the grounds set forth in Section 10 of the United States Arbitration Act. The district court refused to vacate the award, and the court of appeals affirmed.

On certiorari, the Supreme Court posed the issue in this manner: are the "elementary requirements of impartiality taken for granted in every judicial proceeding . . . suspended when the parties agree to resolve a dispute through arbitration"?²⁷ Vacating the award on the basis of the arbitrator's nondisclosure, the Court inferred from the broad statutory language of section 10²⁸ a Congressional intent to im-

²⁴ 15 App. Div. 2d 913, 225 N.Y.S.2d 1014 (1st Dep't 1962).

²⁵ *Id.* at 914, 225 N.Y.S.2d at 1016.

²⁶ 393 U.S. 145 (1968).

²⁷ *Id.*

²⁸ See *supra* note 10.

pose upon arbitration proceedings such judicial standards of impartiality. Analogizing the failure of the arbitrator to disclose to a similar situation in a judicial proceeding,²⁹ the Court ruled as a matter of law that an arbitrator is required to disclose any prior or contemporaneous relationship with one of the parties which might cast suspicion upon the proceeding. Such disclosure, while in no way impinging upon the effectiveness of the arbitral process, would, indeed, supply the safeguard needed to regulate the arbitrator's unbridled discretion.³⁰

While the majority opinion in *Commonwealth* might appear to resolve the confusion concerning disclosure, the concurring opinions' suggestion that trivial relationships need not be disclosed qualifies the broad language.³¹ This qualification imposes upon the judiciary the duty of determining whether the undisclosed relationship is too insubstantial to warrant vacation. The concurring justices contended that adoption of this rule would facilitate disclosure, without endangering the arbitrator's status as a disinterested third party. Furthermore, such frankness at the outset would not only contribute to the functioning of the process, but would also prevent challenge after the award. Thus, pre-arbitration disclosure would minimize judicial interference by permitting the parties, "who are far better informed of the prevailing ethical standards and reputations within their business,"³² to be the judges of the arbitrator's impartiality.

The dissent, in a rational refutation of the majority opinion, examined both the nature of the arbitral process and the objectives of the arbitration statutes. It found the efficacy of the process in its informality, an advantage which would be negated by the imposition of stringent judicial standards.³³ Construing section 10 literally, the dissent indicated that, absent conduct or events unequivocally inconsistent with a fair and impartial hearing, it would not vacate an award.³⁴ Contending that the majority's disclosure standard has "no basis in applicable statute or jurisprudential principles,"³⁵ the dissent concluded that in the absence of *actual* partiality, bias or misconduct, an award is unamenable to judicial interference.

²⁹ The Court referred to *Tumey v. Ohio*, 273 U.S. 510 (1927). The analogy is somewhat weak since the judicial officer in *Tumey* had a pecuniary interest in the transaction he was deciding, whereas in *Commonwealth*, the arbitrator had nothing to gain financially from his decision.

³⁰ 393 U.S. at 149.

³¹ *Id.* at 151-52 (concurring opinion).

³² *Id.* at 151 (concurring opinion).

³³ *Id.* at 154-55 (dissenting opinion).

³⁴ *Id.* at 154 (dissenting opinion).

³⁵ *Id.* at 153 (dissenting opinion).

The *Commonwealth* decision is consistent with earlier arbitration cases in that it holds the arbitrator to judicial standards. If the arbitral-judicial analogy is valid, *Commonwealth* is justified, for it is merely a further extension of the courts' ratiocination. However, by purporting to set forth an absolute rule requiring neutral arbitrators to disclose all prior or contemporaneous relationships with any of the parties to the arbitration proceeding, the majority opinion actually raises two additional questions. First, is the creation of such a rule properly within the scope of judicial authority? And secondly, to what extent will this rule be effectuated?

The majority opinion predicates its argument upon the proposition that arbitration is of a judicial nature. However, there exists a divergence of opinion as to the propriety of this proposition. Some commentators have contended that it is merely a legal fiction, fabricated by the courts in an attempt to oversee arbitration proceedings:

The process of making judges of arbitrators and judicial proceedings of arbitrations seems to be at its best, when used *arguendo* to . . . lend some structure to some set of facts being made up in a given case as cause for disqualification of the arbitrator, as for insufficient "honesty" or "impartiality," "undue bias" or "misconduct" . . .³⁶

In addition, any reference to arbitration or arbitrators as "judicial" proceedings or officers "is necessarily based upon remote resemblances."³⁷

In reality, arbitration is contractual by nature.³⁸ The parties, in their submission agreement, provide for the form and procedure they desire.³⁹ They make provisions for the selection of arbitrators and prescribe the extent of their power. Arbitration is truly self-regulatory in its operation; yet the Court is now willing to set forth a single procedural rule requiring disclosure.

It should be reemphasized that the majority opinion found justification for its disclosure rule implicit in the "broad statutory language" of section 10.⁴⁰ Yet, the Congressional reports concerning the Arbitration Act indicate that it is merely an enabling act providing for the enforcement of arbitration agreements:

Arbitration agreements are purely matters of contract, and the effect of the bill is simply to make the contracting party live up to his agreement.

³⁶ W. Sturges, *Arbitration — What Is It?*, 35 N.Y.U.L. REV. 1031, 1047 (1960).

³⁷ *Id.* at 1045.

³⁸ See M. DOMKE, THE LAW AND PRACTICE OF COMMERCIAL ARBITRATION § 1.01, at 1 (1968); W. Sturges, *Arbitration — What Is It?*, 35 N.Y.U.L. REV. 1031, 1046 (1960).

³⁹ See 6 S. WILLISTON, CONTRACTS § 1928, at 585 (rev. ed. 1938).

⁴⁰ See *supra* note 10.

He can no longer refuse to perform his contract when it becomes disadvantageous to him. An arbitration agreement is placed upon the same footing as any other contract, where it belongs.⁴¹

While section 10 provides for vacation of an award involving corruption, fraud, undue means, or evident partiality, it is clear that its sole purpose is to insure the impartiality of the proceeding. The majority opinion concurs with this interpretation,⁴² but utilizes the section to justify vacation of an award where the impartiality of the arbitrator is conceded. Thus, the admittedly fair and impartial award is subjected to vacation solely because of the arbitrator's failure to comply with a technicality which heretofore was not required.⁴³ Clearly this was not the intention of Congress. As was stated in the cogent dissenting opinion of Mr. Justice Fortas:

Arbitration is essentially consensual and practical. The United States Arbitration Act is obviously designed to protect the integrity of the process with a minimum of insistence upon set formulae and rules.⁴⁴

The majority validly observed that their disclosure rule was consistent with the rule adopted by the American Arbitration Association (hereinafter A.A.A.).⁴⁵ However, it should be noted that the A.A.A. rules apply to an arbitration proceeding only when the parties specifically so provide in their submission agreement. Moreover, as the dissent indicates, it was not until 1964 that the A.A.A. rules absolutely *required* disclosure, since previously, it was merely *requested*.⁴⁶ Undoubtedly, as the Court indicated, an adoption of the A.A.A. rule requiring disclosure would not unduly hamper the effectiveness of the arbitration process. Yet, if the mere failure to comply is to provide a basis for vacation, the initiative for the imposition of such a rule should clearly originate in the legislature.

To what extent will *Commonwealth* resolve the uncertainty

⁴¹ H.R. REP. NO. 96, 68th Cong., 1st Sess. 1-2 (1925).

⁴² 393 U.S. at 147.

⁴³ *Id.* at 153.

⁴⁴ *Id.* at 154-55.

⁴⁵ Rule 18 of the A.A.A. provides:

Disclosure by Arbitrator of Disqualification—At the time of receiving his notice of appointment, the prospective Arbitrator is requested to disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial Arbitrator. Upon receipt of such information, the Tribunal Clerk shall immediately disclose it to the parties, who if willing to proceed under the circumstances disclosed, shall, in writing, so advise the Tribunal Clerk. If either party declines to waive the presumptive disqualification, the vacancy thus created shall be filled in accordance with the applicable provisions of this Rule.

Id. at 154 n.2. For A.A.A. requirements of an arbitrator concerning disclosure, see M. DOMKE, *THE LAW AND PRACTICE OF COMMERCIAL ARBITRATION* § 21.03, at 208 (1968).

⁴⁶ 393 U.S. at 154 n.2.

surrounding an arbitrator's duty to disclose prior or contemporaneous relations with the parties? While the majority opinion purports to set forth an absolute rule requiring disclosure, the qualification annexed by the concurring opinion — that arbitrators need not disclose "trivial relationships" — will undoubtedly cause much confusion. In the absence of a clear majority⁴⁷ the concurring opinion carries considerable weight. As previously indicated, the concurring justices favored disclosure for practical purposes while permitting the arbitrator to decide whether his relationship with a party was substantial enough to require disclosure. What, then, is the "trivial relationship" which need not be disclosed? The arbitrator in *Commonwealth* was apparently a wealthy man, and the business he received from the party, twelve thousand dollars over a four or five year period, would seemingly be trivial. Yet, the award was vacated.

Thus, no clear answer has really been provided for the critical question of whether an arbitrator must disclose a prior or contemporaneous relationship with one of the parties to the arbitration proceeding; the confusion remains, though now centered about the interpretation of the term "trivial relationship." Only future litigation will determine whether the disclosure rule of *Commonwealth* will endure.

FAMILY LAW — JUVENILE COURTS — PREPONDERANCE OF THE EVIDENCE UPHELD AS APPLICABLE STANDARD OF PROOF IN JUVENILE DELINQUENCY ADJUDICATIONS. — *In re Samuel W.*, 24 N.Y.2d 196, 247 N.E.2d 253, 299 N.Y.S.2d 414 (1969).

Appellant was adjudicated a juvenile delinquent for stealing \$112 from complainant's pocketbook. This finding was based upon a preponderance of the evidence as required by Section 744(b) of the New York Family Court Act. The Court of Appeals, in affirming, held that despite the recent expansion of criminal due process in juvenile hearings, the quantitative test of proof, as prescribed by the statute, was both correctly applied and constitutional.

Prior to the juvenile court movement in the United States,¹ a

⁴⁷ *Commonwealth* was decided on a 4-2-3 basis. Thus, a possibility exists that the Court would refuse to vacate an arbitration award involving non-disclosure of a "trivial" relationship.

¹ The first juvenile court act was passed in Illinois in 1899. Law of July 1, 1899, §§ 1-21, [1899] Ill. Laws 131-37. See also Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909).