Under whatever system of law regular courts for the distribution of justice are erected, it is found necessary, in order to give certainty to their decisions, to adapt peculiar forms of actions, and modes of pleading, to the particular nature of the case, and to establish certain formalities in the manner of bringing the parties before the court. This consideration of expense, that must necessarily be incurred before a hearing can be obtained, and a fear that a technical mistake in some part of the proceedings may endanger the party’s success, often prevail with him, though satisfied of the justice of his cause, to refer it to the decision of an indifferent person, before whom he may explain every circumstance, without the apprehension of failing from ignorance of form. An action, too, can seldom decide more than a single question; but the variety of transactions, which, from the nature of improved society, must frequently have place between contending parties, requires a tribunal which can completely investigate the whole, decide one claim or one injury against another, and pronounce a decision as will put an end at once to all their differences. All courts have found it necessary to establish particular modes of proof, and certain rules of evidence; and one, among the latter, which is founded in the first principles of justice and public policy, “that no man shall be permitted to give evidence in his own case.” But this rule, like many others founded on general principles, and established for the convenience of the parties, may frequently happen, that either there is no other evidence than the testimony of the parties themselves, or what there is without these may be very insufficient to enable a public tribunal to draw a positive and certain conclusion. In such a case, a judge, who can examine the parties to the transaction, who can observe their looks and demeanor, and who, without being confined to the strict rules of evidence, is at liberty to decide from circumstances of probability, has manifestly a singular advantage. A conviction of the good policy of encouraging these domestic tribunals, has induced those who have presided over the formation of the civil code, to lend them their assistance to enforce obedience to their decrees: that assistance, however, is not given indiscriminately in all cases, without examining into the propriety and justice of the award; it has been thought proper to establish rules of interpretation, derived from the nature of the authority conferred upon the arbitrators, and the implied engagement under which the contending parties bind themselves by their agreement. In almost every system of law with which we are acquainted, the rules which have been established with respect to awards, in their general spirit and fundamental principles, bear a resemblance to those which are found in the pandect and code of Justinian (Ff. I. 4. t. 8. Cod. I. 2. T. 56. a), that there can be little doubt that the latter are the source from whence the former sprang. By what grades the greater number of them were received into the Roman law, it is impossible now to determine, as they are given as acknowledged and long established rules at the time when the pandect and code were compiled: there can be little doubt that the latter are the source from whence the former sprang.
Under each head into which the subject of awards naturally divides itself, it is proposed, not barely to lay down the law as it is received at the present day, but as far as the determinations of the courts on that subject, which have been preserved in the books of reports, will permit, to trace the variations of opinion which have at different periods taken place, and the grounds on which every question has been at last decided. In the execution of this plan, it may sometimes perhaps be necessary to detail a series of technical subtleties, which, some may think, might as well have been omitted; to those, however, who consider that, in every system, few laws owe their existence to legislative wisdom, contemplating the possible relations and general interests of society, and providing at once, by a positive edict, a solution for every question to which the various transactions of men with each other might in a series of ages give birth, but that by far the greatest number have been established as each particular question has arisen; that the passions of the client have a tendency to influence the mind of the advocate, and that the advocate is often ready to assist the client in repelling the claim of his opponent, by all the subtleties with which his professional pursuits have armed him – To such readers, this detail will probably appear the least faulty part of the work.

DEFINITIONS

That act, by which parties refer any matter in dispute between them to the decision of a third person, is called a submission; the person to whom the reference is made, an arbitrator; when the reference is made to more than one, and provision made, that in case they shall disagree, another shall decide, that other is called the umpire; the judgment pronounced by an arbitrator, or arbitrators, an award; that by an umpire, an umpirage, or, less properly, an award. (Domat. 1 Vol. 223) [...]

[...]

Page 2/2