7. Arbitration is an amicable and neighbourly mode of settling personal controversies, between individuals, by submitting to certain persons called arbitrators, and elected by the parties themselves. It may with propriety be denominated a court created, constituted, and appointed by the parties, and the judges derive all their power and authority from the instructions which are given them. This mode of adjudicating disputes among mankind is a fair, liberal, and friendly, that it is highly favoured by the law, and as the parties elect their own judges, courts are exceeding cautious about setting aside their awards. Arbitrators are called from their possessing an arbitrary power, for while they keep within the limits of their instructions, their determinations are definitive, and subject to no appeal: nor can their sentences be reviewed or reconsidered by any court of law or equity. They are not tied down to the same strictness, formality and precision as courts of law. While they have greater latitude in the mode of proceeding than courts of law, they have plainer powers to do complete and perfect justice between the parties in the decision of the matters in dispute. This freedom from legal formality and nicety, and this extensive latitude in the mode of proceeding, furnish arbitrators with much better advantages to settling disputes, than courts of law can possibly have. Where there are a variety of controversies, arbitrators can comprehend them all under one submission, and settle them all by one decision. They can make such offsets and discounts of mutual demands, and such allowances respecting costs, as are consonant to the principles of equity. But if the parties are driven to their remedies at law, an action must be brought for each matter of dispute, which must have distinct trials and determinations.

The legislature has so far favoured this mode of finishing controversies, that a statute has been made enabling parties to make their submission a rule of court, and then on the award of the arbitrators execution may be granted, and in case of an action pending before the court, the parties may in like manner make a submission. The statute law enacts, that all merchants and others desiring to end any controversy by arbitration, for which they have no other remedy but a personal action, or suit in equity, may agree that their submission of the suit to the award, or umpirage of any persons, shall be made a rule of any of the superior or county courts, which the parties shall choose, and may insert their agreement in their submission, or the condition of their bond or promise, and upon producing an affidavit of such agreement, and reading and filing the same in the court, personally appearing before said court and acknowledging the same, the same may be entered of record in such court, and a rule of court shall therefore be made that the parties shall submit to, and finally be concluded by arbitration or umpirage, and on the award of the arbitrators being returned into court, in case of disobedience of either parties, said court may grant execution for the sum awarded, with costs. When a personal action is pending before a court, the parties may make a reference of it, each choosing a man, and the court appointing a third; and the award made by such referees, or any two of them, and returned into court, and accepted, shall be a final settlement of the controversy, and execution may be granted for the sum awarded, with costs.

The parties may appoint a number of arbitrators as they judge proper, but the usual number is to appoint three. When they appoint but one, he is called an umpire, and the proceeding an umpirage. Sometimes it is agreed by the parties, that if the arbitrators cannot agree, they shall offer in an umpire, who determines the matter; but as the whole proceeding depends on the will of the parties, they can model the appointment as they please, and the arbitrators must pursue their instructions. Where three or more arbitrators are appointed, it is usual to submit their instructions. Where three or more arbitrators are appointed, it is usual to submit their instructions.
A submission contains the instructions to the arbitrators, and may be general, comprehending all matters of dispute, or special, including only some particular matter of dispute. A submission may be written or oral. In either case it must contain the appointment of the arbitrators, and the matter in dispute that is submitted. If it be general, it is sufficient to say all matters of dispute; if it be special, the particular controversy submitted must be described. It must point out the time and place of meeting, and the time when the award must be published. It is proper that the submission should determine the number of arbitrators, and whether the award shall be in writing or by oral. If this be not regulated in the submission, the rule is, that if the submission be in writing, the award must be in writing; but if by oral, then an oral or written award will be good.

Every submission to arbitrators implies an agreement and promise to abide the award that shall be published, if the parties make no express promise. And upon a naked submission without any promise to abide, action will be upon the award, in case of non-performance, and such award will be a good bar to another action. In submissions however, it is the usual practice for the parties to become bound to each other, to abide such award as shall be published; for this purpose the parties frequently enter into bonds, the conditions of which contain the articles of submission and the instruction to the arbitrators. These bonds are sometimes delivered to the arbitrators, third persons, or to the parties themselves. In case of a delivery to the arbitrators, or third persons, if the parties abide the award, then the bonds are to be given up to them — if not, then to be delivered to the parties abiding the award; but it is more proper where bonds with conditions are executed, that they should be delivered to the parties abiding: for by the terms of the condition they are void if the party abides; and if not, then the party who refuses to abide the award, is liable to the action of the other party, on such bond, by force of which he may recover the sum awarded to him. But notwithstanding the bond an action will lie upon the award, in case of non-performance to recover the sum awarded.

[...]

Page: 10