7. Arbitration is an amicable and neighbourly mode of settling personal controversies, between individuals, by submission 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 adjusting disputes among mankind is 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 possession of 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 strictness, formality and precision as courts of law. While they have greater latitude in the mode of proceeding than courts of law, they have ampler 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 adjusting 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 A 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 umpire 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, or personally appearing before such court and acknowledging the same, the court may make an award, which may be made a rule of court, and acknowledged by the parties, and the award made a rule of court, the award may be entered of record in the court, and a rule of court therefore be made that the parties must consent to, and finally be concluded by the arbitrators or umpire, and on the award of the arbitrators being returned into court, in case of an action pending before the court, the parties may make a reference of it, each choosing one man, and the court appointing a third; and the award made by the arbitrators may be accepted, and the court awarding execution for the amount awarded, with costs. When a personal action is pending before the court, the parties may make a reference of it, each choosing one man, and the court appointing a third; and the award made by the arbitrators may be accepted, and the court awarding execution for the amount awarded, with costs. The parties may appoint an arbitrator a number of arbitrators as they judge proper, but the ual court of three 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 must call in an umpire, who must determine 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 may set their instructions. Where three or more arbitrators are appointed, it is usual to inure their instructions. Where three or more arbitrators are appointed, it is usual to inure their instructions.
ÀµubmiÀµÀ¿ìion, that either two agreeing À¿hall make an award. But if three or more are appointed, and nothing is À¿aid in the ÀµubmiÀµÀ¿ìion reÀ¿pecting

the number that muÀ¿t agree to make the award, it will be intended and preÀµumëd to be the agreement of the parties, that the majority of the arbitrators agreeing, À¿hall make an award.

A ÀµubmiÀµÀ¿ìion contains the inÀ¿tructions to the arbitrators, and may be general, comprehending all matters of diÀ¿pute, or À¿pecial, including only À¿ome particular matter of diÀ¿pute. À¿pecифicëd in the ÀµubmiÀµÀ¿ìion. A ÀµubmiÀµÀ¿ìion may be written or parol. In either caÀ¿e it muÀ¿t contain the appointment of the arbitrators, and the matter in diÀ¿pute that is Àµubmitted. If it be general, it is À¿ifficient to À¿ay all matters of diÀ¿pute; if it be À¿pecial, the particular controverÀ¿y Àµubmitted muÀ¿t be deÀ¿cribed. It muÀ¿t point out the time and place of meeting, and the time when the award muÀ¿t be publiÀ¿shed. It is proper that the ÀµubmiÀµÀ¿ìion À¿hould aÀµertain the number of arbitrators, that muÀ¿t agree to make an award; and whether the award À¿hall be in writing or by parol. If this be not regulated in the ÀµubmiÀµÀ¿ìion, the rule is, that if the ÀµubmiÀµÀ¿ìion be in writing, the award muÀ¿t be in writing; but if by parol, then a parol or written award will be good.

Every ÀµubmiÀµÀ¿ìion to arbitrators implies an agreement and promiÀ¿e to abide the award that À¿hall be publiÀ¿shed, if the parties make no expreÀ¿s promiÀ¿e. And upon a naked ÀµubmiÀµÀ¿ìion without any promiÀ¿e to abide, action will be upon the award, in caÀ¿e of non-performance, and À¿uch award will be a good bar to another action. In ÀµubmiÀµÀ¿ìions however, it is the uÀµal practice for the parties to become bound to each other, to abide À¿uch award as À¿hall be publiÀ¿shed; for this purpoÀ¿e the parties frequently enter into bonds, the conditions of which contain the articles of ÀµubmiÀµÀ¿ìion, and the inÀ¿truction to the arbitrators. TheÀ¿es are À¿sometimes delivered to the arbitrators, third perÀ¿ons, or to the parties themÀ¿elves. In caÀ¿e of a delivery to the arbitrators, or third perÀ¿ons, if the parties abide the award, then the bonds are to be given up to them – if not, then to be delivered to the perÀ¿ons abiding the award; but it is moÀ¿t proper where bonds with conditions are executed, that they À¿hould be delivered to the parties themÀ¿elves: for by the terms of the condition they are void if the party abides; and if not, then the party who refuÀ¿es to abide the award, is liable to the action of the other party, on À¿uch bond, by force of which he may recover

the À¿um awarded to him. But notwithÀ¿tanding the bond an action will lie upon the award, in caÀ¿e of non-performance to recover the À¿um awarded.

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