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 designated 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 so 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 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 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 cost, 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 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 said court, 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 such arbitration or umpire, and on the award of such arbitrators or umpires being returned into court, in case of disobedience of either parties, such 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 unial of arbitration is to appoint three. When they appoint but one, he is called an umpire, and the proceeding an umpirement. Sometimes it is agreed by the parties, that if the arbitrators cannot agree, they shall all call in an umpire, who shall 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 their instructions. Where three or more arbitrators are appointed, it is usual to in their instructions.
A submission, that either two agreeing ſhall make an award. But if three or more are appointed, and nothing is ſaid in the ſubmiſſion reſpecting the number that muſt agree to make the award, it will be intended and preſumed to be the agreement of the parties, that the majority of the arbitrators agreeing, ſhall make an award.

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, ſpecificated in the ſubmiſſion. A ſubmiſſion may be written or parol. 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 aſcertain the number of arbitrators, that muſt agree to make an award; and whether the award ſhall be in writing or by parol. 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 parol, then a parol 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 expreſſe promiſe. And upon a naked ſubmiſſion without any promiſe to abide, action will be upon the award, in caſe of non-performance, and the 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 each 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. The 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 perſons abiding the award; but it is moſt proper where bonds with conditions are executed, that they ſhould be delivered to the parties themſelves: 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.

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