Or Concord) is an agreement betwixt two or more persons at Va-
= riance, who do justly their Differences by Mutuall Consent in
the Manner which they agree on, for preventing or Ending a
Law Suit which every one of them prefers to the hopes of Gaining
Joined with the Danger of Loosing. For as the Proverb Runs,
= mando as offer find their account in Macra Concordia, as in
Pinguis sentencia: and according to Accursius, Melius est Amica
bene Genes quam Centum Capse Capse, viz. per Litigium. Tran-
= sactions put an end or prevent Law Suits several ways,
according to the Nature of the Differences, and Diverse agree
= ments which settle them. The Parties transact on the Condi
= tions to which they are willing to agree, according to the Gen
= ral Rules of Contracts.

So found a transaction, 1° If the subject transacted may
be a Doubtfull Right or Suit l. 1 ff de transact. l. 2 C. Eod. Wi-
ther the Matter to be adjusted be the Evident ground of a plea
or how the Judges might incline to Determine Uncertain,
or what effect the Exception of their Sentence when pro
nounced might have Uncertain and Questionable. For
when persons come to Agreement by Clearing the Point
in Time without any Uncertainty about the Legall Fru-
= ition, and their Claim, and the trouble of a process be thereby Evited:
= port thereof, that is no transaction, tho either party abridge
It being More the Uncertainty of the event of a plea
than any trouble it may occasion that founds a Transaction
It were therefore Expedient, when parties Intend a Real
Transaction to Express in the Writ for Clearing their Pre-
= tentions that they Acknowledge the Matter of the Agreement
to be a Doubtfull event, if Prosecuted at Law: tho a tran
= saction will subsist without such express terms, as when
parties during the Dependance of a Suit come to Agree
by Giving and taking less than they Claim'd Mackenz.
1 Inst. 1. 782 Vers. It must be therefore. Nor is a Decreet in
Foro the proper Subject of a transaction, Unless it be liable
to Reduction upon the Account of Informality, or Nullity, or
otherways, or there lyes an Appeal from it. For if the Matter
have been decided by a final Sentence whereof no Review is
Competent by Reduction, or Appeal, a transaction thereof
would be Null l. 7 C. 18 ff de transact. l. 32 C. Eod. junct. l.
207 ff de Reg. Jur. Ley Loix Civiles &c. Tom. 1 part. 1 Liv. 1.
Tit. 13 Sect. 2 Art. 7 Stair ibid. Vers. End of the Matter. For
there was no Longer any Law Suit Depending, and the parties
transacted only because they presupposed that the Matter
in Dispute was Not Decided, and that Neither of them had

Acquired his right. 2° That this error together with Res Judicata,
the Authority of a Judicial Decree or Decree of a Court of Justice
quasi pro Veritate habetur, makes that which had been to Determined,
to be preferred to a Consent, which he who had Desisted from
his right would not have given, had it not been that he believed
himself to be in a Danger in which he was Not. 3° Some things
must be Abated or Yielded up by the parties on both sides l.
38 C. de transact. For if done only by the Creditor, it Receives the
Construction of a Gift or Gratuitous passing from his Claim;
and if upon the Debtors part only, it is Satisfaction or pay
= ment. Thus Transaction of a Debt was Not inferred by Ma
= king payment pendente Lite 10 January 1673 Ramsay contra
Robertson, or giving bond for the sum in a Decreet 3 July
1668 Rue contra Glen Town without abatement; or by a pri
= vers Granting bond upon former accounts, to his Creditor
al whole Instance he was Emergenate Being he gave not up
the Instructions of the former debt, nor Discharged it, but
only obliged himself to Discharge the same upon payment
of the bond, which was therefore Considered by L. as a Corro
= borative Security, and sustained to far as Autenor could
be Instructed. Nor was the Giving of the bond held to be a
transaction, tho the former debt had been Discharged at the
time by the Receiver of the bond, Unless the sum in the bond
was Less than the former Claim, in which case it would
have been sustained for the Whole without further Instruc
= tion 18 Feb. 1680 Burnet contra Erven. It is not Necessary
that this abatement on both Sides be Equal but any Con
= siderable abatement of a principall Sum, or the passing
from Considerable penalties is not sufficient to found a tran
= saction, Stair ibid Vers. It must therefore. M. Domat Les
Loix Civiles &c Tom. 1 part. 1 Liv. 1 Tit. 13 Sect. 1 Art. 2 is of
Opinion that l. 38 C. Eod. transact. ought Not to be taken in a
Strict Literal sence: for that one may transact without
either Giving or promising or Retaining any thing. V. G.
He who is sued as Surety for Another, may be Discharged of
this Suit, altho there be Nothing either Given or promised
or Retained on either Side.

Persons may Not only transact for themselves, but some
are Entitled to transact for others. Those who may transact
for others are tutors and Curators, Factors &c. whose
powers are explained in their proper places. Masters
of a College may transact for the Advantage of the
Society 10 Decemb. 1675 Park contra University of Glasgow
31 January 1678 Lord Rob & the Town of Aberdeen contra the College
of Aberdeen. An agreement taken with the Creditors by the Factor of a Bankrupt
upon a Composition of [illegible] pounds payable [illegible] years after the date
hereof, is not valid, the Bankrupt owing to them is not before agreed to by the Lord Ordinary
[illegible] 23 Jan. 1683 Hugh Adair contra Alexander and William Lynches and others
[illegible] approved by Lords and Act 11 Feb. Council Book Fol. 1. 274 [illegible] ff de pactis. Hut after the