

ff. *De Recept. qui arbit. P* This Contract whereby persons Refer the Matter of their Differences to third parties is termed in the Civilians *Compromissum* & *Compromissum*; or as Vulgarly pronounced a *Compromissum*; because those who made such a promise promise reciprocal to one another to stand to the balance of the person or persons they have made choice of to be their Judges.

The person or persons Authorized to decide between the parties are called Arbitrators or Arbitrators: because they have an arbitrary power to determine in what is submitted, & because the persons who oblige them gave them power to arbitrate and to regulate what shall seem just and Reasonable to them, for terminating the Differences of which they are made Judges. Such as the parts of England being divided into three pieces, the old number of Arbitrators is now reduced to be named, other ways the submission will be. *18 Parl. c. 1. s. 1.* Because Numbers *Dei* Superior *Panel*. *Virgil Eclog. 8. Reg. Maj. lib. 2. Cap. 1. 31.* But tho' it is advise-ble to name an odd number of Arbitrators to determine, but it is now in dispute *Menzies obs.* on d. *1709.* For according to the number of parties, one, two or three are to be authorized to the number of parties. In Cases, Supra arbitr. Some times an honest man or *Umpire*, in case of their Variance is named by the submitters; and some times the Arbiters are expressly empowered to oblige them.

All persons may be Arbitrators, Except such as are Under some Incapacity or Infirmitie, which renders them Unfit for that function by *31. ff. de Recept. qui arbit. Women* who because of their sex cannot be Judges, are like wife Incapable to be named Arbitrators by a submission *18 Parl. c. 1. s. 1.* Except *qui arbit.* Altho' they may Exercise the function of Arbiters as to things within their knowledge in any art or profession in which they are skilful Good such function is not of the same Quality with that of a Judge, as *18 Parl. c. 1. s. 1. s. 2. Ar. c. 1. s. 1.* It may be referred to Women to make an estimate of a thing as of Linen, *18 Parl. c. 1. s. 1.* *Id. supra* pag. 183. A Sary of Nations determine by their Verdict, whether a woman condemned to die for a Capital crime be with quick *18 Parl. c. 1. s. 1.* or in order to stay her Execution till she be delivered. Since women are now competent to any office, it is not surprising that they should be made competent to all offices.

A submission is *1/3* Either General or Special. A General submission is a Reference of all Demands what so ever. But a General submission of all Controversies betwix two persons who were suffil in the same land, was not suffil Suffil

Sufficient Warrant to the Arbiters to determine the Resolvable right of the land to per parts one of the parties; unless either the right of the land had been especially submitted, or had been given by the parties in their Claims *27 Feb. 1527. Maxwell contra Maxwell.* A special submission is of per part Masters in Chancery, that the power of the Arbiters is limited to what is Explained in the submission. *21 36. ff. de Recept. qui arbit.* Arbitrators having no other power than that which the parties can give them, we can not put to them higher or lower Causes, which themselves in good Manners do not suffer to be exposed to any other great than that of Justice, or to be determined by others than Judges or to be clothed with publick Authority. Thus we cannot promote Accusations of published Crimes, such as Murder or Robbery, *Sanctio*, *De Bullis, Excom.*, and others of the like Nature *132 36. ff. de Recept. qui arbit. Reg. Maj. lib. 2. Cap. 6.* For on one side the publick Interest is concerned in these sorts of causes, which makes the Kings Advocate or Attorney General a party in them, whose function it is to prosecute a published Crime without regard to what passes between the parties; and on the other side, the party accused can neither defend his honour nor his Innocence when it is attacked in publick, but in publick before the Judge who exercise the Ministry of Justice; and it would be contrary to good Manners and moreover Useless for him to defend particularly to justify his Innocency before Arbitrators, who having no share in the Administration of Justice, could neither justify nor condemn him. We cannot compromise causes relating to the State of persons, as whether one is legitimate or a Bastard, whether he is a Gentleman or Peleian, *18 Parl. c. 1. s. 1. s. 2.* Nor can such causes be put to Arbitration, the consequence whereof may Intersect on Honour or dignity in due Liberty that good Manners do not allow us to compromise their Gods nor to chuse Judges for Deciding thumped some Civil & State Debates about preference to the office of Justice, cannot be compromised or taken away by Arbitration *18 Parl. c. 1. s. 1.*

A submission is either Verbal or Written. In the Case of a Verbal submission, it may proved by either party's oath that he did submit, and by the oath of the Arbitrator or Arbitrators, what he or they did determine, Feb. 1671, *James contra James* A submission in writ should authorize the Arbitrators to do all things necessary, as to appoint a time and place