The common Officers decease his apparent hope, or refuse to enter upon the Estate unless the Creditors would all quit accounts of their debts; a consent of the plurality of them to accept of such partial payment will bind the rest to stand to the same terms l. 4 & 5 Geo. l. 8 & 9 Geo. 1 c. 10 & de pactis Jo. Bost. ibid. n. 24. Moratorie also may be given in the power of a person

One of two Cautioners in an old Bond transacting the Debt and taking assignation to his own behoof is a third parties Name. that Cautioner was found to have right to claim from the Creditor only his share of what was truely paid, because the Creditor might have gifted to the Cautioner the whole sum which ought not to be profitable to another, yet here was no gift, but only a transaction about an old Doubtful debt 27 July 1672 Brodie contra Keith.

Transactions Regulate only the Differences which appear Clearly to be Comprehended in them by the Intention of the parties, whether it be explained by a General, or particular expression, or that it be known by a necessary consequence of what is expressed: and do not extend to Differences which the parties Never Intended to Comprehend in them l. 9 §. 1 & 3 C. de transact. And if he who transacted concerning a right which he had in his own person, acquires afterward a Title right which belonged to another the transaction wouldbe of No prejudice to this second right l. 9 pr. ff. de transact. Leges Civiles &c. ibid. Art. 6. If he who had or might have had a Difference with several persons transacts with one of them for what concerns him in particular the transaction will be No hinderance why his right should not subsist against the others, and why he may not either sue them at Law or transact with them in another Manner l. 1. C. de transact. l. 15. ff. de Jud. & Qual. Destr. A Creditor who transacts with the surety of his debtor may discharge only the surety, without prejudice to him to pursue the principal Debtor. But if he transact with the principal the surety will also have the benefit of the transaction l. 5. ff. de transact. If he who has a Difference transact with one whom he believes to be his adverse party, but not; the said transaction will have No effect l. 3 §. 2. ff. de transact. However as hath been hinted persons may not only transact for themselves, but some are Entitled or may be Empowered to transact for others.

It being the Common Interest that transactions be firmely observed, these are Not Easily Annulled either by the Civil Law, or by our Custom. A transaction is of that force, that it Cannot be Rescinded upon any pretence of Damage which one of the Contracting parties suffers thereby in Giving More than he Really owes, or receiving less than is due to him l. 7 & 8 Null. ff. ad Senatus consult. Trebellian. For these sorts of Losses or Damages are Compensated and Ballanced

With

with the advantage which the transactors find in Ridding themselves of a troublesome law suit and getting the quiet of their families from the Disturbance of an Uncertain event, Leges Civiles &c. Tom. 1 part 1 Liv. 1 Tit. 1 sect. 4 of l. 20 Tit. 13 Sect. 2 Art. 3. Nor can a transaction be questioned upon the Account that one of the Parties was Drawn into it by fraudulent Motives; Unless he was Deceived in the Substantials of the Transaction Stair lib. 1 Tit. 17 §. 2 Verb. A bond granted. As when One by transaction Relinquisheth a right which he was not able to Maintain for want of a title which his adversary Concealed. Or when an heir transacts with his Coheir, who Deceitfully Concealed from him the true State of the Inheritance l. 19 ff. de transact. l. 9 §. 2. ff. Eod. Nor yet is a transaction to be abolished because of Error or Mistake, Not Substantial but only Circumstantial Stair ibid. Transactions have a force equal to the Authority of a Judicial Decree l. 20 ff. de Jurisdict. Because they are in the place of a Sentence, which is so much the stronger that the parties have Contented to it; and the Engagement which Delivers the parties from a Law suit is altogether Favourable. Yea, albeit it be much Controver ted, whether Solemn and formal decrets can be Reduced upon the Account of Instrumenta Novitor Reperta, yet a civil transaction cannot be Revived upon the Account of Writings Newly Discovered, which would not Change any thing in the transaction l. 19 ff. de Jurisdict. But if a Transaction hath been Entered into by forged Writings, which passed for true Ones, it may be Annulled when the forgery is Discovered, Leges Civiles &c. Tom. 1 Liv. 1 Tit. 1 Sect. 4 de transact. A transaction may be also got Rectified upon Error Calculi an Error of Computation l. Un. C. de Error Calculi.

Sect. 2.

Of Submissions.

Those who being Desirous to make up their Differences without going to Law, cannot Agree among themselves as to the Conditions of their Accommodation, may enter into Submission. Submission is a Mutual obligation of two or More persons having a Difference with one Another, to Refer the Ending thereof to the Determination of some Certain person or persons without publick Authority; and to stand to such Decision Under the pain of a Certain sum to be paid by the Contravener to the other who is willing to observe it or stand to it l. 1 §. 1