

APPELLATE CIVIL.

Before Mr. Justice Wilkinson.

THAMMIRAJU AND OTHERS (DEFENDANTS), PETITIONERS,
and

BAPIRAJU (PLAINTIFF), RESPONDENT.*

1888.
Sept. 21, 25.

Civil Procedure Code, s. 521—Arbitration—Misconduct—Award set aside.

Where a suit was referred to arbitration, and objection was taken to the award on the ground that one of the arbitrators had not attended a meeting when witnesses were examined by the other arbitrators :

Held, that the award was invalid by reason of misconduct on the part of the arbitrators within the meaning of s. 521(a) of the Code of Civil Procedure.

APPLICATION under s. 622 of the Code of Civil Procedure to set aside a decree of I. L. Narayana Rau, District Munsif of Rajahmundry, confirming an award.

The facts necessary for the purpose of this report appear from the judgment of the Court (Wilkinson, J.).

Subba Rau for petitioners.

Biligiri Ayyangar for respondent.

JUDGMENT.—At the request of the parties the suit was referred for decision to three arbitrators. Objection was taken to the award on the ground that one of the arbitrators was absent during the examination of witnesses. The Munsif overruled the objection, being of opinion that the presence of the three arbitrators at a majority of the meetings, and at the final meeting when the award was drawn up, was sufficient to validate the award. The defendants petition this Court to set aside the decree founded on the award as illegal. The question for determination, therefore, is whether the absence of one of the three arbitrators at some of the meetings held amounts to misconduct. It was held in second appeal No. 1316 of 1887 that the word misconduct is used in the sense of neglect of such duties and responsibilities as devolve on arbitrators acting judicially under the Code of Civil Procedure. It certainly was the duty of each and every one of the arbitrators to be present at all the meetings, more especially during the exam-

* Civil Revision Petition No. 70 of 1888.

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ination of the witnesses. In Russell, On the power and duty of Arbitrators, the result of the cases now on the point is given thus: "as joint arbitrators must all act, so they must all act together. They must each be present at every meeting, and the witnesses and the parties must be examined in the presence of them all: for the parties are entitled to have recourse to the arguments, experience, and judgment of each arbitrator at every stage of the proceedings brought to bear on the minds of his fellow judges, so that by conference they shall mutually assist each other in arriving together at a just decision." I have been referred to the case of *Nand Ram v. Fakir Chand*(1), where it was held that the presence of all the arbitrators at all the meetings is essential to the validity of the award. I think that it may be gathered from the provisions of s. 510 that such was the intention of the Legislature, for it is provided that if any one of the arbitrators dies or refuses to act, the Court may either appoint a new arbitrator or supersede the arbitration, in other words the remaining arbitrators cannot act alone. One of the arbitrators having been guilty of misconduct in absenting himself from the meetings, and the other two arbitrators having been guilty of misconduct in examining witnesses in the absence of the third arbitrator, the award should, on the application of the defendants, have been set aside.

I reverse the decree of the District Munsif and direct him to readmit the suit to his file and dispose of it according to law.

The petitioners are entitled to their costs in this Court.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

QUEEN-EMPRESS

against

KUNJU NAYAR.*

Penal Code, ss. 417, 463, 464, 465, 511—Forgery—False document—Fraudulent entry in a book of account.

Prisoner was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts: instead of making this entry as requested,