

APPELLATE JURISDICTION (a)

*Regular Appeal No. 17 of 1863.*VENKATA REDDI.....*Appellant.*VENKATARAMAIIYA and another.....*Respondents.**Regular Appeal No. 21 of 1863.*CHINNAMALLAIIYA and another.....*Appellants.*VENKATARAMAIIYA and others.....*Respondents.*

The Appellate Court will not enter into the details of the account of a Commissioner appointed under Section 181 of the Code of Civil Procedure.

Regular Appeal No. 54 of 1861, (supra, p. 1.) concurred in.

A party cannot be heard in the Appellate Court upon items to which he took no objection in the Court below.

But where there has been error in the principle upon which such account has been taken, the Appellate Court will correct such error if excepted to in the Court below.

1863.
October 31.
R.R. A.A. Nos.
17 & 21
of 1863.

THESE were Regular Appeals from the decision of C. R. Pelly, the Acting Civil Judge of Masulipatam, in Original Suit No. 2 of 1861.

Rangaiya Nayudu for the appellants, the 4th defendant in Regular Appeal No. 17 of 1863.

Tirumalachariyar for the appellants, the 1st and 2nd defendants in Regular Appeal No. 21 of 1863.

The facts appear from the following

JUDGMENT :—The original suit was brought for an account of the dealings of a dissolved partnership, and for the money to be found due upon such account.

The matter was most properly referred to a Commissioner who, after a lengthened investigation, presented his report, to which exceptions were taken by the parties, fully discussed before the Civil Judge and determined by him.

We quite concur with the doctrine in Appeal No. 54 of 1861 (b) that an Appellate Court ought not to enter into the details in an account of a Commissioner appointed under Section 181 of the Code of Civil Procedure. To do so would be to defeat all the benefit of the enactment and at-

(a) Present : Frere and Holloway, JJ.

(b) *Supra*, p. 1.

tempt to do what no Court can satisfactorily do,—decide an interminable series of questions upon all the items of such an account.

1863.
October 31.
RR. AA. Nos.
17 & 21
of 1863.

It is still clearer that a party cannot be heard here upon items to which he took no exception in the Court below.

This is fatal to the appellant in No. 17 of 1861, because no one of the objections now taken was made by him in the Court below.

Where there has been error in the principle upon which the account has been taken, the Court will however correct such error, if excepted to the Court below. After an elaborate discussion of the items in the account by the vakil for the appellant in No. 21 of 1862, we are able to discover only one item in which such error of principle is observable. This is item S in which no credit was given to the other members of the partnership for 170 boxes of thread sold to one K. Sadásimida. It is quite clear that this debt should have formed a part of the account. It is a debt to the partnership, and as there appears to have been no allegation that the debt is a bad one, credit ought to be given to the defendants for their shares of this debt. With this modification the decree of the Lower Court appears to us in all respects right and these appeals must be dismissed with costs.

Appeals dismissed.