

Before Mr. Justice Wilson.

STEEL AND OTHERS *v.* ROBARTS.

1881
April 4.

Application on behalf of Arbitrators—Reference—Costs of Reference.

There is nothing in the Civil Procedure Code which authorizes arbitrators to apply to the Court for confirmation of an order passed by them, making payment of their fees a condition precedent to the hearing of a reference.

MESSRS. BARROW and DIGNAM, who were the arbitrators appointed in the above-mentioned suit to arbitrate between Mr. Steel and Mr. Robarts in certain matters which were known as the Ravelie, Burlah, Panicherra and Stainforth references, applied to the Court on motion, notice of which was duly served on the defendant's attorney, for confirmation of an order passed by them on the 21st March 1881.

It appeared that the arbitrators had given their award in the Ravelie reference in favor of the plaintiff, and that they had also made an award in the Burlah reference, and that the arbitrators' fees for attendance and preparing the latter award amounted to Rs. 8,349, which sum had not been paid; and that on the 30th September 1880, they gave notice to Messrs. Sanderson and Co., the plaintiffs' attorneys, that the award was ready and would be filed on payment of the arbitrators' fees. On the receipt of this intimation, Messrs. Sanderson and Co. wrote to Messrs. Remfry and Co., the defendants' attorneys, expressing their readiness to pay their clients' share, and suggesting that Messrs. Remfry and Co. should pay the defendants' share, and that the award should then be filed. Messrs. Remfry and Co. replied that it was the plaintiffs' duty to take up the award.

The arbitrators met on the 2nd March 1881, at which meeting both the plaintiffs and defendants were represented, and decided on passing the following order as to the undermentioned reference:

“Panicherra and Stainforth references.”

“Ordered, subject to the sanction of the Court being obtained, that, without prejudice to any order or award that may hereafter be made as to how the costs of these references and awards are to be hereafter paid or borne by the parties, the parties do pay

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the arbitrators' fees of these two references (to be fixed by the arbitrators) in equal shares,—that is to say, one-half by Messrs. Sanderson and Co.'s clients, and the other half by Mr. Remfry's clients; and that the arbitrators' fees for every subsequent meeting be paid by the parties in the same proportion before such meeting is opened. In the event of either party not paying the fees hereby directed to be paid, the arbitrators will proceed *ex parte* in the reference or references as to which default shall be made at the instance of the party who shall pay such fees. Messrs. Sanderson and Co. are directed to apply to the Court for the sanction required to the arbitrators' order; and the arbitrators direct that their costs of such application be costs of the reference, whatever may be the result." Mr. Remfry at this meeting protested against such an order, on the grounds that the deed of submission providing for the references contained no provision for prepayment of fees, and that no such condition precedent to the hearing of a reference could be made. The arbitrators, however, replied that cls. 1 and 3 of this agreement empowered the arbitrators to "regulate the proceedings," to which Mr. Remfry replied that such regulation referred only to the mode of proceeding and the reference in which matters were to be taken. The order was ultimately passed as set out above, and the matter came up before the Court on motion, asking for confirmation of the order.

Mr. *Allen* for the plaintiffs.

Mr. *Bonnerjee* for the defendants.

WILSON, J., decided that, where a matter is before arbitrators, it is out of the hands of the Court; that although the Civil Procedure Code gives power to the Court to interfere in various ways in arbitration matters, it makes no provision for such an application as the present. Such being the case, added to the fact that he considered that no sufficient reason for making the application had been advanced, the motion was dismissed with costs.

Application dismissed.

Attorneys for the applicants: *Sanderson and Co.*

Attorneys for the opposite party: *Remfry and Remfry.*