

Present: Lascelles C.J.

FERNANDO v. MIGEL APPU.

438—C. R. Negombo, 19,371.

*Arbitration—Legal misconduct—Receiving fee from one party before making the award.*

The receipt of a fee from one of the parties to a suit by an arbitrator before he made his award was held to amount to legal misconduct.

LASCELLES C.J.—Any act amounts to a legal misconduct if it would give rise to a reasonable probability that the arbitrator would be subjected to any improper influence . . . . . After making his award the arbitrator is entitled to retain the award until he has received his fee either from one party or the other. But that is a wholly different matter from taking a fee from one of the parties before he has actually made his award. The receipt of a fee at that stage is an act which is calculated to undermine the confidence of the opposing party in the impartiality of the arbitrator.

THE facts appear from the judgment.

*Bawa, K.C., Acting S.-G.*, for the defendant, appellant.—The arbitrator in this case received his fee from the plaintiff before he made his award. The receiving of the fee under the circumstances amounts to legal misconduct. *Eckersley v. The Mersey Docks.*<sup>1</sup> The arbitrator might have taken the fee after making the award; he might have retained the award till his fee was paid. *Russell on Arbitration, 297-298.*

*A. St. V. Jayewardene*, for the plaintiff, respondent.—It is not alleged that the arbitrator was biased by reason of his having taken the fee from one party before the making of the award. On the other hand, it was the appellant's proctor who advised the arbitrator to get his fee from the respondent in the first instance. Arbitrators usually receive their fees before making their awards.

January 21, 1913. LASCELLES C.J.—

This is an application to set aside an award on the ground of misconduct on the part of the arbitrator. The alleged misconduct consists in the fact that the arbitrator, before he made his award, accepted his fee, which amounted to Rs. 21, from the plaintiff. There is, it is fair to notice, no imputation of dishonesty against the arbitrator, nor is it alleged or proved that he was in fact influenced in his award by the fee which he had received from one of the parties.

<sup>1</sup> (1892) 2 Q. B. 667.

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But in order to constitute legal misconduct, it is not necessary that there should be proof of any dishonesty or partiality on the part of the arbitrator. Any act amounts to a legal misconduct if it would give rise to a reasonable probability that the arbitrator would be subjected to any improper influence. Now the rights of an arbitrator as regards the payment of his fee are well settled. After making his award he is entitled to retain the award until he has received his fee either from one party or the other. But that is a wholly different matter from taking a fee from one of the parties before he has actually made his award. The receipt of a fee at that stage is, in my opinion, an act which is calculated to undermine the confidence of the opposing party in the impartiality of the arbitrator. There is one portion of the evidence of the arbitrator to which I ought to refer. The arbitrator in his evidence stated that the defendant's proctor had advised him to take his fee first from the plaintiff, and had stated that the defendant would not be responsible for his fee. If the meaning of that evidence is, as I first thought, that the defendant's proctor had suggested that the arbitrator should take his fee from the plaintiff before he made his award, I should certainly have held that it did not lie in the mouth of the defendant to object to the award on the ground that the arbitrator had adopted a course which their own proctor had suggested. But Mr. Bawa has pointed out that it is possible that the meaning of the advice given by the defendant's proctor was that, after the award had been made, that is, at the proper time when the fee ought to be paid, the arbitrator should take his fee from the plaintiff. This, of course, would be a perfectly unobjectionable proceeding, and it is, perhaps, the course which the defendant's proctor advised. I think it would be setting a very dangerous precedent if it were held that an arbitrator, before the completion of his award, was entitled to receive payment of his fee from either of the parties to the arbitration. The receipt of the fee at this stage of the arbitration, in my opinion, amounts to legal misconduct, and the appeal must be allowed and the award set aside. The appellant is entitled to the costs of the appeal and to the costs of the application in the Court below.

*Set aside.*