1922.

Present : Bertram C.J. and De Sampayo J.

ARACHCHI APPU *et al.* *v.* MOHOTTI APPU *et al.*

4—D. C. (Inty.) Kegalla, 5,521.

Arbitration—Reference signed by plaintiffs and not by defendants—Award in favour of defendants—Objection by plaintiffs that reference was not in order not being signed by defendants—Civil Procedure Code, s. 676.

Plaintiffs who signed the reference to arbitration being dissatisfied with the award moved to set it aside on the ground that defendants did not sign it.

Held, that the objection to the award was good.

The provisions of the Civil Procedure Code in regard to arbitration are rigorously and literally to be complied with.

THE facts are set out in the judgment.

Keuneman, for the appellants.

D. B. Jayatileke, for the respondents.

March 13, 1922. BERTRAM C.J.—

In this case we have to decide a technical objection to an award. The arbitrator was appointed in pursuance of a joint motion by the proctors of the two parties. But it turns out that, so far as the defendants are concerned, neither they nor their proctors actually signed this motion. There was thus a failure to comply with section 676 of the Civil Procedure Code, which requires in effect that the application with reference to arbitration shall either be signed by the parties themselves, or by their proctors in pursuance of an express and special written authorization by the parties. It is suggested that there was a double irregularity : in the first place, the application was not signed by both the proctors who jointly presented it ; and in the second place, there was no written authorization by the lay clients empowering the proctors of the defendants to take this step. As I have said, the objection is a technical one, and the proctors who actually appeared for the defendants in the arbitration, if I may say so, very conscientiously and properly declined themselves to be responsible for putting forward the objection. But we have to follow the previous decisions of this Court, and it appears to me that we are bound by them.

There are two Full Court decisions cited by Mr. Keuneman (*Binbarahami v. Kiribanda Muhandiram*[1] and *Gonsales v. Henry Holsinger*[2]), in the first of which all the previous authorities are reviewed. Both these decisions are decisions not upon our Civil Procedure Code, but upon a section of the old Arbitration Ordinance, namely, section 12 of Ordinance No. 15 of 1866. I have compared that section with section 676 of the Civil Procedure Code, and I cannot see any adequate ground for distinguishing it from the latter section. Moreover, the same view has been expressed by a Court of two Judges with regard to section 676 itself. I refer to the judgments of Wood Renton and Grenier JJ. in *Pitche Tamby v. Fernando.*[3] The Court there expressed the opinion that the provisions of the Civil Procedure Code in regard to arbitration are rigorously and literally to be complied with. The facts in that case have a certain similarity to the facts in this case. It is pointed out in the judgment of Wood Renton J. that the plaintiffs-respondents who did not sign that application would not have been bound by the award if it had been adverse to them, and they cannot take advantage of it when it is in their favour; and it is this observation that Mr. Keuneman, who appears for the plaintiffs, chiefly relies upon. In the present case the plaintiffs actually signed the reference to arbitration. They are dissatisfied with the result, and now move to set the award aside on the ground that the defendants did not sign it, and would not have been bound by the award if it had been adverse to them. I think it would serve no useful purpose to refer this case to the Full Court in view of the two previous decisions of the Full Court already referred to. Had the matter been *res integra*, I should have preferred to have followed the principle of *Andrews v. Ellis*,[4] where it was held that the parties to a cause having consented that a case should be tried without a jury by a Judge who only had jurisdiction so to try it by the written consent of the parties, one of those parties could not be heard, after verbally consenting and after taking part in the trial, to insist upon the statutory requirement of a written consent. The local cases are, however, too strong to allow us now to follow that principle. I regret, therefore, that, in my opinion, this appeal must be allowed, with costs.

DE SAMPAYO J.—I agree.

Appeal allowed.

[1] *1 S. C. C. 99.*
[2] *7 S. C. C. 101.*
[3] *(1912) 14 N. L. R. 73.*
[4] *25 L. J. Q. B. 1.*