

(1891) 02 CAL CK 0010
In the Calcutta High Court

Annoda Prosad Mullick and Another

APPELLANT

Vs

Bepin Behari Chowdhry

RESPONDENT

Date of Decision : 09-02-1891

Acts Referred:

Citation : (1891) ILR (Cal) 324

Hon'ble Judges : Norris, J;Beverley, J

Bench : Division Bench

Judgement

Norris and Beverley, JJ.—As the point, so far at any rate as this Court is concerned, is a new one, I will state the facts and give the reason for the conclusion at which we have arrived.

2. It appears that the plaintiffs brought a suit against the defendant. Five persons were nominated as arbitrators to settle the matter in dispute between the parties. There is no evidence to show that any one of these five persons had been previously communicated with by either of the parties, and therefore nothing to show that any of them had given his consent to accept the position of an arbitrator. The so-called five arbitrators were appointed by the Munsif at the suggestion of the respective parties in Court. It appears that one of these five persons abstained, as the Judge finds, from taking any notice of the nomination, and refrained from any action whatever in the matter. The Munsif thereupon nominated, as he called it, a fifth arbitrator.

3. We think that that proceeding on the part of the Munsif was illegal, and that Section 510 of the Code of Civil Procedure, under which he purports to act, applies only in cases where a person has signified his assent to take upon himself the duty of an arbitrator, and after so signifying his assent dies, or refuses, or becomes incapable to act, or leaves British India under the circumstances therein referred to. That view was taken by the Madras High Court in the case of Pugardin Ravutan v. Moidinsa Ravutan ILR Mad. 414 referred to by the District Judge, and in that view we concur.

4. We think therefore that the appeal fails, and must be dismissed with costs.