

1928.

Present : Dalton J.

APPUHAMY v. DINGIRI MAHATMAYA.

185—C. R. Avissawella, 13,524.

*Arbitration—Parties agree to arbitrate during course of proceedings—
Minute of consent—Civil Procedure Code, s. 676.*

Where the parties to an action came to an agreement for arbitration during the course of the proceedings and the Court required them to sign a minute of consent,—

Held, that there was a sufficient compliance with the requirements of section 676 of the Civil Procedure Code.

A PPEAL from a judgment of the Commissioner of Requests, Avissawella.

Garvin, for appellant.

James Joseph, for respondent.

February 6, 1928. DALTON J.—

This is an appeal by the defendant, who is sued for the recovery of the sum of Rs. 35, alleged to be the value of the plaintiff's share of 8 trees standing on certain land. After the case had been heard in part, the defendant admitted the plaintiff's title to an undivided

one-third share of the land upon which the trees stood. It was then agreed between the parties to refer the question of damages, and as to whether the damage had been done as alleged by the plaintiff, to an arbitrator. The parties deposited a sum by agreement for the expenses of arbitration. The arbitrator went to the spot, made his inspection, and also made his award. The award was against the defendant.

He now appeals, first, on the ground that there was no application for a reference under section 676, and secondly, that the award is no proper award in that it does not answer the question that was referred to the arbitrator. In regard to the second point I am unable to agree with counsel that the award does not specifically deal with the question which was referred to the arbitrator. He comes to the conclusion after inspecting the land and after taking evidence that 6 trees had been cut down on the land within the time mentioned in the reference, and he awards damages to the plaintiff.

It is urged on the appeal that he does not specify that the damages were done by the defendant. Counsel, however, cannot explain how he awards damages to the plaintiff except that he was satisfied upon the evidence that the damage was done by the defendant as alleged by the plaintiff. The award, in my opinion, fully answers the question referred to the arbitrator.

On the first point it is urged that there has been no application in writing by the parties as required by section 676 of the Civil Procedure Code. What happened in the Lower Court, as far as one can judge from the journal entries, is that in the course of the proceedings the parties came to an agreement, as mentioned already, for an arbitration, and applied to the Court to direct an order of reference to the Court Mudaliyar as arbitrator. Thereupon the Court required both the plaintiff and the defendant personally to sign a Court Minute.

Mr. Garvin, for the appellant, suggests that this is merely a signature to an agreement to arbitrate. I am quite unable to limit the signature in that way. It may be a signature to the agreement. It is also undoubtedly, in my opinion, a signature to the application which was made to the Court, and which the Commissioner has required in writing to enable him to make an order of reference to an arbitrator. I am, therefore, unable to agree that there has been no proper reference; it comes within the terms of section 676;

I would therefore dismiss the appeal with costs.

Appeal dismissed.

1928.

DALTON J.

Appuhamy
v. Dingiri
Mahatmaya