

Full Court.]

IN RE DOBERER ARBITRATION.

[June 16.

*Arbitration—Setting aside award—Misconduct of arbitrator—Waiver.*

Appeal from judgment of IRVING, J., setting aside an award on the ground of misconduct by an arbitrator. A party to an arbitration does not waive his right to object to an award on the ground of misconduct on the part of an arbitrator by failing to object as soon as he becomes suspicious and before the award is made; he is entitled to wait until he gets such evidence as will justify him in impeaching the award.

Where two out of three arbitrators go on and hold a meeting and make an award at a time when the third arbitrator cannot attend it amounts to an exclusion of the third arbitrator and the award is invalid. A party by attending at such a meeting and not objecting (although he knew of the third arbitrator's inability to attend) does not waive his right to object afterwards.

Per HUNTER, C.J.: It is not necessary that there should be absolute proof of misconduct before an award will be set aside on that ground: it is enough if there is a reasonable doubt raised in the judicial mind that all was not fair in the conduct of one or more of the arbitrators.

*Sir C. H. Tupper, K.C., and W. M. Griffin, for appellant. J. H. Senkler, for respondent.*

Bole, Co. J.]

REX v. SOUTH.

[July.

*Criminal law—Indecent assault—Child's testimony—Evidence as to similar acts not charged—Corroboration.*

The defendant was tried for indecent assault upon a child under the age of fourteen. The child was examined on the "voir dire" and not sworn. On refusing to answer the Crown prosecutor had the trial adjourned. On the re-opening of the trial on the second day the child still absolutely refused to speak. Counsel for the Crown on being asked if he had any other evidence, offered two witnesses in corroboration of the child's evidence as told to them by the child, and also evidence of similar acts with others by the prisoner.

*Held*, following *Queen v. Cole*, 1 Phil. Ev. 508, that evidence not in support of the charges laid in the indictment, but referring to charges not laid, could not be received as corroborative evidence; and following *Rex v. Kingham*, 66 L.J.P. 393, evidence as to what the child told others could not be received. There being no other evidence for the prosecution the prisoner was acquitted.

*Livingston, for the Crown. Sir C. H. Tupper, K.C., for prisoner.*