

appeal, or have indemnified the appellant, or have incurred any expense in the suit, or have any legal control over or right to interfere with it. For aught that appears, they have acquiesced in the decree of the judge of probate.

Administrators and executors, for certain purposes, represent the testate or intestate; for other purposes the heirs or legatees; and for still other purposes the creditors; but so long as the suit is prosecuted by the administrator or executor as such, in his own behalf, and on his own account for the benefit of any and all who may in any way be affected by his acts, whether creditors, or heirs, or legatees, he is, to all intents and purposes, the party on one side, and to him and the real adverse party to the litigation (the appellant in this case), the exception in the statute applies; but the heirs, the legatees (unless it might be in certain cases of residuary legatees), and creditors, not being appellants, though all interested, are notwithstanding competent witnesses, whether the executor elects to testify, or not.

*Judgment on the verdict.*

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FLETCHER v. HUBBARD.

The corruption or misconduct of arbitrators can not be pleaded in a suit at law, but may be the ground of setting aside an award upon motion when the award is returnable to court, and upon a bill in equity in other cases.

ASSUMPSIT. There was a plea of an award and performance thereof, a replication of corruption, gross partiality and misconduct of the arbitrators, and a demurrer to the replication.

*Cushing*, for the defendant.

*Wheeler & Faulkner*, for the plaintiff.

DOE, J. Misconduct of arbitrators is not the subject of a plea, but only a ground to apply to the court to set aside the award. This may be done upon motion, when the award is returnable to court, and upon a bill in equity in other cases. *Page v. Pendergast*, 2 N. H. 233, 235; *Adams v. Adams*, 8 N. H. 82; *Bassett v. Harkness*, 9 N. H. 164; *Rand v. Redington*, 13 N. H. 72; *Bean v. Wendell*, 22 N. H. 582; *Tracey v. Herrick*, 25 N. H. 381; *Cranston v. Kenney*, 9 Johns. 212; *Jackson v. Ambler*, 14 Johns. 96; *Braddick v. Thompson*, 8 East 344; *Kyd on Awards* 327; *Billing on Awards* 175, 283; *Watson on Arbitration* 269, 369.

A different doctrine may necessarily prevail where the equity powers of the court are not sufficiently extensive to deal with awards thus summarily. *Brown v. Bellows*, 4 Pick. 179, 192, note; *Bean v. Farnum*, 6 Pick. 269; *Strong v. Strong*, 9 Cush. 560.

*Demurrer sustained.*