

states, for registration. The document was not new articles of association, or articles of association at all within the meaning of the Indian Companies Act. It was a copy of the special resolution passed by the company, notifying to the Registrar, and through him to the world concerned, that the regulations of the company, which were covered by the resolution, would be the regulations by which the company would in future be bound. These regulations, even though they were new regulations to the exclusion of all the existing regulations of the company, are, by the second paragraph of section 76, to be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association. The law does not say that they are to be deemed articles of association, but expressly declares that they are to be deemed regulations of the same validity as if they had been contained in the articles of association. The document which has been forwarded to us is certainly not one which falls within article 8 of Schedule I of the Stamp Act of 1879, and is not liable to stamp-duty as provided by that article. This is our decision. Let the Registrar certify it as our answer to this reference.

1899

IN THE
MATTER OF
THE NEW
EGGERTON
WOOLLEN
MILLS.

Before Mr. Justice Blair and Mr. Justice Lushman.

RAM BHAROSE (DEPENDANT) v. KALLU MAL AND OTHERS
(PLAINTIFFS).*

1899
December 11.

Partnership—Arbitration—Authority of one partner to sue on behalf of the firm—Authority of one partner to bind the firm by a submission to arbitration—Act No. 1 of 1877 (Specific Relief Act), section 21.

Held that one partner, though entitled to bring a suit on behalf of the firm of which he is a member to recover a debt due to the firm, has no power, in the absence of special authority, to bind the firm by a submission to arbitration of the claim so brought. *Stead v. Salt* (1) and *Strangford v. Green* (2) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. W. M. Colvin (for whom Wallach), for the appellant.
Pandit Moti Lal, for the respondents.

* First Appeal No. 29 of 1899 from an order of Babu Nil Madhab Roy, Small Cause Court Judge, Cawnpore, dated the 27th February 1899.

(1) (1825) 3 Bing., 101.

(2) (20 Car. II) 2 Mod., 228.

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BLAIR, J.—This suit was brought by the plaintiffs to recover money due to them for groceries sold and delivered to the defendant Ram Bharose. The plaintiff's business was a partnership business. One Udai Ram was called the managing partner, but there appears to be no fact found in this case which would distinguish his powers and rights from those of an ordinary acting partner. Proceedings had been commenced by him to recover the debt due to the firm, and we have the authority of English cases, which seem to us to deal with a state of facts in no way different from similar transactions in this country for the proposition that a partner suing to recover a debt due to the firm is acting within the range of his powers; in other words, that he is authorized to adopt the ordinary method provided by law for the recovery of debts due to the firm. Udai Ram, however, before the suit had been decided, referred the matter to arbitration, undertaking no doubt to bind the partnership concern by the award which should be made. Prior to the date fixed for making and publishing the award, a partner, Kallu Mal, gave notice to the arbitrator that he was not bound by the submission to the arbitration, and Udai Ram also repudiated his own liability. The plaintiffs brought this suit to recover their money due to them, narrating in their plaint the general circumstances relating to the arbitration. The substance of their plaint is "we are not bound by those arbitration proceedings. We are entitled to recover just as though they had never taken place." The appellant Ram Bharose set up in his statement of defence that under the true interpretation of section 21 of Act No. I of 1877, and section 251 of the Indian Contract Act, the arbitration agreement constituted a bar to the plaintiff's suit. The Munsif tried the issue of fact as to the liability of the partner Kallu Mal for the act of Udai Ram, and found that Kallu Mal had authorized the reference to arbitration, and thereby bound himself and his minor son, who was also a partner. The Court below found otherwise on the question of fact. It found that there was no authority to refer given by Kallu Mal. It discussed and considered no question of implied liability, and we think it reasonable to draw the inference that the question of implied liability of the partnership for the acts of the managing partner

was not raised before it. At all events there is no finding of such implied liability.

The third point which might have been raised before the lower appellate Court was that, although there might have been in fact no authority conferred upon Udai Ram to refer matters in dispute relating to partnership business to arbitration, still such a representation might have been made to the public as to the nature and extent of his power as to estop the plaintiffs from saying that he had not the fullest authority to enforce the demands of the firm by any machinery he might choose. That question does not appear to have been raised or decided. The defendant therefore having it found against him that there was in fact no authority, has also failed to obtain a finding upon the question whether there was an implied authority or estoppel made by representation of the partners. There was therefore no bar to the consideration of the details of the plaintiff's claim.

An order of remand has been made upon the basis that the plaintiffs have been held entitled to sue as the defendant has failed to establish any bar to their suit. The order of remand, therefore in our opinion, was right. The appeal should be dismissed, and the costs of this appeal should be costs in the cause.

AKMAN, J.—This appeal arises out of a suit brought by Kallu Mal, Gopi Ram and Udai Ram, members of a partnership firm, to recover from the defendant Ram Bharose the price of goods supplied. In answer to the suit Ram Bharose pleaded that the matter in dispute had been, under agreement between him and Udai Ram, the managing member of the firm, referred to arbitration, and that consequently the existence of this agreement barred the plaintiffs' suit. The Court of first instance sustained this plea and dismissed the suit. On appeal the learned Subordinate Judge set aside the decree of the Court of first instance and remanded the case under section 562 of the Code of Civil Procedure for decision upon the merits. It is against this order of remand that the present appeal is brought.

It is contended that the reference to arbitration was a valid reference, which binds the partnership, and consequently the suit is not maintainable. The question whether one partner can, without special authority, bind the firm by submission to

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arbitration, does not appear to have been considered in any Indian case. The English authorities are unanimous in holding that one partner cannot, without special authority, bind his firm by such reference. In case of *Stead v. Salt* (1), a firm consisting of five members, brought a suit against the defendant to recover the price of work, labour and materials. It was pleaded that the subject of the demand, for the enforcement of which the action was brought, was concluded by an award. It appeared, however, that submission to the award was signed by three only out of the five members of the firm, and the Court held that submission by three members would not bind the five. There are other cases to the same effect to which it is not necessary to refer. For the appellant to succeed, it appears to me he must show that the reference to arbitration was either an act necessary for, or such as is usually done in, carrying on the business of the firm in question. He has failed to do so. He attempted to show that the other adult member of the firm had expressly consented to the reference, but the lower appellate Court disbelieved the evidence adduced by the defendant and held that no such consent was proved. It appears from the judgment of the lower appellate Court that no attempt was made to argue that Udai Ram, as managing member of the firm, had any implied authority to refer matters to arbitration. I am of opinion, therefore, that the plea, based upon the provisions of the last paragraph of section 21 of the Specific Relief Act, 1877, fails.

One other contention was urged by the learned counsel on behalf of the appellant, namely, that in any event Udai Ram, who virtually referred the matter to arbitration, was bound by the submission. An old case, *Strangford v. Green* (2), is cited as authority for this contention. It may be that in a suit against Udai Ram personally the defendant may be entitled to some relief; but this will not affect the suit brought by the firm of which Udai Ram is a member. I concur in the order proposed.

By THE COURT.—The order of Court is that the appeal be dismissed. Costs of this appeal will abide the event.

Appeal dismissed.

(1) (1838) 3 Bing. 101.

(2) (29 Car. II) 2 Mod. 228.