

necessary work of prosecuting persons who have been guilty of breaches of Municipal bye-laws. For that reason, though I cannot wholly adopt the views of the learned Chief Justice, I am not prepared to record a dissentient judgment.

AIKMAN, J.—I concur in the answer proposed to be given to the reference by the learned Chief Justice and my brother Judges. The language of section 69 of the N.-W. P. and Oudh Municipalities Act, 1883, is, in my opinion, susceptible of the interpretation for which the learned Government Advocate contends. That interpretation is, to my mind, the most natural construction of the section, as it is undoubtedly the most convenient, and it is the construction which has all along been placed on the section by the Boards which have had occasion to act under it.

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M. J.
POWELL
v.
THE
MUNICIPAL
BOARD OF
MUSSOORIE.

Before Mr. Justice Knox, Mr. Justice Banerji and Mr. Justice Aikman.

IN THE MATTER OF THE NEW EGERTON WOOLLEN MILLS.*

Stamp—Articles of association—Special resolution—Resolution superseding articles of association—Act No. VI of 1882 (Indian Companies Act), sections 76, 79—Act No. I of 1879 (Indian Stamp Act), sch. i., art. 8.

A company limited by shares and already possessing articles of association proceeded to pass a special resolution, in virtue of which a document was drawn up entitled "articles of association" in supersession of the articles theretofore in force. The record of this special resolution was, under the provisions of section 79 of the Indian Companies Act, 1882, sent to the Registrar of Joint Stock Companies to be recorded by him. The document was impounded by the Registrar on the ground that it required to be stamped as articles of association and was not so stamped. Hereafter a reference was made by the Board of Revenue to the High Court under the provisions of section 46 of the Indian Stamp Act, 1879, as to whether the document in question required to be stamped. *Held* that the Indian Companies Act did not contemplate any such thing as new articles of association, and that the document in question was nothing more than the record of a special resolution, and as such did not require to be stamped.

THIS was a reference made by the Board of Revenue for the North-Western Provinces and Oudh, under section 46 of Act No. 1 of 1879. The circumstances which gave rise to the reference were, briefly, as follows. The new Egerton Woollen Mills, a company limited by shares and already possessing articles of

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association, came to the conclusion that their articles of association stood in need of amendment. They accordingly passed a special resolution very largely altering and amending the articles, and the result of this resolution was embodied in a document headed "articles of association." This document, or a copy of it, was forwarded to the Registrar of Joint Stock Companies under the provisions of section 79 of the Indian Companies Act 1882, to be recorded by him. The Registrar impounded it, being of opinion that, owing to the procedure adopted by the company in entirely recasting their articles of association, the document constituted new articles of association and required a stamp of Rs. 25 under article 8 of the second schedule to the Indian Stamp Act, 1879. At the instance of the Company the Board of Revenue referred to the High Court the question whether the document required to be stamped as articles of association, or whether it was merely the record of a special resolution.

Mr. *W. K. Porter*, for the New Egerton Woollen Mills, contended that the document in question was not articles of association; and did not require to be stamped as such. The Indian Companies Act, 1882, (*vide* sections 37 and 39) contemplated that there should be only one set of articles of association during the existence of a Company. But by section 76 of the Act a Company was empowered to "alter all or any of the regulations of the Company contained in the articles of association" by means of a special resolution, as defined by section 77. This was what had occurred in the present case. The Company had by special resolution altered most of the articles of association, and, instead of publishing what was new in the form of an amendment to the articles of association, had entirely recast the articles. Such procedure was adopted for the sake of convenience, but it was not the making of "new articles of association." In point of law the document in dispute was nothing more nor less than the record of a "special resolution" a copy of which had, by reason of section 79, to be forwarded to the Registrar of Joint Stock Companies for the purpose of being recorded by him; it did not constitute "articles of association" requiring to be registered under section 40.

Mr. *E. Chamier, contra*, argued that articles of association were in *pari materid* with rules which partners might make for themselves for the conduct of the partnership business. As such rules might be changed as often as the partners desired, so might articles of association of a Company. The document in question was on the face of it a complete set of articles of association, and required to be stamped as such. It was not permissible to look outside the document itself to ascertain what it was for the purposes of the stamp law. *Chandrakant Mookerjee v. Kartikecharan Chaile* (1) and *Ramen Chetty v. Mahomed Ghose* (2).

KNOX, BANERJI and AIKMAN, JJ.—This is a case stated under section 46 of Act No. I of 1879 by the Board of Revenue for decision of the question raised in the statement. The statement commences by asking for a ruling regarding the question of the stamp-duty payable on what are termed the New Articles of Association of the New Egerton Mills Company, Limited. It then sets out that an authenticated copy of these so-called "New Articles of Association" was submitted to the Registrar of Joint Stock Companies for registration, and that he impounded them, as he was of opinion that they required to be stamped. The reasons why the Registrar of Joint Stock Companies considered that the document was liable to stamp-duty are that, in his opinion, the New Egerton Woollen Mills Company, instead of altering its existing regulations or making new regulations to the exclusion of those already existing, as they were entitled to do under section 77 of the Companies Act, had, for the sake of greater convenience and perspicuity, preferred to adopt an entirely new set of articles of association as the regulations of the company, to the exclusion of those before in force, they were therefore the articles of association of the company, and required to be stamped under article 3 (presumably article 8) of schedule I of the Stamp Act, 1879. The Board state that they agree with the view thus stated by the Registrar of Joint Stock Companies. Before proceeding further, we would point out that the word "New" is a word imported by the Registrar of Joint Stock Companies into the case. The document, which was presented to the Registrar of Joint

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(1) (1870) 5 B. L. R., 103.

(2) (1889) I. L. R., 16 Calc., 432.

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Stock Companies, and which is before us, is headed "Articles of Association of the New Egerton Woollen Mills Company Limited," and not "New Articles of Association," as set out in the reference. After carefully considering the provisions of the Indian Companies Act, 1882, and hearing all that has been said to us by the learned Government Advocate, we are of opinion that there can be no such document under the Indian Companies Act of 1882 as "New Articles of Association." Articles of association are specially referred to in section 57 and following sections of the Act. The sections provide that a company limited by shares may, when on the eve of incorporation, draw up a memorandum of association, and may link with that document articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. If they do not add articles of association so executed to their memorandum of association, in that case the regulations contained in the table marked A in Schedule I to the Indian Companies Act, 1882, shall be deemed to be the regulations of the Company in the same manner and to the same extent as if they had been inserted in the articles of association and the articles had been duly registered. We have not been referred to any section throughout the Act which provides for the framing of new articles of association, and it seems to us that such would really be a contradiction in terms. We can understand a body of individuals who are about to incorporate themselves into a company drawing up and executing articles of association which shall govern them when so incorporated, and we can understand a company when incorporated resolving that there shall be new regulations which shall supersede or modify the articles which were drawn up at the time when the association was first determined upon. This is provided for by section 76 of the Indian Companies Act, and provision is made in section 79, whereby any and every resolution to this effect shall be printed and forwarded to the Registrar of Joint Stock Companies and be recorded by him. Bearing all this in mind, we are satisfied that the document which was submitted to the Registrar of Joint Stock Companies was submitted to him under section 79 to be recorded by him, and not, as he

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.

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Before Mr. Justice Blair and Mr. Justice Aikman.

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

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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.