

1876.
 TUKA'RA'M
 BIN ATMA-
 RA'M
 v.
 RA'MCHAN-
 DRA BIN
 BUDHARA'M.

ing his mortgage without possession by the sale which he caused to be made under a money decree altogether independent of his mortgage, and he certainly would, in our opinion, be so estopped if he did not give warning, at or previously to the sale of the land, to the purchaser of his (the plaintiff's) mortgage on the same land, and that the sale was intended to be subject to such mortgage. This the plaintiff has not even alleged that he did, and still less has he proved it. The plaintiff, in order to obtain as much money as he could under his money decree, was interested in keeping his mortgage secret from intending purchasers. The case, therefore, materially differs from that of *Itchárám Dayárám v. Rájí Jagá*⁽¹⁾, and is not governed by it. We refrain from now expressing any opinion whether we could concur in the ruling mentioned in the last clause of the head-note to that case. For the reason already mentioned, we think that equity forbids that the plaintiff, without making such a special case as we have above indicated, can enforce his mortgage against the defendant to whom the plaintiff himself in execution of a judgment in another suit against the mortgagor, founded upon another cause of action, previously caused the land to be sold.

We reverse the decree of the Assistant Judge, and restore that of the Subordinate Judge, with costs of suit and both appeals to be paid by the plaintiff to the defendant.

[APPELLATE CIVIL JURISDICTION.]

Miscellaneous Regular Appeal No. 3 of 1876.

September 18. NARSINGRAV RAMCHANDRA (PLAINTIFF AND APPELLANT) v. LUXUMANRAV (A MINOR SON AND HEIR OF MADHAVRAV, DECEASED, REPRESENTED BY HIS ADMINISTRATOR MR. E. P. ROBERTSON, COLLECTOR OF DEHRAWAR, DEFENDANT AND RESPONDENT).

Act XX. of 1864, Sections 11 and 15—Collector—Act XIV. of 1869, Section 32—Officer of Government—Jurisdiction.

Sections 11 and 15 of Act XX. of 1864, taken together, show that a Collector, when appointed to take charge of the estate of a minor, is so appointed in his capacity as Collector, and, therefore, as an officer of Government within the meaning of Act XIV. of 1869, Section 32.

(1) 11 Bom. H. C. Rep. 41.

THIS was a miscellaneous regular appeal from the order of the First Class Subordinate Judge of Dharwar.

1876.

NARSINGRAV
RA. MCHAN-
DRA
v.
LUXUMAN-
RAV.

The plaintiff Narsingrav brought this suit, originally, against Madhavrav Luxuman for the recovery of Rs. 11,000 due on a bond dated the 20th April 1868. Shortly after the institution of the suit, Madhavrav died, and the name of his minor son and heir Luxuman was substituted, and he was represented by the Collector of Dharwar, Mr. E. P. Robertson, as administrator of his estate. The Subordinate Judge thereupon held that, under the Bombay Civil Courts Act, No. XIV. of 1869, Section 32, he had no jurisdiction to try the suit, because the Collector, in his opinion, was an officer of Government. He, accordingly, returned the plaint for its presentation in the proper Court. The present appeal was against that order.

The appeal was argued before WESTROPP, C.J., and KEMBALL, J.

Shamrav Vithal for the appellant :—The real defendant in the case is Luxumanrav, the minor. The Collector comes in merely as the administrator of the minor's estate. He does not represent Government in any sense, and, therefore, ought not to be considered as an officer of Government within the meaning of Section 32 of Act XIV. of 1869. Any act done by the Collector under the Minors' Act should not be considered as an act done by him on behalf and as agent of Government.

[WESTROPP, C.J., referred to Sections 11 and 15 of Act XX. of 1864, and said that these sections showed the capacity of the Collector when appointed as an administrator of a minor's estate, under the former section, to be that of an officer of Government. His Lordship also referred to *Desalji Manaji v. Hemadalli*(1).]

The *Honourable Rav Sahab V. N. Mandlik* for the respondent was not called upon.

WESTROPP, C.J. :—The appellant complains that the plaint in this suit, originally instituted against the father of the minor defendant, has been improperly returned to the appellant, since the minor and the administrator of his estate under Act XX. of 1864 (the Collector) have been made parties, on the ground that the Subordinate Judge is precluded by Act XIV. of 1869, Section

(1) 10 Bom. H. C. Rep. 308.

1876.

NARSINGRAV
RAMCHANDRA
v.
LUXUMAN-
RAV.

32, from entertaining a suit in which an officer of Government, in his official capacity, is a defendant. For the appellant it is contended that the Collector is acting as the officer of the Court which appoints him administrator of the estate of the infant, and not as an officer of Government. But we think that Sections 11 and 15 of Act XX. of 1864, taken together, show that the Collector, when appointed to take charge of the estate of a minor, is so in his capacity as Collector, and, therefore, as an officer of Government. When a Collector is transferred to another district, his successor as Collector succeeds also as administrator of the estates of minors which had been entrusted to the transferred Collector, and no new order of the Civil Court is necessary for that purpose.

We affirm the order with costs, but with this addition, that all proceedings beside the plaint which have been had in this suit in the Subordinate Judge's Court be transferred to the District Court.

[ORIGINAL CIVIL JURISDICTION.]

SUIT No. 448 OF 1875.

Appeal No. 307.

October 5. ANANDJI VISRAM (ORIGINAL DEFENDANT, APPELLANT) v. THE NARIA'D SPINNING AND WEAVING COMPANY, LIMITED, (ORIGINAL PLAINTIFFS, RESPONDENTS).

Company—Shares—Prospectus—Memorandum of Association—Material Variance—Illegal Powers.

Distinction pointed out between the case of a person who agrees to take shares in a projected Company upon the faith of a prospectus, and one who does so upon the faith of a document purporting to be the proposed Memorandum of Association of such a Company.

The defendant, on being shown a document purporting to be the Memorandum of Association of a projected Company, signed his name to it, as having taken 4 shares. This document was not registered as the Memorandum of Association of the Company, but another was, which differed from it in omitting, in its 4th clause, the word *yearly* before the word *profits* on which the Company were to pay a certain commission to the Secretaries, Agents, and Treasurers, and in adding to its 6th clause a provision empowering the Company by special resolution in general meeting to subdivide the shares,