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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,

Held that the first was not, but the second was, a material variance.

Quare whether the provision empowering the Company to subdivide the shares was illegal. But, even if it was,

Held that the effect of it being practically to alter the position of the defendant from what it would have been had the document signed by him been registered as the Memorandum of Association of the Company, the defendant was not a shareholder in the Company registered.

In re the Financial Corporation (L. R. 2 Ch. Ap. 714) commented on.

THIS suit was instituted by the respondent Company, which was a Joint Stock Company incorporated under Act X. of 1866, to recover from the appellant defendant the sum of Rs. 2,000 and interest, in respect of two calls of Rs. 250 each on 4 shares in the Company, of which the defendant was alleged to be the holder. The defendant by his written statement admitted that his *Munim* had signed in his name a paper purporting to be the Memorandum of Association of the Nariad Spinning and Weaving Company, Limited, for 4 shares, but said that this paper was not registered as the Memorandum of Association of the Company. That the registered Memorandum of Association, which was registered under Act X. of 1866 on 24th October 1874, was signed by seven persons only, of whom the defendant was not one, and differed from the paper signed by the defendant's *Munim* in several particulars, and especially in making the shares liable to sub-division. That the registered Memorandum of Association was accompanied by Articles of Association which were signed by the same seven persons only as had signed the registered Memorandum of Association, and contained clauses widely differing from the regulations contained in Table A to the Indian Companies' Act. That neither the Memorandum of Association nor the Articles of Association so registered were ever submitted to the defendant or his *Munim* for approval or signature, and they would have refused to approve or sign the same. That neither the defendant nor his *Munim* had ever done any act towards taking shares in the Company other than the signature by the *Munim* of the unregistered paper, nor had any scrip or certificate of shares been delivered or offered to the defendant or his *Munim*. That at the time of the signature by the *Munim* it was agreed that such signature should be null and void unless the whole 400 shares, of which the capital of the proposed Company was to consist, should be subscribed for

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The cause came on for hearing before Green, J., on 6th October 1875, when two issues were framed: (1) whether the defendant is a member of the plaintiff's Company and a holder of 4 shares therein; (2) whether the signature of the defendant's name by his *Munim* became and was null and void under the circumstances in the defendant's written statement mentioned. No objection was taken to the authority of the *Munim* to sign the defendant's name, and it was admitted that the calls were in fact and duly made. The precise date of the signature by the defendant's *Munim* did not appear, but it was before 24th October 1874. The paper so signed by the *Munim*, dated 8th September 1874, and stamped with a stamp of Rs. 16, as provided by Act XVIII. of 1869 for a Memorandum and Articles of Association, was in the ordinary form of a Memorandum of Association, and bore a considerable number of signatures of different persons as shareholders, upwards of 50 appearing before the name of defendant.

It differed in various unimportant particulars from the registered Memorandum of Association, but the variances on which the defendant chiefly relied were the following:—The 4th clause of the paper signed by the defendant's *Munim*, in providing for the remuneration of the Secretaries, Agents, and Treasurers of the Company, stated that they should be allowed a commission of 1½ per cent. on all sales made by the Company, but should be allowed a commission of 2½ per cent. on all such sales if the *yearly* profits of the Company amounted to 5 per cent. or more on the paid-up capital. In the corresponding clause in the registered Memorandum of Association the word *yearly* was omitted before profits. The 6th clause of the paper signed by the defendant's

Munim ran thus :—"The capital of the Company is Rs. 4,00,000, divided into 400 shares of Rs. 1,000 each, with power to increase." The corresponding clause in the registered Memorandum of Association omitted the words "with power to increase," and after the words "Rs. 1,000 each" continued thus : "subject to be increased in accordance with the regulations of the Company and the legislative provisions for the time being in force in this behalf, and which said shares may be divided, by a special resolution of the shareholders in general meeting, into shares of Rs. 500 or Rs. 250 each." The paper signed by the defendant's *Munim* concluded with these words : "We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names, and to sign the Articles of Association when ready." In the corresponding clause in the registered Memorandum of Association the words "and to sign the Articles of Association when ready" were omitted.

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Marriott and Inverarity, for the plaintiffs, contended that by the signature of his name by his *Munim* to the unregistered paper the defendant had agreed to become a shareholder. As to the variations, it lay on the defendant to show that these were such as to make a material difference between the objects of the Company as stated in the paper signed in the defendant's name and those contained in the registered Memorandum of Association. In so far as these variations had the effect of giving to the Company powers not authorized by the Act, they were nugatory and inoperative, and, therefore, immaterial. The other variations were mere verbal emendations. Though notice of call and demand of payment were duly served on the defendant, he never repudiated his liability till the suit was brought, and such *laches* disentitled him to contest the fact of being a shareholder. The following authorities were referred to :—Lindley on Partnership (3rd edition) p. 174, *The New Brunswick, &c., Company v. Boore*⁽¹⁾, *Downes v. Ship*⁽²⁾, *Aldous v. Cornwall*⁽³⁾, *Sanderson v. Symonds*⁽⁴⁾,

(1) 3 H. and N. 249.

(2) L. R. 3 Eng. and Ir. Ap. 343.

(3) L. R. 3 Q. B. 573.

(4) 1 Brod. and Bing. 426.

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Scoble (Advocate General), *Latham*, and *Lang*, for the defendant, argued that the paper signed by the defendant's *Munim* purporting to be a Memorandum of Association, the present case must be distinguished from those cited in which persons were held to be shareholders by reason of having agreed to take shares on the faith of a prospectus. If the document signed by the defendant's *Munim* was signed as a Memorandum of Association, the defendant never became a member of the Company, for that was not the memorandum afterward registered. If the document signed by the defendant's *Munim* was an agreement to take shares, the defendant was entitled to be discharged on the ground of the variance between the document signed by him and the Memorandum of Association afterwards registered. If the document signed by the defendant's *Munim* was a prospectus, the defendant was entitled to be discharged under the agreement by which the signature was to be considered null and void if all the shares were not taken up before the registration of the Memorandum of Association. The variances between the two documents were material. The delay on the part of the defendant in repudiating his liability was not such as to débar him from denying that he was a shareholder.

They referred to the following authorities: *Qola Lead, &c. Company*⁽⁹⁾, *Felgate's case*⁽¹⁰⁾, *Oakes' case*⁽¹¹⁾, *Lindley on Partnership* (3rd edition), pp. 118, 1423, 1409, and 1415.

Inverarity in reply urged that the condition precedent to the signing by the *Munim* of the paper brought to him as alleged in the written statement was not the one proved by the defendant's witnesses. The paper signed in the defendant's name by his

(1) 11 Bom. H. C. Rep. 203.

(2) L. R. 2 Ch. Ap. 714.

(3) L. R. 3 Exch. 35.

(4) 2 Hem. and M. 135.

(5) 8 H. L. Ca. 712.

(6) L. R. 2 Ch. Ap. 536.

(7) L. R. 2 Ch. Ap. 674.

(8) L. R. 2 Ch. Ap. 412.

(9) 2 Ir. Rep. (Equity) N. S. 573.

(10) 2 De G. J. and S. 456.

(11) L. R. 2 Eng. and Ir. Ap. 325.

Munim was evidently not the Memorandum of Association that was to be registered, and of this the defendant or his *Munim* must have been aware at the time of the signature, because at that time there were some 80 signatures before the defendant's, and it was stated that until the Directors were duly appointed, all who signed the Memorandum of Association were to be Directors, but it could never have been intended that there were to be upwards of 80 Directors.

On the first issue Green, J., held that the variances relied on by the defendant between the paper signed by his *Munim* and the registered Memorandum of Association were immaterial, inasmuch as they were in every instance, except in Clause 6, mere verbal alterations, or corrections which did not affect the sense. As to the alterations made by the registered Memorandum of Association in Clause 6 of the paper signed by the defendant's *Munim*, the learned Judge held that these variances also were legally immaterial, for that as they were inconsistent with the Companies Act X. of 1866, which provides that the amount of the shares is to be fixed once for all in the Memorandum of Association, they were nugatory, and inoperative to alter the rights and liabilities of the defendant. On the second issue the learned Judge held that the defendant had failed to prove the agreement on which he relied, and on which, as alleged in the written statement, that issue was founded. A decree was accordingly passed in favour of the plaintiffs for the amount claimed.

Against this decree the defendant appealed, and the appeal was heard by WESTROPP, C.J., and SARGENT, J.

Farran and *Lang* for the appellant.

Marriott, Advocate General (Acting), and *Inverarity* for the respondents.

The following authorities were referred to in addition to those cited in the Court below:—

Davidson v. Cooper⁽¹⁾, *Croockewit v. Fletcher*⁽²⁾, *Pattinson v. Luckley*⁽³⁾, *Ashbury, &c. Company v. Riche*⁽⁴⁾, *Anglo-Moravian, &c. Company*⁽⁵⁾, *West India and Pacific Steam Ship Com-*

(1) 13 M. and W. 343; affirming S. C. 11 M. and W. 778; 13 L. J. Ex. 276.

(2) 1 H. and N. 893; S. C. 26 L. J. Exch. 153. (3) L. R. 10 Exch. 330.

(4) L. R. 7 Eng. and Ir. Ap. 658.

(5) L. R. 8 Ch. Ap. 768.

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The judgment of the Appellate Court was delivered by

SARGENT, J. :—The plaintiffs are a Joint Stock Company incorporated under Act X. of 1866, and seek to recover from the defendant, as the registered holder of 4 shares in the Company, the sum of Rs. 2,000 with interest, being the amount of two calls on the above shares. The defence set up is that the defendant is not a member of the Company, and that his name has been improperly placed on the register. There is but little (if any) dispute between the parties as to the circumstances under which the defendant became connected with the plaintiffs' Company. It appears from the evidence of Javerilal Umiashanker, one of the promoters of the Company, that he and his co-promoter prepared a Memorandum of Association, Exhibit A in this suit, and that some short time before the registration of the Company, which took place on 24th October 1874, he went to the defendant's place of business, and after stating to his *Munim*, Kallianji Hansraj, the objects of the Company, and reading to him the substance of the clauses in this Memorandum of Association, proposed to him that his master should take some shares; that Kallianji said he would consider the matter, and that the Memorandum of Association might be sent to his master's office by Liladhur Haridas, a broker; that accordingly, a day or two afterwards, he sent the intended Memorandum of Association (Exhibit A) to the defendant's office by Liladhur Haridas, who had an interview with Kallianji and also with another *Munim* of the defendant, named Mowji Hansraj. From the evidence of Liladhur Haridas and Mowji Hansraj it appears that Liladhur asked Kallianji and Mowji to subscribe for shares and to sign the deed, and that Mowji ultimately agreed to take 4 shares, and signed the deed as a subscriber for those shares. Mowji, however, says that he

(1) L. R. 9 Ch. Ap. 11. Footnote (2). (2) 8 A. and E. 136.

(3) 35 Beav. 646.

(4) 1 Camp. 81. Footnote.

(5) 4 T. R. 320; S. C. 2 H. Bl. 141; 1 Anst. 225; 5 T. R. 637; 1 Smith L. C. 458.

(6) Cited by Buller, J., in *Master v. Miller*, *ubi supra*.

agreed to take the shares on the condition that the whole of the 400 shares, of which the capital of the proposed Company was to consist, should be subscribed for and allotted at the time of the registration of the Memorandum and Articles of Association, and it is not denied that the 400 shares have not been allotted up to the present time. The learned Judge, however, from whose decree this appeal is brought, was of opinion that the existence of such a condition was not established by the evidence, and it was, moreover, rendered highly improbable by the evidence that, notwithstanding the several notices served, and demands made on the defendant, his *Munim* remained wholly silent, and not until after the suit was instituted set up the defence on the ground of such alleged condition. No objection was taken to that finding, at least in express terms, in the grounds of appeal, but in any case we entirely agree with the learned Judge in the conclusion he arrived at on that part of the case.

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Subsequently to the above interview between Lildhur Haridas and the defendant's *Munim*, namely on 24th October 1874, the Company was registered, and on that occasion the document registered as the Memorandum of Association of the Company, in pursuance of Section 17 of the Companies Act 1866, was not Exhibit A, which had been shown to the defendant's *Munim* as the intended Memorandum of Association, and signed by him as such; but another document, put in evidence as Exhibit No. 1, signed by only seven persons (of whom the defendant is not one), and differing from Exhibit A in several points, of which it is only necessary to mention two, being those which have been relied on as constituting material variances between the two documents. These are: 1st, that, although in Clause 4 of Exhibit A it is provided *inter alia* that a commission of $2\frac{1}{2}$ per cent. on sales should be allowed to the Secretaries, Agents and Treasurers, if the *yearly* profits of the Company amount to 5 per cent., or more on the paid-up capital; the word *yearly* was omitted in Exhibit No. 1, which was the document actually subsequently registered. 2nd, Clause 6 of the document shown to the defendant (Exhibit A) ran thus:—"The capital of the Company is Rs. 4,00,000 divided into 400 shares of Rs. 1,000 each, with power to increase." In the document regis-

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Section 22 of the Companies' Act of 1866 provides that the person signing the Memorandum of Association shall be regarded as a member, and taking the 17th and 22nd sections together the memorandum here spoken of must be the registered Memorandum of Association. The Memorandum of Association of the Company which was registered has not been signed by the defendant's *Munim*. If, therefore, the defendant became a member of the Company, it must be because through his *Munim* (whose authority he has never repudiated) he agreed to become a member, and his name has been entered on the register of members. It is, however, contended for the defendant that he did not agree to take shares in the plaintiffs' Company, but in a projected Company, the registered Memorandum of Association of which was to be the document he signed, and no other; but that in any case he ought to be relieved from his agreement to take shares,—1st, because Exhibit A was not registered as the Memorandum of Association of the Company; 2nd, because the Memorandum of Association differs materially from the one shown him as the intended Memorandum of Association; 3rd, because the Articles of Association differ materially from those contained in Table A of the first Schedule of the Act.

With reference to the first objection taken by the defendant, it is to be remarked that this case differs very materially from those in which a person has been induced to take shares on the faith of a prospectus. A prospectus, as Lord Cranworth says in *Downes v. Ship*⁽¹⁾, "is in the nature of instructions only for the professional man to put into shape, in the same way as an agreement is often the foundation for a deed which may properly contain covenants and provisions not found in the agreement itself;" and the only question which can arise is "whether the

(1) L. R. 3 Eng. and Ir. Ap. 343; see p. 354.

obligations incurred under the memorandum do or do not go beyond those which would have been incurred under the prospectus ;” but the Memorandum of Association is, to use an expression of Lord Cairns in *The Ashbury Railway Carriage and Iron Company v. Riche*⁽¹⁾, “the charter of the Company, and defines the limitation of the power of the Company.”

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The Company is, so to speak, identified by its Memorandum of Association. A person, therefore, who is asked to take shares in a projected Company of which he is shown the Memorandum of Association, and consents to do so, does so upon the full understanding that the document shown him, or a true copy of it, will be registered as the Memorandum of Association. The Company in which he agrees to take shares is the Company to be incorporated by the registration of that document as its Memorandum of Association, and no other Company. Lord Cranworth would appear to have taken that view in *Re Overend Gurney & Co.* when he says, ⁽²⁾ “It was said that Mr. Oakes never agreed to become a member of the Company whose business is indicated by the Memorandum of Association actually filed. A change was made in that Memorandum of Association after he had agreed to take shares, and before it was filed. The change was not of any very great importance ; but I am far from saying that if Mr. Oakes had, within a reasonable time after he agreed to take shares, examined the memorandum, and found that it differed, in however small a degree, from that on the faith of which he acted, he might not thereupon have repudiated his status as a shareholder.” We are strongly inclined to think, therefore, that the defendant is entitled to say “I never agreed to take shares in any Company of which the document shown me as Exhibit A, or at least a true copy of it, was not registered as the Memorandum of Association.”

But, however that may be, it is clear that the Memorandum of Association was, at any rate, the basis of the agreement to take shares, and that upon the analogy of those cases in which the Memorandum of Association has differed materially from the prospectus, the defendant must, in the absence of *laches* or other special circumstances, be entitled to relief, if the variances

(1) L. R. 7 Eng. and Ir. Ap. 653 ; see p. 668.

(2) L. R. 2 Eng. and Ir. Ap. 325 ; see p. 369.

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between the registered Memorandum of Association and Exhibit A are material. In the present case no attempt was even made to charge the defendant with *laches*. Then are the variances here alleged material? With respect to the first variance relied on, viz., the omission of the word "yearly" before the word "profits" in Clause 4, we agree with the learned Judge, that, taking Clause 4 in the registered Articles of Association as a whole, the profits on which it is therein provided that the commission is to be calculated must be deemed to be the yearly profits. Such, we think, must be taken to be the meaning of the contracting parties, in the absence of any qualifying term, in a document of this nature. The omission was, therefore, a merely verbal one.

The second variance relied on as material, which consists in the insertion of words giving the Company the power by special resolution in general meeting to divide the shares previously fixed at Rs. 1,000 each into shares of Rs. 500 or Rs. 250 each, raises a question of some difficulty. Before considering it, it is necessary to dispose of a counter-objection taken by the plaintiff's counsel, viz., that Kallianji, the defendant's *Munim*, had himself expressed to Javerilal, the promoter, his regret that the shares were not of smaller nominal amount. We should feel considerable difficulty in accepting this statement of Javerilal; but in any case the contract which binds the defendant was not entered into on his behalf by Kallianji on the occasion of this alleged conversation, but by Mowji, another *Munim*, whose particular province it would appear to have been to manage such business, and that, too, two or three days subsequently, and nothing then passed that could have led the promoters to suppose that the defendant would not object to such a power.

That this addition was in its nature a material one, we think is plain. The nominal value of the shares necessarily determines in no small degree the class of persons who are likely to be members of the Company. The lowering of that value from Rs. 1,000 to Rs. 250 might certainly be expected to introduce a class of shareholders from whom the recovery of their contributions to the unpaid capital in case of dissolution would be rendered more difficult, and thus indirectly enhance the liability of the more wealthy members, who would have to make up the deficiency.

But it was argued that such a provision, however intrinsically material, was contrary to law, and, therefore, null and void, and that, consequently, the insertion of it could not constitute a material variation of which the defendant would be entitled to complain. The learned Judge of the Division Court acceded to this view. The case of *In re the Financial Corporation*⁽¹⁾ was much relied on as establishing the first branch of the argument, viz., the illegality of the provision in question. The determination of this question was, however, not necessary for the decision of that case; and although Lord Cairns expressed a clear opinion that "it would not be competent, even by unambiguous words in the memorandum, to obtain the power of reducing the shares," Lord Justice Turner, on the other hand, whilst admitting that the Memorandum of Association could not be altered for the purpose of reducing the amount of the shares, refused to express any opinion, as being unnecessary for the decision of the case, "upon the effect of the registration of a memorandum containing a provision not warranted by the statute." The question has not, save on that occasion, so far as we are aware, been the subject either of judicial decision or comment, although the general view taken, by the Lords Justices, of the several sections relating to the Memorandum of Association of a registered Company was repeated by Lord Cairns in delivering judgment in the important case of *Ashbury Railway Carriage and Iron Company v. Riche*⁽²⁾, and was adopted by the other Law Lords who took part in its decision. The question, therefore, whether a Company can reserve power to itself, as was done here, by its Memorandum of Association to diminish the amount of the shares, cannot, notwithstanding the *dictum* of so high an authority as Lord Cairns, be regarded as altogether free from doubt. The learned Judge of the Division Court, however, adopted the opinion of Lord Cairns without hesitation, and having pronounced the alteration illegal, and, therefore, as he says, "inoperative or nugatory," decided that it was also immaterial, because, as the learned Judge adds, "it in no way alters the rights and liabilities of the defendant as created by the signature of the Memorandum of Association originally contemplated." Doubtless, if the provision be an illegal one,

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(1) L. R. 2 Ch. Ap. 714. (2) L. R. 7 Eng. and Ir. Ap. 653.

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it cannot alter the legal rights and liabilities of the defendant. But is it on that account necessarily immaterial? Does not the very fact of the provision in question forming part of the registered Memorandum of Association, which, as Lord Cairns says in the last-mentioned case⁽¹⁾, "is as it were the Charter," and defines the powers of the Company, make it material? Although the illegality of the provision might justify the Registrar of Joint Stock Companies in refusing to register the Memorandum of Association and to issue a certificate of incorporation, still, when the Company has been incorporated, it would *prima facie* be within the competency of the Company to exercise all the powers given it by the Memorandum of Association, and amongst them the power in question. The Act provides no means of rectifying or altering the Memorandum of Association, except when the Company wishes to change its name. The possibility must, therefore, be assumed of a majority of shareholders wishing to exercise the power in question. Assuming its illegality, the defendant might probably by some proceeding, although what the right proceeding would be is not very clear, succeed in preventing the Company from putting the power in exercise. But in the view of the possibility of his having to resort to legal proceedings, and to incur, it may be, considerable expense, to protect his rights, can it be said that this addition to the Memorandum of Association which he signed is immaterial?

We have hitherto assumed, as the learned Judge has done, that the provision is illegal. But whatever the inclination of our own opinion may be, it is impossible to contend that the question must be regarded as settled, or even that it is altogether free from doubt. That the Company, therefore, should attempt to exercise the power, is not a mere possibility, but as probable, perhaps, and as fairly to be expected, as the exercise of any other of the powers which the Company possesses of regulating the conditions of its corporate existence. The defendant is, therefore, we think, entitled to say that whether his legal rights and liabilities are, or are not, affected by the introduction into the memorandum of the power in question, his position is practically

(1) *Ashbury Railway Carriage and Iron Company v. Riche* (L. R. 7 Eng. and Ir. Ap. 653); see p. 668.

altered from what it would have been had the document he signed been adopted as the Memorandum of Association.

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The decree of the Court below is, therefore, reversed, and the plaint dismissed with costs. The plaintiffs must also pay the defendant his costs of appeal.

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[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 111 of 1876.

BANÁPA AND ANOTHER (DEFENDANTS AND APPELLANTS) v. SUNDARDAS JAGJIVANDAS (PLAINTIFF AND RESPONDENT). September 21

Indian Evidence Act (I. of 1872), Sec. 92—Evidence of oral agreement contemporaneous with a deed of sale.

The defendant admitted the execution of a deed of sale, but alleged that contemporaneously with it he entered into an oral agreement with the vendee that the deed was to be merely a security for the payment of a certain sum of money by the defendant to the vendee, and that a large portion of the sum so secured had already been paid to the vendee.

Held in special appeal that as the alleged agreement was wholly inconsistent with the terms of the deed of sale, evidence to prove such agreement was excluded by Act No. 1 of 1872, Section 92.

Muttyloll Seal v. Annundochunder Sandle (5 Moore Ind. Ap. 72) distinguished.

THIS was a special appeal from the decision of W. H. Crowe, Senior Assistant Judge at Kaládgi in the District of Belgaum, reversing the decree of Khrishnarao Pandurang, Second Class Subordinate Judge of Bijápur.

The plaintiff Sundardas sued to be put in possession of and have his title declared to a house situated in Bijápur, and alleged that the defendants, Banápa and Shetapa, sold it, together with some lands and immoveable property, to the plaintiff's brother Haridás (deceased) for Rs. 1,000, under a deed dated the 20th May 1868; that the whole property was in the possession of the plaintiff, who afterwards let the house to the defendants as