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reported decisions of that Court. I contend, therefore, that the decisions of this Court to the contrary are erroneous, and that the Code has not taken away the right of reply which existed and had been the practice of the Court under the High Courts Criminal Procedure Act (X. of 1875) before the Code was made applicable to it, and that after what has happened in this case the Crown is entitled to reply.

Mr. *Woodroffe* was not called on.

The judgment of the Court was as follows:—

WILSON, J.—The question raised now is one which I think I am bound to answer at this stage, in fairness to those who have the responsibility of conducting the case for the prosecution and for the defence, namely, whether, in the events which have happened down to this stage, the Crown is entitled to a reply. This seems to me to depend solely on the provisions of section 292 of the Code of Criminal Procedure. Independently of authority I should have thought that it did not give the Crown the right of reply. It only gives the right when the accused has stated, in reply to the question put to him under section 289, that he means to adduce evidence. I further think it is my duty to follow the decisions of this Court rather than that of the Madras High Court. I hold, therefore, that up to this stage of the case nothing has happened which gives the Crown a right of reply.

Attorney for the prosecution : The *Officiating Government Solicitor* (Mr. *W. K. Eddis*).

Attorney for the accused : Baboo *G. C. Chunder*.

Attorneys for the Bank : Messrs. *Watkins & Co.*

H. T. H.

PRIVY COUNCIL.

P.C.* 1890 *Mar.* 13.

PIRTHI PAL KUNWAR (PLAINTIFF) *v.* GUMAN KUNWAR AND ANOTHER (DEFENDANTS).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Declaratory decree, Suit for—Declaratory decree not obtainable by absolute right—Discretion of Court.

It is discretionary with a Court to grant or to refuse a declaratory decree with regard to the circumstances—*Sreenarain Mitter* v. *Kishen Soondery Dass* (1) referred to and followed.

* *Present:* LORD MACNAGHTEN, SIR B. PEACOCK, and SIR R. COUCH.

(1) 11 B. L. R., 171: at p. 180; L. R. I. A., Sup. Vol., 149.

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PIRTHI PAL KUNWAR v. GUMAN KUNWAR.

A talukhdar died, leaving a widow; also a son who, having succeeded as talukhdar, died childless. This son's widow, being in possession, sued for a declaration that an adoption by the father's widow, to the father, was void and ineffectual. The ground of suit was that, at some time or other after the death of the plaintiff, the person alleging himself to have been adopted might obtain the talukhdari, unless his adoption should now be negatived.

With regard to all the circumstances, the refusal of such a declaration was approved by their Lordships. If the person alleged to have been adopted should sue hereafter, the question would be decided whether he was validly adopted or not.

APPEAL from a decree (27th July 1885) of the Judicial Commissioner of Oudh, reversing a decree (17th December 1884) of the District Judge of Sitapur.

The question on this appeal was whether the Appellate Court below had rightly reversed a decree declaring that the adoption of the second defendant by the first was invalid, and whether the appellant was entitled to have such a declaration made. Ratan Singh, talukhdar of Katesar, in the Sitapur district and tehsil, died in 1837, leaving a son, Raja Sheo Baksh, and a widow, Rani Guman Kunwar, now the first defendant. Raja Sheo Baksh died in 1869, having, as alleged, made provision for the maintenance of the first defendant, and leaving a widow, the plaintiff.

On the 14th December 1883 Rani Guman Kunwar executed a document, registered the next day. This recited that Raja Ratan Singh had by will directed Guman to adopt a son to him, which she had accordingly done by adopting Maneshwar Baksh, to whom she bequeathed all her property.

On the 25th December 1884 Pirthi Pal brought this suit against Rani Guman Kunwar and Maneshwar Baksh to have it declared that this adoption was void. She obtained from the District Judge a declaration that, after the plaintiff's death, the succession would take place as if no such document as that of 14th December 1883 and no adoption had been made. The Judge refused to deal with any question as to the inheritance to Pirthi Pal's own property.

On appeal the Judicial Commissioner reversed the above decree and dismissed the suit with costs, giving judgment as follows:—

"The first question which I have in this appeal to decide is whether I should be exercising a wise discretion in allowing the decree to stand. And I think that I should not. The District

Judge writes:—'It is an open question as to who will succeed to the property or the estate of the defendant No. 1 upon her demise. It would be difficult, if not impossible, to ascertain with any degree of accuracy at the present moment what would constitute the estate of the defendant No. 1 when she dies. How are we to know and how could we determine the question? It would be equally difficult to determine who is the next reversioner. Such a question could not be determined now.' And again:—'The defendant denies any intention to prejudice the plaintiff's interests, the object which the defendant has in view being merely, it is said, to provide an heir and successor to her own property. The will is somewhat ambiguous in its terms, and may admit of different interpretations being placed upon it.' The plaint is not drawn distinctly either under section 39, or under section 42 of 'The Specific Relief Act, 1877,' and Counsel for the plaintiff admits his inability to confine himself to either section of the Act. The plaintiff could obtain no immediate relief under her decree, and her rights will be in no way prejudiced by delay.

"In these circumstances, the remarks of their Lordships in *Sreenarain Mitter* v. *Kishen Soondery Dassee* (1), although made with reference to the law which preceded Act III of 1877, appear to me to be of force."

The Judicial Commissioner then quoted the passage that is given in the judgment below.

On this appeal

Mr. *J. D. Mayne*, for the appellant, argued that the decision of the Judicial Committee referred to by the Appellate Court below did *not* support his conclusion in the present cases. The facts here were sufficient to show that the Court of first instance had exercised a sound judicial discretion in granting a declaratory decree.

He referred to *Thayammal* v. *Venkatarama Aiyan* (2); *Jagadamba Chowdhrani* v. *Dakhina Mohun* (3); *Sreenarain Mitter* v. *Kishen Soondery Dassee* (1).

(1) 11 B. L. R., 171, at p. 190; L. R. I. A., Sup. Vol., 149.
(2) L. R., 14 I. A., 67; I. L. R., 10 Mad., 205.
(3) L. R., 13 I. A., 84; I. L. R., 13 Calc., 308.

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The respondents did not appear.

Their Lordships' judgment was delivered by

SIR B. PEACOCK.—The circumstances of this case are very fully stated by the Judicial Commissioner in his judgment, and their Lordships have very few remarks to make beyond those which the Judicial Commissioner made when he delivered that judgment. He referred to the case of *Sreenarain Mitter* v. *Kishen Soondery Dassee* (1), and read the remarks which had been made by the Judicial Committee in that case. Amongst those remarks it was said: "It is not a matter of absolute right to obtain a declaratory decree. It is discretionary with the Court to grant it or not, and in every case the Court must exercise a sound judgment as to whether it is reasonable or not, under the circumstances of the case, to grant the relief prayed for. There is so much more danger than here of harassing and vexatious litigation that the Courts in India ought to be most careful that mere declaratory suits be not converted into a new and mischievous source of litigation."

The Judicial Commissioner, in exercising that judgment which the Judicial Committee had suggested ought to be adopted by the Courts in India, thought that this was not a case in which, in the exercise of a sound judicial discretion, he ought to grant a declaratory decree, or that a declaratory decree ought to have been granted by the Court of first instance, and he therefore reversed the decision of that Court and refused a declaratory decree. It appears to their Lordships that the Judicial Commissioner exercised a very sound judgment in what he did. All that is suggested by the learned Counsel on the part of the appellant in support of a declaratory decree is this—that, at some time or another after the death of the present plaintiff, the person who according to the plaintiff's contention is not an adopted son may by some means, either by an act of the Government or otherwise, obtain possession as an adopted son. The only object, therefore, of having a declaratory decree is to prevent him being put into possession. Their Lordships cannot assume that the Government, if petitioned to put the person claiming to be an adopted son into possession, would do so unless they saw that he had a right to that possession. The

(1) 11 B. L. R., 171, at p. 190; L. R. I. A., Sup. Vol., 149.

officers of Government would in ordinary course, if there were any doubt as to the title, refer the parties to the Civil Court.

If the person claiming to have been adopted brings an action to enforce his title, the question will be investigated whether he was validly adopted or not.

Under these circumstances, their Lordships think that there was no ground for this appeal, and they will humbly advise Her Majesty that the judgment of the Judicial Commissioner be affirmed.

Appeal dismissed.

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*

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JIBUN NISSA AND OTHERS (DEFENDANTS) *v.* ASGAR ALI AND OTHERS (PLAINTIFFS).

*P.C.** 1890 *Mar.* 14.

[On appeal from the High Court at Calcutta.]

Deed, Construction of—Deeds not intended to operate according to their tenor—Nullity of transaction apart from fraud.

Documents, principally a potta and a kobala, executed between a Mahomedan pardanashin lady and one of her relations purported to represent, the one a putni lease from her of her lands, and the other a sale of her house, and ground, from the date of the execution. That she received the consideration was *not proved*, but had it passed it would have been distributed between the two deeds, which formed part of one and the same transaction. From the acts of the parties it was established that her intent was to deprive her heirs, not herself, and that she had no intention to part with the property *in præsenti*, as the deeds represented that she did. *Held*, that, the latter not being intended to operate according to their tenor, the whole transaction was a nullity.

APPEAL from a decree (16th August 1886) of the High Court reversing a decree (16th July 1886) of a Division Bench, affirming a decree (22nd April 1885) of the Second Subordinate Judge of the 24-Pergunnahs District.

The plaintiffs, now respondents, were the nephews of Delrus Banu Begum deceased on 16th January 1883, and were her heirs by Shiah law. The question raised was whether she had defeated the

Present: LORD MACNAGHTEN, SIR B. PEACOCK, and SIR R. COUCH.