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seem somewhat remarkable that, on the face of the various rulings of this Court with reference to section 27 of the old Act, the Legislature intended to curtail, greatly to the disadvantage of the ryot, the period of limitation from 12 years to two years; and it may seem equally remarkable that it is only in cases of occupancy ryots that this curtailment has been made, and not in regard to tenants of any other class; but what we have to do is simply to administer the law as we find it.

A contention was raised before us by the learned vakeel for the respondent to the effect that, the cause of action having arisen before the Bengal Tenancy Act came into operation, the plaintiff would be entitled to bring his suit within 12 years, that being the time within which he might have sued if the Bengal Tenancy Act had not been passed; but I am unable to accept this contention as correct. Section 184 of the Bengal Tenancy Act declares that suits specified in Schedule III of the Act *shall* be instituted within the time prescribed in that schedule. And there is no saving clause for suits in which the cause of action had arisen before that Act was passed.

Another contention was raised before us to the effect that the suit as laid was not a suit against the defendant as *landlord*, but as a person having no title whatsoever, and, therefore, it did not fall within Article 3 of the Act. But it seems to me that, the defendant being in fact the landlord, it does not matter whether the plaintiff described him as such in the plaint or not.

For these reasons I think that the decree of the lower Court is wrong and should be reversed with costs.

NORRIS, J.—I concur in reversing decree of the lower Appellate Court.

C. D. P. *Appeal allowed.*

ORIGINAL CRIMINAL.

Before Mr. Justice Wilson.

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July 23.

QUEEN-EMPRESS *v.* SOLOMON.

Practice—Prosecutor's right of reply—Criminal Procedure Code (Act X of 1882), *ss.* 289, 292.

The putting in, as evidence on his behalf, of any documentary evidence by an accused person during the cross-examination of the witnesses

for the prosecution and before he is asked under s. 289 if he means to adduce evidence, does not give the prosecution a right to reply

Empress v. *Kaliprossonno Doss* (1) followed. *Queen-Empress* v. *Venkatapathi* (2) dissented from.

THE accused was charged with forgery of a valuable security, forgery, using as genuine a forged document, having the same in his possession with intent to use it as genuine, forgery for the purpose of cheating, and cheating. The offences were alleged to have been committed in connection with certain loans obtained by the accused from the Hong-Kong and Shanghai Bank on the security of Government opium passes alleged to have been forged, such loans having been made in the months of March and April 1890.

The *Officiating Standing Counsel* (Mr. *Pugh*) and Mr. *T. A. Apcar* for the prosecution.

Mr. *Woodroffe*, Mr. *Allen*, and Mr. *J. G. Woodroffe* for the defence.

Mr. *Hyde* for the Hong-Kong and Shanghai Bank.

During the cross-examination of the witnesses for the prosecution, various documents were proved and put in as evidence on behalf of the defence. These documents consisted of numerous genuine opium passes, cheques, and entries in the books of the Honk-Kong Bank and the Bank of Bengal, showing the loan transactions of the accused with both banks for the years 1888 and 1889. Documents were also put in to show the transactions between the accused and one Nursing Dass, a dealer in opium, who was alleged by the defence to be dead, and whose name appeared on some of the forged passes as alleged purchaser of the opium they purported to cover. Evidence was also given in cross-examination to show the number of lots of opium purchased and shipped by the accused during the months of January to April 1890, and of the number of lots purchased in those months by the firm of which Nursing Dass was a partner.

After the close of the case for the prosecution, on the accused being asked whether he intended to adduce any evidence, Mr. *Woodroffe* replied in the negative. Mr. *Pugh* thereupon stated

(1) I. L. R., 14 Calc., 245.
(2) I. L. R., 11 Mad., 339.

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that if he should deem it necessary, after hearing what use the defence proposed to make of the evidence referred to above, he should claim a right to reply on behalf of the Crown. Mr. *Woodroffe* submitted that the Crown could not have a right to reply, and the Court intimated that it would be fairer to both parties to have the question decided at that stage than to leave it over to be decided after Counsel had addressed the jury for the accused.

Mr. *Pugh*.—It has always been the invariable rule in England, and is still the practice, that when documentary evidence is put in on behalf of the accused, the prosecution is entitled to the right of reply (Roscoe, p. 220). Here section 288 of the Criminal Procedure Code expressly provides for the difficulty experienced in England of an accused being forced under certain circumstances to put in as his own evidence the deposition of a witness taken before the committing Magistrate. In this case there has been a large mass of evidence, of which it is difficult to see the relevancy, and until the prosecution know the purpose for which it has been put in, and the use intended to be made of it, it is impossible for me to tell what bearing it has on the case and to deal with it. The Crown will thus be placed at a considerable disadvantage, and it may result in a miscarriage of justice. The decisions on the point of the various High Courts are conflicting. The first reported case in this Court, *Hurry Churn Chuckerbutty* v. *The Empress* (1), is clearly distinguishable. *The Queen-Empress* v. *Grees Chunder Banerji* (2) decided by Field, J., was the first case which really interfered with the former practice of this Court, and that was decided upon the erroneous supposition that the Code of Criminal Procedure is a penal statute. That case was followed by Trevelyan, J., in *The Empress* v. *Kaliprosonno Doss* (3), but, as there pointed out, it was dissented from and not followed by Norris, J., in a case which is unreported. On the other hand, the Madras High Court in *The Queen-Empress* v. *Venkatapatha* (4) have decided the other way, and have refused to follow the decision in *The Queen-Empress* v. *Grees Chunder Banerji* (2). I am also informed that it is the practice of the Allahabad High Court under such circumstances to allow a reply, though there are no

(1) I. L. R., 10 Calc., 140.
(2) I. L. R., 10 Calc., 1024.
(3) I. L. R., 14 Calc., 245.
(4) I. L. R., 11 Mad., 339.

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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.