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recovered by him since 20th December, 1889. The appellant's costs of this appeal to be added to the mortgage-debt.

Decree varied.

Attorneys for appellants :—Messrs. *Jefferson, Bhaishankar and Dinsha.*

Attorneys for the respondent :—Messrs. *Wadia and Ghandy.*

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14 B. 436.

CRIMINAL JURISDICTION.

Before Mr. Justice Farran.

QUEEN-EMPRESS *v.* KRISHNAJI BABURAV BULELL.
[10th July, 1890.]

Practice—Procedure—Criminal prosecution—Right of reply—Documents put in evidence on behalf of accused during cross-examination of witnesses for prosecution—No witnesses called for defence—Criminal Procedure Code (Act X of 1882), s. 292.

The fact that during the cross-examination of witnesses for the prosecution, documents are put in evidence on behalf of the accused, does not give the prosecution the right of reply if no witnesses are called for the defence.

[Diss., 14 A. 212.]

[437] THE accused was tried for defamation and abetment of defamation at the prosecution of Burjorji Byramji.

Macpherson, (Acting Advocate-General), and *P. M. Mehta*, for the prosecution.

Russell, for the defence.

During the cross-examination of the complainant Burjorji Byramji, the counsel for the accused put in evidence a certificate of character of the accused signed by the complainant.

In the cross-examination of a subsequent witness (Muncherji M. Bhownagri), counsel for the defence put in two letters written by one Khan Saheb to the witness for the purpose of showing that Khan Saheb had been improperly endeavouring to obtain money from the witness. This was done, in order to affect the credit of Khan Saheb, who was an important witness for the prosecution. Before tendering these letters in evidence, counsel for the defence asked the Court to rule whether, if he put them in, his doing so would give counsel for the prosecution the right to reply. The Court, however, declined to give any ruling upon a hypothetical case. Counsel for the defence then put in the letters.

Khan Saheb was called as a witness for the prosecution, and during his cross-examination, counsel for the defence put in a letter written by the witness to the Presidency Magistrate, before whom the charge against the accused was originally brought, asking for an adjournment of the case.

At the close of the case for the prosecution, counsel for the defence stated that he did not intend to call witnesses.

Macpherson (Acting Advocate-General), thereupon claimed that as evidence had been put in on behalf of the accused, the counsel for the

defence should address the jury first, and that he, as counsel for the prosecution, should have the right of reply. He relied on s. 292 of the Criminal Procedure Code (Act X of 1882).

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Russell, contra, cited *The Queen* v. *Grees Chunder Banerjee* (1); *Empress of India* v. *Kaliprosonno Doss* (2).

ORDER.

[438] The Court ruled that the prosecution had no right of reply.

Attorneys for the prosecution: Messrs. *Nanu and Hormasji.*

Attorneys for the defence: Messrs. *Balkrishna and Dikshit.*

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14 B. 438.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

MANGALDAS AND ANOTHER (*Original Defendants*), *Appellants v.* RANCHHODDAS BHAVANIDAS (*Original Plaintiff*), *Respondent.**

[21st December, 1889.]

Election—Will—Hindu law.

The doctrine of election applies to wills made in India.

D., a Hindu widow, died, making a will in respect of property which she had inherited from her husband. She bequeathed Rs. 2,000 as a legacy to the plaintiff, and the immoveable property to K., the defendants' father. The plaintiff and K. were the heirs of her husband. The plaintiff sued for the legacy under the will, and for half the immoveable property as heir.

Held, that the plaintiff should be put to his election whether to take the legacy under the will, or half the property as heir of the testator's husband.

[R., 12 Ind. Cas. 591.]

THIS was a second appeal from a decision of J. J. Heaton, Acting Assistant Judge of Thana.

One Divalibai died possessed of moveable and immoveable property which she had inherited from her husband Tulsidas, who died childless.

By her will, Divali left a legacy of Rs. 2,000 to the plaintiff, and the rest of the property to the defendants' father, who was also appointed the executor of her will. The plaintiff and the defendants' father were the sons of the sisters of her husband Tulsidas.

The plaintiff sued to recover the legacy and also half of the property left to the defendants' father. He claimed the legacy under the will and the half share of the property as heir of Tulsidas.

The defendants, their father having died, contended through their mother and guardian, among other things, that the plaintiff should be put to his election.

Both the lower Courts awarded the plaintiff's claim.

[439] The defendants preferred a second appeal to the High Court, which sent back the case for the determination of the following issues:—

1. Ought the plaintiff to be put to his election?

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* Second Appeal No. 789 of 1887.

(1) 10 C. 1024. (2) 14 C. 245.