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the above decree its full legal effect in competing with the plaintiff's deed of sale, and the important question, therefore, is, what is the legal effect it has for such purpose.

Assuming that the defendant's ownership was not in dispute in the suit in which that decree was passed, as would appear to have been the case from there being no declaration of his title as owner, the decree merely adjudicated as to the relationship of landlord and tenant between defendant and his vendor created subsequently to the sale. The defendant's title as owner was not merged in the decree, but still rested exclusively on his deed of sale, although his vendor might not, whilst he was his tenant, be able to dispute it. In this respect the case differs from *Kolluri Nagabhashanum* v. *Ammanna* (1) as explained in *Madar Saheb* v. *Subbarayalu* (2) where the registered document became superseded by a decree under which the plaintiff derived his title as the purchaser at the auction sale, and the competition was, therefore, between the decree and a registered document, which came within the exception. We think, therefore, that the decree of Mr. Justice Jardine should be confirmed with costs.

Decree confirmed.

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18 B. 364.

[364] ORIGINAL CRIMINAL.

Before Mr. Justice Parsons.

QUEEN-EMPRESS *v.* SADANAND NARAYAN AND OTHERS.

[3rd February, 1894.]

Practice—Procedure—Several persons tried jointly—Right of reply where one of several accused calls witnesses and the others do not—Criminal Procedure Code (X of 1882), ss. 289, 292.

Where one of several accused persons tried jointly calls witnesses at the trial, but the other accused call no witnesses, they must all follow in their defence, and the prosecution has the right of reply on the whole case.

SADANAND Narayan, Harichand Bhikoba, Bajirao Tatia Raoji and Sayad Husain were charged, under ss. 109, 467 and 471 of the Penal Code (XLV of 1860), as follows:—No. 1 with the offence of using as genuine a forged document; No. 2 with forgery, and all of the Nos. 1, 2, 3 and 4 with abetment of forgery. The case came for trial at the Criminal Sessions of the High Court, and the prisoners pleaded not guilty, and claimed to be tried.

Anderson appeared for the prosecution.

Accused No. 1 was not defended by counsel.

Lowndes appeared for accused No. 2.

Jardine for accused Nos. 3 and 4.

At the conclusion of the case for the prosecution, accused No. 1 in answer to a question put by the Court said he desired to call witnesses. Accused Nos. 2, 3 and 4 in answer to the Court stated that they did not intend to call witnesses.

Accused No. 1 then called and examined his witnesses.

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(1) 3 M. 71. (2) 6 M. 88.

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Counsel for the other accused (Nos. 2, 3 and 4), being then called upon to address the Court, objected, and contended that inasmuch as they had not called witnesses, counsel for the prosecution should sum up the case as against accused Nos. 2, 3 and 4 and that they should then have the right of reply on behalf of their clients. They contended that the fact that one of the accused had called witnesses in his defence did not affect the right of the other accused, who had called no witnesses. They cited ss. 289 and 292 of the Criminal Procedure Code (X of 1882).

JUDGMENT.

[365] PARSONS, J.—It appears to me that the prosecutor has the right to sum up only when all the accused persons say that they do not mean to adduce evidence. That is my construction of the words at the beginning of the second clause of s. 289, which deals with the case in which an accused person says he does not mean to adduce evidence. The case of the accused saying he does mean to adduce evidence is dealt with in the third clause of the same section. There the words are "if the accused or any one of several accused says that he means to adduce evidence;" but by that clause no right of summing up is given to the accused. The two cases are combined in cl. 4 of the same section, which must be construed as dealing with them separately, thus:—(1) The case of the accused or any one of several accused saying that he means to adduce evidence, and (2) the case of the accused, or all the accused, or more than one saying that they do not mean to adduce evidence, and in this latter case the prosecutor having summed up his case. The language of s. 292 is also, I think, explicit on this point. "If the accused or any of the accused has stated that he means to adduce evidence, the prosecutor shall be entitled to reply." "Reply" here must mean reply generally on the whole case. It cannot be that he is to sum up as to such of the accused as do not call evidence, and reply only on the evidence that may have been adduced by the others.

Here one of the accused said he meant to adduce evidence; I called on the accused generally to enter on their defence under the last clause of s. 289. I think they must now follow one another in their defence under s. 290, and the prosecutor will be entitled under s. 292 to reply generally on the whole case.

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18 B. 366.

[366] PARSI MATRIMONIAL COURT.

Before Mr. Justice Candy.

SORABJI CAWASJI POLISHVALA (*Plaintiff*) *v.* BUCHOOBAI (*Defendant*).* [23rd February, 1894.]

Husband and wife—Divorce—Parsis—Parsi Marriage Act XV of 1865—Minority—Guardians—Practice—Procedure.

In a suit by a husband for divorce under s. 30 of the Parsi Marriage Act, XV of 1865, the defendant, if under the age of 21 years, although more than 18, must be deemed to be a minor, and a guardian for the suit of the defendant must be appointed.

[R., 22 B. 430 (435); 6 C.L.J. 36 (37).]

* Suit No. 2 of 1894.