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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.

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SUIT by a husband for divorce under s. 30 of the Parsi Marriage and Divorce Act, XV of 1865.

The plaint having been accepted, the plaintiff's attorney presented a petition for the appointment of a guardian *ad litem* for the defendant, who was over the age of 18 years but under the age of 21.

Notice was issued to the defendant and her mother to show cause against the application.

Sorabji Bezonji appeared for defendant to show cause :—He referred to s. 3 of Act XV of 1865 ; Indian Majority Act IX of 1875, s. 3, and the Guardians and Wards Act VIII of 1890, s. 4. He stated that, if the defendant was held to be a minor, her mother was willing to act as guardian, and cited *Asirun Bibi* v. *Sharip Mondul*(1).

F. P. Pavri, for plaintiff :—Section 3 of Act XV of 1865 indicates that the Legislature regarded a Parsi as a minor up to the age of 21 in matters relating to suits for divorces. The Indian Majority Act IX of 1875 does not affect the question : see s. 2, cl. (*a*). There being no express provision on the point, it must be settled by reference to English law.

Cur. adv. vult.

JUDGMENT.

CANDY, J.—As all proceedings in this Court are regulated by the provisions of the Code of Civil Procedure (No. 1 of the Rules **[367]** of this Court and s. 40 of the Act XV of 1865) the question is whether under s. 443 of the Code of Civil Procedure (XIV of 1882) the Court is satisfied of the fact of the defendant's minority. If the Court is so satisfied, then the Court *shall* appoint a proper person to be guardian for the suit for defendant. The defendant is admittedly above 18 and under 21 years of age. It is also admitted that she does not come within the terms of the first clause of s. 3 of the Indian Majority Act (IX of 1875), therefore, under the second clause of the said section she must be deemed to have attained the age of majority when she completed the age of 18, provided she is not subject to the provisions of s. 2 of the said Act, which declares that nothing therein contained shall affect the capacity of any person to act in the matter of marriage or divorce.

Here defendant is a defendant in an action for divorce brought by her husband. Her capacity to act must, therefore, be determined. I am satisfied that for such purpose defendant must be deemed to be a minor. Apart from the fact that the law applicable to Parsis in India within the jurisdiction of the High Court on the original side is that which is applied to British-born subjects (per Couch, C.J., in *Mancharsha* v. *Kamrunisa*(2)), we have the fact that the Parsi Marriage and Divorce Act (XV of 1865) evidently treats every Parsi under the age of 21 as a minor. Thus in s. 3, in treating of the requisites to the validity of Parsi marriages, it is provided that, in the case of any Parsi who shall not have completed the age of 21 years, the consent of his or her father or guardian shall have been previously given to such marriage ; and by s. 6 the father or guardian must sign the certificate according to the form as shown by the schedule to the Act, the heading to the last column of the said form running thus :—"Signature of father or guardian when husband or wife is *an infant*." I am satisfied, therefore, that the defendant is an infant, and I must appoint a proper person to be her guardian for the suit.

(1) 17 C. 488.

(2) 5 B.H.C.R. A.C.J. 109.

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Her mother is willing to act as such; but a married woman, though she can act as the next friend of an infant plaintiff, cannot be appointed guardian *ad litem* for an infant defendant [368] (s. 457 of the Civil Procedure Code). I must, therefore, call upon defendant's father, who is said to be a station master near Baroda, to act as guardian *ad litem* for his infant daughter.

Attorney for the plaintiff:—Mr. *F. P. Pavri.*

Pleader for the defendant:—Mr. *Sorabji Bezonji.*

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18 B. 368.

ORIGINAL CIVIL.

Before Mr. Justice Farran.

RAM DYAL SALIGRAM (*Plaintiff*) *v.* NURHURRY BALKRISHNA (*Defendant*).* [10th March, 1894.]

Practice—Inspection—Defendant's right to inspection of documents referred to in plaint before written statement filed.

A defendant is entitled to have inspection of documents referred to in the plaint although he has not filed his written statement.

[F., 12 Ind. Cas. 506=256 P.L.R. 1911=185 P.W.R. 1911; R, 32 B. 152=9 Bom. L.R. 1084 (1085).]

IN chambers. Summons by defendant for inspection.

The plaintiff sued the defendant for Rs. 2,111, the amount alleged to be due from him for goods sold, &c.

In his plaint he stated, in the usual form, that he would rely on the documents specified in the list annexed thereto.

The defendant applied to the plaintiff for inspection of the documents mentioned in the said list. The plaintiff having declined to give inspection until the defendant filed his written statement, the defendant took out a summons calling on the plaintiff to show cause why he should not give the required inspection.

Chitnis, for the defendant, in support of the summons cited *Quilter* v. *Heatley* (1).

Inverarity, for the plaintiff showed cause.—We ought not to be required to give the defendant inspection until his written statement is filed. At present he denies our claim altogether. If he sees the letters we specify in our list he will probably alter his defence. The case of *Quilter* v. *Heatley* (1) does not apply. In that case the documents, of which inspection was sought by the defendant, were referred to in the pleadings, and made part of the [369] statement of claim. That is the ground of the decision of Jessel, M.R.

JUDGMENT.

FARRAN, J.—I think inspection must be given. Under the Code the plaintiff is required to mention the documents on which he will rely at the hearing. He has done so, and has mentioned the documents in question. There is, therefore, no difficulty as to the plaintiff knowing

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* Suit No. 618 of 1893.

(1) 23 Ch. D. 42.