

BURKITT, J.—The conviction in this case cannot possibly stand. It is alleged that the appellant, Musammât Imtiazan, contracted a second marriage with one Khiali Khan during the life-time of one Taleyar Khan, to whom she had been married several years previously. She has been convicted of an offence punishable under section 495, and the other appellants have been convicted of abetment of the said offence. Now it has been distinctly laid down in the case of *Queen-Empress v. Bai Rukshmoni* (1) that the brother of a man, even though the latter was a lunatic, whose wife was prosecuted for bigamy, is not a person “aggrieved” within the meaning of section 198 of the Code of Criminal Procedure. In that opinion I fully concur, and I cannot understand how the Sessions Judge held otherwise. In this case, however, the complainant is neither the man to whom the woman was first married, nor his brother, but is a brother of the man with whom the alleged bigamy was committed. No complaint was made by the first husband, nor by the second, and I fail to see how the brother of the second husband can in any way be considered an aggrieved party.

I set aside the convictions and sentences passed on the appellants and I direct their release.

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## APPELLATE CIVIL.

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1902

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EMPEROR  
v.  
IMTIAZAN.

1902

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*November 8.*

*Before Mr. Justice Know and Mr. Justice Blair.*

KISHAN CHAND (DEFENDANT) *v.* JAGANNATH PRASAD AND ANOTHER  
(PLAINTIFFS) AND GANESH PRASAD (APPLICANT).\*

*Act No. 1 of 1894 (Land Acquisition Act), sections 30, 53—Civil Procedure Code, section 32—Parties—Reference by Collector as to apportionment of compensation—Addition by Judge of party to reference.*

Where under section 30 of the Land Acquisition Act, 1894, the Collector has referred to the District Judge a dispute as to the apportionment of compensation settled under section 11 of the Act, it is not *ultra vires* of the District Judge to add a party to the proceedings before him, having regard to section 53 of the Act and section 32 of the Code of Civil Procedure.

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\* First Appeal No. 32 of 1902, from an order of J. Sanders, Esq., District Judge of Benafes, dated the 12th of March 1902.

(1) (1886) L. L. R., 10 Bom., 340.

1902

KISHAN  
CHAND  
v.  
JAGANNATH  
PRASAD.

THIS was an appeal against an order of the District Judge of Benares in a proceeding under the Land Acquisition Act, 1894. There was pending before the District Judge a reference made by the Collector under section 30 of that Act. One Ganesh Prasad filed an application in the District Judge's Court, asking to be made a party to those proceedings on the allegation he had been in adverse possession of a portion of the property claimed by one of the parties to the reference. The District Judge entertained this application, made Ganesh Prasad a party, and proceeded to fix issues regarding the rights of all the parties on the record. Against this order one of the parties to the reference appealed to the High Court.

Mr. R. Malcomson, for the appellant.

Pandit Madan Mohan Malaviya, for the respondents.

KNOX and BLAIR, JJ.—This is an appeal from an order passed by the District Magistrate of Benares under the Land Acquisition Act of 1894. The Collector had before him a dispute which had arisen, and which he was empowered to refer, and did refer, under section 30. To that dispute, at the time when it was referred, Ganesh Prasad, one of the respondents before us, was no party. After the matter had reached the District Court, Ganesh Prasad, considering himself interested in the result, applied to the District Court to be made a party. He was made a party, and it is from the order making him a party that this appeal arises. The contention before us is that the Judge had no jurisdiction under the Land Acquisition Act to deal with any matter but the particular dispute which was referred to him by the Collector. The answer on the other side is that the provisions of section 53 of Act No. I of 1894 are sufficiently large to allow the adaptation of section 32 of the Civil Procedure Code to the matter before the Judge. The latter argument commends itself to us. We see no reason for restraining the wide language of section 53, and the provisions of section 32 of the Code of Civil Procedure appear to us to be in no way inconsistent with anything contained in Act No. I of 1894. To us it appears distinctly in the interest of all that the questions which arise as to compensation to be paid for a piece of land taken up should be dealt with as far as possible at one and the same time. We

asked the appellant to point out to us what injury would accrue to him from the adoption of such procedure. No particular injury was pointed out. We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

1902

KISHAN  
CHAND

v.

JAGANNATH  
PRASAD

## MISCELLANEOUS CIVIL.

1902

November 3.

*Before Mr. Justice Know and Mr. Justice Blair.*

RAM LAL (DEFENDANT) v. KABUL SINGH (PLAINTIFF).\*

*Civil Procedure Code, section 646B—Small Cause Court—Jurisdiction—Question of jurisdiction not raised in the Court of Small Causes—Reference by District Judge under section 646B declined.*

Section 646B of the Code of Civil Procedure does not apply to every case in which a Court of Small Causes has failed to exercise a jurisdiction vested in it by law, or has exercised a jurisdiction not vested in it by law, but only to a restricted number of such cases, namely those cases in which a Court of Small Causes has erroneously held a suit to be, or not to be, cognizable by it.

Where no question as to the Court's jurisdiction was raised by either party, and the Court of Small Causes proceeded to judgment as if the case was properly cognizable by it, the High Court refused to interfere upon a reference made by the District Judge purporting to be made under section 646B of the Code of Civil Procedure.

ONE Kabul Singh brought a suit against Ram Lal, a civil court amin, and Shib Lal, the judgment creditor, on account of damage done to his country cart while under attachment in execution of a decree. The case was tried as a Small Cause Court suit, and no question as to its not being a suit of the nature cognizable by a Court of Small Causes was raised at the hearing. A decree having been passed in favour of the plaintiff, the defendant Ram Lal applied to the District Judge asking that a reference might be made to the High Court under the provisions of section 646B of the Code of Civil Procedure, and the case was referred accordingly.

Dr. *Tej Bahadur Sapru*, in support of the reference.

KNOX and BLAIR, JJ.—The learned District Judge of Meerut has referred this case, which is now before us, under section 646B of the Code of Civil Procedure. The learned Judge is of opinion that a Court subordinate to him, namely the

\* Miscellaneous No. 95 of 1902.