

1902
 EMPEROR
 v.
 SHIB SINGH.

order, which declines to accept as sureties those persons, because they are relations, and as they are reported to be otherwise persons whose security may be accepted, I direct that it be accepted.

Before Mr. Justice Burditt.

EMPEROR v. IMTIAZAN AND OTHERS.*

Criminal Procedure Code, section 198—Act No. XLV of 1860 (Indian Penal Code), section 495—Bigamy—Prosecution started at the instance of the second husband's brother—“Person aggrieved.”

Held that in respect of a prosecution for bigamy the brother of the second (bigamous) husband of the accused was not a “person aggrieved” within the meaning of section 198 of the Code of Criminal Procedure, *Queen-Empress v. Bai Rukshmoni* (1) followed.

IN this case one Rustam Khan brought a charge under section 420 of the Indian Penal Code against two persons, Basharat Khan and Karamat Khan, the brothers of Musammam Imtiazan. In his deposition as complainant in that case, Rustam Khan further formulated a charge against Imtiazan of having entered into a marriage with his brother Khiali Khan during the lifetime of her legal husband Taleyar Khan, suppressing the fact of such former and subsisting marriage. A charge was framed against Imtiazan under section 495 of the Indian Penal Code, and against Basharat Khan and Karamat Khan under the same section read with section 109 of the Code, and they were all three committed to the Court of Session. It was there argued on behalf of the accused that the commitment could not stand because Rustam Khan, the complainant, was not a “person aggrieved” within the meaning of section 198 of the Code of Criminal Procedure, and reference was made to the case of *Queen-Empress v. Bai Rukshmoni* (1). The Sessions Judge, however, considered that, under the circumstances of the case, Rustam Khan was a “person aggrieved,” and ultimately convicted and sentenced the three accused in respect of the offences charged. Against these convictions and sentences the convicts appealed from jail to the High Court.

The Government Pleader (for whom Munshi *Gokul Prasad*) for the Crown.

* Criminal Appeal No. 681 of 1902.

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

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.

APPELLATE CIVIL.

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EMPEROR
v.
IMTIAZAN.

1902

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.

* 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.