

1909

September 1.

Before Mr. Justice Tudball.

EMPEROR v. LALA AND OTHERS,*

Act No. XLV of 1860 (Indian Penal Code), section 494—Bigamy—"Person aggrieved"—Criminal Procedure Code, section 198—Procedure—Commitment.

In a case of bigamy the person aggrieved is either the first husband or the second husband and not the father. Where a complaint was preferred by the father of the first husband, which resulted in a commitment on a charge under section 498 of the Indian Penal Code, it was *held* that the commitment was bad.

IN this case one Gobardhan filed a complaint in the Court of a Magistrate of the first class against two persons—Badam and Lala—to the effect that Badam's daughter was married to the complainant's son; that Badam had come to his house and taken away the girl and remarried her to Lala, and that on the complainant going to Lala's house, Lala prevented the girl from returning with him, though she was willing to do so. On these allegations Gobardhan preferred a charge under section 498 of the Indian Penal Code against Badam and Lala. The Magistrate added Musammatt Nihalo, the daughter of Badam, as an accused person and committed all three to the Court of Session on a charge under section 494 of the Indian Penal Code. The Assistant Sessions Judge referred the case to the High Court upon the ground that there being no complaint by the "person aggrieved" the commitment was bad.

TUDBALL, J.—One Gobardhan filed a complaint in the Court of a first class Magistrate against Badam and Lala to the effect that Badam's daughter was married to Gobardhan's son; that Badam had come to Gobardhan's house and taken away the girl and remarried her to Lala; that on his going to Lala's house, Lala prevented the girl from returning with him, though she was willing to do so. On these allegations Gobardhan preferred a charge under section 498 of the Indian Penal Code against Badam and Lala. The Magistrate added Musammatt Nihalo, the daughter of Badam, as an accused person and has committed all three for trial to the Court of Session on a charge of bigamy under section 494 of the Indian Penal Code. The learned Assistant Sessions Judge has referred the matter to this Court asking that the commitment might be quashed on the point of law that there is no

* Criminal Reference No. 444 of 1909.

complaint by a person aggrieved of an offence under section 494 of the Indian Penal Code. It is quite clear that no charge of bigamy has been preferred by either the husband of Musammat Nihalo or Gobardhan. In the case of bigamy the person aggrieved is either the first husband or the second husband. In the present case the first husband, though sixteen years of age, has preferred no complaint; neither has the second husband. I do not think that the father of the first husband can, under the circumstances of the present case, be deemed to be the person aggrieved. There is, therefore, no valid complaint of the offence under section 494 of the Indian Penal Code, and the provisions of section 198 of the Code of Criminal Procedure have not been complied with. The commitment, therefore, is bad and is hereby quashed. The Magistrate will proceed to deal with the complaint under section 498 according to law.

1909

 EMPEROR
 v.
 LALA.

 APPELLATE CIVIL.

1909

November 9.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

PARBHU DAYAL (PLAINTIFF) v. ALI AHMAD AND OTHERS (DEFENDANTS).^{*}
Civil Procedure Code (1882), section 583—Decree reversed on appeal—Restitution—Mesne profits—Jurisdiction of Court to which application for restitution is made.

It is the legal effect of a decree of reversal that the party against whom the decree was given is to have restitution of all that he has been deprived of under it. A court of appeal does not necessarily enter into the question whether a decree it is about to reverse has been executed or not. *Huro Chander Roy Chowdhry v. Shooradhonee Debia* (1), *Dorasami Ayyar v. Annasami Ayyar* (2) and *Collector of Meerut v. Kalka Prasad* (3) referred to. *Kalka Singh v. Paras Ram* (4) distinguished.

A mortgagor obtained a decree for redemption and in execution thereof recovered possession of the mortgaged property. On appeal, however, the High Court enhanced the sum payable by the plaintiff mortgagor and on his failure to pay the suit was dismissed. The mortgagee thereupon applied to the Court of first instance asking to be restored to possession of the mortgaged property and also for mesne profits for the period during which he was out of possession. *Held* that the Subordinate Judge had jurisdiction, not only to make restitution by restoring possession, but also to award mesne profits, although the decree of the High Court did not specifically provide for mesne profits.

^{*} First Appeal No. 298 of 1907 from a decree of Muhammad Shafi, Subordinate Judge of Aligarh, dated the 27th of September 1907.

(1) (1868) 9 W. R., 402.

(3) (1906) I. L. R., 26 All., 665.

(2) (1899) I. L. R., 23 Mad., 306.

(4) (1894) I. L. R., 22 Cal., 434.