

1885.

BHIMAJI
GOVIND
v.
RAKMABAI

District Court in appeal, and by the High Court in second appeal. Thereupon the applicant applied to the Subordinate Court to resume proceedings in Suit No. 181 of 1878; and his application having been refused, he now applies with the same object to this Court, on the ground that the consent decree having been set aside, Suit No. 181 of 1878 still remains undecided, and must be completed.

We cannot, however, take this view of the effect of the decree obtained by the opponent No. 1. When the applicant's decree was set aside, it was not reversed. It was only by a Court of appeal that it could have been reversed. The decree obtained by the opponent No. 1 in a separate suit left the applicant's decree legally complete, and amounted only to a declaration that it should "avail nothing for or against the parties" to opponents' suit, "who were affected by it." See the judgment of Lord Brougham in *Earl of Bandan v. Becher*⁽¹⁾; also *Mewa Lall Thakur v. Bhujhun Jha*⁽²⁾ and *Eshan Chunda Safooi v. Nundamoni Dasse*⁽³⁾. The application cannot, therefore, be granted. The rule *nisi*, granted in this case, is discharged with costs.

Rule discharged.

(1) 3 Cl. and F., p. 510.

(2) 13 Beng. L. R., Appx. II.

(3) I. L. R., 10 Calc., 357.

REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS v. BAI RUKSHMONI.*

1886.

January 21.

Criminal Procedure Code (Act X of 1882), Sec. 198—Complaint of bigamy by a person "aggrieved"—Indian Penal Code (Act XLV of 1860), Sec. 494.

Where the wife of a lunatic was prosecuted for bigamy on the complaint of the lunatic's brother,

Held, that the complainant, merely as brother of the lunatic, was not a "person aggrieved by such offence" within the meaning of section 198 of the Criminal Procedure Code (X of 1882), and that the complaint could not be entertained.

* No. 333 of 1885.

THIS was an application for revision of the order of J. F. Fernandez, Esq., First Class Magistrate at Ahmedabad.

The husband of the applicant, Báí Rukshmoni, was a lunatic, and was an inmate of the Lunatic Asylum at Ahmedabad for several years. The lunatic's brother lodged a complaint against Báí Rukshmoni in the Court of the First Class Magistrate at Ahmedabad, charging her with having committed bigamy under section 494 of the Indian Penal Code (Act XLV of 1860). A preliminary objection was taken on behalf of the accused, that the Magistrate had no jurisdiction to inquire into the complaint, as the complainant was not an "aggrieved" party within the meaning of section 198 of the Code of Criminal Procedure (X of 1882).

This objection being overruled, the accused applied to the High Court under its revisional jurisdiction.

Macpherson (with him *Mánekhshá* and *Ganpat Sadáshiv Ráv*) for the accused:—The case turns upon the meaning to be attached to the words "a person aggrieved" in section 198 of Act X of 1882. In cases of bigamy the only person that can be said to be aggrieved is either the husband or the wife. He or she can alone be wronged by the offence. The Legislature could not have intended to include in the expression "a person aggrieved" any relation, near or remote, of the husband or wife.

Telang (with him *Goverdhanráam M. Tripati*) for the complainant:—Section 199 distinctly specifies the person who should be the complainant, but section 198 merely requires the complaint to be lodged by "a person aggrieved". The difference in the wording of these two consecutive sections makes it clear that the Legislature did not intend to confine that expression to the husband or the wife alone.

BIRDWOOD, J.:—We are of opinion that the complainant, merely as brother of the lunatic, whose wife is charged with having committed bigamy, is not a "person aggrieved by such offence" within the meaning of section 198 of the Criminal Procedure Code (Act X of 1882). We, therefore, annul the Magistrate's order, and direct that the complaint be dismissed.

Order reversed.

1886.

QUEEN-
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v.
BÁÍ
RUKSHMONI.