

MUDIANSÉ KORALA *v.* APPUHAMY *et al.*

P. C., Kégalla, 12,519.

Civil Procedure Code, ss. 542 and 543—Prosecution for not reporting death—Duty of “next of kin”—Ordinance No. 18 of 1867, s. 18—Absence of fraud.

Where a deceased left property exceeding Rs. 1,000 and minor children, a prosecution for not reporting his death under section 543 of the Civil Procedure Code does not lie against the adult brothers of the deceased.

It is only when some fraud has been perpetrated that the provisions of sections 542 and 543 of the Civil Procedure Code should be enforced.

The best working provision regarding the reporting of deaths is to be found, not in section 542 of the Code, but in Ordinance No. 18 of 1867, section 18.

THIS purported to be a prosecution under section 543 of the Civil Procedure Code, it being alleged that one Punchirala died intestate on the 28th April, 1894, and that “he left no widow, “and left property exceeding Rs. 1,000 in value; and the above-named accused being the brothers and next of kin of the “deceased, and bound as such under section 542 of the Civil “Procedure Code, within one month from the date of the death “of the said Punchirala, to report the cause to the District “Court..... did wilfully omit to report the said death,” &c.

On being asked to show cause why they should not be convicted, it was contended on behalf of the accused that, as the deceased had left him surviving minor children, they were his "next of kin," and not the accused, and that it was not the duty of the latter to report the death.

The Police Magistrate convicted the accused, and sentenced them to pay each a fine of Rs. 2-50.

On appeal, *Bawa* appeared for them.

4th September, 1894. LAWRIE, A.C.J., set aside the conviction and acquitted the accused, in the following judgment :—

When the accused were asked if they had any cause to show why they should not be convicted, their Proctor made a statement, which the Police Magistrate seems to have treated as a plea of guilty, because he then and there convicted. It is clear to me that the accused did not intend to plead guilty, and did not in fact plead guilty.

I would have sent the case back for trial, but that seems unnecessary, because I think I may take it to be admitted by the prosecution that the deceased left minor children, who are his next of kin. If that be so, then the brothers of the deceased are not his next of kin, and no duty is laid on them by section 542 of the Civil Procedure Code to report the death.

The best working provision regarding the reporting of deaths is to be found, not in section 542 of the Code, but in Ordinance No. 18 of 1867, section 18. By this Ordinance the duty of reporting a death is laid on the nearest male relation present at the death or attending the last illness, and in case none such be present, then the occupier of the house or some inmate of the house, &c. The person failing to report shall, by section 20, be liable to a fine not exceeding £5.

It is, I think, only when some fraud has been perpetrated with regard to an estate worth more than Rs. 1,000 that the provisions of sections 542 and 543 of the Code should be put in force.

