

TOUSSAINT v. ALIMAKANDU *et al.*

P. C., Batticaloa, 10,379.

1896.
January 22
and 28.

*Civil Procedure Code, ss. 542, 543—Wilful omission to report death of intestate—
“Duty of widow, widower, or next of kin.”*

In order to sustain a charge under section 543 of the Civil Procedure Code, it is necessary to prove that the accused are the lawful widow or next of kin of the deceased; that he died intestate; and that the accused wilfully omitted to report his death.

Semble, per LAWRIE, J.—The 542nd section makes the widow or the next of kin liable. The duty seems first to be laid on the widow, and if there be no widow, then on the next of kin. Therefore both should not be convicted unless it is proved that they acted in concert.

THE widow and the son of a deceased person who was alleged to have died intestate were charged with and convicted of the offence of not reporting the death of such person, in violation of section 543 of the Civil Procedure Code.

They appealed, and *Sampayo* appeared for them.

Dias, C.C., for the prosecutor respondent.

23th January, 1896. LAWRIE, J.—

LAWRIE, J.

The charge is defective. It omits to state that the failure to report was *wilful*, a very necessary allegation, because the offence is created by the Ordinance, and is not a *malum in se*. Wilfulness is a material part of the offence. Further, the charge does not set forth that the deceased died intestate leaving property above Rs. 1,000.

The accused are stated to be the next of kin, viz., the widow and the son. The widow is not one of next of kin, and the third accused is only one of several children of the intestate.

The 542nd section makes the widow or the next of kin liable. The duty seems first to be laid on the widow, and if there be no widow, then on the next of kin. It is difficult to hold that both are criminally liable, and I would hesitate to sustain this conviction of both unless they had been proved to have acted in concert.

It is not proved that the first accused is the widow. The third accused is proved to be one of several children of the deceased, all of whom are his next of kin.

It is not proved that the deceased died intestate. On the contrary, the deed produced by the notary looks very like a last will of which probate must be taken. It ought, under section 516, to have been produced to the Court by the person in whose keeping it was deposited.

1896. I acquit the accused, and I direct the Police Magistrate to
January 22 forward the deed No. 1,791 to the District Judge of Batticaloa in
and 23. order that he may take such action thereon as may to him seem
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LAWRIE, J. just and according to law.

