

1895.
September 18.

WIJESKERE v. FERNANDO.

P. C., Colombo, 38,805.

Reporting death to Court—Estate of deceased under Rs. 1,000—Marriage in community—Civil Procedure Code, ss. 542 and 543.

Upon the death of a husband who had been married in community of property which in value was less than one thousand rupees, no duty devolves on the widow to report such death to Court, under sections 542 and 543 of the Civil Procedure Code.

Meaning of estate left by deceased explained.

THE facts of the case sufficiently appear in the following judgment of the Chief Justice.

Sampayo, for appellant.

Rámanáthan, S.-G., for respondent.

BONSER, C.J.—

In this case the appellant is the widow of one W. Joronis Aponsu, who died in 1893, intestate. Now section 542 of the Civil Procedure Code enacts that “when any person shall die in Ceylon without leaving a will, it shall be the duty of the widow, widower, or next of kin of such person, if such person shall have left property in Ceylon amounting to or exceeding in value one thousand rupees, within one month of the date of his death to report such death to the Court of the district in which he shall have so died,” and also to supply an affidavit as to the circumstances of his death and the nature and value of his estate; and the next section provides that “every person made liable to report any death under, or to furnish any information required by, section 542, who shall wilfully omit to report such death or to furnish such information within the time therein prescribed therefor, shall be guilty of an offence and liable to a fine not exceeding one thousand rupees.”

The facts were that Joronis and the appellant were married in community of property, and therefore the Ordinance No. 15 of 1875 did not apply to their case; that the joint estate amounted to Rs. 1,360 in value; and that the widow did not report the death of her husband to the District Court. On these facts Mr. Moor, the Acting Police Magistrate of Colombo, found the appellant guilty of an offence under section 543 of the Civil Procedure Code and sentenced her to pay a fine of Rs. 30. There does not appear to be any evidence that the omission to report the death was a wilful one. But, apart from that, I am of opinion that the facts show that no offence was or could have been committed in this case. The duty only arises in case the deceased leaves property amounting

to at least Rs. 1,000. Now, as I understand the law of community of property, the deceased did not leave this estate of Rs. 1,360: it not was his estate. He was entitled to one-half and the wife to the other half; but, because women were supposed to be incapable of managing property, the Roman-Dutch Law gave the husband the entire management of the joint estate. He was the predominant partner. But this does not make the estate his, and when he dies his widow gets no fresh title to her portion of that estate. She re-enters into the enjoyment of her share which had been temporarily suspended during the coverture, and, therefore, what the husband left was his moiety of the estate, which it was agreed was worth only Rs. 680. That being so, there was no duty to report the death and, therefore, no offence was committed.

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