

decree was passed. It was held that the proceedings had clearly shown an intention to bind the estate, the widow having been originally included as representing minor sons, and that the decree could be executed on making the minor adopted son a party to the proceedings.

SUBBANA
v.
VENKATA-
KRISHNAN.

In the case before us the mother was alone impleaded as the sole representative of the estate, though there was at the time an adopted son. We are therefore of opinion that the inheritance was not properly represented, and that the decree will not bind the son.

The case quoted on the other side—*Ramakrishna v. Namasiyaya*(1)—has no application to such a case as the present. There the suit was to have it declared that the shares of the sons were liable to be sold in execution of a decree against the father,—in other words, that the father had represented the sons in the transaction,—but here there is no question but that the mother did not represent the son.

The defendants' appeal must be allowed and the decrees of the Courts below reversed, the plaintiff's suit being dismissed with all costs throughout.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

QUEEN-EMPRESS

against

SABAPATI.*

1888.
July 5.

Penal Code, s. 471—Using a forged document—Fabrication of a receipt as a voucher to cover a contemporaneous embezzlement.

A postmaster misappropriated a certain sum of money, and at the same time made a false document purporting to be a receipt signed by the person to whom the money was payable. He was convicted of using a forged document under s. 471 of the Indian Penal Code. It was contended that no forgery had been committed, because the receipt was made merely to cover the embezzlement—*Empress of India v. Jivanand* (I.L.R., 5 All., 222):

Held, that the conviction was right.

A debtor, who fabricates a release to screen himself from liability to pay the

(1) I.L.R., 7 Mad., 295. * Criminal Appeal No. 76 of 1888.

QUEEN-
EMPRESS
v.
SABAPATI.

debt, cannot be said not to be guilty of forgery, because he intended by the fabrication to cover a dishonest purpose.

APPEAL from the sentence of J. A. Davies, Sessions Judge of Tanjore, in calendar case No. 48 of 1887.

The facts found by the Sessions Court were as follows:—

Prisoner was a local postmaster, and, as such, received Rs. 15 transmitted by a money-order from Ceylon to pay to one Subramanyam. On the 20th January 1887, prisoner credited himself with the amount in his books and certified the payment on a receipt which purported to be marked by Subramanyam on January 20th. It was proved that Subramanyam did not receive the money until October 1887, after a complaint had been made to the postal authorities. The Court found that the prisoner misappropriated the money and had forged the receipt as a voucher in support of payment, and that, embezzlement being proved, the receipt was used by the prisoner with a guilty knowledge.

It was contended for the prisoner that if the receipt was false it was made to hide the prisoner's guilt, and, therefore, there was no forgery—*Empress of India v. Fateh* (I.L.R., 5. All., 217)—and that the prisoner had not used the receipt, as it was his successor who forwarded it to head-quarters and not himself.

The prisoner was convicted under ss. 409 and 471 of the Indian Penal Code and sentenced to three years' rigorous imprisonment and a fine of Rs. 15.

Sadagopacharyar for appellant.

The Public Prosecutor (Mr. *Powell*) for the Crown.

The Court (Muttusami Ayyar and Wilkinson, JJ.) delivered the following

JUDGMENT:—The prisoner, who was recently the Postmaster of Orathanad, has been found guilty of (1) using as genuine a alleged forged document, and (2) of criminal breach of trust. With reference to the first charge, it is urged that the receipt found to be a forgery was not made with the intention of causing wrongful loss to Government, nor with the intention of defrauding Government, but if made by the prisoner was merely made with the intention of concealing the embezzlement of the money. Such an intention does not, it is argued, in law, render the case one of forgery; and we are referred to *Empress of India v. Fateh*(1), and *Empress of India v. Jivanand*(2). The Sessions Judge was of

(1) I.L.R., 5 All., 217.

(2) I.L.R., 5 All. 222.

opinion that the cases were not in point, because in the present case it was not showed that the false document was made subsequent to the embezzlement. We entertain no doubt that the forgery and the criminal misappropriation form parts of one criminal transaction. Having regard to the definition of forgery, we are unable to hold that there was no forgery. There was clearly an intention to cause wrongful loss to Government by conveying the false impression that the receipt contained an acknowledgment of payment by the payee, and the fact of misappropriation in our opinion merely shows that there was an intention to cause wrongful gain to himself. A debtor who forges a release to screen himself from liability to pay the debt cannot be said not to be guilty of forgery, because he intended by the forgery to cover a dishonest purpose.

On the merits the appeal was dismissed.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Muttusami Ayyar.*

ARIABUDRA AND ANOTHER (DEFENDANTS), APPELLANTS,
and

DORASAMI (PLAINTIFF), RESPONDENT.*

1888.
February 27.
March 15.

Civil Procedure Code, s. 244, Questions to be decided under—Hindu Law, Obligation of son to pay debt of deceased father—Nature of obligation.

D obtained a decree against the father of A and R, Hindus, on a hypothecation bond whereby certain land was pledged as security for repayment of a loan. The decree declared the land liable to be sold for repayment of the debt. The judgment-debtor having died before the decree was executed, A and R were made parties to the proceedings in execution and the land was attached. A and R objected to the attachment on the ground that their shares in the land were not liable to be sold in execution of the decree as they were not parties to the suit. This objection was allowed, and D brought a suit for a declaration that the property was liable to be sold. That suit was dismissed on the ground that a suit for a declaration would not lie. D then sued to recover from A and R the balance due under the decree against their father after crediting the amount recovered by the sale of their father's share. It was objected that the suit was barred by s. 244 of the Code of Civil Procedure :

* Second Appeal No. 568 of 1887.