

reason. Even if there was negligence on their part there is nothing whatever to indicate that it was 'wilful.' The expression 'wilful neglect' has been interpreted in a recent Privy Council ruling *Tamboli v. G. I. P. Railway Co.* (1) as meaning that the 'act is done deliberately and intentionally and not by accident or inadvertence, so that the mind of the person who does the act goes with it.' No such conduct on the part of the *chowkidars* or any other railway servants has been proved in these suits.

I would accordingly accept both appeals with costs throughout and restore the decrees of the trial Court.

ADDISON J.—I agree.

N. F. E.

ADDISON J.

Appeal Accepted.

APPELLATE CIVIL.

Before Mr. Justice Addison and Mr. Justice Bhide.

MUSSAMMAT DURGI (PLAINTIFF) Appellant

versus

SECRETARY OF STATE (DEFENDANT)

Respondent.

Civil Appeal No. 2673 of 1927.

Criminal Procedure Code, Act V of 1898, sections 87 and 88—Absconder—attachment and sale of property—validity of, as against wife's right of maintenance.

Held, that both under Customary and Hindu Law the maintenance of a wife by her husband is a matter of *personal* obligation which is liable to be defeated by the attachment and sale of his property under sections 87 and 88 of the *Criminal Procedure Code*.

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SHAHNARA-
SAHARANPUR
LIGHT RAIL-
WAY COMPANY
v.
SULTAN AHMAD.

BHIDE J.

1928

May 10.

(1) (1928) I. L. R. 52 Bom. 169 (P. C.).

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Mulla's Hindu Law, 5th Edition, paragraph 460, referred to.

MUSSAMMAT
DURGI
v.
SECRETARY OF
STATE.

Second appeal from the decree of Sheikh Ali Muhammad, Additional Judge, Hoshiarpur, dated the 19th August, 1927, affirming that of Bakhshi Hazur Ali, Subordinate Judge, 4th Class, Hoshiarpur, dated the 2nd April 1927, dismissing the plaintiff's suit.

NANAK CHAND, *Pandit* and AMAR NATH CHONA,
for Appellant.

CARDEN-NOAD, Government Advocate, for Respondent.

The judgment of the Court was delivered by—

ADDISON J.

ADDISON J.—Nigahia is an absconder against whom proceedings were taken under sections 87 and 88 of the Criminal Procedure Code, his house and land being attached. Under sub-clause (6D) of section 88 his wife sued the Secretary of State for India in Council for a declaration that her husband's land could not be attached and sold in this way as she was entitled to retain it for the maintenance of herself and the widowed sister of her husband. The courts below have found that the widowed sister of the absconder could have no claim for maintenance on her brother's land, and also that the wife had no right in, or charge on, her husband's property in respect of maintenance. Against this decision the wife has preferred this second appeal.

A widow, both under Customary and Hindu Law, has certain rights of maintenance, which, however, are liable to be defeated, in the estate left by her husband. But a wife has no right of control over her husband's property, and cannot object to his creating a charge upon, or completely alienating it,

though his act is one of wanton waste. In the present case the husband's land has been attached in accordance with law, and the wife's position remains the same. The maintenance of a wife by her husband is a matter of personal obligation (see paragraph 460 of Mulla's Hindu Law, 5th edition).

The right of the widowed sister to maintenance from her brother's property was not even argued and obviously there is none.

For the reasons given we dismiss the appeal with costs.

N. F. E.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Addison and Mr. Justice Coldstream.

CHATRU MALIK, Appellant

versus

THE CROWN—Respondent.

Criminal Appeal No. 674 of 1927.

Accomplice—testimony of—Corroboration—evidence of conduct of accused—Indian Penal Code, 1860, section 464—Incomplete document—whether “made” within meaning of the section—Attestation by witness—whether part of a document—Attesting witness—whether guilty of abetment or of principal offence.

Held, that the evidence of an accused person's conduct may be used as corroboration of an approver's story.

Reg. v. Feigenbaum (1), followed.

It was contended on behalf of the appellants in respect of their conviction under section 467, Indian Penal Code, that as the document alleged to be forged was never completed and remained ineffective it could not be said to have

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MUSSAMMAT
DURGI
v.
SECRETARY OF
STATE.

1928

May 21.