Present: Jayewardene A.J. 1924.

CHUNALICE *v.* SAUNDIAS APPU.

442—P. C. Matara, 30,944.

Case laid over till the decision of connected case—Parties ordered to appear on notice—Accused absent—Forfeiture of bail bond—Court has no power to postpone case indefinitely.

This case was laid over till the decision of a connected case, and the Court ordered parties to appear on notice. After the decision of the connected case, the accused did not appear as notice could not have been served. The Magistrate forfeited the bail bond. The surety appealed.

Held, that the Court has no power to postpone a case indefinitely. A date should be fixed on which accused should attend Court. The forfeiture of the bail bond was wrong.

THE facts are set out in the judgment.

H. V. Perera for appellant.

August 8, 1924. JAYEWARDENE A.J.—

This is an appeal from an order against a surety forfeiting a bail bond. The appellant stood security for one Don Hewage John who was charged with an offence before the Police Court of Matara. He was released on bail on his giving security in the sum of Rs. 200. The appellant bound himself as surety for the payment of Rs. 200 if the accused failed to attend to answer the charge on May 9, 1924, and on any subsequent date on which he might be required to attend until otherwise directed by the Court. This case seems to be connected with some other case, and after some evidence had been recorded on May 30, 1924, it was agreed that this case should be laid

1924.

JAYEWARDENE A.J.

Chunalice v. Saundias Appu

over till the decision in appeal of the connected case, and the Court made this entry: " Parties to appear on notice." After the decision of that case in appeal, the proceedings in the present case were resumed on June 21, 1924, when the accused were noticed to appear on July 3. On July 3 the first accused was present, and the second accused John had not been served with notice and was absent. The Magistrate thereupon directed notice to be served upon the surety. The surety was present on July 18, but the second accused against whom a warrant had been issued was not produced. Thereupon, the surety was called upon to show cause why the bond should not be enforced. He said: " I have no cause to show, I beg for pardon." The Court then directed that the surety's bond be enforced. The surety appeals against this order, and it is contended for him that as no date was fixed, when the case was laid over until the decision of the connected case, for the accused to attend Court, but it was directed that the accused should attend on notice, and as the notice issued on the second accused had not been served, it could not be said that he had failed to attend when required by the Court, with the consequence that the surety was not bound to produce the man in Court unless he had been served with the notice issued by the Court, as observed by Withers J. in the case of *Mathews v. Muniandi*,[1] I am inclined to agree with the observations of Withers J. that the Court has no power to postpone a case indefinitely, but that when a case is laid over until the decision of another case, a date should be fixed on which the accused should attend Court. A bail bond was enforced in that case, and the order of enforcement was set aside on the ground that there had been no breach of his undertaking by the surety. I have also been referred to another case in which a similar view has been taken (*Muttiah v. Murugiah* [2]). In view of these judgments, I think the order of forfeiture in this case is wrong.

I therefore set aside the order appealed against and order the recall of the warrant issued against the surety.

Set aside.

[1] *(1892) 3 N. L. R. 122.*

[2] *(1913) 1 Wijewardene's Rep. 9.*