

1963

Present : Abeyesundere, J.

APPUWA, Appellant, *and* ASSISTANT COMMISSIONER
OF AGRARIAN SERVICES, Respondent

S. C. 459/63—M. C. Kegalle, 44842

*Paddy Lands Act, No. 1 of 1958—Section 21 (1)—Procedure in eviction thereunder—
Failure of tenant to be present in Court on due date—Power of Court to excuse
default.*

An order of eviction was made against the appellant when he failed to be present in Court on the date when he was required to show cause, under section 21 (1) of the Paddy Lands Act, why he should not be evicted from a paddy land. When, on a later date, he sought to have the order vacated on the ground that his absence was due to illness, the Magistrate refused the application, stating that he had no power to vacate his order.

Held, that as the appellant's absence was due to illness, his default should be excused.

APPEAL from an order of the Magistrate's Court, Kegalle.

U. C. B. Ratnayake, for the respondent-appellant.

N. B. D. S. Wijesekere, Crown Counsel, for the Attorney-General.

September 6, 1963. ABEYESUNDERE, J.—

The appellant was absent on the day he was required by the Magistrate of Kegalle to show cause why he should not be evicted from the paddy land described in the report under section 21 (1) of the Paddy Lands Act, No. 1 of 1958, presented to the Magistrate's Court of Kegalle by the Assistant Commissioner of Agrarian Services of the Kegalle District. The Magistrate made order allowing the application contained in such report for an order of eviction of the appellant from such paddy land.

On a later date the appellant filed an affidavit together with a medical certificate stating that his absence was due to illness and praying that the Court be pleased to vacate the order made in regard to the aforesaid report. The Magistrate stated that he had no power to vacate his order.

As the appellant's absence was due to illness, his default should be excused. I set aside the order made by the Magistrate on February 6, 1963, and direct that the appellant be given a further opportunity to show cause why he should not be evicted from the aforesaid paddy land.

Order set aside.
