1961 *Present :* **Gunasekara, J.**

THE QUEEN *v.* J. M. MUDIYANSE and 4 others

S. C. (Midland Circuit, 1st Kandy Sessions 1961)—M. C. Gampola, 8,462

In the matter of an Application under Section 31 of the Courts Ordinance

Courts Ordinance (Cap. 6)—Section 31—Discharge of prisoner if not brought to trial at second criminal sessions after commitment—" Second criminal sessions ".

The expression " second criminal sessions " in the second part of section 31 of the Courts Ordinance includes any criminal sessions subsequent to the first. Accordingly, an application for the discharge of a prisoner under section 31 may be made at the end of even the fifth sessions held after the date of the commitment at which the prisoner might properly be tried.

" It is inconceivable that the legislature, having provided that a right to an order of discharge should be available to prisoners who have not been brought to trial by the end of the sessions following next after the first sessions at which they could have been tried, intended that such a right should not be available to those who have been imprisoned without trial for longer periods "

APPLICATION under section 31 of the Courts Ordinance.

M. Udurawana, in support.

Daya Perera, Crown Counsel, for the Crown.

Cur. adv. vult.

April 10, 1961. GUNASEKARA, J.—

This is an application under section 31 of the Courts Ordinance made on behalf of five prisoners who have been committed for trial before this Court on a charge of murder and have not yet been brought to trial. The order of commitment was made on the 29th September, 1959, and the criminal sessions for the Midland Circuit which are being held here from the 10th March, 1961, are the fifth sessions held after the date of the commitment at which the prisoners might properly be tried. The four previous sessions began respectively on the 1st December, 1959, 10th March, 1960, 1st August, 1960 and 1st December, 1960. The application made on behalf of the prisoners is that they should be discharged from imprisonment or admitted to bail. The learned Crown Counsel has objected only to an order being made for their discharge.

The first part of section 31 of the Courts Ordinance provides that if any prisoner committed for trial before the Supreme Court for any offence shall not be brought to trial at the first criminal sessions after the date of his commitment at which such prisoner might properly be tried (provided that twenty-one days have elapsed between the date of the commitment and the first day of such criminal sessions), the said Court or any Judge thereof shall admit him to bail, unless good cause be shown to the contrary, or unless the trial shall have been postponed on the application of such prisoner. In terms of those provisions, at the end of the sessions that began on the 1st December, 1959, the prisoners were *prima facie* entitled to be admitted to bail.

Nothing has been urged against their being admitted to bail and it has not been suggested that the trial was on any occasion postponed on the application of any of the prisoners. They must therefore be admitted to bail if they are not discharged from imprisonment.

The application for an order of discharge is made under the second part of the section, which enacts, subject to certain provisos and exceptions, that if such prisoner be not brought to trial at the second criminal sessions of the Supreme Court held after the date of his commitment at which he might properly be tried, " the Judge of the said Court presiding at such last-mentioned sessions shall, unless good cause be shown to the contrary, issue his order to the Fiscal for the discharge of such prisoner from his imprisonment ". The provisos are that six weeks at least shall have elapsed since the close of the first criminal sessions after the date of the commitment and that six months at least shall have elapsed between the date of the commitment and the commencement of such second criminal

sessions. Where these conditions are satisfied and no good cause has been shown to the contrary the presiding Judge is required to make an order for the discharge of the prisoner unless it has been by reason of the insanity or sickness of the prisoner or by reason of his application for the postponement of the trial that he has not been brought to trial at such sessions.

The present application for an order of discharge is resisted upon the sole ground that such an order can be made only by the Judge who presided at the second sessions held after the date of the commitment and that therefore it cannot be made by any Judge other than the Judge who presided at the sessions which began on the 10th March, 1960.

I am unable to accept this contention. The mischief that is aimed at by the enactment is the imprisonment for unduly long periods of accused persons awaiting trial, and the remedy provided is to confer on such prisoners a right to be discharged after the lapse of a specified period if certain other conditions are satisfied.

> "It is said to be the duty of the Judge to make such construction of a statute as shall suppress the mischief and advance the remedy. Even where the usual meaning of the language falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, if they are fairly susceptible of it." [1]

It is inconceivable that the legislature having provided that a right to an order of discharge should be available to prisoners who have not been brought to trial by the end of the sessions following next after the first sessions at which they could have been tried, intended that such a right should not be available to those who have been imprisoned without trial for longer periods. Considered in the light of the apparent purpose of the enactment the expression "second criminal sessions" must, in my opinion, be taken to include any criminal sessions subsequent to the first.

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, or by rejecting them altogether, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning." [2]

I hold that under the provisions of the second part of section 31 the prisoners may become entitled to an order for their discharge from

[1] *Maxwell on the Interpretation of Statutes, Tenth Edition, p. 68.*
[2] *Ibid p. 229.*

imprisonment if they are not brought to trial at the current sessions. The question whether such a right has accrued to them by reason of their not having been so brought to trial can only be decided at the end of the sessions. (I may observe in passing that, as was pointed out by Mr. Udurawana in the course of his argument, such a right had not accrued to the prisoners at the close of the sessions that began on the 10th March, 1960 ; for the necessary periods of six weeks and six months from the close of the first sessions and the commitment, respectively, had not elapsed at that date.)

I direct that each of the prisoners should be admitted to bail upon his entering into a bond in a sum of Rs. 7,500 with two sureties.

Application allowed.