1955 *Present :* **Sansoni, J.**

THE QUEEN *v.* N. SUNDERAM and others

S. C. 193—Application under section 31 of the Courts Ordinance for release on bail of prisoners on remand in M. C. Kayts, 4,215.

Bail—Courts Ordinance (Cap. 8)—Section 31.

By Section 31 of the Courts Ordinance :—

> "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 . . . . ."

Held, (i) that the Section does not require that the criminal sessions in question should have begun after the date on which the prisoner could have been brought to trial, but only that it should have begun after the date of commitment. *The King v. Girigoris Appuhamy* (1946) 47 N. L. R. 499, not followed.

(ii) that if a case is added to the calendar at a stage when there is not enough time to summon the witnesses, there is "good cause shown to the contrary" within the meaning of the Section.

APPLICATION for bail under Section 31 of the Courts Ordinance.

A. H. C. de Silva, with *A. K. Premadasa*, in support.

V. S. A. Pullenayegum, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

May 19, 1955. SANSONI, J.—

This is an application under section 31 of the Courts Ordinance by 23 prisoners who have been indicted on twenty-one counts involving charges of murder, arson and unlawful assembly. At the close of the non-summary inquiry on 29th July, 1954, the Magistrate committed them to stand their trial in this Court. The record was sent back by the Attorney-General to the Magistrate for further proceedings to be taken, and it was returned by the Magistrate to the Attorney-General on 10th January 1955. The first criminal sessions of the Northern Circuit began on 7th February 1955, but copies of the indictment were not served on all the prisoners until 25th February 1955. Since section 165 (F) (3) of the Criminal Procedure Code requires that fourteen days should elapse between the service of the indictment and the trial, the first date on which the prisoners could properly have been tried was 14th March since 12th March was a Saturday.

I was informed by Crown Counsel that this case would have been added to the calendar and tried if it had not been that a trial which had begun the previous week was still proceeding on 14th March and there was another trial fixed to begin on 15th March. The Sessions was scheduled to close on 18th March, and according to Crown Counsel the presiding Judge did not consider it expedient to add this particular case to the calendar because it was extremely unlikely that the trial could be completed by 18th March.

Two questions were argued before me: (1) whether these prisoners could properly have been tried at that particular sessions, seeing that the sessions had commenced before the first date on which they could have been brought to trial; (2) if so, whether good cause has been shown by the Crown as to why these prisoners should not be admitted to bail.

On the first question I have no doubt at all. Once the indictment had been served on all the prisoners and fourteen days had elapsed, there was no further legal impediment in the way of the Crown in bringing this case to trial, for the only other condition imposed by section 31, that twenty-one days should have elapsed between the date of the commitment and the first day of the criminal sessions, had also been satisfied. There is, however, the dictum of Nagalingam, A.J., in *The*

King v. Girigoris Appuhamy [1], that if a criminal sessions had commenced before the first date on which a prisoner could have been brought to trial, that is not a sessions at which the prisoner might properly be tried. This view of the learned judge is opposed to the decision of Nihill, J., in *de Mel v. The Attorney-General* [2] and the recent judgment of Gunasekara, J., delivered on 6th March 1955. It also seems to me to add a condition to section 31 which is not to be found there, and I would respectfully dissent from it. The section does not require that the sessions in question should have begun after the date on which the prisoner could have been brought to trial, but only that it should have begun after the date of commitment.

On the second question, I think the facts of this particular case are sufficient to constitute good cause within the meaning of section 31. I should say at once that I do not think it is open to me to question the decision which had been made that the sessions should close on 18th March. Counsel for the petitioner submitted that he gave an undertaking that if the case were taken up for trial on 14th March it would be finished by 18th March. It seems to me to have been a bold undertaking and one which, though given in all good faith, it might not have been possible to keep despite the best efforts of counsel. The presiding Judge may have had the same doubts. But another matter which also needs to be remembered is that more is required to be done than merely adding this case to the calendar and fixing it for trial on 14th or 15th March. Witnesses had to be summoned after these steps had been taken ; I do not know how many witnesses there are on the back of the indictment but they must be fairly numerous. How then could the trial have even begun before the 18th March ? In view of these facts I think the Crown has shown good cause in this case and I therefore dismiss this application.

Application dismissed.