Present : Wood Renton J. and Grenier J. *June 26, 1911*

APPUHAMY *v.* APPUHAMY.

141 *and* 142—*D. C. Ratnapura* 1,776.

Appeal dismissed for non-appearance of counsel—Refusal to reinstate appeal.

Where there was no appearance for appellant when an appeal was called, and the case was allowed to stand at the bottom of the cause list for the day, and where there was no appearance even when the appeal was called a second time, the Supreme Court dismissed the appeal and refused to reinstate it.

June 26, 1911. WOOD RENTON J.—

These cases appeared in the cause list before my brother Grenier and myself to-day. When they were called in due course, we were informed by a member of the Bar as *amicus curiae*, for he did not profess to have been asked to make any statement on the point, that the appellant's counsel was engaged in the other branch of the Supreme Court. No objection was offered by counsel on behalf of the respondent to the cases being provisionally passed over, and in accordance with our usual practice they stood down to the bottom of the cause list for the day. We thereupon disposed of another District Court final appeal, and only two other cases, with the exception of those that had been passed over, remained on our list. It appeared that in both of these cases another member of the Bar was counsel for the appellants, and that he was at the time engaged on the other side of the Supreme Court. It was then twenty minutes to one o'clock, and the practical result was that we found ourselves at that hour with no other appeals to be heard. We thereupon, following our usual course, fell back upon the cause list, and directed the Registrar to call over the postponed cases in their order. When the present cases were called, counsel appeared on behalf of the respondents, but there was no appearance on behalf of the appellants, and we dismissed both appeals with costs. Shortly afterwards the member of the Bar whose name had been mentioned to us at the time when the two cases that I am referring to were placed at the bottom of the list, made an application to have them reinstated. He said that he was ready to argue them there and then. If there had been no other facts, it is clear that no ground for the reinstatement of the appeals had been made out. But the point that caused us difficulty arose when a leading member of the Bar said that he himself was engaged on behalf of the appellants

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in both cases, and that the other member of the Bar, whose name alone had so far been brought before us, was only his junior. He further stated that he had been at pains to see that when the cases were called his junior should be present to argue them, and his name had been handed in to the Registrar as one of the counsel appearing in the cases. In view of these facts, we thought it right to place the whole circumstances before His Lordship the Chief Justice and my brother Middleton, and to ascertain their opinion as to the ultimate order that should be made. Since the adjournment of the Court this has been done. The attention of all the Judges has been called to the order made by Sir Joseph Hutchinson on May 6, 1910, in dealing with a somewhat similar matter, and the conclusion that I am now about to state, expresses the view of every member of the Supreme Court. The circumstances with which Sir Joseph Hutchinson had to deal were different. There an appeal had been called in due course, there was no appearance on behalf of the appellant, and the appeal was struck out. It was subsequently brought to the Chief Justice's notice that a leader of the Bar, who was counsel for the appellant in that case, had expressly requested another member of the Bar, not himself engaged in the case, to apply for a short postponement, if the case should be called while he was engaged on the other side of this Court. The case was called, but unfortunately the member of the Bar to whom the request just mentioned had been made either was not present or said nothing at the proper time, and the appeal, as I have said, was dismissed. Sir Joseph Hutchinson thought that under those circumstances counsel for the appellant had done all that he could with a view to seeing that a postponement was applied for, and he accordingly allowed the case to be reinstated. But here the facts are different in more than one particular. The cases in question were allowed to stand to the bottom of the list, and they were struck out only when the Court had, at a point of time long before its proper hour for adjournment, no other work to do. In addition to that, the leading member of the Bar, in the cases with which Sir Joseph Hutchinson had to deal, appeared alone. In the present case he had a junior, for whose absence no adequate excuse has been offered. Under these circumstances, it appears to me, and as I have said, the conclusion at which I should myself arrive has the full assent of the Chief Justice and my brother Middleton, that the appeals should not be reinstated. I would adhere to the order I have made.

GRENIER, J.—I entirely agree.

Application refused.