

1946

Present : Cannon J.

ABDUL HAMEED Appellant, and KALMUNAI POLICE,
Respondent.

310—*M. C. Kalmunai, 164.*

Surety for appellant—Forfeiture of bond—Powers of Court—Criminal Procedure Code, ss. 341, 411.

A surety bound himself on behalf of an appellant "that he (the appellant) shall attend at the Magistrate's Court after the proceedings in the case shall have been returned to the said Magistrate's Court from the Supreme Court on appeal and there surrender himself . . . and abide sentence which shall have been pronounced against him . . ."

The appeal was duly heard and dismissed, and the accused attended the Magistrate's Court on April 23, 1945, when the Supreme Court decision was communicated to him. He was subsequently given time to pay the fine which was due from him. Thereafter the accused did not appear, and the Magistrate ordered the surety's bond to be forfeited.

Held, that the terms of the surety's bond were fulfilled when the accused appeared on April 23, 1945, and that the surety's liability came to an end on that date.

Held, further, that section 341 of the Criminal Procedure Code does not enable a bond to be taken if the appellant is not in custody.

A PPEAL against an order of the Magistrate's Court, Kalmunai.

G. Thomas, for the surety, appellant.

J. G. T. Weeraratne, C.C., for the Attorney-General.

Cur. adv. vult.

April 16, 1946. CANNON J.—

This is an appeal by a surety, whose bond was forfeited on the ground that he had failed to produce the accused before the Magistrate. It is necessary to examine the original record in order to appreciate the points. One Neina, the accused for whom the appellant became a surety, was convicted on September 18, 1944, of transporting paddy without a permit. In his order on September 18, 1944, the Magistrate says :—

The accused is said to be a Vatte Vidhan. I sentence him to pay a fine of Rs. 1,500. Time to pay is allowed till October 16, 1944. In default 6 months' R. I., $\frac{1}{2}$ fine to R.F. Bail accused in Rs. 1,500.

In the record is the copy of a warrant, dated September 18, 1944, committing the accused to prison for default of payment of the fine. It is difficult to understand why the accused was committed to jail on September 18, 1944, when he was given time till October 16, 1944, to pay the fine. He was released on September 23, 1944, when he and his surety executed a document purporting to be a bond and bearing the title "Bond Pending Return to Distress Warrant". By this bond the accused bound himself to attend the Magistrate's Court at Kalmunai on October 16, 1944, and to continue so to attend until otherwise directed by the Court; and in case of default he bound himself to forfeit to the

Crown Rs. 1,500. The surety also bound himself in respect of this obligation. It would appear from this bond that no Warrant of Distress was in fact issued, as the printed words "and a Warrant of Distress having issued for the recovery of the said fine" have been scored through. During the currency of this bond the accused filed his Petition of Appeal on September 27, 1944. He thereupon executed another bond with the same surety on that date. The latter bond is the one in respect of which the order now in appeal has been made.

The obligation of the surety under the second bond is thus stated :—

I, Sinnalebbepody Abdul Hamid of Addalaichenai, hereby declare myself surety for the said Neina Aratchi Vadde Vidhane that he shall attend at the Magistrate's Court of the said Magistrate after the proceedings in the case shall have been returned to the said Magistrate's Court from the Supreme Court on appeal, and there surrender himself into the custody of the Magistrate's Court, and abide sentence which shall have been pronounced against him and not depart without leave, according to law; and in case of his making default therein bind myself to forfeit to His Majesty the King the sum of One thousand five hundred rupees.

The appeal was duly heard and dismissed, and the accused attended the Magistrate's Court on April 23, 1945, when the Supreme Court decision was communicated to him. He was then given time till May 7, 1945, to pay the fine. On May 7, 1945, he again appeared and paid Rs. 500. He was given further time to pay the balance till May 21, 1945. On that day he again appeared and paid Rs. 100 and was given time till June 4, 1945, to pay the balance. Thereafter the accused did not appear, and the Magistrate on January 24, 1946, ordered the surety's bond to be forfeited.

Mr. Thomas contends that the Magistrate's order for the bond of September 27, 1944, was made without jurisdiction inasmuch as the accused was not in custody at the time; and consequently the bond was a nullity. Therefore the Magistrate's order on January 24, 1946, forfeiting it was null and void.

He further submitted that even if the bond of September 27, 1944, was valid, the obligation of the surety was fulfilled on April 23, 1945, when the accused appeared to hear the judgment of the Supreme Court. Consequently, the bond being then discharged, the order of forfeiture above mentioned, from which this appeal is taken, was null and void.

For the Attorney-General Mr. Weeraratne is unable to support the Magistrate's action in the matter.

I hold that the terms of the bond of September 27, 1944, were fulfilled when the accused appeared on April 23, 1945, and the surety's liability came to an end on that date.

On the question whether the bond of September 27, 1944, is a bond taken under any provision of the Criminal Procedure Code, I do not think that section 341, under which it purports to be taken, affords any authority for taking such a bond. That section provides for the taking of a bond when an appeal has been preferred, if the appellant is in custody, the object of the bond being to obtain the appellant's release from

custody. In this case the accused was not in custody on September 27, 1944, and the bond is therefore not a bond for forfeiture taken under section 341. The summary procedure for forfeiture of bonds under section 411 can be followed only in respect of bonds taken under the Code. The order of forfeiture is therefore bad.

For these reasons the appeal is allowed and the Magistrate's order set aside. The sum of Rs. 250, which has been paid by the surety on account, must be returned to him.

Appeal allowed.
