

1953

Present : Swan J.

K. CYRIL, Appellant, and DOLE (Inspector of Police), Respondent

*S. C. 942—M. C. Galle, 9,551**Postponement—Application therefor—Circumstances when it should be granted.*

At the conclusion of the case for the prosecution the Proctor who was appearing for an accused person applied for a postponement stating that it was well past the ordinary working hours of the court, that he had had a heavy day and that the defence would take at least two hours.

Held, that in the circumstances the application for postponement should have been granted.

APPPEAL from a judgment of the Magistrate's Court, Galle.

G. E. Chitty, with *A. W. W. Goonewardene*, for the 1st accused appellant.

A. Mahendrarajah, Crown Counsel, for the Attorney-General.

December 9, 1953. SWAN J.—

There were two accused in this case. Only the 1st accused has appealed. Perhaps the 2nd accused is satisfied with the order that the learned Magistrate has made. Mr. Chitty, appearing for the 1st accused, complains that at the conclusion of the case for the prosecution the Proctor for the 1st accused applied for a date which the learned Magistrate refused, although it was well past the ordinary working hours of the court. Thereupon the Proctor for the 1st accused withdrew from the case and the accused was deprived of his services. I think the refusal of the Magistrate to grant the 1st accused's Proctor a date prejudiced the 1st accused. Ordinarily when there is co-operation between Bench and Bar an application for a date is readily granted. In this particular case the Proctor for the 1st accused drew the attention of the court to the fact that it was ten minutes to five and stated that the defence would take at least two hours and that he had had a heavy day and asked for the courtesy of a postponement which was curtly refused. In the circumstances I do not think there has been a satisfactory trial so far as the 1st accused is concerned. I would therefore set aside the conviction of the 1st accused and order the case to be tried before another Magistrate who may or may not assume jurisdiction as District Judge as he thinks fit.

Conviction set aside.