

1898.
March 10.

MATHEWS v. MUNIANDI.

P. C., Kandy, 4,575.

Bail bond—Forfeiture—Postponement of case sine die—Liability of sureties.

The postponement of a case *sine die*, in which the accused by bail bond bound himself to attend Court on a certain day to answer a criminal charge and to continue to attend until otherwise directed, determines the bail bond, and the mere fact of the bond containing the words "to continue to attend until otherwise directed" would not extend the time at which the accused should attend until the conviction or acquittal of accused, nor render the bond liable to forfeiture on his failure to attend on notice after the postponement *sine die*.

THE facts of the case are shortly these. On the 10th April one Muniandi was brought up before the Police Magistrate of Kandy under a warrant to answer the charge of an offence against the Labour Ordinance, and he signed a recognizance, in which he bound himself to attend in the Police Court of Kandy on the 20th day of May to answer to the said charge, and to continue to attend

until otherwise directed by Court, and in case of his making default therein he bound himself to forfeit to Her Majesty the Queen the sum of Rs. 25.

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One Ramasamy (appellant) and another signed this recognizance as sureties for the attendance on those terms.

On the 20th May the case was postponed till the 3rd June, 1897, pending result of P. C., 4,572.

Muniandi, the accused, attended Court on that day and on the 3rd June. The journal entry of that day was, "Accused present. "Postponed *sine die* pending result of 4,572 in appeal."

The next entry was 3rd August: "On motion filed in 4,574, "notice issued for 23rd instant, on surety."

Then appeared the following entries: "23rd May accused absent. "Mr. Beven for complainant. Notice securities re-issued for 8th "September."

"8th September, 1897, parties absent."

Then warrants were ordered for the arrest and production of the sureties. A proclamation was also ordered to be made on account of the defendant. On the 8th October Ramasamy (appellant) was brought up under warrant, and he was called upon to produce the body of Muniandi. He failed to do so, and was consequently called upon by the Police Magistrate to show cause why his bond should not be declared forfeited.

It was urged by his proctor that the order of the 3rd June, postponing the case *sine die*, determined the bond.

This argument did not prevail with the Magistrate, who decided that the words in the bond "until otherwise directed" could only mean until the principal is acquitted or convicted. He declared the bond forfeited, and called upon Ramasamy to pay a sum of Rs. 25.

Ramasamy appealed.

10th March, 1898. WITHERS, J.—

I am unable to agree with the Magistrate. The direction conforming to the bond is a direction that the defendant should attend in the Court on a day certain. To postpone the case *sine die* was to direct otherwise. In my opinion such an order is too indefinite and ought never to be made. Sureties have a right to stand upon the very terms of their undertaking. It was a term of their undertaking that the defendant should attend at a certain time and place. They were entitled to know in this case on what day the defendant was directed to attend at the Police Court. If they did not know when they were to produce this man, how could they carry out their undertaking? Even if I am wrong in thinking

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that the postponement of the case *sine die* was a direction otherwise (*i.e.*, other than a direction to attend at the Police Court on a day certain), it was clearly incumbent on the Magistrate to name a date for the attendance of the defendant, and to give him and his sureties reasonable notice of the time at which the former was required to attend at the Police Court.

They had no opportunity given them of producing the defendant on any particular day before the Court.

I hold that the appellant has not forfeited his bond, and I must set aside the order and sentence.

