

1953

Present : Palle J. and L. M. D. de Silva J.

W. STEPHEN FERNANDO, Appellant; and W. JAMES
FERNANDO, Respondent

S. C. 244—D. C. Colombo, 23,443

Postponement—Grant or refusal—Discretion of Court.

An order refusing or granting a postponement is a typical exercise of discretionary power with which an appellate court would be slow to interfere.

APPPEAL from a judgment of the District Court, Colombo.

S. W. Walpita, for the defendant appellant.

A. W. Gooneratne, with *B. E. de Silva*, for the plaintiff respondent.

Cur. adv. vult.

January 9, 1953. PULLE J.—

The appellant in this case is the defendant against whom judgment has been entered for the payment of Rs. 6,775, legal interest and costs.

The trial of the case was taken up on the 15th February, 1951, when the Proctor for the appellant tendered a medical certificate and applied for a postponement. The certificate which was dated the 15th February, 1951, merely stated that the appellant was under "treatment for acute gastritis". The certificate which was intended to be used as evidence in a court of law did not state specifically that the condition of the appellant was such as to render him unfit to attend court. The learned District Judge declined to grant a postponement and having heard the evidence adduced he entered judgment for the plaintiff as prayed for but reserved to the defendant, with the consent of the plaintiff, the right to bring a separate action upon the claim in reconvention.

It is argued in appeal that the Judge erred in refusing to grant a postponement. Now an order refusing or granting a postponement is a typical exercise of a discretionary power with which an appellate court would be slow to interfere. In the case of *Maxwell v. Keun*¹ Atkin L.J. said at page 653,

"The other point that was made by the defendants was that this was a discretionary order, and that the Court of Appeal ought not to interfere with the discretion of the learned Judge. I quite agree the Court of Appeal ought to be very slow indeed to interfere with the discretion of the learned Judge on such a question as an adjournment of a trial, and it very seldom does do so; but, on the other hand, if it appears that the result of the order made below is to defeat the rights of the parties altogether, and to do that which the Court of Appeal is satisfied would be an injustice to one or other of the parties, then the Court has power to review such an order, and it is, to my mind, its duty to do so." Other cases on this subject are reviewed by the Court of Appeal in *Dick v. Piller*².

In his order the learned Judge stated his reasons as follows:—

"It (the certificate) does not even say that the defendant is at present suffering from acute gastritis, but only says he is under treatment for gastritis. It may be that he is now not so bad as he was when he first started treatment. I refuse the application for a date."

We are unable to say that the Judge exercised his discretion wrongly in refusing to grant a postponement. It is a matter of common knowledge in this country that medical certificates are procured with the object of delaying creditors especially in cases where the party applying for a postponement is remiss in getting ready for trial or feels that his defence has little chance of success. In these circumstances the Judge was perfectly right in subjecting the certificate to a strict scrutiny.

The appeal is dismissed with costs.

L. M. D. DE SILVA J.—I agree.

Appeal dismissed.

¹ (1928) 1 K. B. 645.

² (1943) 1 All E. R. 627.