

1948

Present : Nagalingam J.

SAMMY SINGHO, Appellant, and HENRY SILVA, Respondent

S. C. 141—C. R. Balapitiya, 24,580

Postponement—Absence of material witness—Summons served—Court should allow postponement.

Where a material witness on whom summons has been served is absent, the Court should allow a postponement.

APPEAL from a judgment of the Commissioner of Requests, Balapitiya.

A. C. Nadarajah, for plaintiff, appellant.

G. P. J. Kurukulasuriya, with *Naina Marikar*, for defendants, respondents.

October 5, 1948. NAGALINGAM J.—

After framing the issues in this case, the Counsel appearing for the plaintiff applied for a postponement on the ground, *inter alia*, that one of the material witnesses, namely, the headman, to prove prescriptive possession, was absent. The Counsel for the defendants objected to that. Thereupon the learned Commissioner disallowed the application for postponement. It is not easy to see the basis for the refusal. It is true that the defendants did not deny possession, but the plaintiff was out to prove prescriptive possession. He could not do that without calling evidence. If, according to the plaintiff, the headman was a material witness to prove prescriptive possession, the learned Commissioner should have allowed the postponement as the headman had been duly summoned. There were also other grounds raised for the postponement. I do not think it necessary to consider them in view of the conclusion I have reached on the first ground. I would, therefore, set aside the judgment of the learned Commissioner dismissing the plaintiff's action, and send the case back for trial on the issues framed. The plaintiff was entirely to blame for the situation in which he found himself. He will bear the costs of trial in the Court below. He will be entitled to the costs of appeal.

Appeal allowed.