1945

Present: Wijeyewardene J.

ANDRISHAMY, Petitioner, and DEONISHAMY, Respondent.

In revision M. C. Matara, 52,311.

Criminal Procedure—Complainant's application for postponement refused— Duty of Magistrate to proceed with the trial.

When a Magistrate refuses an application for postponement made by a complainant he should proceed with the trial and ask the complainant to place his evidence before the Court.

T HIS was an application to revise an order of the Magistrate of Matara.

- S. C. E. Rodrigo (with him S. Saravanamuttu), for the petitioner.
- P. S. W. Abeyewardene, C.C., as amicus curiae.

March 9, 1945. WIJEYEWARDENE J .-

The complainant charged the accused in this case with offences under sections 486 and 314 of the Ceylon Penal Code. The plaint was filed on January 10, 1944. On January 25th the accused was present and he pleaded not guilty. The case was fixed for trial on March 4. An entry made on that date by the Magistrate is as follows:—" the complainant not 46/19.

ready. He moves for a date. I refuse. I discharge the accused". The Magistrate has not given reasons for refusing the postponement, but, apart from that, when he refused a postponement, he should have proceeded with the trial and asked the complainant to place his evidence before him. There is nothing in the record to show that he has done so. I am unable to sustain the order of the Magistrate. I set aside the order of discharge and send the case back for trial.

Order set aside.