

1925.

Present: Bertram C.J. and Schneider J.SIMON SINGHO *v.* WILLIAM APPUHAMY.

242—D. C. Colombo, 10,490

Time—Postponement of case—Undertaking to pay costs—Last day a Sunday—Judicial act.

On an application made on behalf of the defendant the case was postponed on condition that the costs of the day were paid by him on or before July 20; and it was further agreed that on failure thereof, judgment should be entered for the plaintiff. July 20 fell on a Sunday, and the costs were tendered on the Monday following.

Held, that the defendant had failed to carry out his undertaking in terms of the order.

Per BERTRAM C.J.—A person is relieved from responsibility to make a payment in the nature of a judicial act on a Sunday. An undertaking to pay costs *simpliciter* does not imply payment into Court.

A PPEAL from an order of the District Judge of Colombo. In this action an application was made for a postponement on the ground that the defendant was ill. The Court then made the following order: "Of consent, postponed for July 21. Defendant to pay Rs. 86 costs of to-day on or before July 20. If not paid, judgment for plaintiff, and the defendant's claim in reconvention to be dismissed." July 20 happened to be a Sunday. On Monday morning the defendant's counsel appeared, and stated that the costs had been tendered that morning. The learned District Judge held that the defendant had failed to comply with the order, and entered judgment for the plaintiff.

J. S. Jayewardene, for defendant, appellant.

H. V. Perera, for plaintiff, respondent.

February 13, 1925. BERTRAM C.J.—

In this case an application was made in the Court below for a postponement on the ground that the defendant was ill. The Court then made the following order: "Of consent, postponed for July 21. Defendant to pay Rs. 86, costs of to-day, on or before July 20. If not paid, judgment for plaintiff, and defendant's claim in reconvention to be dismissed." As it turned out, July 20 was a Sunday, a fact which the Court probably overlooked. On the Monday morning the defendant's counsel appeared and tendered a medical

certificate. He also stated that the costs had been tendered that morning. The learned Judge, holding that the order was not complied with, entered judgment in terms of the consent order.

1925.

BERTRAM
C. J.

*Simon
Singho v.
William
Appuhamy*

In the Court below the defendant's counsel had not realized the point about the 20th being a Sunday. Mr. J. S. Jayawardene has discovered the point, and pressed it upon us on this appeal. He contends that in the circumstances, July 20 being a Sunday, the defendant was entitled to comply with the order on the following day. Various authorities have been cited to us. But I think it is clear that neither the Indian authorities nor the English authorities apply to the case.

With regard to the case cited by my brother Jayewardene in a recent judgment (*Balprasad v. Dharindhar Sakharam*¹), that case no doubt, held that under the law in force in India where a decree based on an agreement is passed for the payment of a certain sum within a given period, and where, owing to the Court vacation, payment becomes impossible during the last two days of that period, the person ordered to pay must take the consequences; he must pay on an earlier date. The fact that the compliance with the decree on the last two days has become impossible does not exonerate him. That case was cited by my brother Jayewardene in the course of the investigation of the question, where, in such cases as these, the circumstance that compliance with the decree on the last day has become impossible, whether through circumstances outside the control of the party affected or otherwise, entitles that party to pay on the subsequent day. My brother held that impossibility of performance did not extend the time within which performance may have been made. So also with regard to the English cases. They are cited in a note to paragraph 893 of the Article on Time in *Halsbury's Laws of England*, vol. 27, p. 451. It appears that under the English Common law, Sunday has no special significance. But that is not the position of our own Common law. The principles of the Roman-Dutch law which deal with Sunday have been explained in a previous judgment of this Court (*Kulantaivelpillai v. Marikar*²), and legislation, no doubt, based upon these principles has taken place in this Colony. See the Holidays Ordinance, No. 4 of 1886, and the Interpretation Ordinance, No. 21 of 1901, section 7.

It is clear that under our law a person cannot be compelled to do a judicial act on a Sunday. Whether the obligation to do it proceeded from his own undertaking or from the order of the Court, he is excused from making a payment of the nature of a judicial act on a Sunday. Now, the question arises in the present case whether the obligation imposed upon the defendant was an obligation to perform a judicial act? I do not think it was. He undertook as a condition of the order made by the Court to pay a

¹ I. L. R. 10 Bom. 433.

² (1913) 20 N. L. R. 471.

1925.

BERTRAM
C. J.*Simon
Singho v.
William
Appuhamy*

sum of money on a particular day. If his undertaking had been to pay money into Court, then, I think, it might well have been argued that he was entitled to pay the money into Court on the Monday. This is nowhere expressly indicated. Nor is it expressly stated in Voet's account of the subject, *bk. II., Tit. XII.* But it is clear that a person is relieved from responsibility to make a payment in the nature of a judicial act on a Sunday, and our legislature in the two Statutes, to which I have referred, proceeds upon the principle that in such cases an obligation may be fulfilled on the following day. I think in interpreting our own procedure we ought to adopt the same principle as that which had been adopted in these two Statutes.

I therefore think that if an order is made or an undertaking given that costs shall be paid into Court on a Sunday, that order or undertaking will be satisfied by payment into Court on a Monday. It is quite true that in such a case a time may be limited, or an order may be made that the payment shall be made on or before a particular day, and it might be said that in such circumstances the party responsible ought to pay before the Sunday. I do not think that it is a general principle. A person under such an obligation is entitled to wait till the last possible moment for its performance. In doing so he, of course, takes a risk, and he may find it impossible to perform his obligation at the time. But, he is entitled to take that risk. He is, therefore, entitled to any latitude which the law gives him on making the payment. But, in the present case, it cannot be said that the defendant had undertaken to perform a judicial act. He has undertaken to pay costs, and an undertaking of that sort *simpliciter* does not imply payment into Court. In the ordinary way it would be satisfied by payment to the other side. It is not every payment due on a Sunday that can be postponed. Section 8 of the Holidays Ordinance only refers to certain classes of debts—those which a man cannot be compelled to pay on a Sunday. An obligation to pay costs in pursuance of an undertaking is, in my opinion, not within this class of debts, unless the obligation is to pay money into Court.

For these reasons I am of opinion that it was not competent to the defendant to pay the money on the Monday. I would, therefore, dismiss the appeal, with costs.

SCHNEIDER J.—I agree.

Appeal dismissed.