

1958 Present: H. N. G. Fernando, J., and T. S. Fernando, J.

THE ATTORNEY-GENERAL, Appellant, and K. A. AMARADASA  
and 12 others, Respondents

S. C. 23—D. C. (Criminal) Matara, 241

*Postponement—Emergency proclaimed under Public Security Ordinance, No. 25 of 1947—  
Judicial notice thereof—Criminal Procedure Code, ss. 194, 201, 208, 289 (1).*

In a case taken up for trial in a District Court on June 5, 1958, during the existence of the state of emergency which was proclaimed on May 27, 1958, under the Public Security Ordinance, eighteen out of the twenty prosecution witnesses were not present. The Court, after recording that Crown Counsel and most of the prosecution witnesses were absent, made order "acquitting and discharging" the accused.

*Held*, that the Court should have taken judicial notice of the Proclamation and postponed the trial in view of the disturbed conditions prevailing at the time.

**A**PPEAL from an order of the District Court, Matara.

*Ananda Pereira*, Crown Counsel, for the Attorney-General.

No appearance for the accused-respondents.

*Cur. adv. vult.*

November 24, 1958. T. S. FERNANDO, J.—

The Attorney-General appeals against an order made by the District Judge of Matara acquitting 13 persons who had been indicted on a number of charges of unlawful assembly, house-breaking, theft and mischief.

Upon the receipt of the indictment in the District Court the case was fixed for trial on 30th April, 1958, and on that day Crown Counsel appeared for the Crown, but as some of the witnesses for the prosecution had not been served with summons the trial was refixed for 5th and 6th June, 1958.

When the case was called in court on 5th June, 1958, all the accused were present, but of the 20 prosecution witnesses listed on the back of the indictment only 2 were present, one of them being the Village Headman. Of the witnesses absent 9 were Tamils and 8 were either Police or Fiscal's officers. There was no appearance of any pleader for the Crown. The indictment was read and explained to the accused, presumably in compliance with section 204 of the Criminal Procedure Code, and each of them pleaded not guilty. Section 206 requires the Judge to try the accused thereafter, but the learned District Judge after recording that Crown Counsel and most of the prosecution witnesses were absent made order "acquitting and discharging" the accused.

On the 27th May, 1958, His Excellency the Governor-General, acting under powers vested in him by the Public Security Ordinance, No. 25 of 1947, and declaring that he is of opinion that by reason of the existence of a state of public emergency in Ceylon, it is expedient so to do in the interests of public security, the preservation of public order and the maintenance of supplies and services essential to the life of the community, had by a Proclamation of that day brought into operation Part II of the said Ordinance. The Court was bound to take judicial notice of this Proclamation and could not possibly have been unaware of the existence of the state of public emergency. That travel and communications had been disrupted and that persons belonging to particular races were afraid at this time to travel in areas in which they were in a numerical minority were notorious facts. The record contains a telegram sent on 4th June, 1958, to the District Court by Crown Counsel who had been directed by the Attorney-General to conduct the prosecution that he was unable to travel from Colombo owing to the disturbed conditions prevailing at the time which made it unsafe to travel and requesting that the case be postponed. It would appear that this telegram was received in the District Court only on 6th June, 1958, a circumstance indicative by itself of the dislocation of normal communications in the areas affected.

Section 201 of the Code requires the prosecution of a criminal trial before a District Court to be conducted by the Attorney-General or the Solicitor-General or a Crown Counsel or by some pleader authorised by the Attorney-General. It has long been recognised in our Courts that in this way the prosecution of criminal trials in the District Court is under the direct supervision of the Attorney-General. In this very case on the earlier date that had been fixed for trial Crown Counsel appeared.

On 5th June, 1958, upon the plea of not guilty being entered, the trial could have commenced only by the prosecuting counsel stating his case to the Court—vide section 208. In the absence of the prosecuting counsel the trial could not therefore have commenced. For this reason it has been argued by Crown Counsel that it was not open to the District Judge to order an acquittal of the accused. It has been submitted that the only provision contained in the Code for an acquittal without a trial is section 194 relating to proceedings in a Magistrate's Court where on account of the absence of a private individual-complainant the Magistrate is required to acquit the accused unless he thinks it proper to adjourn the hearing. Even where an acquittal is so made, the law provides for its cancellation if the complainant appears before the Magistrate within a reasonable time and satisfies him that the absence was due to some cause over which he had no control.

Without entering upon a consideration of the question whether a District Court cannot in any circumstances make an order of acquittal where the Crown is not represented at the trial, it is in my opinion sufficient in the circumstances of the case before us to consider whether the District Judge should acting under section 289(1) of the Code have postponed the commencement of the trial. Section 289(1) enacts that if from the absence of a witness or any other reasonable cause it becomes necessary or advisable to postpone the commencement of or adjourn any inquiry or trial, the Court may from time to time order a postponement or adjournment on such terms as it thinks fit for such time as it considers reasonable. I have already stated that the District Judge should have been aware of the public emergency and of the disruption of the normal life of the community. In the district in which the learned judge has jurisdiction it is a well recognised fact that Tamils are in a minority. It would appear that the judge through inadvertence failed to address his mind to the question of a postponement of the trial. Had he so addressed his mind, I have no doubt that the most unusual circumstance of the absence of practically all the prosecution witnesses would inevitably have led the judge to make an order of postponement. The charges against the accused were of a very serious nature. The allegation against them was that in June, 1956—nearly two years before the date of trial—they had formed themselves into an unlawful assembly and had looted and damaged two shops belonging to certain Tamils—offences, ironically enough, of precisely the same kind as those allegedly prevalent in May and June, 1958. When the learned Judge became aware that 18 out of 20 witnesses for the Crown were absent, he would in my opinion have appreciated, had he addressed his mind to the question, that even if Crown Counsel had been present the latter would have had to move in the circumstances for a postponement of the trial to ensure the attendance of his witnesses, a motion which the learned judge would undoubtedly have granted.

For the reasons set out above, the order of acquittal has to be quashed. The case is remitted to the District Court for early trial.

H. N. G. FERNANDO, J.—I agree.

*Acquittal quashed.*