

1968 *Present*: H. N. G. Fernando, C.J., T. S. Fernando, J., and  
Samerawickrame, J.

B. V. PERERA, Appellant, *and* P. AMBALAVANAR, Respondent  
*S. C. 16/66—D. C. Colombo, 61967/M*

*Postponement—Refusal despite production of medical certificate—Duty of Court to have considered whether the medical certificate was authentic.*

On the first date of trial, despite the production of a medical certificate stating that the 1st defendant was unfit to attend Court, an application made on his behalf for postponement was refused and the Court proceeded to trial and to judgment without the 1st defendant having any chance to establish that the request for postponement was made on proper grounds.

*Held*, that there should be a fresh trial.

**A**PPEAL from a judgment of the District Court, Colombo.

*Nimal Senanayake*, with *Miss Adela P. Abeyratne*, for 1st Defendant-Appellant.

*H. Rodrigo*, for Plaintiff-Respondent.

*Cur. adv. vult.*

June 13, 1968. H. N. G. FERNANDO, C.J.—

This was an action against two defendants for a sum of Rs. 50,000, the claim being based on an allegation that the plaintiff had entrusted his lorry to the 1st defendant for repairs and that the lorry had not been returned to the plaintiff. The 1st defendant answered that the plaintiff had failed to pay the bill for the repair of the lorry and that the lorry had been retained for that reason.

On the first date of trial, counsel appearing for the 1st defendant filed a medical certificate to the effect that "Mr. B. V. S. Perera is suffering from Fibrositis of the pectoral muscle on the left side. He will not be fit to attend Court tomorrow and for about one week thereafter", and moved for an adjournment. Counsel for the plaintiff objected, stating that he did not admit the genuineness of the medical certificate. The trial Judge refused the application for an adjournment, whereupon counsel for the 1st defendant withdrew from the case. The trial was held immediately thereafter as against the 1st defendant, counsel for the plaintiff having informed the Court that no relief was claimed against the 2nd defendant.

I do not understand why the trial Judge acted so precipitately. The medical certificate has all the appearances of genuineness, and, if the statement made in it was correct, the 1st defendant was not fit to attend Court. When plaintiff's counsel objected to the grant of an adjournment and challenged the genuineness of the certificate, the simple and proper course for the Court was to require the 1st defendant's counsel to prove the authenticity of the certificate. If the Judge in his discretion considered that the costs of the day should be borne by the 1st defendant, an order to that effect could have been made. Instead, the Court proceeded to trial and to judgment without the 1st defendant having any chance to establish that his request for a postponement was made on proper grounds.

The judgment and decree are set aside, and a fresh trial will be held on a date to be fixed by the District Judge. The costs of this appeal will abide the final result of the action.

T. S. FERNANDO, J.—I agree.

SAMEERAWICKRAME, J.—I agree.

*Case sent back for a fresh trial.*

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