

R. v. JOHN RITAYI AND SAKALUNYINGA KASOKA.

CRIMINAL REVIEW CASE No. 247 OF 1939.

Forfeiture of deposit—discretion of court—if warrant issued forfeiture should be postponed.

The forfeiture of a deposit on non-appearance of accused should be postponed if a warrant is being issued to bring the accused before the court. If, however, no warrant is being issued it is proper that the deposit should be forfeited at once.

Thomson, A.J.: The two accused in this case were apparently arrested on 3rd July and the same day each made a deposit of 10s. with the police at Chingola, presumably in accordance with section 119 of the Criminal Procedure Code, which each acknowledged should become forfeited to the Crown if he failed to appear before the Court of the Resident Magistrate at Chingola on 5th July at 9 o'clock in the forenoon.

On the 5th July both accused failed to appear at the time and place at which they had been required to appear and the Magistrate, quite properly, ordered the money deposited to be forfeited, or in his own phrase the bail to be estreated. He then issued warrants for the arrest of the accused. The warrants were executed and the accused were brought before the Court on 12th July when each was duly tried, convicted and sentenced.

Now, I do not propose to interfere with these proceedings in any way, but I would wish to make it clear that, under section 124 of the Criminal Procedure Code, forfeiture of recognizances on non-appearance is not obligatory but is within the discretion of the Court and there are, of course, such circumstances as sickness and so forth which might well be an excuse for non-appearance in an individual case and which would render forfeiture of recognizances harsh and unreasonable.

When a defendant does not appear and no steps are contemplated to enforce his appearance it is only right and proper that his recognizance (or deposit as the case may be) should be forfeited forthwith, but in a case where the defendant subsequently appears either on a warrant or otherwise he should be afforded an opportunity of showing cause, if he can, why his recognizance should not be forfeited and as a matter of practice and to avoid difficulties forfeiture should not be finally ordered until it is reasonably probable that the defendant will not appear.

In this particular case the Magistrate issued his warrants on 5th July, having earlier in the same day forfeited the deposits of the two accused. It would have been better had he deferred dealing with the deposits and then when the accused appeared before him on 12th July dealt with the question of forfeiture (or in other words with the question of whether or not the accused had or had not a good excuse for their non-attendance on 5th July) before proceeding to the trial of the Information.